



## MITIGATING ALCOHOL HARMS

*“Prosecuting some of the offences in the Sale of Liquor Act in court can be **long and drawn out** and can involve the Police in a lot of paper work. A specific **effort needs to be made to simplify the law** in this area and make it work better.”*

# PROBLEM LIMITATION

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## CHAPTER 11

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- INTRODUCTION**
- 11.1 Problem limitation measures do not attempt to alter the demand or supply of alcohol. Instead they seek to reduce both the incidence of alcohol misuse and the level of alcohol-related harm.
- 11.2 This chapter includes commentary on the current law and possible options in relation to the following problem limitation measures:
- Licensing enforcement
  - The use of infringement offences
  - Alcohol in public places
  - Public drunkenness
  - Product labelling
  - Transport
  - Treatment.

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**ENFORCEMENT  
AND PENALTIES****CURRENT POSITION ON ENFORCEMENT IN THE LEGAL SYSTEM**

- 11.3 It is necessary first to explain how the criminal justice system treats prosecutions and police discretion in order to understand how liquor law is enforced.
- 11.4 Criminal offences and penalties come at several levels. These are:
- Indictable and electable offences, which must attract or may be subject to a jury trial, for serious criminal activity. The offences are usually found in the Crimes Act 1961 and attract substantial terms of imprisonment – there are none of these in the Sale of Liquor Act 1989.
  - Summary offences, which are dealt with by judge alone in the District Court, and are punishable by a fine and, in some cases, a short term of imprisonment.
  - Infringement offences, which involve an on-the-spot fine, only proceed to court if they are challenged, and do not attract a criminal conviction.
- 11.5 Currently, most of the offences under Part 8 of the Sale of Liquor Act 1989 are summary offences, which are punishable by a fine,<sup>1</sup> but some are also punishable by a maximum penalty of a short term of imprisonment.<sup>2</sup> Some offences can be committed by any person, while others apply only to the licensees or managers. In the case of some offences involving licensees, the court also has the power to suspend a licence for up to seven days.<sup>3</sup> Sale of Liquor Act offences are prosecuted in the District Court and, if proved, result in a criminal conviction. Liquor ban bylaws, discussed later in this chapter in the section about Alcohol in Public Places, also result in a summary conviction in court.
- 11.6 An alternative to summary offences is infringement offences. A well-known example of an infringement offence is failing to have a warrant of fitness for a motor vehicle on the road.<sup>4</sup> Infringement offences evolved largely in response to increasing demand placed on court resources.<sup>5</sup> Essentially they are a way of relieving court pressure, while at the same time ensuring that penalties are imposed. The advantages of infringement offences are that they are outside the formal court process (unless challenged), do not result in a criminal conviction, and save Police time due to the considerable amount of paperwork and Police time and resources involved in bringing prosecutions. In addition, there are often substantial delays in the court system and in many instances it is not worthwhile for the Police to prosecute, especially where the offence is a minor one and the penalty likely to be small. Police resources are limited and they must establish priorities over the use of these resources.
- 11.7 The Sale of Liquor Act 1989 already has provision for two infringement offences.<sup>6</sup> These relate to minors in restricted or supervised areas. There is an offence punishable by a fine not exceeding \$1,000 where a person under the age of 18 is found in any restricted area on any licensed premises.<sup>7</sup> The other infringement offence is the purchasing of liquor by minors, which has a maximum fine of \$2,000,<sup>8</sup> but if that is proceeded against as an infringement offence the fine cannot exceed \$500. These infringement offences provide a means of avoiding a minor getting criminal convictions for these offences.

- 11.8 In addition to prosecution through a District Court, Part 6 of the Sale of Liquor Act 1989 also provides powers for a member of Police or a licensing inspector to apply to the Liquor Licensing Authority (Licensing Authority) vary or revoke any licence condition, or to suspend or cancel a licence on the following grounds:<sup>9</sup>
- the licensed premises have been conducted in breach of any of the provisions of the Act or of any conditions of the licence or otherwise in an improper manner;
  - the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence; or
  - the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public.
- 11.9 Where a licensee or manager is convicted of particular offences under the Sale of Liquor Act 1989 there is a mandatory requirement for the police to send a report to the Licensing Authority, including a recommendation about whether the licence should be suspended or cancelled.<sup>10</sup> The Licensing Authority must consider the report immediately and determine whether or not to have a hearing.
- 11.10 While these different offence and enforcement regimes, through either the District Court or the Licensing Authority, have been set out in the Sale of Liquor Act, individual decisions about whether enforcement action should be taken are for the Police and the liquor licensing inspectors.
- 11.11 The first principle, and it is an important principle, is that the Police have a duty to enforce the law. But they also have discretion as to how and when to enforce it. What they cannot have is a policy of non-enforcement.<sup>11</sup> Furthermore, the Police have a discretion with which the courts will not interfere. It is also clear under New Zealand law that although the Police have a good cause to suspect a person of having committed an offence, there is discretion whether to arrest.<sup>12</sup>
- 11.12 Enforcement of council liquor ban bylaws, which we discuss below, is a key area where police discretion is exercised. Police have the powers to ask individuals to tip out the liquor, or leave the area with the liquor, to give warning, or to arrest and charge the individual. While Police have data about the number of breach of liquor ban apprehensions they have undertaken (9,359 in 2007/08),<sup>13</sup> there is no record of the number of times where something short of a prosecution was the outcome. Some constables have conservatively estimated that only one in 10 offences detected ends up recorded as an apprehension, with other alternative action preferred. Some police have also suggested that requiring a person in breach of the liquor ban to tip their evening's proposed consumption down a drain may have a greater deterrent factor than a warning, or a charge.

## ENFORCEMENT OF LICENSING

- 11.13 The Sale of Liquor Act 1989 sets out the framework for the licensees and managers of licensed premises to obtain licences. Licensees are expected to operate their businesses to ensure compliance with the Act and the conditions of their licence.<sup>14</sup> This includes ensuring that door and bar staff are aware of their obligations under the Act to ensure that minors or intoxicated persons are not present on their licensed premises or served there.
- 11.14 A manager is required to be on duty at all times.<sup>15</sup> Managers are required to hold a manager's certificate<sup>16</sup> and the Licensing Authority or District Licensing Agency (DLA) must only issue or renew a general manager's certificate to those with prescribed qualifications.<sup>17</sup> Since April 2006 anyone wishing to apply to the DLA for a manager's certificate has been required to obtain a Licence Controller Qualification, through the Hospitality Standards Institute.<sup>18</sup> This is designed to equip someone with a working knowledge of the Sale of Liquor Act with an emphasis on the requirements of host responsibility and responsible service. The qualification comprises two New Zealand Qualifications Authority standards and can be gained online or by attending a course, which typically involves two half days of study and an examination. A person must be 18 years or more to obtain the qualification.<sup>19</sup>
- 11.15 In the course of preliminary consultation with those responsible for compliance and enforcement, a number of issues regarding the adequacy of the current management system have been raised with the Law Commission. These concerns included:
- The relative ease and speed with which a manager's certificate can be obtained<sup>20</sup> can have the effect of minimising the impact on licensees when a manager is suspended or loses their manager's certificate as a result of an infringement such as selling to minors; that is, a replacement manager is often easily found.
  - The current Act does not differentiate between the risks and responsibilities attached to managing different types of premises (for example, a small wine bar attached to a vineyard compared to a 2,000-capacity inner-city bar with multiple drinking and service areas). The question was asked whether larger premises should be required to have a specific ratio of duty managers based on patronage numbers.
  - Also, under the current Act there is no legal requirement for security or door staff to have training in the obligations of licensees under the Act. In some situations, security staff are making critical assessments of the state of intoxication of patrons both on- and off-premises and are frequently required to intervene.
- 11.16 A key part of the role of the licensee and manager includes monitoring intoxication levels of patrons and asking intoxicated patrons to move on. It has been said by a member of the United Kingdom's Metropolitan Police that "publicans are often our best policemen".<sup>21</sup>

