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**ALCOHOL IN OUR LIVES:
CURBING THE HARM**

Address to ALAC Conference

**TelstraClear Events Centre
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President
Law Commission**

Introduction

One of my favourite playwrights is Tennessee Williams. And one of his most powerful plays is *Cat on a Hot Tin Roof*. You will recall it was made also into a memorable movie starring Paul Newman, Elizabeth Taylor and Burl Ives. The following piece of dialogue takes place:

BIG DADDY: Son, you know you got a real liquor problem?

BRICK: Yes, Sir, yes, I know.¹

Having studied liquor problems intensively since August 2008 in New Zealand, I have come to the conclusion that New Zealand has a real liquor problem. Curing it will not be easy, since many people get a lot of enjoyment from the moderate use of alcohol.

The time line

The first thing that needs to be said about the Law Commission's report *Alcohol in Our Lives: Curbing the Harm* is that it is research based. There is a great deal of research on the multi-faceted effects of alcohol in our communities. Much more than has ever existed before.

In a rational policy-making environment, research should be king. But when it comes to liquor, New Zealanders never had a rational policy-making environment. As our Report says, the subject of alcohol is a social battleground replete with both passions and prejudices.

When the Report was tabled in Parliament last week, there was a tendency in the media to see it in a short term context. The problems New Zealand has with alcohol will not be solved this year or next. They need to be addressed over several years. What we have tried to do is write a report that will guide policy for at least a decade.

We tried to produce a blueprint for the future. We were not under the impression that it could all be done immediately. Indeed, a large segment of our recommendations

¹ Tennessee Williams, *Cat on a Hot Tin Roof* (Penguin Books, Harmondsworth, 1957) 68.

relating to advertising, sponsorship and promotion take place over a recommended five year period.

Our recommendation that producers and retailers be required to provide sales and price information, so that a minimum price scheme can be evaluated in the future, is another measure that cannot be wholly implemented immediately.

At the same time, it is important to understand that this package consists of a large number of mutually reinforcing elements. Unless a comprehensive approach is taken to addressing the problems that alcohol poses for New Zealand society, those problems will not be solved.

The community

The Report makes clear that the law is only part of the solution. Law changes are a necessary condition for other changes to be achieved. Law changes can nudge the community in a different direction by creating an environment more conducive to less risky behaviour.

But to bed in enduring change, the need for it has to be reflected in the hearts and minds of the community. That requires an attitudinal shift and a new drinking culture. These shifts in attitude need to be based on community awareness of the risks associated with the abuse of alcohol and a willingness not to take those risks.

Many of the necessary changes must flow from the community itself, not the law. In our Report we made it clear that many individuals, local government bodies, educational institutions and businesses can contribute to the goal of changing the drinking culture without any changes in the law.

Indeed, strenuous efforts need to be made to change the binge-drinking culture that afflicts New Zealand. Social attitudes need to be shifted so it is not regarded as socially acceptable to get drunk. We ought not to embrace what has been labelled “a new culture of intoxication”.

The reform process

One feature of the alcohol topic lies in the number of interests within the community that it touches. And so far as the New Zealand Government is concerned, it is no different: 14 government departments have an interest in some aspect of alcohol policy. They all contributed to the Law Commission's work. A special Inter-Departmental Committee was established. It met periodically in the course of our project to provide us with information and feedback.

The Law Commission also had the benefit of seconded staff from some of the key government agencies – the Police, the Ministry of Justice, the Ministry of Health and the Alcohol Advisory Council. Some have tagged this report the “Palmer Report”. I'm happy to have my name associated with the Report, but the fact of the matter is that the Report is the product of a collective effort that drew heavily on the wisdom, expertise and insights of a wide range of individuals, organisations and research.

It also needs to be understood that all the Law Commissioners, not just myself, had to be in agreement with the contents of this Report before it went forward.

The terms of reference for this study were enormously wide. That is why the Report is so long. As well as the general remit to examine and evaluate the current laws and policies relating to the sale, supply and consumption of alcohol, 13 matters for particular examination were separately specified in the Terms of Reference for our attention.

The Law Commission engaged in a wide programme of public consultation. We had more than 50 meetings all around New Zealand. We received almost 3000 submissions from members of the public. What we picked up was a widespread sense of public concern that the pendulum has swung too far in favour of liberalisation of alcohol laws.

The Law Commission made 153 recommendations. It is now over to the Cabinet, the Parliament and the people to decide what happens next. We have delivered our recommendations which reflect the best judgment that we are able to bring to the topic. This is likely to be the last formal occasion on which I speak on the review and the conclusions we have reached. It is now a matter for the decision-makers.

