



WHAT CAN BE SOLD – TO WHOM, WHERE AND WHEN

*Supply control measures are designed to limit the availability of alcohol. They are based on the theory that **increased availability results in increased levels of consumption and alcohol-related harm** (the availability theory).*

The availability theory has been the subject of considerable research in recent times.

SUPPLY CONTROLS

CHAPTER 9

INTRODUCTION

- 9.1 Under New Zealand law nobody may sell liquor unless they have a licence to do so. This requirement is set out the Sale of Liquor Act 1989.
- 9.2 Because licensing is the fundamental means of controlling the sale of liquor, the criteria for securing a licence and the conditions that can be imposed on a licence become matters of great importance. The scope and content of the Act are therefore extremely important in deciding whether the balance in our existing law is correct.
- 9.3 In this chapter, we analyse the principles that underpin licensing systems, including the central assumption that restricting the availability of alcohol through changes to supply controls, such as licensing, will mean less alcohol consumption and alcohol-related harm.

- 9.4 The chapter begins with an overview of the current law, and then moves on to consider the following aspects of supply control:
- Availability theory: the influence of liquor outlet numbers, outlet density, hours of sale and price on consumption and alcohol-related harm;
 - Licensing criteria: the adequacy of the current criteria used for granting a licence, and options for expanding those criteria, including examples from Australian states;
 - Types of off-licence premises: restrictions on the types of premises permitted to sell alcohol for consumption away from the premises, and the range of alcohol products available for sale;
 - Licence conditions: the range of conditions currently available and possible expansion of these;
 - Prohibited days: prohibitions on the sale of alcohol on specified days and whether there is a case for change;
 - Hours: whether hours of sale should remain discretionary, or whether an alternative approach might be considered;
 - District Licensing Agencies: their role, and ways to enhance this;
 - The Liquor Licensing Authority: its role and the case for expanded functions;
 - Liquor licence notification requirements, renewals and fees: the adequacy of the current system and options for change;
 - Minimum purchase age/drinking age: the situation under the current law and options for change; and
 - Licensing trusts: ownership and control: the future of licensing trusts.

**REGULATORY
SCHEME**

SALE OF LIQUOR ACT 1989

- 9.5 The primary instrument for controlling the sale of liquor in New Zealand is the Sale of Liquor Act 1989 (The Act). The fundamental means by which control is achieved by the Act is the requirement to have a licence in order to sell liquor.¹
- 9.6 Acts are driven by their purpose, and it is the custom in modern statutes to include a purpose provision. The Act sets out its object in section 4:
- (1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.
- (2) The Licensing Authority, every District Licensing Agency, and any Court hearing any appeal against any decision of the Licensing Authority, shall exercise its jurisdiction, powers, and discretions under this Act in the manner that is most likely to promote the object of this Act.
- 9.7 It can be seen from that object that the aim of the legislation is to contribute to the “reduction of liquor abuse”. That, of course, remains an important aim. But it does appear to the Law Commission that some more specific objectives

could be included. Bearing in mind the harm outlined in Part I of this issues paper, the Commission has proposed a more specific object provision, which is described in chapter 12.²

- 9.8 The structure and logic of the current Act need to be understood in any effort to reform it. The underlying principle of the Act, laid out in section 6, is:

The sale of liquor to the public or any member of the public requires a licence.

- 9.9 The Act goes on to specify four kinds of licence that can be granted:

- On-licences (which authorise the sale and supply of liquor for consumption on the licensed premises, for example in bars and restaurants);³
- Off-licences (which authorise the sale or delivery of liquor on or from the premises described in the licence for consumption off the premises, for example a bottle store or supermarket);⁴
- Club licences (which authorise the sale and supply of liquor for consumption on the club premises to club members, their guests, or members of other clubs);⁵ and
- Special licences (which authorise the holder of the licence to sell and supply liquor for consumption on the premises to any person attending any particular occasion or event or series of occasions or events).⁶

- 9.10 The Act also envisages that two or more licences of different kinds could be issued in respect of the same premises.⁷

- 9.11 Part 1 of the Act deals with on-licences. An on-licence is needed to sell alcohol to people for consumption on the premises where the sale is made, for example bars and restaurants.⁸ Part 1 sets out who may hold a licence.⁹ It deals with applications, objections and reports that must be given before a decision can be made.¹⁰ It also sets out the criteria and conditions for on-licences¹¹ in some detail, together with provisions relating to variations of conditions,¹² duration of on-licences,¹³ and their renewal.¹⁴ There are special provisions relating to BYO restaurants.¹⁵

- 9.12 Part 2 deals with off-licences¹⁶ and the pattern of the legislative provisions follows broadly the pattern established for on-licences but with some differences.

- 9.13 Part 3 of the Act deals with club licences. A club is defined in section 2 of the Act. These licences authorise the holder to sell and supply liquor for consumption on the premises as described in the licence, to any member of the club or any person who is a guest of, or who is accompanied by, a member of the club, and to any member of any other club with which the holder of the licence has an arrangement for reciprocal visiting rights.¹⁷ Permanent club charters that were in force under the Sale of Liquor Act 1962 continue in force notwithstanding the 1989 Act, and the holders can continue to sell and supply liquor in accordance with the charter without the necessity to obtain a new licence.¹⁸

- 9.14 The application of the Act also exempts the House of Representatives, Police canteens, canteens established for the officers of any penal institution, canteens established by the New Zealand Fire Service Commission, and canteens established by the Defence Force.¹⁹
- 9.15 Special licences are the fourth category of licence, and are provided for in Part 4 of the Act. A special licence authorises the holder of the licence to sell and supply liquor on the premises or conveyance described in the licence to any person attending any occasion or event or series of occasions or events described in the licence.²⁰
- 9.16 These licences are in the nature of a temporary right to sell liquor for special occasions. The law sets out who may hold a special licence,²¹ how it is applied for²² and the criteria which apply to them.²³
- 9.17 The licensing provisions are administered through institutions known as the Liquor Licensing Authority (Licensing Authority) and the District Licensing Agencies (DLAs). The Licensing Authority is presided over by a District Court Judge, who is appointed as its chairperson. Other members can be laypersons and there shall be no more than four persons on the Licensing Authority.²⁴ Members are appointed by the Governor-General for a specified term.²⁵ The Licensing Authority has the powers of a Commission of Inquiry.
- 9.18 The functions of the Licensing Authority are to:²⁶
- consider and determine applications for the grant of, and renewal of, on-licences, off-licences, and club licences as may be referred to it by any DLA;
 - consider and determine applications for the granting and renewal of Manager's Certificates; and
 - determine appeals from DLA decisions.
- 9.19 The Licensing Authority also has legal power to investigate and report on such matters for the exercise of its powers or functions under the Act²⁷ and there are some coercive powers in respect of such investigations.
- 9.20 The Licensing Authority has a close relationship with the DLAs. The functions of a DLA are to:²⁸
- consider and determine applications for the grant of, and renewal of, licences, where these are not required to be determined by the Licensing Authority;
 - consider and determine applications for temporary authority;
 - grant applications for renewal of Manager's certificates;
 - conduct enquiries to make reports as may be required by the Licensing Authority under section 95.

- 9.21 The Act designates the Chief Executive of each local authority as the Secretary of the DLA;²⁹ however, the local authority may delegate any powers, duties or discretions to any committee as it considers necessary.³⁰ The DLA must appoint at least one licensing inspector to hold the powers conferred under the Act.³¹
- 9.22 DLAs consider and determine unopposed licence and licence renewal applications.³² Any applications that are the subject of an adverse report by either the police, a licensing inspector or a medical officer of health,³³ or are the subject of an objection by a qualifying member of the public,³⁴ are referred to the Licensing Authority for consideration.³⁵
- 9.23 The Act also provides that any party dissatisfied with a DLA decision can appeal to the Licensing Authority.³⁶
- 9.24 Where the Licensing Authority refuses any application for the grant or renewal of any licence or any Manager's Certificate on the ground of the suitability of the applicant or cancels or suspends any licence or Manager's Certificate on the ground of suitability of the licensee or manager, there is a full appeal to the High Court.³⁷
- 9.25 For other matters there is an appeal to the High Court on questions of law only.³⁸
- 9.26 Part 8 of the Act deals with offences and enforcement. It covers such subjects as:
- Sales by unlicensed persons.³⁹
 - Allowing unlicensed premises to be used for the sale of liquor.⁴⁰
 - Use of unlicensed premises as a place of resort for the consumption of liquor.⁴¹
 - Persons found on unlicensed premises kept as a place of resort for consumption of liquor.⁴²
 - Promotion of excessive consumption of alcohol. This is an important provision that provides:⁴³

Every person commits an offence and is liable to a fine not exceeding \$5,000 who, being a licensee or manager of licensed premises, does anything in the promotion of the business conducted on the premises, or in the promotion of any event or activity held or conducted on the premises, that is intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent.
 - Selling or supplying liquor to an intoxicated person on behalf of the licensee or manager of any licensed premises.⁴⁴
 - Allowing a person to become intoxicated on licensed premises or allowing drunkenness or disorderly conduct on licensed premises.⁴⁵
 - Being on licensed premises outside the licensing hours.⁴⁶

- 9.27 The police have powers of entry onto licensed premises⁴⁷ and also have power to demand information.⁴⁸ They can seize samples of liquor.⁴⁹ The Act also deals with matters of evidence in relation to some specialised issues.⁵⁰
- 9.28 Part 9 of the Act deals with licensing trusts. These are specialised community organisations and there are a range of detailed specialised legal provisions concerning their registration, governance, accountability and other issues.⁵¹

OTHER STATUTES

- 9.29 There are a variety of other statutes that are relevant to the sale of liquor. Although these do not deal with supply controls, a number of them are noted below.
- 9.30 Perhaps the most important is the Alcohol Advisory Council Act 1976. The Alcohol Advisory Council of New Zealand (ALAC) is an autonomous Crown entity. Its statutory primary objective is:⁵²
- the encouragement and promotion of moderation in the use of liquor, the discouragement and reduction of the misuse of liquor, and the minimisation of the personal, social and economic harm resulting from the misuse of liquor.
- 9.31 ALAC's activities are funded by means of a levy on liquor that is imported into or manufactured in New Zealand.⁵³
- 9.32 ALAC is required by its statute to encourage, promote, sponsor and co-operate in research into the use of liquor in New Zealand, the public attitudes towards the use of liquor, the problems associated with the misuse of it, and the means of minimising the harmful effects of it.⁵⁴ It also has the important function of disseminating information to the public concerning the misuse of liquor.⁵⁵ It is instructed to devise, promote, sponsor, conduct, and encourage and co-operate in the preparation and conduct of educational programmes for the public and for persons who may be at special risk in respect of liquor-related problems.⁵⁶ These functions are to discourage the misuse of liquor, to encourage moderation in the use of liquor, and to promote and encourage responsible attitudes towards the use of liquor.
- 9.33 ALAC has been active in New Zealand for many years on this issue, and its current mission is to lead a change in New Zealand's drinking culture.⁵⁷
- 9.34 The Customs and Excise Act 1996 has important application to the liquor industry, especially in its imposition of excise tax. This will be discussed in chapter 10 of this paper.

- 9.35 The Hotel Association of New Zealand Act 1969 is still in force. The statute used to provide for compulsory membership of every person holding a hotel keepers, tourist house keepers or tavern keepers licence or Manager's Certificate, however that has now been changed. Section 3(2) provides:
- Every person (including a body corporate, but excluding a licensing trust and an employee of a licensing trust) who is the holder of—
- (a) An on-licence; or
 - (b) An off-licence; or
 - (c) A general manager's certificate—
- granted under the Sale of Liquor Act 1989 in respect of a hotel, a tavern, or a tourist-house, is eligible to be a member of the Association.
- 9.36 The Association, which is now known as the Hospitality Association of New Zealand, has remarked to the Law Commission in discussions that it believes that this statute is no longer required.
- 9.37 There is a Wine Act 2003, which deals with particular matters relating to the industry. While it is important, it is not of central concern in this review. The Wine Act 2003 concerns the setting of standards for the identity, truthfulness in labelling and safety in wine.⁵⁸ It also provides for the minimising and management of risk to human health arising from the making of the wine and ensuring compliance with wine standards.⁵⁹ It is concerned to facilitate export of New Zealand wine⁶⁰ and the promotion of consultation with industry organisations on regulation to foster efficiency and growth in the industry.⁶¹ It also enables levies to be imposed on winemakers for payment to entities representing their interests.⁶²
- 9.38 The Commerce Act 1986 has important applications to the sale of liquor. But the rules in the Commerce Act are to some degree and in some respects overridden by the specific provisions in the Sale of Liquor Act itself. This is an important and difficult issue that will require further investigation. Specific attempts to override the Commerce Act should be avoided if at all possible. But where special regulation is needed, the Sale of Liquor Act will set it out.
- 9.39 It needs to be understood that liquor is also dealt with in a number of other statutes, such as the Local Government Act 2002 (discussed in chapter 11), the Gambling Act 2003, the Civil Aviation Act 1990, the Electoral Act 1993, the Local Electoral Act 2001, and the Māori Community Development Act 1962. These specialised Acts will not figure largely in the considerations of the Law Commission. Further, the Law Commission understands that relevant provisions of the Māori Community Development Act are being reviewed as part of a wider review of the Māori warden scheme by Te Puni Kōkiri (the Ministry of Māori Development).