- 11.17 There is a clear link between the consumption of liquor and aggression and violence occurring in and around bars, pubs and clubs. A 2008 book by Kathryn Graham and Ross Homel,<sup>22</sup> which includes research based in Wellington, focuses on specific industry characteristics and explores ways in which policies can be developed in the running of drinking establishments and the policing of them to eliminate problems. This sort of research has many rich insights to offer both law enforcement personnel and regulators.
- 11.18 The book deals with accords, that is to say voluntary agreements among licensees and Police, local government, community groups, health agencies and other interested parties. These arrangements can have an important effect in lowering the levels of violence. Industry initiatives, such as alcohol accords, are an important aspect of enforcement. An alcohol accord is a voluntary, industry-based partnership in a local community used as a framework to introduce practical solutions to alcohol-related problems. An example of an accord in New Zealand is the Christchurch City one-way door intervention,<sup>23</sup> which is a willing compliance model for licensees to not admit patrons after 3 am on Thursday, Friday, and Saturday nights. They are currently limited by the provisions of the Commerce Act 1986, which restricts any accord that prevents competition on price. The New South Wales Liquor Act 2007 has specific trading conditions to manage high-risk bars, which are known as declared premises and are listed in the schedule to the legislation.<sup>24</sup> The applicable conditions include:
- a “lock-out” where patrons are not permitted entry after 2 am and before 5 am;
  - no glass vessels after midnight until closing;
  - no shots or drinks of higher than listed proportion of alcohol by volume levels;
  - restrictions on the number of drinks served after midnight; and
  - 10 minutes per hour of non-service for each hour after midnight.
- 11.19 The suggested approaches in Graham and Homel’s book aim to discover how to prevent violence by sustainable evidence-based practices. As the authors point out:<sup>25</sup>

In addition, the specific approaches that will be most successful are likely to vary by drinking establishment, community and culture, and each type of establishment is likely to pose different regulatory challenges. Neighbourhood bars, for example, tend to have a loyal clientele and operate according to well-established informal norms that have evolved over many years. On the other hand, nightclubs and bars crowded together in city centre entertainment areas may operate as discrete and highly competitive business entities, lack any sense of tradition, and aim to package excitement and glamour for hundreds or even thousands of young adults who may have trouble remembering where they were the night before.

11.20 The manner in which police and licensing inspectors deal with difficult and intoxicated people in such situations is very important. Graham and Homel note the importance of a tailored, evidence-based prevention approach to enforcement by police and licensing inspectors.<sup>26</sup> The authors concisely summarise targeted enforcement as follows:<sup>27</sup>

A broad, heavy-handed enforcement approach, for example, will not be effective when problems are due to a small number of uncooperative high-risk premises and where most licensees have been cooperating effectively for some time with local government, community groups and police. On the other hand, prevention programmes that emphasise voluntary involvement in codes of practices and staff training may make little progress in a situation where there is a culture of confrontation between licensees and authorities, or where short-term competition is the major concern among drinking establishments.

11.21 The New Zealand Police are involved in delivering proactive and reactive policing approaches, which reflect the 'policing with confidence' strategic goal.<sup>28</sup> While reactive policing is demand-driven by incidents observed by police and calls for service from members of the public, proactive policing is focused on prevention. Liquor licensing staff are a key part of the frontline police response, working with general duties police to gather intelligence about alcohol-related risks and harm based on incidents and calls for service in and around licensed premises. This information is critical to informing enforcement action and education with licensees to contribute to Police's overall effectiveness in preventing alcohol-related offending and victimisation.<sup>29</sup>

11.22 On the proactive side, police undertake compliance checks. This involves entering licensed premises and requiring duty managers or licensees to provide certain information, and checking the premises for compliance with licence conditions, including host responsibility.<sup>30</sup> Police also observe the patrons on the premises to determine whether any offences under the Sale of Liquor Act 1989 (such as allowing a minor on premises, sale or supply to a minor, or allowing a person to become intoxicated) have been committed.<sup>31</sup> These visits enable police to monitor the risks on individual premises and intervene, where necessary. In 2007/08 Police recorded undertaking 12,745 hotel compliance checks.<sup>32</sup> This equated to 1.2 visits per year for every on- and club-licensed premise in New Zealand,<sup>33</sup> although it is possible not every licensed premise has been visited and some will have been visited numerous times due to targeting to risk.

11.23 Police direct their staff's compliance checks of licensed premises, focusing on premises with higher risk and previous non-compliance with the requirements of the Sale of Liquor Act 1989. Liquor licensing staff also ensure that Alco-link data is completed on charge sheets for all individuals charged with offences.<sup>34</sup> Alco-link data is used to determine where enforcement action through either the District Court or the Licensing Authority may be required with licensees or managers. It provides an evidence base to determine issues and an appropriate course of action for licensed premises or managers, based on risk.

- 11.24 Liquor licensing staff within New Zealand Police are either dedicated full-time positions, of which there are 15, or a part-time portfolio role. It is more common to be a part-time role, alongside other policing responsibilities. In some locations (for example, Manukau and Canterbury) Police have a dedicated Liquor Licensing Unit, where a sergeant leads a team of liquor licensing officers in managing all alcohol work. In 2007/08 Police recorded 16,938 applications being checked for suitability of licensees and liquor licence renewals.<sup>35</sup>
- 11.25 A key proactive role undertaken by the liquor licensing staff is the undertaking of controlled purchase operations. These planned, collaborative operations, with partner agencies, involve supervised volunteers aged 17 years and younger attempting to purchase alcohol from licensed premises (on-off-and club-licence holders). The purpose is to monitor and enforce section 155 of the Sale of Liquor Act 1989 about sales to a minor. Police visited 1,455 licensed premises during controlled purchase operations in 2007/08, visiting on average 13 premises during each operation.<sup>36</sup> Off-licence premises were most likely to be visited in these operations, and numbers of sales they made to minors have reduced since 2005/06, with the proportion being 17 per cent selling to minors in 2007/08.<sup>37</sup> Club licensed venues were most likely to sell to a minor (60 per cent of those visited in 2007/08, although a very small number were visited).<sup>38</sup>
- 11.26 Licensing inspectors employed by local authorities also play an important role in ensuring licence conditions are being met by operators. Information on the number of compliance checks undertaken by licensing inspectors each year is not collated nationally. An inspector may exercise the power to enter licensed premises for the purpose of ascertaining “whether the licensee or any manager is complying with the conditions of the licence”.<sup>39</sup> An inspector must produce evidence of identity to the person appearing to be in charge of the premises on first entering licensed premises. Inspectors may enter permanent chartered club premises. In contrast, the Police may enter premises “to ascertain whether the licensee is complying with the provisions of this Act and the conditions of the licence”.<sup>40</sup> The Police have no right of entry on to permanent chartered club premises. The role of the DLAs and their inspectors were discussed in chapter 9.
- 11.27 Police, often in collaboration with partner agencies, determine the appropriate course of action to take with a particular licensee or manager for any observed breaches of conditions or the provisions of the Act. There are choices to be made between proceeding in the District Court or the Licensing Authority, or working to achieve a satisfactory resolution through the Graduated Response Model. This collaborative model involves face-to-face meetings with key agencies (Licensing Authority, Police, and public health) who determine a proposed approach for the current situation, informed by the evidence of the licensee/manager’s past behaviour, and make a decision based on an evaluation of risks and appropriate intervention ranging from low intervention/education to a high intervention/cancellation approach.

- 11.28 Seeking a determination of an alleged breach of licence conditions or the Sale of Liquor Act through the District Court or the Licensing Authority can be lengthy and resource intensive. The Licensing Authority has expertise in licensing laws but deals only in licensing matters and not the criminal law. It currently does not have the power to impose fines.
- 11.29 The Sale of Liquor Act 1989 does provide a mechanism for police to close a bar when there are concerns about rioting or fighting.<sup>41</sup> The provision regarding rioting requires an order to be made by a District Court Judge, or two or more Justices of the Peace, or a community magistrate before a bar is closed. Such an order only applies for the time specified in the order but cannot apply after the day on which it is made.<sup>42</sup> This provision has limited utility because the time required to obtain the order before the bar is closed defeats its purpose.
- 11.30 In contrast, powers to close bars due to fighting or serious disorder do not require court approval, as police can make the order. These powers are more effective than those relating to rioting, but raise the question of whether there should be wider circumstances where police can close premises immediately, such as when serious breaches of the Act are occurring. New South Wales has powers in its legislation to immediately close a bar where there is a significant threat or risk to the public interest, such as a threat to public health or safety, a risk of substantial damage to property, a significant threat to the environment, or a risk of serious offences being committed on the premises.<sup>43</sup>
- 11.31 The law seems to be most effective when the relevant agencies take a collaborative approach to compliance and enforcement. The Responsible Liquor Licensing model, first promoted by councils in the wider Auckland region, New Zealand Police, Fire Service and the Auckland Regional Public Health Service, seems to be a particularly good example of this collaborative approach in action. These multi-agency approaches must be well planned to be effective and they must be resourced adequately.
- 11.32 The Law Commission's own observations, based on extensive contact with the New Zealand Police working in the New Zealand night-time culture, leads us to the view that they have developed some excellent policing methods for handling difficult situations. And there is a group of police in New Zealand handling licensing matters who have become specialist and who are extremely knowledgeable. This expertise should be further developed and fostered within the New Zealand Police.
- 11.33 Despite these positive features, it appears that there are some aspects of the existing law that are not fully enforced through the court or Licensing Authority process because enforcement is expensive and there are other priorities. Prosecuting some of the offences in the Sale of Liquor Act in court can be long and drawn out and can involve the Police in a lot of paper work. A specific effort needs to be made to simplify the law in this area and make it work better.

