

**POLICY**MONOGRAPHS

# **Alcohol Policy and the Politics of Moral Panic**

Luke Malpass

THE CENTRE FOR  
**INDEPENDENT  
STUDIES**

**National Library of Australia Cataloguing-in-Publication Data:**

Malpass, Luke, 1983-

Alcohol policy and the politics of moral panic / Luke Malpass, with a contribution by Eric Crampton.

9781864322057 (pbk.)

CIS policy monographs ; 118.

Alcoholic beverages--Prices--New Zealand.

Drinking of alcoholic beverages--New Zealand.

Price regulation--New Zealand.

**Other Authors/Contributors:**

Crampton, Eric.

Centre for Independent Studies (Australia)

363.410993

# **Alcohol Policy and the Politics of Moral Panic**

Luke Malpass

with a contribution by  
Eric Crampton

CIS Policy Monograph 118



**2011**

## Related CIS publications

### Policy Monograph

PM109 Luke Malpass, *Superseding MMP: Real Electoral Reform for New Zealand* (16 March 2010).

### Issue Analysis

IA114 Andrew Norton, *Diminishing Democracy: The Threat Posed by Political Expenditure Laws* (31 July 2009).

# Contents

Executive Summary.....	vii
Preamble .....	viii
Introduction.....	1
The Law Commission’s report.....	2
Historical role of liquor regulation.....	2
Current issues.....	3
On harm.....	4
Alcohol liberalisation and drinking levels.....	4
What we are consuming.....	7
Overall and per capita consumption.....	8
Headline figures and the meaning of statistics.....	8
Alcohol: Really no ordinary commodity? .....	9
Who is allowed to debate?.....	13
Public health and policy prescriptions.....	15
Recommendations.....	16
Discussion.....	19
Conclusion.....	20
Endnotes .....	21

## **ACKNOWLEDGEMENT**

Thank you to those who reviewed draft versions of this paper.  
The usual disclaimer applies.

## Executive Summary

Alcohol regulation is a vexed policy issue that presents a great many challenges to policymakers. The harmful effects of alcohol are such that government feels it has a responsibility to take action to ameliorate at least some of them. However, any such actions inevitably curb choice and raise costs for the vast majority of responsible drinkers. They offend the principle of free trade and free consumption, and involve difficult tradeoffs.

In this vein, the former Labour government asked the New Zealand Law Commission (the commission) in 2008 to undertake a thorough review of the legislative framework concerning alcohol. The commission's findings were published in three reports (the Palmer reports) in 2009–2010: a report advocating abolishing the conscience vote on matters of alcohol; an alcohol issues paper soliciting submissions; and a final report containing recommendations for legislative changes, including replacing the outdated *Alcoholism and Drug Addiction Act 1966* with new legislation. The reports were legalistic and simplistic, and they proposed legal fixes to a cultural problem.

The most egregious example of poor liquor regulation in New Zealand was the six o'clock swill, instituted during World War I, which resulted in a dramatic increase in per capita alcohol consumption. If these draconian restrictions failed to curb alcohol consumption, and in fact had the opposite effect, there is no reason to believe that a more moderate version of the same policy would produce better results.

The public health literature suggests key policy levers such as restricting supply and increasing costs to help reduce alcohol-related harm. However, much of this literature looks at aggregate harm reduction across society as opposed to problem drinking among specific cohorts. It also confounds epidemiological levels of harm with real social harms caused by alcohol. The latter is more closely associated with patterns of drinking at an individual level, not across society.

Much of the public health literature and research used by the commission was based on a World Health Organization publication called *Alcohol: No Ordinary Commodity*, a book rich in evidence about how to reduce aggregate harm from alcohol consumption. As a result, the commission's policy suite, while no doubt well meaning in trying to prevent alcohol-related harms, is misguided in its choice of policy areas that need reform. It focuses on society-wide aggregate measures rather than on preventing the more pressing issues arising from alcohol consumption such as violence, bingeing, criminal activity, among others.