**AVAILABILITY
THEORY**

- 9.40 Supply control measures are designed to limit the availability of alcohol. They are based on the theory that increased availability results in increased levels of consumption and alcohol-related harm (the availability theory). The availability theory has been the subject of considerable research in recent times. In large part this is because liquor licensing systems in a number of countries, including New Zealand, have shifted to a more liberalised model in which restrictions on such things as the number of outlets, trading hours, and the places where alcohol can be purchased have been relaxed.⁶³ Researchers have asked whether the increase in availability resulting from liberalisation has led to increased alcohol consumption and alcohol-related harm.
- 9.41 Researchers examining the links between availability, consumption and harm grapple with multiple variables which apply at both a population level and at the community level. First, availability itself has several different dimensions, including the geographic availability of alcohol, and the hours and the price at which it is sold. These dimensions apply to both on-licence and off-licence premises. Secondly, each of these dimensions influence each other and may have different significance in different environments. For example, the physical clustering (density) of alcohol retailers may promote discounting, promotions and extended trading hours as competing businesses attempt to secure market share. This may contribute to increased consumption and alcohol-related harm in some environments, but not in others. Thus, the aggressive promotion of cheap high-alcoholic volume premixed spirits in communities with high levels of social deprivation and youthful populations may produce risks that are specific to that place.
- 9.42 Also, researchers must consider not just the different impacts of off-licence and on-licence availability at a population level and a community level, but also consider the combined effects of the availability of alcohol from off-licence and on-licence premises. For example, chapter 5 of this paper cites qualitative British and New Zealand research examining the impact of 'pre-loading', or consuming shop bought alcohol before entering bars and clubs.⁶⁴ Pre-loading is driven in part by the significant price differential between the cost of alcohol purchased from on-licence and off-licence premises. The early research suggests individuals who drink before going out may consume larger quantities per occasion and suffer higher levels of alcohol-related harm than those who do not.⁶⁵ Anecdotally too, police report pre-loading is a contributing factor in the high levels of intoxication and antisocial behaviour among those attempting to gain entry to late night licensed premises.
- 9.43 The existence of these multiple interacting variables and the difficulties of designing research that allows comparisons between levels of consumption and harm *before* significant changes in availability and *after*, makes this a challenging field for researchers. However in the last two decades there have been more than 40 studies published that have found correlations between density of outlets and various types of alcohol-related harm. Some of these studies are cited in the following discussion, which begins with an examination of the link between availability and consumption.

AVAILABILITY AND CONSUMPTION

- 9.44 At a population level, some studies have shown increased availability of alcohol being matched by an increase in the amounts consumed. Renowned alcohol policy researcher, Dr Paul Gruenewald, for example, found in his 1993 cross-sectional comparison of several US states that the number of retail outlets was directly related to sales of alcohol.⁶⁶ Generally, however, the studies on availability and overall consumption have shown mixed results, with a number finding little or no correlation. The relationship appears to be the strongest when there is a sudden and sharp increase in availability. A number of studies from the Nordic countries found statistically significant increases in levels of alcohol consumption when preceded by a dramatic change in availability, for example the introduction of alcohol into previously 'dry' rural areas, and the introduction and then removal of beer from supermarkets in Sweden.⁶⁷
- 9.45 Arguably, the inconclusive nature of the findings is reflected in the long-term trends in alcohol consumption in New Zealand. The point was made in Part I of this paper that the doubling of the number of licensed premises since the Sale of Liquor Act 1989 came into effect did not translate into an immediate increase in alcohol consumption at a population level. In fact, per capita consumption of pure alcohol initially tracked down. It has increased nine per cent in the last 10 years, but remains lower than it was in the late 1970s.⁶⁸
- 9.46 Yet this does not mean there is *no* relationship between availability and consumption. Per capita annual consumption figures provide only a high-level view of drinking patterns. They do not reveal levels of consumption within population sub-groups. For example, the per capita figures say nothing about the increase in the proportion of young people who participate in heavier drinking sessions.⁶⁹ This trend towards larger quantities per drinking occasion is associated with increased risks of a number of harms including intentional and unintentional injury. Noticeably, this increase has occurred within the context of a more relaxed supply context, including a reduced minimum purchase age and increased price competition.
- 9.47 While still at a relatively early stage, some studies also suggest that clustering of outlets may increase the levels of consumption amongst groups living in the area or close by. In the view of the World Health Organisation, there are special problems when outlets are tightly clustered, with a particular relationship between outlet density and the extent of underage drinking.⁷⁰ Consistent with this observation, a 2007 New Zealand study found that outlet density was associated with the amount of alcohol consumed by teenagers.⁷¹ Another study examining the association between outlet density, and drinking levels and related problems among New Zealand university students from six campuses found higher outlet density, especially within 1 kilometre of university campuses, was associated with higher levels of drinking and related problems.⁷² In this context, it is relevant that high outlet density of off-licence premises is associated with cheap alcohol products, which in turn facilitate heavy sessional drinking. In this way, particular forms of concentrated availability – in this case high outlet density – can potentially influence consumption levels.

9.48 This raises the question of whether higher outlet density increases consumer demand for alcohol or simply reflects it. Gruenewald concludes that the answer may be both.⁷³ To some extent, outlets exist because people want to buy alcohol. But in high outlet density areas, particularly once a 'saturation' point has been reached, those outlets generally have to stimulate consumer demand in order to achieve profitability. This can be done through greater outlet specialisation (for example wine bars or nightclubs as distinct from 'ordinary' pubs) and through mechanisms such as lower prices and longer trading hours. In this sense, alcohol markets are dynamic and high outlet density can reflect, as well as stimulate, consumer demand.

AVAILABILITY, OUTLET DENSITY AND HARM

9.49 Studies that link increased availability with increased alcohol-related harm, and criminal offending in particular, are more definite. It would be misleading to suggest that the findings of these studies are singularly conclusive. They are not. Those that do show significant correlations are usually subject to various methodological limitations. Nevertheless, the theme that has emerged from this body of studies has become increasingly clear: the higher the density of outlets the greater the likelihood of crime and anti-social behaviour.

9.50 To be clear, these studies do not conclude that outlet density 'causes' alcohol-related harm. Because of the number of variables involved, such causative links are very difficult, if not impossible, to prove. However, these studies do show strong associations between higher outlet density and alcohol-related harm, suggesting that the former is likely to be an important contributing factor to the latter.

9.51 A number of studies have found associations between outlet density and assaults and other physical violence using population samples in Norway,⁷⁴ California,⁷⁵ New Jersey,⁷⁶ and Sydney and rural New South Wales,⁷⁷ amongst other areas.

9.52 A 2003 Californian study found increased self-reported rates of driving after drinking, particularly amongst young people, in high outlet density areas.⁷⁸ Friesthler and others reported that child abuse and neglect in California were positively correlated with the density of on-licence and off-licence premises.⁷⁹ A 1998 New Orleans study found that outlet density was linked with high-risk sexual behaviour as evidenced by higher reported rates of gonorrhoea.⁸⁰

9.53 Rather than assuming that all outlets are equal, some studies consider the type of outlets (for example, on-licence or off-licence) and the types and strengths of beverages that are typically sold. These studies provide a more detailed insight into the links between outlet density and crime. For example, Roman and others found in their recent study of the District of Columbia that density of on-licence outlets predicted aggravated assaults, but the same was not true for off-licences.⁸¹ But concentration of both types of outlet predicted high levels of disorderly conduct.

- 9.54 A major study conducted by the National Drug Research Institute found that outlet density in Western Australia was strongly associated with assault and drink-driving offences.⁸² Again, the type of premises was relevant to the findings, with hotels, taverns and liquor stores proving to be strong predictors of alcohol-related harm, but less so for club licences, restaurants, and nightclubs. In another Western Australian study, longer trading hours for Perth hotels were associated with higher levels of consumption and higher assault rates.⁸³
- 9.55 A 2006 New Zealand study found that an increased number of prosecutions of young people for disorder offences, and driving while under the influence offences, coincided with the liberalised regulatory environment brought into effect by the Sale of Liquor Act 1989.⁸⁴ However, negative trends were noted for fatal and non-fatal alcohol-related vehicle crashes for all groups. A study by Kypri and others concluded that significantly more alcohol-involved crashes occurred among 15 to 19 year-olds in New Zealand than would have occurred had the minimum purchase age remained at 20 years, rather than being reduced to 18 years.⁸⁵
- 9.56 As noted in chapter 5, a comprehensive police study of the impact of 24-hour licensing on criminal offending and victimisation in Auckland city concluded that there was a strong correlation between extended trading and violence and disorder offences.⁸⁶ In many respects, these correlations are to be expected, given the typical clustering in central city locations of licensed premises with extended operating hours; these alcohol-driven late night entertainment precincts attract patrons from a wide geographic area. While it is plausible that reductions in the total number of licensed outlets or trading hours in a particular area may reduce the level of alcohol-related offending in that area, it is also plausible that the consumption and associated harm would simply be displaced to other locations.
- 9.57 However, the link between high outlet density and harm is likely to be increased by two further factors. First, outlet clustering is often accompanied by long trading hours. In the case of smaller off-licence retailers in particular, this may attract further criminality, as well as 'secondary' harm such as graffiti and property damage.⁸⁷ Second, where high outlet density occurs in lower socio-economic areas, some research suggests these areas may be particularly susceptible to an increase in social harms from high outlet density because of community dynamics and environmental factors.⁸⁸ This said, the link between outlet clustering and crime may be no less of an issue for towns and cities that have high clusters of on-licence premises in their central business district areas.
- 9.58 The links between density and violence exist whether density is measured on a geographical basis (the number of outlets per square kilometre) or on a population basis (the number of outlets per head of population).⁸⁹ However, the geographic basis is the most important of the two measurements.

When researchers consider high outlet density, they are concerned with the spatial relativities of liquor outlets to one another, that is to say, a geographic proximity. Per head of population measurements of outlet density do not necessarily reflect this physical ‘bunching’. Thus, although the Mackenzie district in the South Island has the highest outlet density in the country,⁹⁰ this ranking is driven by the comparatively lower number of people in this region rather than a high number of liquor outlets.

- 9.59 In summary then, while the evidence in New Zealand does not suggest a direct linear relationship between total population consumption levels and gradual changes in physical *outlet numbers*, the evidence does suggest *availability* (price, hours, physical access) has an impact on patterns of drinking and levels of alcohol-related harm at a sub-population level. The confounding effect of environmental factors, such as social deprivation or vulnerable population groups, makes it difficult to arrive at universal conclusions in this area. A major research project is currently being undertaken by University of Otago researchers Kypri, Bell and Connor examining the link between outlet accessibility, area deprivation and adult drinking patterns. The study is designed to control for the effects of deprivation and so should assist in identifying the key variables in the availability and harm equation.
- 9.60 From a policy perspective, the key issue is that the current Act is not designed to take into account many of the important variables outlined in the preceding discussion.

**LICENSING
CRITERIA
AND DENSITY**

- 9.61 It is significant that the Sale of Liquor Act does not allow a licence to be declined on the basis of the number of existing outlets in an area. Consequently, numerous instances of high outlet density areas exist across New Zealand.
- 9.62 The research outlined above indicates that high levels of outlet density can be linked with increased consumption levels, and that outlet clustering is associated with higher levels of criminal activity. But these are subtle and nuanced relationships depending on a range of circumstances.
- 9.63 Currently, every application for an on-licence, off-licence or club licence must be accompanied by a certificate from the local authority stating that the proposed use of the premises meets the requirements of the Resource Management Act 1991 and the Building Code.
- 9.64 In determining an application for an on-licence, the licensing decision-maker is obliged by the statute to have regard to the following criteria:⁹¹
- (a) The suitability of the applicant;⁹²
 - (b) The days on which, and the hours during which, the applicant proposes to sell liquor;
 - (c) The areas of the premises that are to be designated as restricted⁹³ or supervised areas;⁹⁴

- (d) The steps proposed to be taken by the applicant to ensure that the requirements of the Act in relation to the sale of liquor to prohibited persons (for example minors or intoxicated persons) are observed;
 - (e) The applicant's proposals in relation to:
 - the sale and supply of non-alcoholic drinks and food;
 - the sale and supply of low-alcohol drinks;
 - the provision of assistance with, or information about, transport from the premises;
 - (f) Whether the applicant will be:
 - selling or supplying other goods besides liquor and food;
 - providing any services other than those directly related to the sale or supply of liquor or food,
 and, if so, the nature of those goods or services;
 - (g) Any matter dealt with in any report on the application by a licensing inspector, the police or a medical officer of health.
- 9.65 The criteria for off-licences are similar to those in (a) to (d) and (f) to (g) above.⁹⁵
- 9.66 The criteria for club licences are similar to those in (a) to (e) and (g) above, and also include the following:
- days on which, and the hours during which, the premises are used for the club's activities; and
 - the proportion of the club members who are minors.⁹⁶
- 9.67 Before granting a club licence, the DLA or Licensing Authority must be satisfied that the consumption of liquor is not the predominant purpose for which the premises are or will be used.⁹⁷
- 9.68 The criteria for special licences are similar to (a) to (e) and (g) above and also include the nature of the particular occasion or event or series of occasions or events in respect of which the licence is sought.⁹⁸
- 9.69 Objections to an application may only be made by persons with a "greater interest in the application than the public generally",⁹⁹ on basis of the licence criteria listed above. A licence cannot be declined on the basis of the number of existing outlets in an area or because the local community does not wish a new liquor outlet to be established in the area.
- 9.70 The decision-maker must not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.¹⁰⁰

ENVIRONMENTAL LEGISLATION

- 9.71 The control of the number of licensed premises was explicitly and transparently provided for in the Sale of Liquor Act 1962. That being so, and the Town and Country Planning Act of the time not being a licensing statute, it was not permissible for local authorities to seek to limit the number of premises which were the subject of a separate licensing regime (for example liquor stores and petrol stations) through the medium of the district plan.
- 9.72 The Resource Management Act 1991 was not therefore drafted in an environment in which planning controls were available to, in effect, operate as a licensing tool.
- 9.73 The suitability of the premises' locality, having regard to neighbouring land use, was removed as a criterion for determining whether to grant a licence in the second draft of the Sale of Liquor Bill.¹⁰¹
- 9.74 Whereas the Sale of Liquor Act 1989 provides for a licensing regime that incorporates controls over who may obtain a licence to sell, who licensees may sell to, and the hours at which sales may be made, the Resource Management Act is an environmental statute. It does not set up licensing regimes and does not serve as one.¹⁰²
- 9.75 Nevertheless, given that the purpose of the Resource Management Act includes enabling "people and communities to provide for their social, economic, and cultural well-being and for their health and safety",¹⁰³ it is arguable that controls could be put in place under that Act for the purpose of advancing the health goals of liquor legislation. However, this raises an inherent tension between the two statutes.
- 9.76 Limits on the location of licensed premises can be enforced through the Resource Management Act. The difficulty with using this statute for this purpose is that the environmental focus of the Resource Management Act means it is unlikely to be the best tool for the task. As control of the location of licensed premises is not necessarily for an environmental purpose, it arguably should not be imported into an environmental statute when there is a specific, single purpose licensing Act available.
- 9.77 The apparatus of the Resource Management Act also is not well suited to implementing restrictions on the number or size of licensed premises as an availability control. That Act, and those who administer it, are not well equipped to assess and determine such limits.
- 9.78 One area where the Resource Management Act can influence liquor licences is in relation to trading hours. Restrictions designed to protect the amenities of surrounding neighbourhoods are commonly imposed on many activities pursuant to that Act. Thus, so far as amenity protection is concerned, the Resource Management Act is the mechanism through which these issues are

best addressed. The Licensing Authority does not have particular experience or skills in assessing and determining these issues, although it may impose conditions with on- and off-licences for this purpose.¹⁰⁴

- 9.79 The criteria relevant to considerations under the Resource Management Act 1991 do not include those relevant to the suitability of liquor licence applicants and do not relate to the manner of operation of particular premises. The focus of the Sale of Liquor Act is the imposition of controls on the sale of liquor and the fixing and maintenance of standards in that regard. Given that, then it is preferable that the necessary powers be conferred by and through an Act dealing with the sale of liquor, rather than an environmentally focussed statute like the Resource Management Act.