### MORE INFRINGEMENT OFFENCES?

- 11.34 The Law Commission's extensive observations show that the Police require some efficient and expedient way of dealing with people who are causing public disorder but where the expense and complication of the full court process is not warranted. That raises the question of infringement offences. Infringement offences create a penalty. There are many instances in New Zealand law of minor offending where infringement notices provide a sufficient and proportionate response to the wrong that was done. The Ministry of Justice guidelines suggest that infringement notices are appropriate if the misconduct at which they are aimed is comparatively minor; there are straightforward issues of fact to be determined; the offences are strict or absolute liability; and an infringement notice would be an appropriate mechanism to encourage compliance with the law.<sup>44</sup>
- 11.35 It appears to the Law Commission that there is scope for expanding the range of infringement offences in relation to liquor. Given the nature of the enforcement activities the Police have to undertake in this regard, it would be very helpful if the constable could issue these offence notices on the spot. This would cut down the amount of paperwork required. It would avoid having to arrest people in some instances and it would mean that penalties were being imposed in circumstances where often they are not at present due to the cumbersome nature of the system for formal prosecutions.
- 11.36 There are a number of offences involving liquor that are minor and do not involve complex facts and therefore may meet the Ministry of Justice's criteria for creating new infringement offences. Infringement offences may also be appropriate for breach of licence conditions or technical breaches of the liquor laws as a way to enforce the law without the need for a full prosecution. This would mean that there could be faster resolutions for offences where there is little in issue.
- 11.37 The content of the more serious offences contained in the Sale of Liquor Act needs to be reviewed, and the maximum penalties reviewed as well. Increased penalties will assist in signalling to licensees and the community that there needs to be a deterrent effect for particular types of liquor offending. Examples where penalties might be increased include selling to minors and intoxicated individuals and other offences which require a report to be provided to the Liquor Licensing Authority upon conviction.<sup>45</sup>

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### ALCOHOL IN PUBLIC PLACES

#### CURRENT POSITION

- 11.38 The Law Commission's terms of reference direct it to consider the relationship between the Sale of Liquor Act 1989 and the Local Government Act 2002. In recent years the activities of local government around New Zealand have become a matter of great importance in regulating conduct relating to liquor in public places. The Local Government Act 2002 empowers the making of bylaws to regulate drinking in public areas. These liquor ban bylaws, which are enforced by the Police, are an important source of the police activity in relation to liquor. But there are questions about whether a designated

liquor ban area is appropriate, or whether drinking in a public place should be barred altogether. A separate, but related, issue raised is how to deal with intoxicated people in public places.

- 11.39 There is no offence of drinking in a public place for all persons in New Zealand. However, police have power to deal with drinking in public places in two circumstances: they can issue a Liquor Infringement Notice for an individual under the age of 18 who is in possession of, or drinking alcohol, in a public place,<sup>46</sup> or prosecute any person in breach of a council's liquor ban bylaw.<sup>47</sup>
- 11.40 In 2007/08 Police issued 3,145 liquor infringement notices under the Summary Offences Act 1981 in 2007/08 which represents approximately 34 people out of 10,000 under the age of 18 being issued with a liquor infringement notice in 2007/08.<sup>48</sup>
- 11.41 Councils have the power to make bylaws for liquor control purposes under section 147 of the Local Government Act 2002. These allow for liquor bans in public places.<sup>49</sup> There are a range of activities which the bylaw cannot prohibit, such as the carriage of an unopened bottle or container, or taking the liquor to visit someone who lives within the liquor ban area.<sup>50</sup>
- 11.42 The Local Government Act 2002 also contains powers of arrest, search and seizure in relation to liquor.<sup>51</sup> Section 169 authorises police to search any vehicle that is in or entering a public place in a liquor ban area.<sup>52</sup> The provision also authorises police to seize and remove liquor and its container if found in breach of the bylaw,<sup>53</sup> which is forfeited to the Crown upon conviction.<sup>54</sup> There are some requirements to be met by police before they can exercise the power of search, including informing the person of their opportunity to remove the container or vehicle from the public place and giving the person a reasonable opportunity to do so. Police are authorised to arrest a person found committing an offence, or who refuses to comply with a request of police to leave the ban area, or surrender the liquor in their possession.<sup>55</sup>
- 11.43 A large number of bylaws have been made under these provisions and they are frequently changed. In 2005, 64 per cent of the 74 territorial authorities had a liquor control bylaw.<sup>56</sup> Research conducted by the Law Commission for this review shows that there has been a large increase in the number of territorial authorities with liquor control bylaws, with 93 per cent of the territorial authorities having at least one liquor ban. The main reason for the 29 per cent increase in the total number of territorial authorities with liquor bans is due to more district councils creating bans.
- 11.44 When liquor bans initially began, they were largely in place for New Year's Eve, Guy Fawkes, or special events. However, now more of the territorial authorities' liquor bans operate permanently. In 2005, 64 per cent of the councils' bans were permanent, 24 hours a day/7 days per week (24/7) liquor bans;<sup>57</sup> while in 2009, 71 per cent of the councils with bans have at least one 24/7 liquor ban area.<sup>58</sup>
- 11.45 The areas covered by liquor bans also vary from the central business districts (CBD) only, to far-reaching boundaries. Some boundaries for liquor bans have expanded significantly over time.

- 11.46 At least 80 per cent of people apprehended by police for breach of a liquor ban are prosecuted.<sup>59</sup> The number of liquor bans in place, and subsequent apprehensions, has increased in recent years. Therefore, while the proportion proceeding to court remains relatively stable, the volume impact on the court between 2005 and 2007/08 is over 2,000 additional cases to be determined, which has an impact for police, court staff (including the Collections Unit) and the judiciary.
- 11.47 Most individuals who are charged with breach of liquor ban and proceed to court plead guilty,<sup>60</sup> and over half are convicted.<sup>61</sup> The 2005 data showed that a quarter of those charged were discharged without conviction,<sup>62</sup> while data for 2007/08 showed that only four per cent were discharged without conviction.<sup>63</sup> Between five and 10 per cent of cases were withdrawn.<sup>64</sup> In 2007/08, 10 per cent were withdrawn by leave due to the offender completing police diversion.<sup>65</sup>
- 11.48 Fifty per cent of those prosecuted in 2007/08 were convicted and received a fine as their sanction, while the remainder of those convicted (12 per cent of prosecutions) received a conviction and discharge.<sup>66</sup> The maximum penalty that can be imposed for a breach of a liquor ban bylaw is \$20,000.<sup>67</sup> The average penalty imposed in 2004 was \$257.77, which is similar to the penalty for a liquor infringement notice for under those under 18,<sup>68</sup> but in 2007/08, the average fine imposed for breach of liquor ban was \$231.<sup>69</sup>

#### Problems and benefits of liquor bans

- 11.49 There are a number of problems with bylaws. Bylaws are less robust legal instruments than statutes. They can be invalidated on the grounds that they are *ultra vires* the empowering Act, contrary to the Bill of Rights Act 1990, unreasonable, or repugnant to the law of New Zealand.
- 11.50 Further, it is difficult for anybody to know with any degree of certainty what the law of New Zealand on this subject is in a particular place, at a particular time. They certainly cannot ascertain it by looking at the New Zealand statute book. The law does require legible notices to be affixed in the public place but it is doubtful how effective these are. Observations by the Law Commission often found it hard to locate or read the notices, especially in the dark.
- 11.51 There is a seemingly remorseless tendency for local authorities to expand the geographical range of their liquor bans, to address perceptions of displacement of drinking to outside the boundaries of the liquor ban.
- 11.52 The process of developing bylaws is expensive, since they have to be advertised and go through a special consultative process. The requirement for signage to be displayed also imposes costs. Havelock North, for example, conservatively estimated their costs of implementing, maintaining and evaluating the liquor ban at \$60,000, with annual operational costs of between \$10,000 and \$15,000.<sup>70</sup> These estimates do not take into account the costs of defending challenges to the bylaw in court, which can be substantial.