Can I say immediately that it is highly appropriate that this address should be given at an ALAC conference. ALAC played a pivotal role in our review and we are most grateful for the insights, assistance and practical help we received from ALAC. Our extensive enquiries around New Zealand were greatly facilitated by ALAC's help.

False criticism – Nanny State

Rather than engage in a blow by blow account of the Law Commission's recommendations, I thought it would be useful to explain the fundamental principles and analysis which underpins the policy package the Law Commission has put forward.

In the course of this I hope to apply an analytical blow torch to some of the more pernicious and self-serving arguments mounted against the Report. These include suggestions that the recommendations are "prohibitionist", or "punish the responsible majority for the sins of the small minority", or represent a "nanny-state approach" or are an attack on the "poor".

Behind the slogan "nanny state" lies a serious principle. It is one our report explicitly endorses: that people live in a free and democratic society and should be subject to only such reasonable limitations on their freedom as can be justified in a free and democratic society. People have the liberty to behave as they choose as long as their actions respect the rights of others and are not contrary to the law. Public policy decisions that are made to restrict activity have to be justified by strong arguments that it is in the public interest that individuals and corporations do not exercise their freedom in particular ways.

But to frame the alcohol debate solely in terms of consumer rights is to ignore a number of fundamental principles.

First, alcohol is not an ordinary commodity. It is a legalised drug capable of causing serious harm to both the drinkers and those around them.

The consumption of this drug at quite low levels can affect the judgment of the consumer, potentially undermining their ability to make fully rational decisions or indeed to accurately assess the risks associated with their drinking.

But the primary rationale for state regulation of this drug lies not in a paternalistic impulse to protect drinkers from themselves, but rather in the need to minimise the harm and cost that drinkers inflict on others – including the State.

In short, if the State is expected to play the role of banker, doctor and welfare provider, it is also entitled to set the rules around alcohol in such a way as to minimise its exposure to the costs associated with alcohol-related harm.

These arguments are well accepted by the New Zealand Treasury as a justification for the imposition of excise tax on alcohol. Indeed, the current government has already demonstrated its willingness to intervene strongly in the market with moves to increase taxation on tobacco. The Regulatory Impact Statement prepared in support of these tax increases stated:

“Evidence shows that increasing the price of tobacco products is the single most effective means of reducing smoking prevalence in tobacco consumption, and averting tobacco-related deaths and illnesses.”

The same is true for alcohol. The distinction between alcohol and tobacco that is drawn lies in the argument that tobacco has no favourable consequences, whereas alcohol consumption does in some circumstances for some people. This argument cannot bear much weight if the aim is to minimise the harm done by excessive alcohol consumption. People who consume in a way that is not risky will pay little extra.

What the Australian economic consultants that we retained told us was that a significant increase in New Zealand’s alcohol excise tax of 50 or even 100% would yield net economic benefits.

The price of alcohol is a key driver of alcohol consumption levels and therefore a driver of acute and chronic harms. Thus, alcohol taxation and price regulation are potentially initially important instruments in the range of policy measures available to improve the balance of benefits and costs associated with alcohol consumption.

The economists told us that the policy proposal we made was likely to pass the public interest test as indicated by a cost benefit analysis, that it was the best policy compared with other policy alternatives, and since a portfolio of policies was required

to cover the range of risks, this policy proposal would fit in within an optimal portfolio of policy interventions.

The government has also shown a willingness to take a strong precautionary approach to the harms associated with other drug use, including proposals to restrict public access to over-the counter cold and flu remedies containing precursor ingredients for the production of methamphetamine. Surveys suggest around 4% of New Zealanders use amphetamines. To date there have been no recorded deaths from methamphetamine overdose in New Zealand. In contrast, since July 2007, 83 people are known to have died from alcohol poisoning – literally drinking themselves to death. In addition, a thousand people a year are estimated to die of alcohol-related causes in this country, and many thousands more are injured as a result of their own or somebody else's drinking.

Rather than a paternalistic approach, the overall thrust of the Law Commission's Report is actually to return much of the decision-making power to local communities. Under the current licensing laws, the people have had little or no opportunity to influence how and where alcohol is sold in their neighbourhood. The Law Commission's proposals are founded on the principle that the people most affected should be the ones influencing the decisions.

The Commission also proposes increasing the rights and responsibilities of parents, rather than the state, in respect of their children's drinking. This is founded on a belief that parents should be the ones to determine when and how their children are introduced to alcohol. But with that right comes the responsibility to supervise and monitor their children's drinking.

Nothing works

Perhaps one of the most prevailing reactions to the Law Commission Report is that nothing that is recommended will make any difference. In truth, that is false. The measures recommended are research based, and the research shows they will make a difference. People may not like the measures. That is a different thing. Price makes a difference. Availability makes a difference. Age makes a difference. The number of licences makes a difference. The level of enforcement makes a difference.