NEEDS TEST

- 9.80 Under the 1962 Act, which preceded the Sale of Liquor Act 1989, the Licensing Control Commission determined whether any new licence was “necessary or desirable” and also redistributed existing licences. One vital consideration was an economic one: demand. An important consideration for the Licensing Control Commission was to provide facilities so that “the purchase and consumption of liquor is met but not stimulated”.¹⁰⁵ The practical effect of these measures was a strong tendency to protect existing interests.
- 9.81 South Australia is the only Australian jurisdiction to impose a needs test. There, for example, an applicant for a retail liquor merchant’s licence, which is similar to our off-licence, must satisfy the licensing authority that the licensed premises already existing in the locality “do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand”.¹⁰⁶
- 9.82 The Law Commission does not favour a return to the test contained in the 1962 Act for the granting of a new licence, nor any similar restriction. This would be too inflexible and would create an artificial value in a licence that would be unnecessarily restrictive. There is merit, however, in empowering the licensing bodies to refuse a licence on wider grounds than at present. To reduce harm arising from outlet density, what is needed is an assessment of the suitability of the particular type of outlet in the particular area, rather than a blunt assessment of the number of outlets. There is also a need for greater community input into decision-making and greater consideration of the local impacts of liquor licences.
- 9.83 Community groups are expressing their concerns about alcohol and its impacts.¹⁰⁷ Communities want more say in decisions about where and how alcohol is sold, supplied and consumed in their neighbourhoods. Local Government New Zealand has stated that there is support in local government for more community input into licensing decisions and the consideration of the wider impacts of alcohol sale and supply in the community.¹⁰⁸

LOCAL ALCOHOL POLICIES

- 9.84 A number of territorial authorities already have local alcohol policies in place, although these are not presently required by law. Local alcohol policies commonly contain:¹⁰⁹
- Reference to district planning rules governing the permitted location and operation of licensed premises;
 - Guidelines for permitted trading hours;
 - Information about how applications will be considered; and
 - An explanation of the DLA's approach to enforcement of the Act.
- 9.85 The licensing decision-makers are not bound by local alcohol policies, but the Licensing Authority has indicated that it does give weight to them.¹¹⁰ In fact, the Licensing Authority has encouraged territorial authorities to develop such policies.¹¹¹ The weight to be attached to a local alcohol policy by the Licensing Authority may be affected by the existence or adequacy of the public consultation that preceded it.¹¹²
- 9.86 If a local authority does not have a local alcohol policy, there is very little scope under the present Act for communities to have a say in licensing decisions. The Licensing Authority has itself stated:¹¹³
- If an applicant is suitable and has a valid Resource Management Certificate, a liquor licence is almost inevitable given present legislative provisions. The Act requires us to be satisfied that the applicant is suitable and will uphold the law. Apprehension of problems alone is not sufficient to prevent a suitable applicant, particularly one supported by the District Licensing Agency Inspector and the Police, from exercising rights granted by the local authority.
- 9.87 One way of facilitating community input into licensing decisions would be to require all local authorities to adopt a local alcohol policy. To reduce the risk of wide variations in alcohol availability in different districts (and associated migration problems), the statute could set out both the matters that must be included in a policy and matters that may be included. Policies could be required to be consistent with the object of any new Act. They could be produced on the recommendation of the relevant DLA, with input from the police and the medical officer of health, and approved by the Council and then by the Licensing Authority. A requirement for final approval by the Licensing Authority would ensure a degree of national consistency and quality control in local alcohol policies.
- 9.88 A further measure to reduce the risk of wild variations and inflexible policies would be for the legislation to require the Licensing Authority to take local alcohol policies into account in decision-making, rather than making the policy supreme and effectively providing for a local veto on all liquor matters. The Licensing Authority is an expert body that is able to bring national experience to bear on licensing decisions. If the Licensing Authority retained the ability to make the final decision on a licence (subject to rights of appeal to the High Court), this would enable a degree of flexibility to allow legitimate exceptions to a local alcohol policy in appropriate cases.

- 9.89 There is an issue as to whether a local alcohol policy should be adopted by way of the special consultative procedure under the Local Government Act 2002. This procedure is the method prescribed under the Gambling Act 2003 for the adoption of local policies on venues for class 4 gambling (gaming machines).¹¹⁴ It is a resource-intensive process however, and it would be unwise to impose a greater burden on local authorities than is necessary. It may therefore be better for each local authority to determine the most appropriate means of developing and consulting on its own local alcohol policy. Small local authorities that do not have significant alcohol problems may not need the same level of consultation as may be required in a large metropolitan area. They may also wish to develop joint policies with neighbouring districts. The costs associated with the special consultative procedure must be balanced against the need to ensure sufficient consultation.
- 9.90 In adopting a Class 4 gambling venue policy, a territorial authority must have regard to the social impact of gambling within the territorial authority district.¹¹⁵ The social impact of alcohol in the district could also be a factor in the development of a local alcohol policy. The local medical officer of health could advise on this.
- 9.91 Much thought will have to be given to the transitions regime if local alcohol plans become compulsory. It is desirable that persons who have already invested in businesses not be adversely affected if, for example, the location of any current licensed premises was contrary to a local policy that was later adopted. One option would be to grandfather current licences, provided they are being appropriately managed and comply with other aspects of the policy, or to grandfather them for a set period of time or until the licence renewal date.

ADDITIONAL LICENCE CRITERIA

Social impact

- 9.92 Another means of taking into account the effect of the granting of a licence on the local community would be to include in the licence criteria the ability for the licensing decision-maker to decline a licence if it considers that the overall social impact of the licence is likely to be detrimental to the well-being of the local or broader community. Such an assessment could take into account such matters as the proposed site and nature of the premises and the health and social characteristics of the local population.

New South Wales

- 9.93 Until recently, the New South Wales (NSW) liquor legislation¹¹⁶ required applicants for a liquor licence to provide a detailed social impact assessment covering a number of specified criteria relating to the location and area for the proposed premises, for example the presence of vulnerable groups. The following factors were taken into account as part of the social impact assessment process: consideration of the local community that is likely to be beneficially or detrimentally affected by granting the application, the number of young persons living in the area as against the number of licensed premises in the area, and a demographic profile of the area.

- 9.94 A report on the regulatory regime for the sale of packaged liquor in the Australian State of Victoria,¹¹⁷ found that:¹¹⁸

There is little indication of how the data collected through the NSW social impact assessment system relates either to the risk of alcohol-related harm or to the decision-making process.

- 9.95 The report also stated that industry groups involved in the NSW packaged liquor market had advised that under the NSW social impact assessment process there was a cost of \$80,000-\$100,000 per application, which can virtually exclude many smaller independent operators and small firms, and that there was a delay of up to two years for an application to be considered.

- 9.96 The NSW social impact assessment requirement has recently been replaced pursuant to a new Liquor Act 2007. Licence applications must now be accompanied by a community impact statement. In the second reading speech for the relevant Bill, the NSW Minister for Gaming and Racing stated that:¹¹⁹

Social impact assessments...have been criticised for being costly, time consuming, subjective, incomplete, and bewildering to residents and other stakeholders...A more efficient, less costly, and better targeted process is needed. The object [of the community impact statement] is to facilitate consideration by the authority [the new Casino, Liquor and Gaming Control Authority] of the impact that the granting of certain applications will have on the local community. It does this by providing a process in which the authority is made aware of the views of the local community, and the results of any discussions between the applicant and the local community about issues and concerns...

Statements will summarise the results of consultation by applicants with local councils, police, health, Aboriginal representatives, community organisations and the public...The Government will examine how community impact statements can be linked into the planning process to reduce duplication as much as possible. No fee will be payable to the licensing authority for a statement.

- 9.97 The community impact statement is essentially a summary of consultation between the applicant and the local community about any issues and concerns with a proposed application. The application will only be approved where the overall social impact will not be detrimental to the well-being of the local community.

- 9.98 Different types of liquor licence applications require different types of community impact statements. Like the previous social impact assessments, there are two types of community impact statements – category A and category B. The key difference between a category A and category B statement is in relation to the stakeholders required to be notified. More stakeholders must be consulted when preparing a category B statement.

- 9.99 A category A community impact statement is required for such things as a packaged liquor licence limited to the sale or supply of alcohol by taking orders over the telephone, fax, mail order or through a website, or for a restaurant to sell alcohol without meals.
- 9.100 A category B licence is required if the application is for such things as a hotel licence, club licence, or packaged liquor licence.
- 9.101 The Casino Liquor and Gaming Control Authority website states that assistance from a consultant or a lawyer is not required, although an applicant may choose to engage professional assistance, for example for complex or contentious applications.¹²⁰ A community impact statement must show how stakeholder concerns have been resolved and describe any changes that have been made to the proposal as a result of stakeholder discussions. If there is no resolution of stakeholder concerns, the statement must note the issues raised, and include a brief description of the attempts that were made to resolve these concerns.¹²¹
- 9.102 The Law Commission will be monitoring the effectiveness of the change from social impact assessments to community impact statements in NSW.

Western Australia

- 9.103 In August 2007 the Western Australian Government replaced the public needs test with a public interest assessment requirement, which basically requires the licensing authority to assess whether granting an application is in the public interest, having regard to:¹²²
- The harm or ill health that may be caused to people (or any group of people) through the use of liquor;
 - The impact on the amenity of the locality;
 - Whether offence annoyance, disturbance or inconvenience might be caused to people who live or work nearby; and
 - Any other prescribed matter.
- 9.104 An applicant must lodge a public interest assessment submission to support an application for a liquor licence. The guidelines for this assessment stress that the assessment is not meant to be a complicated process and does not have to be prepared by lawyers or industry consultants.¹²³

Queensland

- 9.105 As of 1 January 2009, Queensland has also required community impact statements.¹²⁴ There are two types – “standard” and “full”. The draft guidelines provide that every applicant for a licence (other than a “community club” or “community other”), a detached bottle shop, or approved extended trading hours will be required to submit at least a standard community impact statement. A full community impact statement will be mandatory for certain

licence categories or styles of venue, such as hotels and nightclubs. A full statement may be requested after receipt of a standard statement if the Chief Executive has concerns in relation to:¹²⁵

- The size, nature, location or internal layout of the proposed or existing premises;
- The number and nature of objections received;
- The proposed application being located within a low socio-economic area;
- The proposed application being located within 200 metres of sensitive facilities of concern;
- The previous trading history of the applicant in licensed premises;
- The application being the first of its kind in the locality;
- The application being for an area where there is a high concentration of licensed premises.

9.106 A standard community impact statement requires details of the health and social impact of a licence proposal. The submission must address a number of areas and issues and provide any mitigating factors or proposals by the applicant to reduce any negative impacts. It should address:¹²⁶

- The nature and type of facilities to be provided;
- The positive and negative impact on the local community as a whole, and in particular, residents and businesses within 200 metres;
- Details of any sensitive facilities within 200 metres of the site, for example a home for people with psychiatric illness;
- Any noise impact or change to the amenity of the local area;
- Any cultural, recreational, employment or tourism benefits;
- Impact on traffic;
- Safety issues – in terms of public disorder, vandalism, public drunkenness; and
- Whether there would be any impact on, or change to, the character or identity of the local community.

9.107 A full community impact statement must contain:¹²⁷

- Delineation of the local community area;
- Social profile of the local community area (in terms of its local character, identity and aspirations, including demographic data on persons aged 15 years and over with no qualifications, aboriginal people; recent migrants from non-English speaking countries, occupied private dwellings with two or more families, households renting, one-parent families with dependent offspring, employed males classified as “labourers and related workers”, employed females classified as “labourers and related workers”, and tourist numbers and projections);
- Assessment of community risk;
- The likely health and social impacts (positive and negative impacts);
- Consultation with residents and businesses within 200 metres of the site;
- Consultation via a survey with residents in the local community area;
- Consultation with key advisers.