Second, the commission's policy prescriptions are a mixture of science, sociology and advocacy; present value judgments as evidence; and use clumsy aggregate calculations. Public health advocates, who have just as much a vested interest as alcohol companies, employ spurious figures of cost to strengthen the case for a moral judgment.

Many of the recent 'cost' calculations of alcohol by two consultancies, BERL and Marsden Jacob Associates, are faulty. Both make methodological errors and employ unreal assumptions. Marsden Jacob's report in particular was requested by the commission under undue haste and was not made open to sufficient scrutiny. The two reports produced inflated headline figures that gave further impetus to 'doing something' about alcohol, when in reality, they were inaccurate and of little use to policymakers.

These policy prescriptions are an example of 'policy based evidence' rather than 'evidence based policy.' They ignore the evidence for liberalisation in the mid-1970s leading to reduced alcohol consumed and changing consumption patterns from beer to wine. Since liberalisation, consumption reduced before rising with higher incomes. This trend has levelled out since 2008 after the global recession. There is no reason to believe that increased regulation and restrictions will reduce alcohol consumption and related harms, when the evidence is to the contrary.

Government should not be looking to further regulate, or re-regulate, the sale of liquor in New Zealand to appease public panic over alcohol. A problem certainly exists, but punishing the responsible majority for the foolish minority, while eschewing personal responsibility and using society-wide regulatory measures, is not a good basis for public policy.

I'd rather that England should be free than that England should be compulsorily sober. With freedom we might in the end attain sobriety, but in the other alternative we should eventually lose both freedom and sobriety.

— W.C. Magee, Archbishop of York, Sermon to Peterborough (1868)

## Preamble

In response to the NZ Law Commission's (the commission) review of the regulatory framework concerning liquor, Minister of Justice Simon Power announced in October 2010 a package that 'adopts, in full or in part, 126 of the 153 Law Commission recommendations, as well as making other changes.'<sup>1</sup> Although a number of the commission's micro changes to the implementation of alcohol regulation were sensible, its thematic recommendations were heavily value laden and based on dubious analysis that presented values and judgments as scientific evidence. This policymaking process left a lot to be desired.

This monograph seeks to shed light on the commission's report and the research it was based on to show that policies moving towards restricting alcohol will penalise the majority and do little to change the drinking habits of the problematic minority.

Whether one agrees with the commission's recommendations or not, legislation in an area that directly affects 85% of adult consumers (who spent \$4 billion–5 billion in 2008 on alcohol) should not be changed lightly, at the behest of opinion polls and moral public panic, or in policy directions that are doomed to be unsuccessful.

This monograph is about more than just alcohol. Policymakers must be informed by positive evidence and value judgments about the legitimacy of actions that governments undertake. The government of the day can then choose its options in a transparent manner. However, the increasing trend toward 'evidence' as a reason for government to 'do something' regardless of efficacy is apparent in the current liquor debate.



## Introduction

Liquor laws are a vexed and sensitive issue. It is a difficult area in which to legislate, and debates surrounding liquor sale, licensing and consumption are prone to emotive rhetoric as well as competing and legitimate tradeoffs.

Alcohol regulation is not primarily a legal issue but a normative and social issue, one that can be informed by quality empirical research but is more likely to be informed by value judgments. Through the NZ Law Commission (the commission), the Clark government chose to review the legislative framework for alcohol regulation instead of investigating and debating the overall social setting in which alcohol is consumed.

Short- and long-term alcohol consumption does have harmful effects which drive debates about alcohol and its regulation. Alcohol consumption is a factor in domestic violence. It has the potential to ruin lives and families. It can lead to poor health outcomes. It is capable of creating negative externalities (or 'social costs') such as pressure on police, the health system, the criminal justice system, and damage to private and public property.

But the question we have to ask is: what is the role of the state in protecting people from themselves and others from the outcomes of those who drink in excess? Emotive language and disapproval of certain behaviours are commonplace in this debate, muddying the waters around legitimate concerns over the impact of the social and economic costs of alcohol consumption, not to mention the philosophical argument regarding individual choice.