And take the example of a 13 year old boy more than four times over the legal alcohol limit, who crashed his parents Mercedes Benz as reported in the *Herald on Sunday* on 2 May.

The child produced a breath alcohol reading of 658 micrograms of alcohol per litre of breath. He had a friend in the car. The crash occurred at 10pm on Saturday night.

Who supplied this boy with alcohol? Who supervised him drinking it? We believe the Law Commission's recommendations on parental responsibility will have an impact on this sort of behaviour.

The law cannot change human nature. It cannot stop people getting drunk. This is obviously right. But what the law does do is to provide a framework for the necessary conditions to support behavioural and social change. It can also help to establish and support social norms by prohibiting and penalising certain behaviours. It can nudge the community in a better direction.

The Report makes it clear that there were benefits associated with the liberalisation of alcohol in the years following 1989. It allowed a vibrant café and restaurant society to develop. But our analysis led us to the conclusion that the liberalisation of alcohol laws over time led to over-supply and over-commercialisation of alcohol.

Alcohol has been aggressively promoted. There has been fierce competition in the retail sector relating to it. That has led to the development of cheap retail alcohol markets where alcoholic beverages can be purchased for less than bottled water. That, it seems to the Law Commission, is fundamentally at odds with the precautionary principle that should apply to the sale of a drug.

We also know that the widespread availability of cheap alcohol facilitates harmful drinking. The research is clear that young and heavy drinkers prefer cheap alcohol.

In tandem with this radically changed market, there has been an escalation in alcohol-related harms, which our Issues Paper dealt with in detail.

Commentators rightly point out that alcohol is just one factor in the mix, and that the last two decades have seen enormous social, technological and economic change in New Zealand. That is obviously right. But commenting on the causes behind a

steady increase in youth violence in the New Zealand Herald last week, Principal Youth Court Judge Andrew Beecroft said:

“Some of it is long-term factors, including abuse within the family, transients, early development of conduct disorders ... if you took alcohol out of the violent offending equation you would probably reduce the numbers in the Youth Court by 90%.”

The factor that distinguishes alcohol from many other contributing factors is that the abuse of alcohol is a modifiable risk factor. We can do something about it. And it is simply not correct to say none of the measures that we can adopt will make any difference. They can and they will if only we have the courage to adopt them.

Violence is an increasing and growing problem in New Zealand society. This is true both in the family and in the wider community. The research evidence suggests a causative relationship between alcohol intoxication and aggression. This evidence needs to be taken seriously. The Police certainly take it seriously. The amount of Police resource devoted to policing the problems of alcohol seems scandalously high.

Do not punish the responsible majority

A recurrent theme running through the coverage of our report in the media is that harmful drinking is a minority pursuit and therefore the “responsible majority” should not be penalised by price increases and restrictions on hours, and that we rather should target the troublemakers.

There are some serious defects with this argument. The first one is that the drinking surveys and evidence that we have in New Zealand do not support the notion that we are dealing with an insignificant minority of drinkers.

What the evidence suggests is that the majority of drinkers get drunk occasionally. Just over 20% drink in a potentially hazardous manner. And about 10% drink enough to get drunk every week.

Some people abstain or moderate their drinking during the week and then drink large amounts on the weekend. Many New Zealanders who may classify themselves as

responsible drinkers may be among the third whose daily intake is pushing their risk of dying of an alcohol-related disease or injury above 1:100.

People who drink infrequently but heavily (that is, binge drinkers) do not necessarily pay their fair share of excise, because they can generate significant costs in terms of injuries and criminal harm. Most of the episodes of intoxication occur among the large number of people whose total consumption is not particularly high and who get intoxicated relatively infrequently, rather than the small number of people who become intoxicated most frequently and drink most heavily. The result is that most of the acute harm is actually associated with the majority of the drinking population.

It is abundantly clear that drinking to intoxication and drinking large quantities remain the dominant features of the New Zealand drinking culture. It is also clear this behaviour is not confined to an aberrant minority. The first point of any policy should be to actually address the real facts and not pretend about them.

Further, because excise tax is levied on the amount of pure alcohol in a product, those who drink the most alcohol pay the most tax, both proportionately and absolutely. Also, because excise increases have the greatest impact on the price of cheap alcohol, and cheap alcohol is favoured by heavy and young drinkers, excise increases provide a mechanism by which harmful consumption can be preferentially targeted.

Moderate drinkers, and others with low or no alcohol consumption, will also benefit from a reduction in alcohol-related costs and harms across society, potentially reducing costs for health and justice services.