Victoria

- 9.108 Victoria does not have a social impact requirement. However, a licence application can be declined, even if no objections are lodged, if granting the application would detract from, or be detrimental to, the amenity of the local area, or would be conducive to, or encourage, the misuse or abuse of alcohol.¹²⁸

Possible implications for New Zealand

- 9.109 The Australian states all appear to enable at least some types of licence applications to be turned down on wider grounds than the Sale of Liquor Act 1989. Many of the Australian jurisdictions include considerations that take into account the impact of the proposed premises on the people and amenity of the relevant community. Such a requirement would address the lack of community input in current decision-making under the Sale of Liquor Act.
- 9.110 The costs associated with a full social impact assessment and the associated delays with such a process experienced in NSW point against requiring such assessments in New Zealand. However, there is merit in allowing the decision-maker to take the characteristics and views of the local community into account in decision-making. Again, the medical officers of health could assist with information on population and health outcomes for the relevant community. If medical officers of health were provided with the opportunity to report on all licence applications, rather than just on licences and club licences, a requirement to consider the social well-being of the community would be more effective. Medical officers of health could also be given the same powers of entry onto licensed premises as licensing inspectors are given, which would allow them to better observe the way in which licensed premises in the area are operating.

Object of the Act

- 9.111 In its Annual Report for the 12 months ended 30 June 1996, the Licensing Authority noted that the Sale of Liquor Act allows:¹²⁹
- A local authority to determine site suitability through zoning mechanisms and the issue of a Resource Management Certificate; and
 - The Licensing Authority to determine the suitability of a licence applicant.
- 9.112 It stated that:¹³⁰

Liquor licensing is social legislation; it involves more than planning issues. The wider views of the public, particularly in the proposed area of the licence, need to be considered, case by case. A broader assessment than the mere “suitability” of the applicant and the zoning of the premises is possibly required.

Where an applicant for a licence is not required to obtain a notified Resource Consent, the first opportunity local residents or business people have to make their views known is when the matter comes before the LLA. At that stage the Authority usually listens to the objectors’ concerns and responds that it is

powerless to do anything about them because of the very limited and specific criteria that the Authority is directed to have regard to by ss 13, 35 and 55 of the Act. There is no apparent linkage between those criteria and the object of the Act requiring the Authority to exercise its various functions in the manner most likely to contribute to the reduction of liquor abuse. The Authority may have regard to neighbouring land use considerations, but only in determining trading hours.

Since 1 April 1990 neither the LLA nor a Local Authority has been clearly entrusted by Parliament with a discretion to **refuse** the grant of a liquor licence. [emphasis in original].

- 9.113 There are conflicting judicial decisions on the role of section 4, which contains the object of the Act, in relation to the legislative provisions dealing with the licence and licence renewal criteria. In *Re Goldcoast Supermarket Ltd*,¹³¹ Wild J confirmed that the Licensing Authority had no power to refuse the grant of a licence to further the aim of the Act, or in response to local opinion on issues that may not be a ground of objection. In his view, the specific licence criteria were the only matters that could be taken into account:¹³²

Section 4 is not of itself a consideration under s 35(1). There is no requirement on the Authority in s 35(1) in granting an application to achieve a reduction in liquor abuse.

- 9.114 In the subsequent decision of *Walker v Police*, Fisher J took a different (and arguably preferable) approach, albeit in relation to the section setting out the licence renewal criteria, rather than the licence criteria. His Honour considered that the words “have regard to” tend to be regarded as more flexible than phrases like “decide on the basis of”, and the absence of a requirement to “solely” have regard to the listed criteria was also relevant.

- 9.115 Fisher J held that:¹³³

It would be strange if, having stated in s 4 that the Licensing Authority is to exercise its jurisdiction, powers and discretions in the manner that is most likely to promote the stated object of the Act, one then found that the object is treated as irrelevant in exercising the most important discretions arising under such provisions as ss 13, 22, 35.

- 9.116 Fisher J concluded that the criteria for a renewal were not to be interpreted in any narrow or exhaustive sense.¹³⁴ In the view of His Honour, the Licensing Authority was permitted to take into account anything that in terms of the statute as a whole appeared to be regarded by the legislature as relevant to licence conditions and the terms of which they should be granted. This included the statutory object in section 4. This did not mean that the object takes priority over the other considerations expressly listed in the section.

- 9.117 A similar approach to that of Fisher J was taken by French J in *My Noodle Ltd v Queenstown Lakes District Council* in the context of taking into account the provisions of a local alcohol policy when considering licence renewals.¹³⁵ In that decision, Her Honour held that the Licencing Authority was entitled to take a local authority’s alcohol policy into account when considering applications for

renewals or grants of licences, notwithstanding the absence of any express reference to such policies in the Act. This decision is under appeal to the Court of Appeal.

- 9.118 In light of the ambiguity in the relationship between the object of the Act and the licence criteria, there is merit in amending the legislation to specifically require the licensing decision-maker to take the object of the Act into account when determining a licence application. This would enable the licence decision-maker to decline a licence application on the basis that granting the licence would be inconsistent with the object of the Act. Such a ground would be further strengthened if the object of the Act was amended to better reflect a harm minimisation focus in the legislation, as is suggested in chapter 12.

**TYPES OF
OFF-LICENCE
PREMISES**

- 9.119 Section 36 of the Sale of Liquor Act 1989 restricts the types of premises in respect of which an off-licence may be granted. It is a highly controversial and confusing provision that has been the subject of much case law. The incoherent nature of section 36 is a direct result of the successive and sometimes inconsistent amendments made to the provisions concerning off-licences by way of the conscience vote in Parliament.
- 9.120 The Law Commission's first report on its review of the regulatory framework for the sale and supply of liquor suggested that it is preferable for alcohol Bills to be voted on the basis of standard party based voting rather than using the conscience vote.¹³⁶ That report set out in detail the significant changes made to the clauses dealing with off-licences as the Bill progressed through House as an example of how conscience voting can produce incoherent legislation.¹³⁷
- 9.121 Section 36 provides:

36 Types of premises in respect of which off-licences may be granted

- (1) Except as provided in subsections (2) to (5) of this section, an off-licence shall be granted only—
- (a) To the holder of an on-licence in respect of a hotel or tavern, in respect of the premises conducted pursuant to that licence; or
 - (b) To the holder of a club licence, being a club that is entitled under paragraph (i) or paragraph (j) of section 30(1) of this Act to hold an off-licence, in respect of the premises conducted pursuant to that licence; or
 - (c) In respect of premises in which the principal business is the manufacture or sale of liquor; or
 - (d) In respect of—
 - (i) Any supermarket having a floor area of at least 1000 square metres (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or
 - (ii) Any grocery store, where the Licensing Authority or District Licensing Agency, as the case may be, is satisfied that the principal business of the store is the sale of main order household foodstuff requirements.

- (2) The Licensing Authority or District Licensing Agency, as the case may be, may grant an off-licence in respect of any other premises if the Licensing Authority or District Licensing Agency, as the case may be, is satisfied, in a particular case,—
 - (a) That, in the area in which the premises are situated, the sale of liquor in premises of a kind described in paragraph (c) or paragraph (d) of subsection (1) of this section would not be economic; or
 - (b) That the sale of liquor would be an appropriate complement to the kind of goods sold in the premises.
- (3) Nothing in subsection (1) or subsection (2) of this section shall authorise the grant of an off-licence in respect of—
 - (a) Any service station or other premises in which the principal business is the sale of petrol or other automotive fuels; or
 - (b) Any shop of a kind commonly known as a dairy.
- (4) Nothing in subsection (2)(b) of this section shall authorise the grant of an off-licence in respect of any supermarket or grocery store, or any other premises on which the principal business is the sale of food or groceries.
- (5) This section applies subject to sections 51 and 52.

9.122 Put simply, an off-licence can only be issued to a person in respect of one of the following types of premises:¹³⁸

- A hotel or tavern;
- Any club, other than a sports club, that holds a club licence;
- Premises in which the principal business is the manufacture or sale of liquor;
- Supermarkets having a floor area of at least 1000 square metres;
- Grocery stores where the principal business of the store is the sale of main order household foodstuff requirements;
- Other premises in an area where the sale of liquor would otherwise be uneconomic; and
- Other premises where the sale of liquor would be an appropriate complement to the kinds of goods sold in the premises (excluding those where the principal business is the sale of food or groceries);

but not dairies or service stations.¹³⁹

DAIRIES AND GROCERY STORES

9.123 One of the most difficult aspects arising from section 36 is how to determine the difference between a dairy (from which alcohol cannot be sold) and a grocery store (from which alcohol may be sold). In its annual report to Parliament for the 15 months ended 30 June 1991, the Licensing Authority stated:¹⁴⁰

With deregulation of shop trading hours on a Sunday and the abolition of restrictions on the type of goods that may be sold by a dairy the distinction between grocery/superette/dairy is no longer clear.

- 9.124 In the ensuing years, that distinction has become even less clear with the emergence of numerous city convenience stores and with previously traditional “dairies” selling more household-type stock in order to maintain their businesses in the face of stiff competition and even longer opening hours of supermarkets, or to qualify for a liquor licence.
- 9.125 Traditionally, a dairy was a small shop in a suburban area that sold goods such as butter, milk, bread and confectionary. It was able to trade outside normal trading hours. Today, the term “dairy” has different meanings for different people, and there seem to be fewer dairies in the traditional sense still in operation, although many shops still have “dairy” in their trading name. Articulating the difference between a dairy, grocery store and convenience store is not easy. Consequently, the law in this area has become difficult to apply, as evidenced by the number of off-licences issued in respect of premises that many people would call dairies.
- 9.126 The Act attempts to distinguish a grocery store as one where the “principal” business is the sale of “main order household foodstuff requirements”.¹⁴¹ The legislation does not define “main order household foodstuff requirements”. The Licensing Authority has interpreted these as “the items the majority of New Zealand families purchase once a week from either a supermarket or a grocery”,¹⁴² although that interpretation was relaxed for a period in the early 2000s to reflect changes in the nation’s food buying patterns and diet.¹⁴³ The legislation also does not make clear how “principal” should be interpreted, for example whether it should be calculated having regard to gross turnover, net revenue, floor space, shelf space, or a percentage of the total number of items sold.
- 9.127 The Licensing Authority has held that “principal” means mainly, first in rank or first in importance. It does not mean total or almost all.¹⁴⁴ The Authority has previously stated that in determining the principal business of any store, it endeavours to apply a broad common-sense approach. Consideration includes matters such as:¹⁴⁵
- Percentages of turnover derived from the sale of main order household foodstuffs;¹⁴⁶
 - The number and range of the items available, with the greater the number and depth of foodstuff items available, the more likely the premises are to be a grocery store;
 - The size of the premises, with larger premises being less likely to be categorised as a dairy;
 - The layout of the premises, with the presence of trolleys and multiple rows of goods assisting categorisation as a grocery store; and
 - The view of the premises.
- 9.128 Recently, the Licensing Authority has been taking a much stricter approach to the interpretation of what constitutes a grocery store. In *The Woodward Group Limited* the Licensing Authority determined that it would no longer issue off-licences to convenience stores.¹⁴⁷ In that decision the Authority stated:¹⁴⁸

We can only grant an off-licence under that section to a grocery. ... The Act does not say 'grocery or convenience store'. ...

In summary therefore, and after careful consideration, we consider that the Authority's earlier decisions to issue off-licences to convenience stores was contrary to the correct interpretation of the Act, and should no longer be regarded as good law. The current application illustrates the point that the Authority's relaxed interpretation of a grocery store in 2001, has led to unrealistic expectations that inappropriate businesses could qualify for a grocery-style off-licence.

- 9.129 Similarly, in *MK Devereux Limited*,¹⁴⁹ the Licencing Authority focused on turnover percentages of household foodstuffs in determining whether the relevant store was a grocery or a dairy, and held that the only items that can be included in the turnover percentages will be "those items that are taken home to be eaten or consumed in the home or to assist with the preparation of forms of food in the home". It stated:¹⁵⁰

In summary we have slowly but inevitably been drawn to the realisation that the way in which certain premises have been licensed must stop. We have been too inclined to accept turnover figures at face value. It seems to us that it has become easy for applicants to include in the percentage figures, items that do not qualify.

... we believe that even in a modern context, main order household foodstuffs that are purchased from a grocery are those food items that the majority of New Zealand families purchase to take home for preparation and consumption. They will generally not include impulse purchases of food items such as confectionary.

- 9.130 The law in this area is clearly unsatisfactory, with the result that much time and resources are wasted in litigating what types of premises may be used to operate an off-licence.
- 9.131 One way of dealing with the dairy versus grocery issue would be to define with more particularity what constitutes each type of premises. This would be difficult in practice, however, because of the similarities between the two. One means by which a distinction might be made would be to create a floor size requirement for a grocery store, but this has inherent difficulties. In determining a floor size, there will always be stores that fall just short of the cut off. It is hard to find a principled means of deciding upon the appropriate floor size to adequately capture the difference between the two types of store.
- 9.132 The question must be asked what the prohibition on licences in respect of dairies is trying to achieve in terms of the minimisation of alcohol-related harm. If the concern is the purchase of alcohol by minors, then a floor restriction is unlikely to assist. The Police data on controlled purchase operations for the 2007/08 fiscal year shows that there was only a one per cent difference between medium sized grocery stores and small sized grocery stores (that is, what the public might classify as a dairy) in terms of the percentage of premises that sold alcohol to a minor.¹⁵¹ Prevention of the sale of liquor to minors is likely to be better dealt with by way of tighter restrictions on management of premises through licence conditions and greater enforcement of the law relating to sales to minors.

- 9.133 If the concern about dairies relates to density of outlets, then this concern may be better dealt with by means of the licence criteria. Prescription around the nature or size of the premises invites making the licensing decisions technical and arbitrary when wider factors are more relevant. It is difficult to see how a dairy would pose a greater threat of alcohol-related harm to its community than a standalone bottle store of a similar size. A better approach may be for the law to avoid stipulating rules about permissible retailers (which are inevitably worked around by some operators) or arbitrary minimum shop size requirements, and instead allow the licensing decision-maker to determine each application on a case-by-case basis using a proper assessment of the risk the particular premises in the particular location poses in each case. Where an application meets the general licence criteria, that may be sufficient. If the licensing bodies had the discretion to refuse licences on more grounds than at present, the need for tight prescription as to the type of premises would fall away. This would be a more flexible and practical approach to licensing, but one that would likely better facilitate the reduction of alcohol-related harm.
- 9.134 Nevertheless, it may be that the risks of harm are considered so significant that the statute should specify certain off-licence restrictions that have universal application. This may be the case, for example, with service stations selling alcohol. This restriction has been in place for some time and was the only restriction on off-licence premises recommended by the Laking Committee.¹⁵² Yet even this has now become complicated. Many supermarkets, most of which are also licensed premises, now operate petrol pumps adjacent to the supermarket buildings. There are also examples of standalone bottle stores operating right beside service stations.
- 9.135 Drink driving is such a problem in New Zealand that any association between alcohol and petrol stations is likely to be abhorrent to most New Zealanders. This is despite the fact that logic would suggest that there is no greater likelihood of a person who drives to a service station and buys alcohol drink driving than a person who drives to a supermarket or other off-licence and buys alcohol.