- 11.53 There is some duplication between the power to prosecute for a breach of the liquor ban and the power to issue a liquor infringement notice for those under 18. At least, in principle, this means that someone under 18 years of age could be charged with both offences and face different consequences.
- 11.54 It is clear that drinking in a public place tends to promote social disorder. But to what degree that will occur depends on the circumstances, the time of day, the location of the drinking and many other factors. Police's data identified that in 2007/08 public places were the place of last drink for 18 per cent (14,838 apprehensions) of apprehensions where an alleged offender consumed alcohol prior to offending.<sup>71</sup> Almost half (47 per cent) of alleged offenders who identified their place of last drink as a public place were assessed as moderately affected by alcohol and a further 13 per cent were extremely affected by alcohol at the time of arrest.<sup>72</sup> This means that 60 per cent of those apprehended for an offence and who had been drinking in a public place were at the high end of intoxication on the Police's behavioural scale.<sup>73</sup>
- 11.55 Significant harm and costs result from consumption of alcohol in public places. Alcohol can contribute to perceptions of lack of safety in some areas<sup>74</sup> and normalise the abuse of alcohol. There are significant costs to councils and ratepayers as a result of litter, vandalism and associated behaviour. Cleaning up CBD areas the morning after is a significant and expensive activity in some towns and cities.
- 11.56 It is obvious that councils find liquor control bylaws essential to maintain order and a sense of amenity, especially in CBDs where there are clusters of licensed premises. An 'alcohol-free zone' is not unique to New Zealand, with the United Kingdom also having an example of such legislation.<sup>75</sup> The Police regard them as an important tool as well. But there are some enforcement problems. For example, the police must seize the alcohol or a sample and take it back to the station and then, in some instances where a charge is defended, prove that it is alcohol. There are also serious issues about the resources necessary to enforce these laws, taking into account offender transportation and processing, file preparation and the time in having the case finalised in court. Police recorded 9,359 liquor ban offences in 2007/08, and suggest that this is an under-estimate given that in many areas police exercise alternative action including asking the individual to tip the liquor down a drain, or giving the individual a warning.<sup>76</sup> It is noted that most individuals who are charged with breach of a liquor ban, and whose cases proceed to court, plead guilty.<sup>77</sup>
- 11.57 One alternative is to make it an offence to consume alcohol in any public place. The advantage of such a proposal is that it would be clearer for the public by providing a bright-line rule in a way that liquor ban bylaws do not and cannot do. It would avoid confusion about where and when people can and cannot drink. Since many councils have 24/7 or weekend/evening bans in CBDs, at beaches, carparks and other popular sites, this effectively means that the public cannot drink in these places anyway.

- 11.58 Prohibiting consumption of alcohol in all public places would mean that some people would be unable to have a drink at a picnic on the beach where such a beach is not currently subject to a liquor ban (although many beaches are). It would also curtail individual freedom for those who drink responsibly in public and do not create disorder. It is possible there would be a strong public reaction against a proposal to make it unlawful to drink in a public place. To overcome these difficulties it may be possible to build into the law some exemptions where a local authority determines that alcohol could be consumed at certain locations or times or events. These exemptions would need to be provided for in the legislation itself. And there would need to be a process for promulgating decisions about them. There are, however, formidable legal design problems with constructing such a law.
- 11.59 The central issue is whether the problems of public order addressed by liquor bans are best addressed by continuing them in the form of bylaws or whether there should be a summary offence that makes it an offence to drink in a public place across New Zealand. Obviously supplying alcohol on occasions in public places can be allowed if a special licence is obtained, under the Sale of Liquor Act, for the sale of liquor, or under a statutory exemption as described above if a suitable regime can be defined.

#### **PUBLIC DRUNKENNESS**

- 11.60 The offence of being drunk in a public place, which has been described by an Australian commentator as “one of the more tawdry bits of legal baggage that the British brought to Australia”,<sup>78</sup> harks back to 1606, “when the English Parliament passed an Act ‘for oppressing the odious and loathsome sin of drunkenness’”.<sup>79</sup>
- 11.61 New Zealand had the offence of being drunk in a public place at least as far back as section 19 of the Police Offences Act 1884. It remained an offence through the Police Offences Act 1927<sup>80</sup> until 1981 when it was repealed.<sup>81</sup>
- 11.62 What replaced public drunkenness was an amendment to the Alcoholism and Drug Addiction Act 1966 to provide police with the powers to take an intoxicated person found in a public place to that person’s home, or if that is not reasonably practicable, to a temporary shelter, or if neither option is available, to a police station.<sup>82</sup> The section was amended to enable a constable to take the person to a police station when it is not immediately practicable to determine whether the person should be taken home or to the shelter. The offences of disorderly behaviour and offensive behaviour continue to apply.<sup>83</sup>
- 11.63 One of the reasons the offence of being drunk in a public place was repealed in 1981 was the time, expense and resources expended in processing many drunk people through the courts where only small penalties would be imposed. Members of Parliament of the day were convinced the offence should go. When the Summary Offences Act 1981 was first introduced, the then Minister of Justice, Hon Jim McLay said:<sup>84</sup>

This provision can be described, at best, only as a clumsy method of achieving a measure of social hygiene. It needlessly takes up the time of the courts, and unnecessarily imposes convictions on those who transgress. Accordingly, public drunkenness of itself and by itself is no longer to be an offence... Other offences that involve something other than mere drunkenness, but of which drunkenness may on certain occasions be a part, and which might, for example, lead to disorderly behaviour, fighting, or the use of indecent language, can still lead to the intervention of the law.

- 11.64 It is relevant to note that during the second reading of the Summary Offences Bill, the Member for Island Bay, Rt Hon Frank O’Flynn QC, decried the absence of detoxification centres.<sup>85</sup> Almost 30 years on, the relative paucity of available detoxification centres or temporary shelters to which individuals can be taken remains an issue.
- 11.65 In chapter 5, we highlighted that 21,263 individuals were detained in custody or taken home in 2007/08.<sup>86</sup> These powers to detain reside in section 36 of the Policing Act 2008.<sup>87</sup> This is a huge Police resource invested in looking after drunks who cannot safely look after themselves. During submissions on the Police Act Review, a community representative raised the following concerns about the power under the then section 37A of the Alcoholism and Drug Addiction Act 1966:<sup>88</sup>
- While [...] acknowledge that at present the Police are empowered under section 37A of the Alcoholism and Drug Addiction Act to take any person found publicly drunk or debilitated... the final option is being used to excess. This is not a criticism of the Police but of the Health Service that currently does not provide adequate detox care in communities. [...] consider... [this] is an inappropriate use of Police time and resources.
- 11.66 If we look to overseas jurisdictions, Australia has all but removed the offences of public drunkenness. Victoria is the only state that continues to have the offences for public drunkenness,<sup>89</sup> with other states and territories in Australia having decriminalised public drunkenness and put in place more welfare-based approaches, like New Zealand.<sup>90</sup> There have been calls over the past decade for Victoria to decriminalise their remaining offences relating to public drunkenness.<sup>91</sup>
- 11.67 Public drunkenness remains an offence in the United Kingdom with the offences of being “drunk and incapable”<sup>92</sup> and “drunk and disorderly”.<sup>93</sup>
- 11.68 Does New Zealand want to return to having an offence of being drunk in a public place, or are the existing offences in the Summary Offences Act 1981 sufficient? Should this behaviour lead to an individual being fined by way of infringement offence? Or should it remain a welfare issue, where the powers to detain intoxicated people in order to drive them home, take them to a temporary shelter, or, as a last resort, take them to a police station, remain the appropriate powers?