For example, saying that alcohol is undesirable and must be regulated because those imbibing might do or say something regrettable and saying that tax on alcohol should cover the negative health costs and social costs (costs borne publicly by taxpayers) are quite separate issues. The former concerns personal and moral tastes and preferences, which is usually not considered part of public policy. The latter is a technical question of public costs and their causes, which is very much part of public policy.

In recent years, governments have felt pressure from many sectors to further regulate the sale and provision of alcohol. A series of reports (many of them taxpayer-funded) have 'found' that alcohol consumption is accompanied by grave and substantial 'social costs.' This increase in awareness is partly due to NGOs and community groups, who see firsthand the devastation that alcohol abuse can wreak on local communities.<sup>2</sup> It is also caused by a resurgent 'wowsersism' dressed up as health concern.

In response to these concerns, the Clark Labour government asked the commission to examine the legislative and regulatory framework surrounding alcohol consumption.<sup>3,4</sup> The commission has produced three reports (the Palmer reports):

- one arguing that alcohol regulation is too important to be left to a conscience vote<sup>5</sup> (the conscience vote seems like a side issue and highly procedural)
- one examining the issues, and
- one recommending new regulation, restriction of sale, and changes to tax policy.

The reports imply a link between alcohol, harm and social costs, which higher taxes and tighter restrictions are supposed to fix or ameliorate. This argument is based on the premise that alcohol is too affordable, is too readily available, and costs the public purse a lot.

Neither the argument nor the policy prescriptions in the commission's report and the literature (especially public health literature) clearly link the need for higher tax/increased restriction and regulation for alcohol regulation to reduced social cost or substantial increases in aggregate public wellbeing. Indeed, much of the rhetoric around alcohol is highly politicised and tends to reflect preconceived views about human agency and the role of government.

**Much of the rhetoric around alcohol is highly politicised and tends to reflect preconceived views about human agency and the role of government.**

Alcohol regulation is a divisive issue; alcohol abuse touches the lives of many and destroys the lives of some. This monograph does not aim to trivialise the suffering or the negative social effects of alcohol abuse. Neither does it seek to sanction arguments that drinking is exclusively sinful, inevitably socially destructive, and that individual choices about alcohol consumption are not valid unless they conform to arbitrary public health standards.

## The Law Commission's report

In 2008 the commission, headed by President Sir Geoffrey Palmer, was asked to 'examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in New Zealand.'<sup>6</sup> The commission was part of a government response to community concerns about the supply of alcohol and binge drinking, particularly the sale of liquor at small stores and unruly behaviour at night-time 'hot spots.' The review was announced in the final months of the Clark government, so a very difficult political issue was effectively deferred until after the 2008 election.

The commission's terms of reference were primarily to address the negative and legalistic aspects of alcohol regulation (see Appendix) and particularly key questions regarding section 4 of the *Sale of Liquor Act 1989*, which states:

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 can be achieved by legislative means.* (emphasis added)

According to the Laking Committee, which had investigated and recommended the reforms that were adopted in the late 1980s, legislative means had little effect on ameliorating the harmful consumption of alcohol, and that public education campaigns were the best way to tackle such a problem.<sup>7</sup> While the commission's report, *Alcohol in Our Lives: Curbing the Harm* (Palmer report) released in April 2010, acknowledged this historical experience, it signalled a fundamental reassessment of the objective of the Act. The commission's new approach is remarkable for its renewed faith in the ability of legislation to control liquor abuse. A subtle but important difference is that the commission focuses not on the reduction of liquor *abuse* but on reducing liquor *consumption* in an attempt to curb harm.

The Palmer report, in reality, reflects a 'second-best' approach to policymaking. A first-best approach would, among other things, be a technically challenging undertaking, certainly expensive, and politically unsaleable across the board: such an approach would have to tackle the highly contentious cultural context of alcohol consumption in New Zealand. Laws can be easily changed and can have a demonstrable effect, even modest ones, at the margins, and at substantial cost.