COMPLEMENTARY GOODS

- 9.136 In *Lopdell v Deli Holdings Ltd*,¹⁵³ Randerson J in the High Court dealt with the relationship between section 36(2)(b), which allows an off-licence in respect of premises where the sale of liquor would be an appropriate complement to the kinds of goods sold in the premises, and section 36(4), which provides:
- (4) Nothing in subsection (2)(b) of this section shall authorise the grant of an off-licence in respect of any supermarket or grocery store, **or any other premises on which the principal business is the sale of food or groceries.** [Emphasis added].
- 9.137 Prior to this decision, the Licensing Authority had granted off-licences in respect of delicatessens, where it considered the sale of alcohol to be complementary to the other specialty goods sold. Randerson J clarified that section 36(4) precludes the grant of an off-licence in respect of premises on

which the principal business is the sale of food or groceries, whether or not the business or the premises are similar in nature to a supermarket or a grocery store, and allowed appeals against the issue of licences to a delicatessen and a takeaway pizza parlour.

- 9.138 It is difficult to see the logic of section 36(4), when the most obvious complement to alcohol is food. There seems to be no reasonable basis for concluding that a delicatessen selling high end alcohol products is more harmful to the community than a supermarket or a stand alone bottle store. In fact, it is likely to be less harmful because of the price of the products sold and the typically “upmarket” layout and design of the premises. Questions may arise concerning takeaway food stores, but again, density concerns may be better dealt with by an assessment of the particular premises in accordance with broader licence criteria.

**TYPES OF
PRODUCTS
AVAILABLE AT
OFF-LICENCE
PREMISES**

- 9.139 Related to the issue of the type of permitted off-licence premises is the issue of what alcoholic products different types of off-licences may sell.
- 9.140 The Sale of Liquor Act provides that it is a condition of all off-licences held by a supermarket or a grocery store that no liquor be sold other than wine, beer or mead (that is, they cannot sell spirits or spirits-based drinks).¹⁵⁴
- 9.141 From a competition point of view, it would seem fairer if all off-licences were allowed to sell all types of liquor without discrimination. The current restrictions may be said to create an uneven playing field as between alcohol product sectors. It seems unfair that wine and beer with levels of alcohol per volume of up to 14 per cent may be purchased in supermarkets and grocery stores, whereas spirits-based ready to drink beverages with the same or lower alcohol percentages may not. It may also be argued that, like beer and wine, spirits are an adjunct to food and should therefore be available for purchase at supermarkets and grocery stores.
- 9.142 A number of other countries, including some Australian states and the United Kingdom, allow the sale of spirits from supermarkets.
- 9.143 It is difficult to see how allowing supermarkets to sell spirits and spirits-based drinks would lead to greater sales to minors. The Police controlled purchase statistics for the 2007/08 fiscal year indicate that supermarkets have the lowest number of sales to minors among all off-licence premises.¹⁵⁵ The figures for sales to minors by grocery stores over the same period are more than double the rate of supermarkets, but are not significantly higher than the percentage of sales to minors by bottle stores.
- 9.144 The strongest argument against widening the range of alcoholic beverages supermarkets and grocery stores may sell is the relatively low price at which supermarkets have been able to sell wine and beer because of their purchasing power. As discussed in chapter 10, price is a significant demand reduction lever for minimising alcohol-related harm. Enabling the sale of spirits in an environment where their price is likely to fall, may have an effect on consumption rates.

- 9.145 There may be a case for restricting products over a certain alcohol percentage from supermarket sales, rather than restricting types of beverage, as this would be fair to all types of alcohol manufacturers.
- 9.146 Another way of dealing with restrictions on the types of products available at off-licences would be to allow the licensing bodies to impose such a restriction as a condition of a licence. They could therefore take into account the nature of the particular premises and its likely customer base when determining whether a restriction on types of product would be appropriate.
- 9.147 The New South Wales legislation allows regulations to be made to ban undesirable alcohol products.¹⁵⁶ Although there may be no products currently on the market that would warrant banning in New Zealand, new products are continually being developed, and there may be a case to allow the Minister on the recommendation of an expert committee to ban certain products for health reasons where there is evidence to support this in the future.

LICENCE CONDITIONS

- 9.148 A liquor licence permits the licensee to sell alcohol in accordance with the conditions of the licence.
- 9.149 The Act prescribes both mandatory licence conditions (for example it is a condition of every on-licence that the licensee must have a reasonable range of non-alcoholic drinks available for consumption on the premises) and discretionary conditions that the licensing decision-maker may impose. For on-licences, these conditions may relate to the following matters:¹⁵⁷
- (a) The days on which and the hours during which liquor may be sold;
 - (b) The provision of food for consumption on the premises;
 - (c) Any other matter aimed at promoting the responsible consumption of liquor;
 - (d) The steps to be taken by the licensee to ensure the provisions of the Act relating to minors and intoxicated persons are observed;
 - (e) The designation of the whole or any parts of the premises as a restricted area or supervised area;
 - (f) The persons or types of persons to whom liquor may be sold or supplied.¹⁵⁸
- 9.150 Similar provisions apply to conditions for other types of licences.¹⁵⁹
- 9.151 The range of conditions that may be imposed in respect of a licence under the Sale of Liquor Act is much narrower than under the 1962 Act. Unlike the 1962 Act, the current Sale of Liquor Act contains no provision empowering the licensing body to “impose such conditions not inconsistent with the Act as the [licensing body] thinks fit.”

- 9.152 There is merit in allowing the licensing body to impose any reasonable condition on the licence it considers appropriate for the purpose of giving effect to the object of the Act. These conditions could relate to matters such as promotional activities, ensuring availability of free tap water, one-way door policies, and any undertaking given by the licensee. Often a licensee will be asked to, or offer to, give an undertaking about, for example, the control of noise. If the undertaking is breached, the licensee can be brought before the Licensing Authority on the basis that it shows a lack of suitability. However, it would be much more effective if the enforcement application was based on a breach of a condition of the licence.
- 9.153 On the other hand, greater discretion may give rise to greater variances between licence conditions in different areas. Consistency could be facilitated however by the ability to appeal a licence condition imposed by a DLA to the Licensing Authority.

**PROHIBITED
DAYS**

- 9.154 It is a condition of all on-licences held by hotels and taverns (but not other premises such as restaurants) that they may not sell alcohol on Good Friday, Easter Sunday, Christmas Day, or until 1 pm on Anzac Day (the prohibited days), unless the purchaser is living on the premises or is on the premises for the purpose of dining.¹⁶⁰ Off-licences are similarly prohibited from selling liquor on the prohibited days unless an exception applies.¹⁶¹
- 9.155 These licence conditions are consistent with the requirement under the Shop Trading Hours Act Repeal Act 1990 for almost all shops to be closed on these three and a half days.¹⁶² To maintain that consistency, the prohibited days should continue for off-licences until such time as the general shop laws are changed.
- 9.156 There may be a case for removing the prohibited days for on-licences. The Licensing Authority has reported that:¹⁶³
- In the absence of a contribution to the reduction of liquor abuse, there is no logical reason for prohibiting the sale of liquor in hotels and taverns to persons other than lodgers and diners on 3 1/2 days out of 365, whilst premises such as bar/brasseries, theatres, indoor cricket and ten pin bowling venues, chartered clubs and sports clubs do not have any similar restriction.
- 9.157 It does seem unfair that some types of premises are permitted to serve alcohol on the prohibited days without the dining requirement, while others are not. There should be consistency in this regard. Either all premises should be prohibited from selling alcohol unless purchasers are dining, or the restrictions should be lifted.
- 9.158 Undoubtedly, the prohibited days adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. For many people, rules around the prohibited days are outdated and inconvenient.

- 9.159 On the other hand, many would argue that the remaining sacrosanct days should continue to be respected, and that the three and a half days are the only days on which workers are guaranteed time off to spend with their families. However, these arguments are not so apt for bars that are only open in the evening and early hours of the morning. Although New Zealand is a largely secular society, in the 2006 census, just over two million people affiliated with a Christian religion.¹⁶⁴ Recent attempts to change the general Easter shop trading hours have failed in Parliament.¹⁶⁵
- 9.160 In relation to alcohol-related harm, data from the Police National Alcohol Assessment indicated that the number of apprehensions during the Easter break was less than for other weekends prior to and following the Easter holiday. There was a lower average number of offences over the four-day Easter period compared to other weekends in March and April.¹⁶⁶
- 9.161 Anzac Day did not show the same decrease in alcohol-related apprehensions however. In 2006/07 there was a peak in apprehensions mid-week during the week of Anzac Day that was not seen in previous weeks. There is some indication that the number of apprehensions over Anzac Day fluctuates depending on what day it falls on.
- 9.162 The restricted sale of alcohol on Christmas Day has also not been reflected in the number of apprehensions where an alleged offender had consumed alcohol prior to offending.
- 9.163 A practical difficulty with the prohibited days is that the Act does not specify the hour at which they begin. In line with the common law, the Licensing Authority takes the view that the prohibited days begin at midnight the previous night. If the prohibited days continue for on-licences, the statute should specify the time at which the prohibition begins, for example 2.00am. This would limit disruption to licensees' businesses on what is effectively the night before the prohibited days, and create certainty as to what the law requires.

HOURS

- 9.164 Unlike the 1962 Act, the Sale of Liquor Act 1989 does not specify the hours of operation of licensed premises. Hours are dealt with by way of a discretionary licence condition. Factors involved in determining hours include the type and location of the premises, the licensee, the clientele and the style of operation.¹⁶⁷ A local alcohol policy will also be a relevant factor. Previously, the general approach of the Licensing Authority was that where there were residential neighbours to taverns and hotels, a closing time of around 11 pm on week nights and 12 midnight or 1 am the following day on Friday and Saturday nights was often considered appropriate. In other cases for taverns and hotels, closure at 3 am was common. Though 24 hour trading was permitted, it was not generally the norm.¹⁶⁸ This has been changing in recent years however, with 735 on-licences, 265 off-licences, and two club licences currently permitting the sale of liquor at any time, and 2097 on-licences, 352 off-licences and 17 club licences permitted to sell liquor after 2 am.¹⁶⁹

- 9.165 An on-licence for a licensed casino authorises the sale of liquor for consumption in the casino while it is lawfully operated.¹⁷⁰ The Licensing Authority cannot impose other conditions regarding hours.
- 9.166 The trend toward later, and 24 hour, trading of liquor in New Zealand is contributing to increasing disorder and problems for the police. While liberal trading hours may be necessary to give responsible people sufficient time to purchase their liquor requirements, many people have commented to the Law Commission that hours should be more restricted, in particular for off-licences. One possibility is for the statute to set out national restrictions on trading hours for both off-licences and on-licences. Local alcohol policies could reduce, but not extend, those hours. For off-licences, a time of 8 am to 10 pm may be appropriate. This would help to prevent the problem of young people returning to off-licences late at night when they are already intoxicated, and would reduce the opportunity for crime.
- 9.167 For on-licences, a general closing time of 2 am may be appropriate. To minimise the effects on businesses currently able to stay open later, it may be necessary to provide for extensions to the national closing time if the premises can show that they have taken steps to minimise the alcohol-related harm associated with later trading hours. This could, for example, involve assistance with transportation options, greater security presence, and the provision of food after midnight.
- 9.168 There may also be a case for permitting extensions to bars that operate a “one-way” door from a particular time, such as 1 am, as a condition of their licence. The term is used to refer to an intervention where, after an agreed time, patrons in licensed premises are able to remain in the premises, but cannot re-enter the premises or enter another licensed premises after leaving. Some bars in particular areas have volunteered to adhere to such a scheme. A one-way door policy may reduce the number of intoxicated people moving about on the streets, where harm is more likely to occur, and would facilitate a staggered departure from licensed premises.
- 9.169 An evaluation of the Christchurch City 3 am one-way door intervention found that while there was no overall reduction in alcohol-related crime in the inner city, there were reductions in some subsets of crime.¹⁷¹ That one-way door strategy relied on effective working relationships by all parties, including Police and licensees.
- 9.170 A temporal analysis of violence offences in the Police’s *National Alcohol Assessment*¹⁷² shows that these offences peak between 1 and 1.30am on both Saturday and Sunday mornings, so an earlier one-way door of 1 am may be more effective.