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**PRODUCT****LABELLING AND  
SERVING SIZES****LABELLING**

- 11.69 Labelling requirements for alcohol products are set out in the *Australia New Zealand Food Standards Code*. The code requires that alcoholic beverage containers list the alcohol content and the number of standard drinks in the container.<sup>94</sup> Standard drink labelling provides consumers with more information about alcohol products so that they are better informed when making purchasing decisions. They are also designed to encourage responsible alcohol consumption.
- 11.70 Alcoholic beverages are among only a handful of products not required to show ingredients or a nutritional information panel.<sup>95</sup> It is unclear whether either of these would affect alcohol consumption, but an argument can be made that alcohol products should have the same ingredient and nutritional information requirements as other food and beverages.
- 11.71 Some countries, including Canada and the United States, require alcoholic beverage containers to provide health warning labels.<sup>96</sup> Food Standards Australia New Zealand is currently assessing whether health advisory labels relating to drinking during pregnancy and high risk (including binge) drinking should be required for alcoholic products in Australia and New Zealand. The following statement in figure 11.1 from Food Standards Australia New Zealand, supplied by the agency to the Law Commission, sets out its role and current work in this area:

**FIGURE 11.1****FOOD STANDARDS AUSTRALIA NEW ZEALAND****INTRODUCTION**

Food Standards Australia New Zealand (FSANZ) is an independent statutory authority established by the Australian Government under the Food Standards Australia New Zealand Act 1991. An agreement between the Governments of Australia and New Zealand set out the arrangements relating to a joint food standards system.

FSANZ is responsible for the development and maintenance of food standards and other food-related regulatory measures in Australia and New Zealand. All foods produced or imported for retail sale and for catering in Australia and New Zealand are required by law to comply with the Australia New Zealand Food Standards Code (the Code). Due to country-specific requirements, food safety standards, standards for primary products and maximum residue levels for agricultural chemicals are not part of the joint system.

FSANZ is part of a wider food regulatory system for Australia and New Zealand consisting of three parts: food regulation policy development, food standards development and the implementation and enforcement of food standards. Food policy is established by the Australia and New Zealand Food Regulation Ministerial Council (the Food Regulation Ministerial Council) supported by the Food

Regulation Standing Committee. The Food Regulation Ministerial Council comprises Health and Food Ministers from all Australian State and Territory jurisdictions and from the Australian and New Zealand Governments. FSANZ receives policy guidelines from the Food Regulation Ministerial Council and is required to have regard to them when developing standards. The implementation and enforcement of food standards are carried out by the relevant authorities in the Australian jurisdictions and the New Zealand Food Safety Authority.

Food standards can be developed or amended by application from interested parties. Proposals to amend the Code can be raised by FSANZ or initiated on receipt of policy guidelines from the Food Regulation Ministerial Council. The assessment of both applications and proposals involve public consultation.

Food standards are contained within the Code. Part 2.7 of the Code contains standards relating to composition and labelling (including declaration of alcohol by volume and standard drinks labelling) of alcohol products. The Code can be found on line at: [www.foodstandards.govt.nz](http://www.foodstandards.govt.nz)

#### **HEALTH ADVISORY STATEMENTS ON PACKAGED ALCOHOL**

In recent times, FSANZ has completed work on one project that involves the labelling of alcoholic beverages with health advisory labels, and is currently working on another in the same general area of interest.

#### **HEALTH ADVISORY STATEMENTS ON PACKAGED ALCOHOL TO HELP CURB ALCOHOL MISUSE**

In March 2008, the Council of Australian Governments (COAG) asked the Food Regulation Ministerial Council to request FSANZ to consider mandatory health warnings on packaged alcohol. The request was made concurrently with a request to the Ministerial Council on Drug Strategy to report on a range of options to curb high risk (including binge) drinking. In response to this request, FSANZ commissioned a review on the effectiveness of labelling in relation to high risk drinking, and submitted the review report to the Food Regulation Ministerial Council in May 2009. The Food Regulation Ministerial Council considered the report and agreed to provide the report to the Ministerial Council on Drug Strategy to allow a single and coordinated response to COAG as a part of its consideration of a broad and comprehensive approach to reducing high risk (including binge) drinking.

Application A576 – Labelling of alcoholic beverages with a pregnancy health advisory label (see [www.foodstandards.govt.nz](http://www.foodstandards.govt.nz)).

FSANZ received an application to amend the Code to require pregnancy health advisory statements on the labels of alcoholic beverages from the Alcohol Advisory Council of New Zealand in 2006. An Initial Assessment Report was released for public comment in December 2007 and ninety-nine submissions were received. A commissioned review on the effectiveness of labelling was completed in July 2009. FSANZ is currently developing a Draft Assessment Report for this application.

- 11.72 In response to a previous application for health advisory labels on alcoholic beverage containers (Application 359), the Australia New Zealand Food Authority concluded:<sup>97</sup>

Scientific evidence for the effectiveness of warning statements on alcoholic beverages shows that while warning labels may increase awareness, the increased awareness does not necessarily lead to the desired behavioural changes in 'at-risk' groups. In fact, there is considerable scientific evidence that warning statements may result in an increase in the undesirable behaviour in some 'at risk' groups.

- 11.73 Babor reviewed the evidence of effectiveness of alcoholic beverage container warning labels and found no evidence that exposure to these labels in itself produces a change in drinking behaviour.<sup>98</sup> However, they did find that warning labels have some effects on intentions to change drinking patterns, conversations about drinking, and willingness to intervene with others who are seen as engaging in hazardous drinking, all of which may facilitate the effectiveness of other interventions in reducing alcohol-related harm. They concluded that warning labels could be effective if combined with other strategies.
- 11.74 In regard to labelling, commercial free-speech issues of the type we have already analysed in chapter 10 concerning advertising also exist.
- 11.75 In light of the work going on in FSANZ and the width of its jurisdiction over these matters, there seems to be little point in the Law Commission taking up the issue of labelling of alcohol products.

#### **SERVING SIZES**

- 11.76 The United Kingdom Government has a significant and substantial strategy in the course of development, part of which relates to serving sizes and related issues.<sup>99</sup> This is a joint project between the Department of Health, the Home Office, the Department of Education and Skills, and the Department of Culture, Media and Sport in the United Kingdom. The aim is to promote sensible drinking.
- 11.77 The United Kingdom Government published an alcohol harm-reduction strategy for England in 2004. The key elements of that were:
- better education and communication;
  - improving health and treatment services;
  - combating alcohol-related crime and disorder; and
  - working with the alcohol industry.

There are many facets of the strategy not relevant to the issue being discussed here.

- 11.78 In May 2009 the Home Office published an extensive consultation document on highly specific mandatory licensing conditions.<sup>100</sup> It is worth summarising the mandatory licensing conditions, including Food Safety Act requirements, that are being contemplated:<sup>101</sup>

- Banning irresponsible promotions, such as “All you can drink for £10” or speed drinking competitions. The proposal is to ban any promotion that encourages the consumption of large quantities of alcohol and the rapid consumption of alcohol that could increase the risk of alcohol-related crime and disorder, public nuisance, and cause a risk to public safety.
  - Banning alcohol from being dispensed directly into the mouth of any customer, a practice which encourages the type of excessive and irresponsible drinking that could increase the risk of alcohol-related crime and disorder, and risk to public safety.
  - Ensuring that smaller measures (not smaller glass sizes) of alcohol are made available to customers to help them manage their alcohol consumption and reduce the risk of alcohol-related crime and disorder.
  - Ensuring that free tap water is available to customers to help them manage their alcohol consumption and reduce the risk of alcohol-related crime and disorder.
  - Seeking to ensure that online or mail-order alcohol retailers have robust age-verification systems in place to prevent underage sales.
  - Ensuring there is point-of-sale information visible to all customers of licensed premises about the unit content of a representative sample of drinks, and in the off-trade there is further information about health guidelines and risks.
- 11.79 The enabling authority for imposing mandatory conditions is contained in the Policing and Crime Bill at present before the United Kingdom Parliament.<sup>102</sup> The Bill provides the legal authority necessary to impose up to nine mandatory conditions by subordinate legislation.
- 11.80 One of the conditions is that the responsible person shall ensure that, if sold for consumption on the premises, alcoholic drinks specified must be available and offered for sale or supply in the measures stated. These measures are based on the standard quantities specified in the existing Weights and Measures legislation:
- beer, lager or cider: half pints;
  - gin, rum, vodka or whiskey: 25 ml or 35 ml; and
  - still wine in a glass: 125 ml (except where the wine is only sold by the bottle).
- 11.81 The commentary says this condition would stop the practice of offering large glasses of wine, double measures of spirits or pints of beer or cider. It would mean greater consumer choice with deciding how much they wish to drink. It would not prevent other measures being offered, such as pints of beer, lager or cider, or 250 ml of still wine.
- 11.82 At the time of writing, it is not clear which of the mandatory conditions upon which consultation is being conducted will be chosen, but from the point of view of this review, developments in the United Kingdom do raise the question of whether or not there should be more attention in this country to the issue of serving sizes.