The Law Commission has, where at all possible, adopted policies that target those sectors of the drinking population who drink in the riskiest fashion and experience the most harm. While unpopular and labelled discriminatory, age restrictions on alcohol are strongly and powerfully supported by the evidence. The curious thing is that those who attack the Commission for penalising all drinkers seem equally unsupportive of policies which specifically target the problem.

Do not target the poor

Another curious charge levelled against us is that we are targeting the poor. The truth is our research showed that the poorer and more vulnerable communities that we

consulted – for example in Porirua and Otara – made the heaviest and most passionate demands for urgent action.

They said that alcohol was inflicting too high a price on their communities. The law needed to help them push it back.

The absence of any say in local communities about the nature and number of the liquor outlets around them is a glaring and unacceptable defect of the existing law. Communities know it. Poor communities know it most of all. And they were at the forefront of demanding something better in their submissions to us.

Those who actually live and work in communities battling high levels of crime and social deprivation seem in no doubt about the damaging effects of saturating their neighbourhoods of liquor. The Law Commission’s Otara consultation meeting told us: “Alcohol is destroying our community.”

The reality in New Zealand at present is that alcohol licences are easy to get and hard to lose. Members of the public have little or no input into where and how alcohol is sold.

Extended trading hours mean that alcohol is available around the clock in many parts of the country. The saturated market that has resulted from this regime has led to fierce competition for market shares. This in turn has resulted in heavy marketing and price discounting.

It is always the case in a public debate that there is a formidable list of clichés, half truths and sound bites designed to obfuscate, divert, and disassociate. Some of the arguments are simply bizarre. But they are put forward in the intention that they will influence the public.

The conscience vote

One feature of our study in the Law Commission has been the conscience vote. The first report that we put forward recommended abolition of the conscience vote. This of course is not a question for the government. It is a question for the party caucuses. But the idea that matters of important social policy that bear heavily on law and order

and health should be made on the basis of a conscience vote seems to us to be courting legislative disaster.

The present law relating to selling wine and beer in very small outlets resulted from just such a law-making process in 1989. We need to learn from our past mistakes.

Not enough personal responsibility

Many segments of the licensed trade say that the full answer to liquor problems is to impose more personal responsibility. The Law Commission received many submissions to this effect. One difficulty with the argument is that it is requiring people to act in a rational and responsible way when their minds have already been impaired by the ingestion of alcohol. There is a serious contradiction in that to begin with.

A popular idea, and one that was quite attractive to us, was the idea that the offence of public drunkenness should be re-introduced.

The essential difficulty with this proposal is that it founders on the issue of Police resources. The Police made it clear to us that their capacity to enforce this offence across the whole of New Zealand all the time did not exist.

There is nothing worse than a law that cannot be enforced. And I doubt that the public would be interested in increasing the Police force for this purpose. We did recommend, however, a new system of civil cost recovery. This would provide the Police with the power to serve a notice of debt on anyone who, because of intoxication, is either driven home, placed in temporary shelter or put in a Police cell under the powers of detention that the Police have under section 36 of the Policing Act 2008. There would be a prescribed penalty of, say, \$250. The proceeds should go to the consolidated fund and any disputes should be dealt with by the Disputes Tribunal of the District Court. This recommendation has the advantage of not clogging up the criminal courts with many thousands of offenders that a new offence of public drunkenness would attract each year. More than 20,000 a year are dealt with by the Police in this way.

The other feature of personal responsibility that our recommendations deal with came from the research that we conducted in Australia.

This was the recommendation to introduce an offence for any person to supply alcohol to a minor under the age of 18 unless that person is the minor's parent or guardian or a responsible adult authorised by the parent or guardian, and unless the alcohol is supplied in a responsible manner. This would mean that any person legally entitled to supply a minor, who then fails to supply in a responsible manner, including providing appropriate supervision, also commits an offence.

Similar provisions exist in the law of New South Wales, Queensland and Tasmania, thereby covering half of the population in Australia. If teenage drinking is supervised by parents it is likely to take place at lower risk levels. Unsupervised drinkers are nearly seven times more likely to experience alcohol-related harm than supervised drinkers. The research also shows that parents are the most common source of supply for those aged between 14 and 17 who drink less than two drinks on a typical occasion. Unsurprisingly, friends were the most common source of supply to those who drank six or more drinks. We think the law needs to recognise the rights and responsibilities of parents with respect to the supply of alcohol to minors. When it is considered that a brain does not stop developing until the age of 25, there would seem to be strong reasons for such a provision.

Conclusion

In essence, the recommendations of the Law Commission break down into a number of areas:

- Licensing, including age and hours;
- Price;
- Advertising;
- Enforcement;
- Promotion; and
- Treatment.

Unless we make real progress in all these areas, alcohol will remain a lamentable tale of woe in New Zealand.