**DISTRICT
LICENSING
AGENCIES**

- 9.171 The Sale of Liquor Act provides that each of the 73 territorial authorities has the status of a District Licensing Agency (DLA) for its district. DLAs consider and determine unopposed licence applications and renewals and unopposed manager's certificates and renewals to individuals to enable them to manage premises that hold a liquor licence.
- 9.172 In order to maximise efficiency and use of local knowledge, the licensing system needs to emphasise local reporting and prompt use of local practical knowledge.
- 9.173 Councils vary considerably in population density, socio-economic and economic composition. This diversity means that different councils operate under very different circumstances and with different priorities and resources to address.¹⁷³
- 9.174 In formal terms, the DLA is made up of the elected members of each local council. Extensive delegation to both committees and individuals under both the Sale of Liquor Act,¹⁷⁴ and the Local Government Act 2002, often means that liquor matters receive only delegated attention from the Council as a body corporate. The CEO of the local authority is to be the Secretary of the DLA,¹⁷⁵ which reinforces the need for high level support for the DLAs' work. However, a former member of the Licensing Authority advised the Law Commission that for 6 years during that member's tenure such high level interest was generally little in evidence. Further, the former member reported that in some DLAs, both in main centres and provinces, the Chief Executive showed little interest and declined to meet the visiting Licensing Authority as a body to discuss liquor topics. This may have improved in the ensuing years, but the Law Commission has discerned in its discussions around the country a perception that there is lack of knowledge of local authorities' liquor functions at high levels in some councils.
- 9.175 It has been suggested to the Law Commission that change is needed to improve the flow of significant information while avoiding excessive burdens on senior council officers. In this regard, an ongoing routine flow of data from secretaries of DLAs to the Licensing Authority, particularly prior to visits beyond Wellington, should be facilitated and enhanced.
- 9.176 The Act requires each DLA to appoint one or more inspectors.¹⁷⁶ The inspector is to perform the duties of a statutory officer. Duties of inspectors include reporting on each application, inspecting premises and requiring information from licensees.¹⁷⁷
- 9.177 Unlike other local government appointments of staff, which are made explicitly by the Chief Executive, inspectors are appointed by the DLA, that is, by the Council as a body. This higher level of appointment is unusual in practice and, as with many other liquor matters, is also commonly delegated.

- 9.178 The result is that in practical terms, although not the legal position, “the DLA” is often simply one or more local body inspectors. In some local authorities powers are commonly delegated to an official who combines the role with other tasks. Such an official generally receives little real support, and in particular, lacks the ability to obtain prompt legal advice without undue difficulty.
- 9.179 Often the inspector will have a range of other responsibilities, some of which could potentially be in conflict with the inspector role.
- 9.180 In some smaller councils, a council official writes the report on the application, and may then effectively also decide whether or not to accept his or her own recommendation. A separate police report may be the only potential independent constraint on approval.
- 9.181 Throughout the country, each licensing inspector’s expertise, level of ongoing training, time available for the role, and ability to report regularly varies considerably. Accordingly, action or inaction in response to perceived offences and breaches of licensing conditions also varies. There are no enforceable national standards.
- 9.182 The Office of the Controller and Auditor-General’s 2007 performance audit of liquor licensing by territorial authorities (OAG Report) found:¹⁷⁸

Staffing arrangements varied in the DLAs we visited, and in every territorial authority the nature and extent of liquor licensing work was different. We were not satisfied that the allocation of territorial authority staff time was appropriate to the range of tasks associated with the scope of the liquor licensing function. Territorial authorities need to carry out a more informed assessment of the range of activities that staff should perform as part of their DLA tasks.

- 9.183 While some DLAs take an active role, in other DLAs liquor problems may be left almost entirely to the police. Early intervention by inspectors so as to avoid or minimise later more serious problems would be a positive step.
- 9.184 The OAG Report states that:¹⁷⁹

Independence and impartiality are critical to the process of inquiry and reporting set out in the Act, and to the exercise of inspectors’ powers of inspection and enforcement. An inspector may oppose an application for a liquor licence, and present evidence when the Authority considers the application.

The principles of independence and impartiality should be reflected in policies and practices, recognising those circumstances where the recommendation of the inspector may differ from the views of their managers or elected members. The policies and practices should also reflect the possibility that the personal life of a district licensing inspector could bring them into situations where there might be a potential conflict of interest with their statutory duties under the Act.

- 9.185 The OAG Report found that the statutory functions of the inspector and the Secretary of the DLA were “not supported by policies and practices to adequately ensure appropriate independence and impartiality”.¹⁸⁰ The Law Commission understands that Local Government New Zealand is working with local authorities to address the matters raised in the OAG report.
- 9.186 Partial separation of functions (reporting and decision-making), mandatory ongoing training for inspectors, and perhaps explicit procedures for resolving differences of opinion are needed. DLA decisions should also be independent from the local council itself.
- 9.187 Decision-making by local personnel who know the local scene and who live with the local consequences has obvious merit. The wider aim should be to decide non-contentious routine applications as speedily as possible locally, and prepare reports for the decision-maker (local or national) where opposing viewpoints exist. Which decisions are taken locally and which centrally requires further consideration. A measure of flexibility is desirable, but with final powers centralised. A 2001 review of the Liquor Licensing Authority by the current chair,¹⁸¹ considered whether to recommend a further devolution of work such as dealing with contested applications for manager’s certificates, to the DLAs. It concluded that:¹⁸²
- [a]lthough a limited number of the 74 agencies would be capable of carrying out such work, there would be many more which would struggle with the responsibility. The main concern would be the maintenance of consistent standards for all Managers throughout the country. This can really only be achieved by having a central regulatory authority.
- 9.188 The aim is to encourage local responsibility and improve effective control over the sale and supply of liquor.
- 9.189 The ability of the DLA to impose modest sanctions, but only if done speedily, could be a first step to encourage more active local control.
- 9.190 To achieve more active and higher level involvement of officers within each DLA, new powers could be introduced, such as a power to impose either a formal ‘DLA warning’ or a brief suspension of a licence, for up to three days. Parallel police powers to apply to the Licensing Authority should remain, as should full appeal rights to the Licensing Authority.
- 9.191 If the Licensing Authority was able to impose fines and costs on persons found to have breached the Act or a licence condition, as discussed further below, there may also be merit in providing for DLAs to keep those fines or at least a percentage of them. This would provide a better incentive for DLAs to bring regulatory actions against licensees for hearing by the Licensing Authority, and would provide another means to fund the enforcement costs incurred by DLAs. A similar concept is provided for under the Resource Management Act, where the Court may require the defendant to reimburse the informant for certain costs that the informant has incurred.¹⁸³ Those costs must relate to investigating and remedying, or mitigating, any adverse effect on the environment arising out of the events that have given rise to the

relevant charge. In *Burns v Bay of Plenty Regional Council*,¹⁸⁴ the High Court considered that, when determining the level of a fine, a global penalty should be assessed. It ordered that 90 per cent of the fines be paid to the informant, in addition to an award of costs.¹⁸⁵

- 9.192 The law should also specifically provide for the Licensing Authority to require information from DLAs and discuss wider sale of liquor problems with agencies in each DLA area.
- 9.193 In addition, routine provision, on request, of aggregated data from each DLA to the Licensing Authority regarding the overall position of licences in a particular geographical area, or licences with particular conditions attached, should be provided for.

**LIQUOR
LICENSING
AUTHORITY**

- 9.194 The powers of the Licensing Authority and its legal foundation are outlined earlier in this chapter. The ability to reduce harm under the current provisions of the Sale of Liquor Act are severely constrained. The essential ability to refuse a licence revolves around two things: whether the applicant is suitable and whether the physical site meets local council planning requirements. It is very difficult to refuse a liquor licence on grounds outside these.
- 9.195 That is in sharp contrast to the former Licensing Control Commission. It had much wider discretionary functions, as it had to decide whether a licence was “necessary or desirable.” The object of the 1962 Act was less neutral in the sense that it required under section 75(4) that the purchase and consumption of liquor is met but not stimulated. In the Law Commission’s view, it would be counterproductive to go back to anything that resembles the 1962 test. But the reasons for expanding the grounds for refusing a licence appear strong.
- 9.196 The Law Commission commissioned a legal opinion from Mr RJS Munro, a lawyer in private practice who sat for a considerable period of time as a member of the Licensing Authority. For a period he was its Acting Chair. He gave us the following advice about the powers and functions that the Liquor Licensing Authority needs:

Whatever the division of duties legislatively, powers are desirable locally or NZ wide to: –

- Grant or explicitly refuse licences and general managers certificates – an amended power;
- Renew such licences and certificates – an existing power;
- Suspend or cancel licences and certificates – an existing power;
- Fine licensees and managers for breaches under ss 132 & 135 – a new power;
- Consider any individual application either at the request of the DLA or by order of the central body. All applications which result in reports in opposition by the police, a licensing inspector, a Medical Officer of Health, or objection by any person with standing should be first considered by the central body, but could be referred to the DLA for hearing by Councillors – an amended power;
- Issue binding statements and guidance to DLAs under section 96 – an existing power;
- Issue non-binding recommendatory statements and guidance to DLAs – a new power;

- Consider appeals from decisions of DLAs – an existing power;
- Consult any person or body which the decision-maker considers may assist it to achieve the object of the legislation – an amended power;
- Continue to be deemed a Commission of Inquiry under the 1908 Act and (proposed) amending legislation and a widened scope of jurisdiction to enhance the flow of data from inspectors, police and DLAs and licensees to the central body – an amended power;
- Analyse the use and abuse of licences and require a regular and routine flow of information from DLAs – an amended power;
- Report annually to the Minister in accordance with (more detailed) criteria including assessment of results of DLA initiatives, effect of control measures, periodic public surveys of satisfaction of outcomes within each DLA area, (to be independently and transparently conducted on a “rolling” basis selected by the LLA but with the ability of locals to request an early survey) – an amended power;
- Report publicly “if requested” to the Minister on any specific sale of liquor topic other than one relating to an individual hearing or appeal – a new power.

9.197 We generally favour the recommendations contained in Mr Munro’s advice although in some areas it is possible that the scope of the Licensing Authority’s powers should be extended even further.

9.198 Giving the Licensing Authority power to fine is legally significant. Most tribunals do not have a power to fine. Fines are usually imposed by courts. The protections of court procedure and judicial decision-making are significant safeguards against arbitrary decisions.

9.199 On the other hand, there are some tribunals that can fine those who come before them. There are a number of disciplinary tribunals involving the professions where that is so. For example, under the Lawyers and Conveyancers Act 2006, a Lawyers Standards Committee can fine a practitioner up to \$15,000.¹⁸⁶ Even greater powers are provided in respect of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal established under the same legislation. There are similar powers in other legislation governing professions. The Health Practitioners Competence Assurance Act 2003 gives the Health Practitioners Disciplinary Tribunal the power to order a health practitioner to pay a fine not exceeding \$30,000, plus costs.¹⁸⁷

9.200 While the people regulated by the Sale of Liquor Act are not professionals in the sense that lawyers, doctors and a whole range of health professionals are, they do share the characteristic that they must be registered (that is, licensed). The licence can be lost. It does not seem unreasonable for a body with extensive knowledge of the liquor industry and power over the issuing and cancellation of licences to have a power to fine these same participants in the industry. If that were done, it may make it much easier to avoid the pitfalls of prosecution in the ordinary courts where the delays would be much greater and the judge before whom the matter came may have little background in licensing matters. It is rather a specialised area. Since the Licensing Authority is presided over

by a District Court Judge, it should be possible for fining to be carried out to a high judicial standard without sacrificing anyone's rights. A higher standard of proof than the balance of probabilities could be applied.

- 9.201 If the Licensing Authority is to be invested with new and wider powers, together with some changes in its character, then the question arises as to whether a new form of institution is required.
- 9.202 The most obvious alternative would be to have the District Court have all the jurisdiction of the Licensing Authority. There are some advantages in that. The power of a judge presiding in a court certainly gains respect of the public. It would also enable all legal issues that arise in the jurisdiction to be dealt with effectively. In many other countries courts are, or have in the past been, involved in making licensing decisions. But there is a lack of flexibility surrounding courts and court procedure. That may be an undesirable restraining influence on a body that deals with all the social and community facets of liquor licensing.
- 9.203 In the United Kingdom, Justices of the Peace in court used to deal with licensing matters. Now that has been abandoned in favour of local control. But, on a recent visit to England, the Law Commission found that there are some problems with the new model as well. The Licensing Authority in the New Zealand framework is not a court but a tribunal. Officials we spoke to in England thought that such a regulator was a useful device for handling licensing issues.
- 9.204 A number of other models are available. An independent regulatory commission could be established along the lines of the Commerce Commission established by the Commerce Act 1986 or the Gambling Commission set up under the Gambling Act 2003, which function as industry regulators. These models would be more elaborate than the Licensing Authority, even in an expanded role. They would also be more expensive, and pose difficulties in terms of finding an appropriate administrative home.
- 9.205 The Licensing Authority is part of the Tribunals Division of the Ministry of Justice. It is serviced by experienced officers and works smoothly. In fact it is remarkable how well it does on such a limited resource base.
- 9.206 It seems to the Law Commission that not much would be gained by abolishing the Licensing Authority and quite a lot would be lost. In our enquiries we have found that the Licensing Authority is respected by most of the actors in the industry. It has a great deal of institutional knowledge which should be preserved.
- 9.207 One issue that does arise is whether a multi-member Licensing Authority is required. It was formerly the case that two lay members sat with the judge. Now in most cases it is only one. Issues arise as to what value there is in lay membership, although many people think it adds some balance and different perspectives. The chair has a casting vote.¹⁸⁸
- 9.208 Multiple decision-makers are more costly and may tend to cause greater hearing delays. A two-person body sitting with the chair holding a casting vote is really a one person body except in public perception.

9.209 Mr RJS Munro said in his legal opinion

From its creation in 1990 until 2001, the LLA had three members including its chair. Until 1999 the exercised jurisdiction which required it to determine all new licence applications throughout New Zealand, whether or not objections or reports in opposition were made. LLA staff assisted members to facilitate this task. From 1 April 2000 DLAs were empowered to grant non-opposed applications rather than forwarding all complete files for decision. At much the same time a steady increase in the number of disciplinary applications for cancellation or suspension of licences and certificates occurred requiring public hearing.

9.210 There is a reasonably strong case for getting rid of the lay membership. The judicial member clearly dominates proceedings and the legal nature of many of the issues makes this inevitable. Furthermore, in the Law Commission's view two-person sittings are undesirable. It either should be three or one.

9.211 One consideration that needs to be borne in mind here is a need for economy. The burden of the liquor work is likely to increase in the future. It may be a good idea to have one judge permanently in Auckland doing this work and another one doing the rest of New Zealand. This could be more easily accomplished if funds did not have to be found for lay members.