- 11.83 New Zealand currently has no requirement for standard serving sizes for alcoholic beverages, although in on-licences, spirits may not be served in a drinking vessel of a capacity exceeding 500 millilitres. Currently the per-serve volume of alcoholic beverages differs markedly across different on-licence premises.
- 11.84 There is a case for providing a regulatory power to require licensed premises to offer standard measures of wine, beer and spirits, as this would help people to better understand the actual amount of alcohol they are drinking and to moderate their consumption accordingly. The harm-reduction benefits likely to be gained from a standard serving size would need to be balanced against the costs this would impose on the industry, however.

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## TRANSPORT

- 11.85 While the blood alcohol limits for driving are not governed by the Sale of Liquor Act, they are closely related to it.
- 11.86 New Zealand's legal limits for blood alcohol content (BAC) and equivalent breath measures are set in the Land Transport Act 1989. The present law provides for a blood alcohol limit of 80 milligrams of alcohol per 100 millilitres of blood (often referred to as .08) and a youth limit for drivers under 20 years of age of 30 milligrams per 100 millilitres of blood.<sup>103</sup> It is an offence to exceed these limits.<sup>104</sup> The blood alcohol limits only apply to vehicles on roads.
- 11.87 The New Zealand .08 limit is among the highest limits internationally, although the same limit applies in the United Kingdom. Many jurisdictions, including Australia and Europe, have legal limits of .05 or less.
- 11.88 Many published studies show that the risk of being involved in a crash increases as blood alcohol level increases. While there has been considerable reduction in alcohol-related fatal crashes since the 1990s, general road safety progress has stalled in recent years. Both the proportion of total crashes that are alcohol-related, and the number of alcohol-related crashes has risen for both fatal crashes and injury crashes.
- 11.89 In 2007 there were 128 deaths from crashes with driver alcohol or drugs as causal factor, 30 per cent of New Zealand's total road toll. Over 83 per cent of the alcohol or drug affected drivers in fatal crashes are male. Many more males are convicted for drink driving than females, however, the conviction numbers for women have increased sharply over the last four years. The 20 to 24 and 25 to 29 year-old age groups were the most likely to be affected by alcohol.
- 11.90 Reducing the BAC limits for both age groups is likely to reduce the risk of alcohol-related vehicle crashes for *all* drivers (that is, those under the legal limit as well as those over it) on the basis that the lower limit would encourage people to drink less before they drive.<sup>105</sup> International experience has consistently demonstrated the safety benefits associated with limits of .05 or lower. Queensland, New South Wales, and the Australian Capital Territory all experienced fewer fatal and non-fatal vehicle crashes following a reduction from a .08 limit to a .05 limit.<sup>106</sup>

- 11.91 It has been suggested that most repeat drink drivers will not adhere to a reduced limit any more than they would to the current limit. Similarly, it has been suggested that those drivers who currently drive a vehicle while in the .05 to .08 band pose a much smaller road risk than those people who drive above the current limit and, therefore, that the harm reduction gain from a reduced BAC limit would be relatively minor.
- 11.92 Other harm reduction mechanisms outside drink driving laws may also be considered desirable in respect of motor vehicles. For example, legislation enabling the use of vehicle ignition interlocks has been introduced in the USA, Canada, Australia, Sweden, Finland and parts of France.<sup>107</sup> Vehicle interlocks may be considered a useful mechanism to help reduce alcohol-related vehicle accidents, particularly in the case of recidivist drink drivers. The cost and effectiveness of interlock devices would need to be considered in some detail. Vehicle 'open container' laws are another possibility.<sup>108</sup> These laws are common in the United States and are designed to discourage driving under the influence of alcohol and to minimise driver distraction. Any shift to an open container law in this country would need to be considered alongside other laws dealing with the consumption of alcohol in public places.
- 11.93 Most Australian states have generalised alcohol offences for operating water-based vessels while under the influence of alcohol or drugs. Some of these states have specified blood alcohol limits for operators of recreational boats that are the equivalent of blood alcohol limits for driving a vehicle on the road.<sup>109</sup> A Maritime New Zealand review published last year noted that alcohol was a factor in 18 per cent of recreational boating fatalities between 2000 and 2006.<sup>110</sup> Both Maritime New Zealand and Yachting New Zealand have recommended set blood alcohol limits for boat skippers. The benefits and practicalities of such laws being introduced in New Zealand will need to be examined closely.

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## TREATMENT

- 11.94 During the course of the Law Commission's initial inquiries, we have become concerned at the lack of policies, facilities and programmes around the country in relation to assessment and treatment for people with alcohol problems. The District Court Judges have made clear to the Law Commission their grave concerns about the absence of assessment facilities and programmes to which they can refer people who appear in front of them.
- 11.95 While the adequacy of treatment services is not in itself a legal matter, it is a key problem-limitation measure that cannot be divorced from any discussion about reducing alcohol-related harm. Gaps in treatment availability have been identified as a problem for people with alcohol-use disorders coming into contact with the courts, corrections system, social welfare system, primary care and emergency department services.
- 11.96 Specialist treatment can be effective for people with alcohol-use disorders.<sup>111</sup> However, because specialist treatment is comparatively resource intensive it is available only to the small proportion of people with a relatively severe disorder for whom this level of treatment can be effective.

- 11.97 There is good evidence that brief interventions can be highly effective and cost-effective for treating less severe alcohol-use problems.<sup>112</sup> Brief interventions are short treatment sessions that aim to assist change in the behaviour of individuals with regard to their alcohol use before the onset of significant health and social consequences. They can be effective in changing patterns of alcohol consumption and reducing alcohol-related problems, but they are underutilised in New Zealand.<sup>113</sup> There is scope for increased use of brief interventions, which can be delivered in primary care or a range of community settings. For example, a court referral for screening and brief intervention could be useful in cases where offending was linked to alcohol use but the offender may not be dependent and requiring specialist services. Ambulance services, emergency departments and police who deal with people for alcohol-related matters could refer those people to a health professional or other trained staff for screening and brief intervention.
- 11.98 A major conflict seems to be that sectors differ in their desired outcomes. Most treatment is provided by the health sector, so is prioritised based on the severity of the disorder as an indicator of need for treatment. In contrast, the justice sector has an interest in reducing reoffending, and would like to see more treatment available for people whose offending is linked with their use of alcohol. These people might not be a high priority for treatment according to the health sector because their actual disorder might be relatively minor.
- 11.99 Most of the policy suggestions to improve treatment would require additional government investment, possibly from multiple sectors. One of the major barriers to increasing treatment provision is the shortage of skilled practitioners, both specialist addiction treatment practitioners and non-specialist professionals with the capability to provide lower-level treatment services.<sup>114</sup> Workforce development for the addiction treatment sector has been identified as an area of need, and is being addressed through existing strategies.<sup>115</sup> Workforce limitations could be mitigated in part by increasing the use of electronic or web-based brief interventions, which are known to be well received and effective in some settings.<sup>116</sup> This is a new area of research that would benefit from further investigation because it has the potential to be highly cost effective.
- 11.100 What is needed to address the problems with access to treatment falls within the Health Portfolio and cannot be the subject of detailed recommendations by the Law Commission. But the Law Commission has reached the conclusion from those aspects of the problem that we have studied that the following measures may be needed:
- Provide centres for temporary supervision for individuals who are not charged with an offence but pose a significant concern to their own or others' safety or health.
  - Require the need for alcohol and other drug assessment and treatment to be taken into account during sentencing in cases where alcohol and other drugs may have contributed to the offending.
  - Develop the workforce to ensure assessment, referral and brief interventions can be delivered by appropriate professionals across sectors (for example, primary care, mental health, emergency departments, justice, corrections, education, Work and Income, ACC).

- Investigate the range of alcohol-specific treatment interventions provided, with a view to determining gap areas (such as alcohol detoxification and nationally consistent drink driving group interventions) with the potential to increase funding via the alcohol levy managed through ALAC.
- Fund primary care providers to deliver screening, brief interventions and referral to specialist treatment.
- Investigate the feasibility of using electronic screening and brief interventions in a range of settings.
- Monitor the prevalence of alcohol-use disorders and the delivery of screening, brief intervention and referrals in primary care and Emergency Departments.