**LICENCE
TYPES**

9.212 The four basic licences provided for in the 1989 Act are a great improvement on the previous system, which provided for a large number of different licences, required the provision of accommodation, and contained other strange forms of economic protection for the industry.

9.213 In the Law Commission's preliminary consultation, there has been no criticism of the four types of liquor licence requirement, although there has been criticism of clubs selling liquor to persons outside the club licence restrictions and a lack of enforcement of this.

9.214 It can be argued that the four types of licence could be simplified even further just down to one licence. This single licence would then be categorised by various conditions that were set on it and the risks that various types of outlets posed to the object of the Act. However, the four licence system is well known and well understood, and the system should not be changed if it is working well. There may be merit in abolishing club licences and requiring clubs to obtain an on-licence if they wish to sell alcohol. Their status as a club could be reflected in licence conditions. This may place too great an administrative burden on small clubs however. Currently, clubs do not have to have a manager on duty at all times, as liquor is (in theory at least) not being sold to the public. If club licences are to remain a separate category of licence, the legislative provision relating to a manager being physically on duty at all times liquor is being sold could be reinforced to include club premises where more than 10 members are present. This would require larger clubs to adhere to the same management requirements as other types of premises where alcohol is served, while not imposing undue costs on small clubs where, for example, there may only be a few people gathered for a drink after a game of bowls.

**NOTIFICATION
REQUIREMENTS**

- 9.215 Licence applicants must give public notice of the application in the local newspaper on two occasions and ensure that notice of the application is attached in a conspicuous place on or adjacent to the site of the relevant premises unless it is impracticable or unreasonable to do so.¹⁸⁹
- 9.216 It is not clear that the present notification requirements are working effectively for either the public or licence applicants.
- 9.217 For applicants, it is expensive to place public advertisements.
- 9.218 Many people these days do not read the public notices section of the newspaper and are unaware of the opportunity to object to a licence application. For this reason, a notice is required to be put up at the site. However, such notices may not stand out in the particular location, especially if there are other notices in the same place. A low-cost suggestion for dealing with this is to require notices to be a particular colour and size so that they stand out. A physical notice in the letterbox of residents in the immediate vicinity may also be appropriate.
- 9.219 Another means of making licence applications more accessible to the public in a cost-effective way and to reduce compliance costs for applicants would be to require all licence applications, location of premises and dates for objections to be listed on a website. Some Australian states are utilising this method.

LICENCE FEES

- 9.220 Currently, many councils fund liquor licensing administration and enforcement by up to 50 per cent from rates.¹⁹⁰ In most other areas of council responsibility, councils can set fair and reasonable fees through their Annual Plan process. However, licence fees for each type of licence are set out in the Sale of Liquor Regulations 1990. They range from \$63 for a special licence to \$776 for other licence applications. A proportion of some fees is given to the Licensing Authority. There is no variance in the fees payable for different types of premises. For example, a small café is subject to the same fees as large bar. It may be preferable for licence fees to better reflect the level of risk that the particular licence poses to the community. For example, a large bar with long trading hours can be expected to have an association with a greater number of alcohol-related harms, such as violent crime, than a café that is only open during the day.
- 9.221 There also are good arguments in favour of enabling local authorities to set their own licensing fees so that DLAs' costs can be more closely reflected in the fees and charges. It seems inequitable for the same level of fees to apply, irrespective of the resources needed to process and enforce particular licences. Alternatively, local authorities could be empowered to impose an annual 'supervision' fee that could reflect the burden of the number of inspections required for the particular premises.

**LICENCE
RENEWALS**

- 9.222 New liquor licences, other than special licences, last for one year after issue. To continue trading, an application for renewal must be made within that time. After the initial year, licences can be renewed for three-year terms. At the end of each term, the licensee must apply for a renewal and publicly advertise the application.
- 9.223 Public notice requirements apply to renewal applications.¹⁹¹
- 9.224 The process for consideration of a licence renewal is similar to the original licence application, with opposed renewals being dealt with by the Licensing Authority. If there is no objection, the DLA must issue the renewal. In considering an application for the renewal of an on-licence, the Licensing Authority shall have regard to the following matters:
- The suitability of the licensee;
 - The conditions attaching to the licence;
 - The manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence; and
 - Any matters dealt with in any report on the renewal application by the police, a licensing inspector or a medical officer of health.¹⁹²
- 9.225 Similar, but not identical, provisions apply in respect of off-licences,¹⁹³ and club licences.¹⁹⁴ Objections to a renewal may be made by person with a greater interest than the general public on the grounds of the renewal criteria.
- 9.226 There are detailed elements around licence renewal that could be streamlined and simplified, for example premises that pose a low risk to the community could be exempt from the renewal process. This should reduce compliance costs. If there were complaints about the operation of licensed premises, then they could lose this exemption.

**MINIMUM
PURCHASE AGE/
DRINKING AGE**

- 9.227 There is no minimum age at which it is legal to *drink* alcohol. The Sale of Liquor Act provides for a minimum age of 18 years to *purchase* alcohol on or from any licensed premises. It is an offence for a person under 18 years to purchase liquor on or from any licensed premises, or to enter a restricted area on any premises unless part of a police controlled purchase operation.¹⁹⁵
- 9.228 The alcohol purchase age has been heavily fought over in New Zealand over the last decade and there are no easy answers.
- 9.229 A legal purchase age is recognised internationally as being a highly effective and inexpensive supply control mechanism.¹⁹⁶
- 9.230 As a harm reduction measure, there is a case for an increase in the minimum purchase age, given the increased risks alcohol poses to young people outlined in chapter 4 of this paper.

- 9.231 The Law Commission is aware that many young people under 18 years are supplied with alcohol by friends who are 18 years or over. This is exacerbated by the fact that half the school students in year 13 will turn 18 during the school year, and the other half will not turn 18 until they have left school. As discussed in chapter 7, more students are staying for year 13 now.
- 9.232 An increase in the purchase age from the current 18 years to 20 years will make the supply of alcohol to younger teenagers more difficult and therefore may reduce (but not eliminate) consumption in underage teenagers.
- 9.233 This said, the arguments against an increase in the purchase age are also strong. Many young people are responsible and mature individuals. To prevent, for example, a 19 year-old who works, pays taxes and votes from buying a beer at a pub is intolerable to some people.
- 9.234 There is an intermediate option: the split purchase age. Under this option, the purchase age could be kept at 18 years for on-licences, but increased to 20 years for off-licences. This would be less restrictive than the position prior to the 1999 amendment. It is recognised that there is a risk of creating uncertainty around the law. This would have to be managed accordingly. However, a split purchase age offers three benefits. First, the law would not exclude those aged 18 or 19 from purchasing alcohol. It would simply require that those purchases occur in the relatively supervised environment of on-licence premises. Second, a split-age may encourage some young people to drink at on-licence premises earlier in the evening, rather than drinking large volumes of cheap alcohol from an off-licence before coming into town late at night ('pre-loading'). Third, young teenagers are less likely to have friends that are at least 20 years of age, meaning that the supply of alcohol purchased from off-licences may reduce.
- 9.235 Another option is to introduce a minimum drinking age so that it would be an offence for people under a certain age, say 18 years, to consume or possess alcohol. There is evidence that minimum drinking ages are effective,¹⁹⁷ but there are also risks of criminalising youth, creating a disincentive for them to seek help (for example, in cases of alcohol poisoning or dependence, or a party that has become out of control) and potential difficulties in enforcing the law in private places.
- 9.236 A person cannot purchase or acquire any liquor on or from any licensed premises with the intention of supplying it to any person who is under the age of 18 years, unless the person intends to supply it to:
- A child of whom that person is a parent or guardian; or
 - Any other person who is attending a private social gathering.¹⁹⁸
- 9.237 There is no requirement for the adult who is supplying the alcohol to supervise the young person's consumption.
- 9.238 Many have said to the Law Commission that parents should take responsibility for their children's drinking. In many cases, this is not occurring. The Law Commission considers a broader set of obligations for the supply of liquor to young people than the existing ones have merit. One option is to make it an offence for an adult to supply liquor to a young person unless it is a private

social gathering, and that adult is (or has the consent of) the young person's parent or guardian. This would likely reduce the supply of alcohol to minors by friends and therefore reduce consumption by minors. Furthermore, the offence would not criminalise young people and would increase responsibility on adults. In the Law Commission's view, more needs to be done to protect young people.

- 9.239 Supervision of young people, when they drink, may assist in avoiding harmful consequences. A requirement to do this also has merit.

**LICENSING
TRUSTS**

- 9.240 A further aspect of supply control relates to the ownership of licensed premises. In a number of states in the United States for instance, liquor retail outlets can only be operated by the state government. While the creation of state monopolies was linked with the prohibition era, their retention is commonly justified on the basis that liquor outlets are less likely to proliferate under a government monopoly, and that they are more likely to operate in a responsible way (for example, in regard to pricing practices and selling to underage persons) compared to private enterprise, given that they have a different profit motive.
- 9.241 There are some parallels with licensing trusts in New Zealand.
- 9.242 These trusts operate licensed premises (including on-licences and off-licences) in their respective areas. Some own commercial and residential properties. The profits from the trusts' commercial operations are returned to the local communities. Through the election of trustees, the community is able to exercise a degree of control over the operation of licensed premises – certainly more so than areas where licensing trusts do not operate.
- 9.243 Some licensing trusts have the sole right to establish and operate hotels, taverns and off-licences in their districts.¹⁹⁹ Only four remain. To alter the preferential rights of the remaining monopoly licensing trusts, 15 per cent of the electors in the trust area must file a written request for a poll, and a majority of voters in the poll must vote for competition in the area.²⁰⁰
- 9.244 These preferential trading rights are not without controversy. In these trust areas, only the licensing trust may be granted a licence for a new pub for example. It also means that the two supermarket chains are unable to sell liquor in their stores in these areas. This may be to the disadvantage of drinkers in these areas. More fundamentally, it might be argued the law should not provide a commercial advantage for one entity at the expense of others.
- 9.245 In practical terms, however, those licensing trusts with monopoly trading rights appear to enjoy wide support in their respective communities. The profits that are returned to the communities help fund significant local projects including infrastructure and tourism initiatives, as well as providing financial assistance to small groups reliant on external funding. The amount of money available for distribution to these communities would likely reduce if the monopoly rights were removed.

CHAPTER 9 ENDNOTES

- 1 Sale of Liquor Act 1989, s 6.
- 2 See chapter 12, para 12.8.
- 3 Sale of Liquor Act 1989, s 7.
- 4 Sale of Liquor Act 1989, s 29.
- 5 Sale of Liquor Act 1989, s 53.
- 6 Sale of Liquor Act 1989, s 73.
- 7 Sale of Liquor Act 1989, s 6(3).
- 8 Sale of Liquor Act 1989, s 7.
- 9 Sale of Liquor Act 1989, s 8.
- 10 Sale of Liquor Act 1989, ss 9-11.
- 11 Sale of Liquor Act 1989, ss 13-14.
- 12 Sale of Liquor Act 1989, s 16.
- 13 Sale of Liquor Act 1989, s 17.
- 14 Sale of Liquor Act 1989, ss 18-20 and ss 22-23.
- 15 Sale of Liquor Act 1989, s 28.
- 16 Sale of Liquor Act 1989, ss 29-52.
- 17 Sale of Liquor Act 1989, s 53.
- 18 Sale of Liquor Act 1989, s 238.
- 19 Sale of Liquor Act 1989, s 5(3). See also Armed Forces Canteens Act 1948.
- 20 Sale of Liquor Act 1989, s 73.
- 21 Sale of Liquor Act 1989, s 75.
- 22 Sale of Liquor Act 1989, s 76.
- 23 Sale of Liquor Act 1989, s 79.
- 24 Sale of Liquor Act 1989, s 85.
- 25 Sale of Liquor Act 1989, s 86.
- 26 Sale of Liquor Act 1989, s 91.
- 27 Sale of Liquor Act 1989, s 92.
- 28 Sale of Liquor Act 1989, s 100.
- 29 Sale of Liquor Act 1989, s 102.
- 30 Sale of Liquor Act 1989, s 104.
- 31 Sale of Liquor Act, 1989, s 103.
- 32 Sale of Liquor Act 1989, ss 21, 34, 58, and 76.
- 33 Sale of Liquor Act 1989, ss 11, 33, 57, 78 for initial licences, and ss 20, 43, and 66.
- 34 Sale of Liquor Act 1989, ss 10, 32, 56, and 77.
- 35 Sale of Liquor 1989, ss 21, 34, and 58.
- 36 Sale of Liquor Act 1989, s 137.

- 37** Sale of Liquor Act 1989, s 138.
- 38** Sale of Liquor Act 1989, s 139.
- 39** Sale of Liquor Act 1989, s 151.
- 40** Sale of Liquor Act 1989, s 152.
- 41** Sale of Liquor Act 1989, s 153.
- 42** Sale of Liquor Act 1989, s 154.
- 43** Sale of Liquor Act 1989, s 154A.
- 44** Sale of Liquor Act 1989, 166.
- 45** Sale of Liquor Act 1989, ss167-168.
- 46** Sale of Liquor Act 1989, s170.
- 47** Sale of Liquor Act 1989, s 175.
- 48** Sale of Liquor Act 1989, s 176.
- 49** Sale of Liquor Act 1989, s 177A.
- 50** Sale of Liquor Act 1989, ss 178-180.
- 51** Sale of Liquor Act 1989, ss 185-219ZF.
- 52** Alcohol Advisory Council Act 1976, s 7.
- 53** Alcohol Advisory Council Act 1976, s 28.
- 54** Alcohol Advisory Council Act 1976, s 8(1)(a)
- 55** Alcohol Advisory Council Act 1976, s 8(1)(b).
- 56** Alcohol Advisory Council Act 1976, s 8(1)(c).
- 57** Alcohol Advisory Council of New Zealand Briefing for Incoming Minister (21 November 2008)
Wellington: Alcohol Advisory Council, 2 (available at <http://www.alac.org.nz/InpowerFiles/CorporateReports/Document.Document.38468.f505a6f7-bb17-499f-b1e3-c429430caa73.pdf>).
- 58** Wine Act 2003, s 3(a).
- 59** Wine Act 2003, s 3(b).
- 60** Wine Act 2003, s 3(c) and (d).
- 61** Wine Act 2003, s 3(e).
- 62** Wine Act 2003, s 3(f).
- 63** See M Livingston, T Chikritzhs and R Room "Changing the Density of Alcohol Outlets to Reduce Alcohol-Related Harm" (2007) *Drug and Alcohol Review* 557, 557-560.
- 64** Louise Kirkwood *Analysis of Waitemata District Alcohol Behaviour Survey* (Report Prepared for the Alcohol Advisory Council of New Zealand (ALAC), 2009) 22.
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- 66** P Gruenewald; W Ponicki and H Holder "The Relationship of Outlet Densities to Alcohol Consumption: A Time Series Cross-Sectional Analysis (1993) 17 *Alcoholism: Clinical and Experimental Research* 38-47.
- 67** See P Mäkelä, I. Rossow and K Tryggvesson "Who Drinks More and Less When Policies Change? The Evidence From 50 years of Nordic Studies" in I R Room (ed) *The Effects of Nordic Alcohol Policies: What Happens to Drinking and Harm When Alcohol Controls Change* (Nordic Council for Alcohol and Drug Research Publication, Helsinki, 2002) 17-70.

- 68 Statistics New Zealand *Alcohol Available for Consumption: Year Ended December 2008* (available at <http://www.stats.govt.nz/default.htm>) (accessed 14 July 2009).
- 69 See chapter 3.
- 70 World Health Organisation *Expert Committee on Problems Related to Alcohol Consumption* (World Health Organisation, Geneva, 2007) 26.
- 71 T Huckle, J Huakau, P Sweetsur, O Huisman and S Casswell "Density of Alcohol Outlets and Teenage Drinking: Living in an Alcoholic Environment is Associated with Higher Consumption in a Metropolitan Setting" (2008) 103 *Addiction* 1614.
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- 75 R Lipton and P Gruenewald "The Spatial Dynamics of Violence and Alcohol Outlets" (2002) *Journal of Studies on Alcohol* 187.
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- 78 A J Treno, J Grube and S Martin (2003) "Alcohol Availability as a Predictor of Youth Drinking and Driving: A Hierarchical Analysis of Survey and Archival Data" (2003) 27 *Alcoholism: Clinical and Experimental Research* 835.
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- 82 T Chikritzhs, P Catalano, R Pascal and N Henrickson "Predicting Alcohol-Related Harms From Licensed Density: A Feasibility Study" (National Drug Law Enforcement Research Fund, Hobart, 2007) X.
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- 84 T Huckle, M Pledger and S Caswell "Trends in Alcohol-related Harms and Offences in a Liberalized Alcohol Environment" (2006) 101 *Addiction* 232.
- 85 D Begg, G Davie, K Kypri, J Langley, S Stephenson, S Tippetts and R Voas "Minimum Purchase Age for Alcohol and Traffic-crash Injuries Among 15-19 Year Olds in New Zealand (2006) 96 *American Journal of Public Health*, 126.
- 86 New Zealand Police "24 Hour Licensing Hours in Auckland City" (A paper prepared by Senior Sergeant Ben Offner, Sergeant Bryce Law and Barry Hyde, May 2008).
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- 89 R Scribner, D Cohen, S Kaplan and S Allen "Alcohol Availability and Homicide in New Orleans: Conceptual Considerations for Small Area Analysis of the Effect of Alcohol Outlet Density" (1999) 60 *Journal of Studies on Alcohol* 310.
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- 91** Sale of Liquor Act 1989, s 13.
- 92** Sale of Liquor Act 1989, s 2 does not include a statutory definition of “suitability”.
- 93** Sale of Liquor Act 1989, s 2 defines “restricted area” as areas in licensed premises where minors cannot be admitted.
- 94** Sale of Liquor Act 1989, s 2 defines “supervised areas” as areas in licensed premises where minors cannot be admitted unless accompanied by their parent or guardian.
- 95** Sale of Liquor Act 1989, s 35.
- 96** Sale of Liquor Act 1989, s 59.
- 97** Sale of Liquor Act 1989, s 59(2).
- 98** Sale of Liquor Act 1989, s75.
- 99** Sale of Liquor Act 1989, ss 10, 32, 56, 77.
- 100** Sale of Liquor Act 1989, ss 13(2), 35(2), and 59(3).
- 101** Alan Dormer, Alastair Sherriff and John Crookston *Sale of Liquor* (Thomson Brookers, Wellington, 1990), 1-91, 35.05.
- 102** Except in so far as water rights are concerned where a “first in first served” rule applies.
- 103** Resource Management Act 1991, s 5(2).
- 104** Sale of Liquor Act 1989, ss 14(7) and 37(5).
- 105** Sale of Liquor Act 1962, s 75(4).
- 106** Liquor Licensing Act 1997 (South Australia), s 58(2).
- 107** See for example *B & D Co 2008 Ltd* (LLA, PH0001/2009).
- 108** Local Government New Zealand submission on Sale and Supply of Liquor and Liquor Enforcement Bill (254-1).
- 109** Controller and Auditor-General “Liquor Licensing by Territorial Authorities: Performance Audit Report” (Wellington, November 2007), 18.
- 110** See, for example, *YP Parker* (LLA, 1131/97); *My Noodle Limited v Queenstown Lakes District Council* (2008) NZAR 481 (HC), French J.
- 111** *Jones; Evolution Foods Ltd* (LLA, PH 224/01).
- 112** *Samson Pehi* (LLA, 1460/95).
- 113** *The 515 Club Inc* (LLA, PH835/03).
- 114** Gambling Act 2003, s 102.
- 115** Gambling Act 2003, s 101.
- 116** Liquor Act 1982 (NSW); Liquor Regulation 1996 (NSW).
- 117** Liquor Control Advisory Council “Report on the Appropriateness of the Regulatory Regime for the Sale of Packaged Liquor in Victoria” (Reference No 1, Melbourne, 25 March 2008).
- 118** Liquor Control Advisory Council, above n 117, 31.
- 119** Parliament of New South Wales, (Legislative Assembly, Hansard, 28 November 2007), 4632.
- 120** NSW Casino Liquor & Gaming Control Authority, Community Impact Statement Introduction (Sydney, December 2008) (available at <http://www.olgr.nsw.gov.au/pdfs/CIS/CIS%20Introduction.pdf>).
- 121** NSW Casino Liquor & Gaming Control Authority, above n 120, 5.
- 122** Liquor Control Act 1988 (WA), s 38.
- 123** Department of Racing, Gaming and Liquor, Government of Western Australia, “Public Interest Assessment – A guide to satisfying the Public Interest Test” (22 January 2008), 2.

- 124** Liquor Act 1992 (Queensland), s 116. Prior to the amendments that commenced on 1 January 2009, this section focused on an examination of applications in terms of “public interest”.
- 125** Queensland Office of Liquor, Gaming and Racing *Draft Guideline 38 Community Impact Statement* (Queensland, 2009) (available at www.olgr.qld.gov.au/resources/liquorDocs/Guideline38Draft.pdf) (accessed 14 July 2009).
- 126** Queensland Office of Liquor, Gaming and Racing *Draft Guideline 38 Community Impact Statement* (Queensland, 2009) (available at www.olgr.qld.gov.au/resources/liquorDocs/Guideline38Draft.pdf) (accessed 14 July 2009).
- 127** Queensland Office of Liquor, Gaming and Racing *Draft Guideline 38 Community Impact Statement* (Queensland, 2009) (available at www.olgr.qld.gov.au/resources/liquorDocs/Guideline38Draft.pdf) (accessed 14 July 2009).
- 128** Liquor Control Reform Act 1998 (Victoria), s 42.
- 129** Liquor Licensing Authority “Report of the Liquor Licensing Authority for the 12 months ended 30 June 1996” (Presented to the House of Representatives pursuant to s98(2) of the Sale of Liquor Act 1989, Wellington, 1996).
- 130** Liquor Licensing Authority, above n 129, 3.
- 131** *Re Goldcoast Supermarket Ltd* [2001] 2 NZLR 769 (HC), Wild J.
- 132** *Re Goldcoast Supermarket Ltd* [2001] 2 NZLR 769 (HC), Wild J, 12.
- 133** *Walker v Police*, Fisher J, HC, Wellington, 31 May 2005, AP87/01, 12.
- 134** *Walker v Police*, Fisher J, HC, Wellington, 31 May 2005, AP87/01, 13.
- 135** *My Noodle Limited v Queenstown Lakes District Council* (2008) NZAR 481 (HC), French J.
- 136** New Zealand Law Commission Report *Review of the Regulatory Framework for the Sale and Supply of Liquor Part 1 Alcohol Legislation and the Conscience Vote* (NZLC, R106, Wellington, 2009).
- 137** New Zealand Law Commission, above n 136, 31.
- 138** Sale of Liquor Act 1989, s 36.
- 139** Sale of Liquor Act 1989, s 36(3).
- 140** Liquor Licensing Authority “Report of the Liquor Licensing Authority for the 15 months ended 30 June 1991” (Presented to the House of Representatives pursuant to s98(2) of the Sale of Liquor Act 1989, Wellington, 1991) 11.
- 141** Sale of Liquor Act 1989, s 36(1)(d)(ii).
- 142** *B & D Sima Ltd* (LLA, 397/92).
- 143** See for example *In Vetro Trading Company Limited* (LLA PH 200/2004).
- 144** *Caltex NZ Ltd* (LLA, PH167/01) paras 18-41.
- 145** *Jay & H Co Ltd* (LLA, PH155/01).
- 146** Evidence of this is required under the Sale of Liquor Regulations 1990, reg 8(2)(j).
- 147** *The Woodward Group Limited* (LLA, PH 1415/2008).
- 148** *The Woodward Group Limited* (LLA, PH 1415/2008), 10.
- 149** *MK Devereux Limited* (LLA, PH 1532/2008).
- 150** *MK Devereux Limited* (LLA, PH 1532/2008), 7.
- 151** New Zealand Police *Analysis of the Sale of Liquor to Minors From off Licensed Premises in Police Controlled Purchase Operations* (April 2009). Each Police District was asked to review off-licence premises that were visited as part of a controlled purchase operation for the 2007/08 fiscal year. Eleven of the 12 Police districts responded with data. This covered a total of 864 licensed premises.
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- 153** *Lopdell v Deli Holdings Ltd* (2002) NZAR 227 (HC), Randerson J.
- 154** Sale of Liquor Act 1989, s 37(3).
- 155** New Zealand Police, above n 151.
- 156** Liquor Act 2007 (NSW), s 100.
- 157** Sale of Liquor Act 1989, s 14.
- 158** Subject to the Human Rights Act 1993, Sale of Liquor Act 1989, s 14(8).
- 159** Sale of Liquor Act 1989, ss 37, 60 and 80.
- 160** Sale of Liquor Act 1989, s 14.
- 161** Sale of Liquor Act 1989, s 37.
- 162** Certain exceptions apply pursuant to ss 4 and 4A of the Shop Trading Hours Act Repeal Act 1990.
- 163** Report of the Liquor Licensing Authority for the 12 months ended 30 June 2000, para 6.4.
- 164** Statistics New Zealand *QuickStats About Culture and Identity* (available at www.stats.govt.nz/census/2006-census-data/quickstats-about-culture-identity).
- 165** For example the Easter Sunday Shop Trading Amendment Bill.
- 166** New Zealand Police *National Alcohol Assessment* (Wellington, April 2009) (available at www.police.govt.nz) [*National Alcohol Assessment*] 83.
- 167** *Tonto Investments Ltd* (LLA, 1210/95).
- 168** *KR and CA Burton* (LLA, 2020-2025/95).
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- 172** *National Alcohol Assessment*, above n 166, 80.
- 173** Department of Internal Affairs *Policy Development Guidelines for Regulatory Functions Involving Local Government* (available at <http://www.communityoutcomes.govt.nz/web/coutcomes.nsf/unid/TCAO-7HP537?openDocument>).
- 174** Sale of Liquor Act 1989, s 104.
- 175** Sale of Liquor Act 1989, s 102.
- 176** Sale of Liquor Act 1989, s 103.
- 177** Sale of Liquor Act 1989, s 131.
- 178** Controller and Auditor-General, Performance Audit Report Liquor Licensing by Territorial Authorities (Wellington, 2007) [OAG Report], 21.
- 179** OAG Report, above n 178, 29.
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- 181** *Review of the Liquor Licensing Authority*, (Wellington, 30 November 2001).
- 182** *Review of the Liquor Licensing Authority*, above n 181, 6.
- 183** Resource Management Act 1991, ss 339(5) and 314.
- 184** *Burns v Bay of Plenty Regional Council* High Court, Tauranga, Lang J, CRI 2009 470 16 June 2009.
- 185** *Burns v Bay of Plenty Regional Council* High Court, Tauranga, Lang J, CRI 2009 470 16 June 2009, para 33.

- 186** Lawyers and Conveyancers Act 2006, s 156.
- 187** Health Practitioners Competence Assurance Act 2003, s 100.
- 188** Sale of Liquor Act 1989, s 97(3).
- 189** Sale of Liquor Act 1989, ss 9(4), 31(3), 55(3), 76(4).
- 190** Local Government New Zealand, above n 108, 4.
- 191** Sale of Liquor Act 1989, ss 23, 46, 69.
- 192** Sale of Liquor Act 1989, s 22.
- 193** Sale of Liquor Act 1989, s 45.
- 194** Sale of Liquor Act 1989, s 68.
- 195** Sale of Liquor Act 1989, s 162(5).
- 196** Thomas Babor et al *Alcohol: No Ordinary Commodity* (OUP, New York, 2003) 127.
- 197** A Wagenaar and T Toomey "Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature From 1960 to 2000" (2002) 14 *Journal of Studies on Alcohol*, 206.
- 198** Sale of Liquor Act 1989, s 160.
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