11.101 The Alcoholism and Drug Addiction Act 1966 is also currently under review.

## CHAPTER 11 ENDNOTES

- 1 Sale of Liquor Act 1989, s 154A Promoting the excessive consumption of alcohol; s 160 Purchasing liquor for minors; s 161 Employment of minors; s 162 Purchasing of liquor by minors; s 163 Minors in restricted area or supervised areas; s 164 Allowing minors to be in restricted areas; s 168 Allowing drunkenness or disorderly conduct on licensed premises; s 169 Sales of spirits otherwise than in a glass; s 170 Being on licensed premises outside licensing hours; s 171 Allowing person on licensed premises outside licensing hours; s 172 Making false representation to licensees, etc; s 172A Licensee's offences in respect of manager.
- 2 Sale of Liquor Act 1989, s 151 Selling liquor without a licence; s 152 Allowing unlicensed premises to be used for sale of liquor.
- 3 Sale of Liquor Act 1989, s 155 Selling liquor to minors; s 165 Unauthorised sale or supply; s 166 Sale or supply of liquor to an intoxicated person; s 167 Allowing person to become intoxicated.
- 4 Land Transport Act 1998, s 34(1)(b).
- 5 Royal Commission on Courts Report (Wellington, 1978) paras 435-447.
- 6 Sale of Liquor Act 1989, s 162C.
- 7 Sale of Liquor Act 1989, s 163.
- 8 Sale of Liquor Act 1989, s 162.
- 9 Sale of Liquor Act, ss 132-133.
- 10 Sale of Liquor Act 1989, s 132A.
- 11 *R v Metropolitan Police Commissioner, Ex Parte Blackburn* [1968] 1 All ER 762.
- 12 *Attorney-General v Hewitt* [2000] 2 NZLR 110.
- 13 New Zealand Police *National Alcohol Assessment* (Wellington, April 2009) 20 [*National Alcohol Assessment*] (available at <http://www.police.govt.nz>).
- 14 Sale of Liquor Act 1989, s 115.
- 15 Sale of Liquor Act 1989, s 115.
- 16 Sale of Liquor Act 1989, s 116.
- 17 Sale of Liquor Act 1989, s 117A.
- 18 Sale of Liquor Act 1989, s 117A and Sale of Liquor Regulations 1990, reg 21AA.
- 19 Sale of Liquor Regulations 1990, reg 21A.
- 20 A leading Auckland provider, Hospitality Management Consultants, quotes course fees (including provision of a copy of the Sale of Liquor Act 1989 (\$20.90) and the liquor controller qualification application fee) of \$245.00 (available at <http://www.barmanager.co.nz/training-course.html>).
- 21 Commander Simon O'Brien, Metropolitan Police, London to Sir Geoffrey Palmer, Law Commission (1 June 2009), meeting.
- 22 Kathryn Graham and Ross Homel *Raising the Bar – Preventing Aggression in and Around Bars, Pubs and Clubs* (Willan Publishing, Devon, 2008).
- 23 Alcohol Advisory Council of New Zealand *Evaluation of the Christchurch City One Way Door Intervention: Final Report* (ALAC, Wellington, 2008) (available at [http://www.alac.org.nz/DBTextworks/PDF/One\\_Way\\_Door.pdf](http://www.alac.org.nz/DBTextworks/PDF/One_Way_Door.pdf)).
- 24 Liquor Act 2007 (NSW), Sch 4.
- 25 Graham and Homel, above n 22, 251.
- 26 Graham and Homel, above n 22, 251.
- 27 Graham and Homel, above n 22, 251.
- 28 New Zealand Police *Strategic Plan to 2010* (Wellington, 2006).
- 29 New Zealand Police, generic position description for Liquor Licensing Constable.

- 30** Sale of Liquor Act 1989, s 175.
- 31** Sale of Liquor Act 1989, ss 160-175.
- 32** *National Alcohol Assessment*, above n 13, 28.
- 33** *National Alcohol Assessment*, above n 13, 28.
- 34** Information on the collection of Police's Alco-link data and its use is outlined in chapter 5.
- 35** *National Alcohol Assessment*, above n 13, 29.
- 36** *National Alcohol Assessment*, above n 13, 30.
- 37** *National Alcohol Assessment*, above n 13, 31.
- 38** *National Alcohol Assessment*, above n 13, 31-32.
- 39** Sale of Liquor Act 1989, s 131.
- 40** Sale of Liquor Act 1989, s 175.
- 41** Sale of Liquor Act 1989, ss 173-174.
- 42** Sale of Liquor Act 1989, s 173.
- 43** Liquor Act 2007 (NSW), s 82.
- 44** Ministry of Justice *Policy Framework for New Infringement Schemes* (2008) 5, para 21. (available at <http://www.justice.govt.nz/pubs/reports/2008/infringement-guidelines/index.html>).
- 45** Sale of Liquor Act 1989, s 132A.
- 46** Summary Offences Act 1981, s 38(3) – infringement offence.
- 47** Local Government Act 2002, s 147.
- 48** *National Alcohol Assessment*, above n 13, 32.
- 49** Local Government Act 2002, s 147(1):  
 public place—(a) means a place—  
 (i) that is under the control of the territorial authority; and  
 (ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and  
 (b) includes—  
 (i) a road, whether or not the road is under the control of a territorial authority; and  
 (ii) any part of a public place.
- 50** Local Government Act 2002, s 147(3):  
 A bylaw made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container,—  
 (a) the transport of that liquor from premises that adjoin a public place during any period when, under the Sale of Liquor Act 1989, it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place:  
 (b) the transport of that liquor from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of liquor under the Sale of Liquor Act 1989:  
 (c) the transport of that liquor from outside a public place to premises that adjoin a public place—  
 (i) by, or for delivery to, a resident of those premises or by his or her bona fide visitors; or  
 (ii) from those premises to a place outside the public place by a resident of those premises, provided the liquor is promptly removed from the public place.
- 51** Local Government Act 2002, s 169.

- 52 Local Government Act 2002, s 169(2)(a)(ii).
- 53 Local Government Act 2002, s 169(2)(b).
- 54 Local Government Act 2002, s 169(3).
- 55 Local Government Act 2002, s 169(2)(c) and (d).
- 56 Department of Internal Affairs & Buddle Findlay *Report on Liquor Control Bylaws* (August 2005) 16 [*Report on Liquor Control Bylaws*].
- 57 *Report on Liquor Control Bylaws*, above n 56, 16.
- 58 Note that 4 district councils' hours/days combination could not be ascertained for the purpose of the stocktake so were not counted (April 2009).
- 59 Corroborated by 2005 and 2007/08 data: *Report on Liquor Control Bylaws*, above n 56, 17 (80%), and data provided to the Law Commission by the Ministry of Justice (8 June 2009) email (82% for 2007/08).
- 60 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email, showed that over the past five fiscal years between 86 and 91 per cent of individuals pleaded guilty.
- 61 Corroborated by 2005 and 2007/08 data: *Report on Liquor Control Bylaws*, above n 56, 17 (54%), and data provided to the Law Commission by the Ministry of Justice (8 June 2009), email, (62% for 2007/08).
- 62 *Report on Liquor Control Bylaws*, above n 56, 17.
- 63 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- 64 Corroborated by 2005 and 2007/08 data: *Report on Liquor Control Bylaws*, above n 56, 17, and data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- 65 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- 66 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- 67 Local Government Act 2002, s 242(4).
- 68 *Report on Liquor Control Bylaws*, above n 56, 18.
- 69 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- 70 Hastings District Council *Havelock North Liquor Ban An Impact and Outcome Evaluation* (2004).
- 71 *National Alcohol Assessment*, above n 13, 69.
- 72 *National Alcohol Assessment*, above n 13, 70.
- 73 *National Alcohol Assessment*, above n 13, Appendix D, 103.
- 74 Nielsen Research "Quality of Life Survey 2008 National Report" (Wellington, 2009) 6. (available at [http://www.qualityoflifeproject.govt.nz/pdfs/Quality\\_of\\_Life\\_2008.pdf](http://www.qualityoflifeproject.govt.nz/pdfs/Quality_of_Life_2008.pdf)).
- 75 Criminal Justice and Police Act 2001 (UK), s 13 gave local authorities the power to designate public areas through the introduction of a designated public place order, making it an offence to drink alcohol in such areas after being asked not to do so.
- 76 *National Alcohol Assessment*, above n 13, 20.
- 77 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email, showed that over the past five fiscal years between 86 and 91 per cent of individuals pleaded guilty.
- 78 A Cornish "Public Drunkenness Laws in Australia" (1988) 2 *Aboriginal Law Bulletin* 4.
- 79 Tom Roper (30 November 1990) *Parliamentary Debates* (Victoria), Legislative Assembly 2911, quoted in Desmond Lane "Public Drunkenness in Victoria" (1991) 2 *Aboriginal Law Bulletin* 21.

- 80** Police Offences Act 1927, s 41 read:  
Every person found drunk in any public place is liable:
- (a) to a fine not exceeding \$20:
  - (b) repealed
  - (c) on a third conviction with a period of 6 months to imprisonment for any term not exceeding 14 days, or, at the discretion of the convicting court, to a fine not exceeding \$20...; and
  - (d) on any subsequent conviction within such period of 6 months, to imprisonment for any term not exceeding 3 months.
- 81** Summary Offences Act 1981.
- 82** Alcoholism and Drug Addiction Act 1966, s 37A, subsequently repealed from 1 September 2008 when the substantive provision was included as section 36 of the Policing Act 2008.
- 83** Summary Offences Act 1981, ss 3-4.
- 84** (16 June 1981) 437 NZPD 420.
- 85** (15 October 1981) 442 NZPD 4180.
- 86** *National Alcohol Assessment*, above n 13, 26.
- 87** Policing Act 2008, s 36 Care and protection of intoxicated people:
- (1) A constable who finds a person intoxicated in a public place, or intoxicated while trespassing on private property, may detain and take the person into custody if—
    - (a) the constable reasonably believes that the person is—
      - (i) incapable of protecting himself or herself from physical harm; or
      - (ii) likely to cause physical harm to another person; or
      - (iii) likely to cause significant damage to any property; and
    - (b) the constable is satisfied it is not reasonably practicable to provide for the person's care and protection by—
      - (i) taking the person to his or her place of residence; or
      - (ii) taking the person to a temporary shelter.
  - (2) A person detained under subsection (1)—
    - (a) must be released as soon as the person ceases to be intoxicated:
    - (b) must not be detained longer than 12 hours after the person is first detained, unless a health practitioner recommends that the person be further detained for a period not exceeding 12 hours.
  - (3) A health practitioner must not recommend the further detention of a person detained under subsection (1) unless the health practitioner satisfies himself or herself that—
    - (a) the person remains intoxicated and is incapable of protecting himself or herself from physical harm; and
    - (b) the person does not have health needs that may require medical attention; and
    - (c) it is not reasonably practicable to provide for the person's continuing care and protection by—
      - (i) taking the person to his or her place of residence; or
      - (ii) taking the person to a temporary shelter.
  - (4) In this section,—
 

**intoxicated** means observably affected by alcohol, other drugs, or substances to such a degree that speech, balance, co-ordination, or behaviour is clearly impaired

**temporary shelter** means a place (other than a place operated by the Police) that is capable of providing for the care and protection of an intoxicated person.
  - (5) Section 31 of the Crimes Act 1961 applies in respect of the power to detain and take a person into custody under this section as if the power were a power of arrest.
- Compare: 1966 No 97 ss 37A, 38; 1992 No 46 s 122A.

- 88** New Zealand Police *Public Views on Policing: An Overview of Submissions on Policing Directions in New Zealand for the 21st Century* (2007) (available at <http://www.policeact.govt.nz>).
- 89** Summary Offences Act 1966 (Vic), s 13 drunk in a public place (fine 1 penalty unit; allowing for detention by police); s 14 offence of drunk and disorderly (penalty: for a first offence – 1 penalty unit or imprisonment for three days; for a second or subsequent offence – 5 penalty units or imprisonment for one month).
- 90** Richard Milford “The Decriminalisation of Public Drunkenness in Western Australia” (1991) 2 *Aboriginal Law Bulletin* 18, 42.
- 91** Royal Commission into Aboriginal Deaths in Custody *National Report* (vol 3, 1991) 6, cited in Lane, above n 79.
- 92** Licensing Act 1872 (UK), s 12.
- 93** Criminal Justice Act 1967 (UK), s 91.
- 94** “Standard 2.7.1: Labelling of alcoholic beverages and food containing alcohol” in Food Standards Australia New Zealand *Australia New Zealand Food Standards Code* (Canberra, 2009).
- 95** “Standard 1.2.4: Labelling of ingredients” and “Standard 1.2.8: Nutrition information requirements” in Food Standards Australia New Zealand, above n 94.
- 96** Alcohol HealthWatch *Alcohol Health and Safety Advisory Statements (Warning Labels) in New Zealand* (Auckland, 2003) 7-8.
- 97** Australia New Zealand Food Authority *Full Assessment Report and Regulation Impact Assessment. Subject A359 – Labelling of Alcoholic Beverages* (2000) 1 (available at <http://www.foodstandards.gov.au>). The Australia New Zealand Food Authority is the name by which Food Standards Australia New Zealand was previously known.
- 98** T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2003) 193.
- 99** Her Majesty’s Government *Safe. Sensible. Social. – The Next Steps in the National Alcohol Strategy* (2007).
- 100** Home Office *Safe. Sensible. Social. Selling Alcohol Responsibly: A Consultation on the New Code of Practice for Alcohol Retailers* (May 2009) [*Selling Alcohol Responsibly*].
- 101** *Selling Alcohol Responsibly*, above n 100, 19.
- 102** Policing and Crime Bill (available at <http://www.parliament.uk>).
- 103** Land Transport Act 1998, s 11.
- 104** Land Transport Act 1998, ss 56-57.
- 105** Bill Frith and Grant Strachan “Road Safety Impact of Establishing Blood Alcohol Concentration Levels at 0.05” in *Road Safety Handbook* (vol 1, Austroads, Sydney, 2002) 30.
- 106** J Fell and R Voas “The Effectiveness of Reducing Illegal Blood Alcohol Concentration (BAC) Limits for Driving: Evidence for Lowering the Limit to .05 BAC” (2006) 37 *Journal of Safety Research* 233, 238.
- 107** A Clayton and D Beirness *A Review of International Evidence on the Use of Alcohol Ignition Interlocks in Drink-Drive Offences* (Road Safety Research Report 89, Department for Transport, London, 2008). A vehicle ignition interlock is a small, hand-held, breath-testing device, wired to the ignition system of a vehicle. The driver must blow into the interlock before attempting to start the vehicle. If the driver’s breath alcohol content is higher than the pre-set level, the vehicle will not start.
- 108** Open container laws prohibit drivers or passengers from possessing or drinking from an open alcohol vessel when inside a vehicle.
- 109** See generally S Diplock and K Jamrozik “Legislative and Regulatory Measures for Preventing Alcohol-Related Drownings and Near Drownings” (2006) 30 *Australian and New Zealand Journal of Public Health* 314.
- 110** Maritime New Zealand *Boating Safety Strategy: 2007 Review of the New Zealand Pleasure Boat Strategy* (compiled for the National Pleasure Boat Safety Forum, Wellington, 2008) 6.
- 111** Babor and others, above n 98, 213.

- 112** Babor and others, above n 98, 212.
- 113** J Hosking, S Ameratunga, C Bullen, I Civil, A Ng and A Rodgers "Screening and Intervention for Alcohol Problems Among Patients Admitted Following Unintentional Injury: A Missed Opportunity?" (2007) 120 New Zealand Medical Journal, 2417; J Pulford, R McCormick, A Wheeler, P Firkin, I Scott and G Robinson "Alcohol Assessment: The Practice, Knowledge, and Attitudes of Staff Working in the General Medical Wards of a Large Metropolitan Hospital" (2007) 120 New Zealand Medical Journal 2608.
- 114** National Committee for Addiction Treatment *Investing in Addiction Treatment: A Resource for Funders, Planners, Purchasers and Policy Makers* (Christchurch, 2008) 3-4, 16.
- 115** Minister of Health *Te Kōkiri: The Mental Health and Addiction Action Plan 2006–2015* (Ministry of Health, Wellington, 2006) 2.
- 116** K Kypri, J Langley, J Saunders, M Cashell-Smith, and P Herbison "Randomized Controlled Trial of Web-Based Alcohol Screening and Brief Intervention in Primary Care" (2008) 168 Archives of Internal Medicine 530.