**The idea of the inherent sinfulness of drinking had strong support in New Zealand, and the practical arms of this view—once wielded significant political influence.**

## Historical role of liquor regulation

Liquor regulation in New Zealand can be divided into two periods—a) when regulation was driven by the 'sinfulness' of liquor, and b) when the object of regulation was to support safe trade and prevent harm insofar as far as possible. The idea of the inherent sinfulness of drinking had strong support in New Zealand, and the practical arms of this view—the prohibitionist and temperance movements—once wielded significant political influence. In 1910, these movements successfully banned the employment of new barmaids for fear they would attract men to drink; this measure was not rescinded until 1962.<sup>8</sup>

The temperance movement's greatest win was the introduction of six o' clock closing—or the infamous 'six o clock swill.' Originally introduced in the guise of a wartime measure of solidarity in 1917, the swill managed to remain in place until 1967. Substantial literature exists on the effects of the swill on the drinking habits of New Zealand men, including vivid archival images of beer halls jam packed with men standing (no seating was provided) trying to guzzle as much beer as possible between finishing work and the closing at six. For example, the humorous revisionist history TV show *The Unauthorised History of New Zealand* shows vivid footage of old-fashioned beer barns under the six o' clock swill.<sup>9</sup>

Support for the swill came from a combination of unusual bedfellows, namely trade unions, hotel owners, and prohibition organisations, according to the Institute for the Study of Competition and Regulation (ISCR).<sup>10</sup> The six o' clock swill, while perhaps not causing New Zealand's so-called 'binge drinking culture,' locked it in socially and culturally. Customers drank as much as they could before the mandatory closing time, clearly showing how legislative restrictions can modify people's behaviour with disastrous consequences.

The main results of the six o' clock swill were:<sup>11</sup>

**Lack of choice.** The beer barns were massive and choice of pubs was between rough and very rough.

**Entrenched privilege.** Contrary to popular belief, the hotel industry actively lobbied government to retain the compulsory closing time so that publicans didn't have to work late or pay overtime rates to employees.

**Lack of quality.** Because the majority of drinkers were working men who could only turn up from five to six, and did not have the time to travel further afield, pubs had no reason to provide pleasant surrounds. Bars had no barmaids, chairs or food.

**A feral drinking culture:** Drinking a lot, drinking quickly, and getting drunk carried less social stigma over time. This 'sinking piss' mentality, often bemoaned in New Zealand, is the greatest legacy of the six o' clock swill and also the most difficult to change. It is also difficult to see how extra legislation can change it.

These drinking laws were liberalised in 1967 and closing times extended to 10 pm. However, the really big reform came with the fourth Labour government, which appointed the Laking Committee to fundamentally reform liquor laws and draw up a set of principles upon which to base the law.

**The Palmer report is inconsistent in acknowledging that culture is the root problem while espousing legal fixes.**

## Current issues

The state's interest in limiting alcohol consumption is based on several popular arguments:

- social and economic costs
- short-term harms (excessive drinking, hangovers, violence and injury through drunkenness, and risky behaviour such as drunk driving), and
- long-term harms (domestic abuse, social disorder, and health costs through drink-related issues such as cirrhosis of the liver).

These separate issues are often treated together, which conflates the problems and muddles policy responses. The commission's report adds to the confusion with its thrust on the importance of industry regulation over personal responsibility in dealing with alcohol-related issues. Although Palmer has rejected that analysis in speeches, the tenor of the report clearly champions legislative fixes to cultural problems (insofar as they are problems). The report is inconsistent in acknowledging that culture is the root problem while espousing legal fixes. It is a confused analysis, and an example of 'policy based evidence' rather than 'evidence based policy.'

## On harm

The overall point of reform is to reduce alcohol-related harm. The commission's final report even reflects this in its name: *Alcohol in Our Lives: Curbing the Harm*. This harm takes many forms and affects real people in real situations. The commission uses harm prevention as the guiding principle in making its recommendations.

This monograph examines key recommendations such as raising liquor prices and restricting availability, measures that are unlikely to tackle any of the alcohol-related problems. It takes issue with using the underlying idea of harm as the guiding principle behind any report that seeks to influence public policy. The fact that a commodity causes some harm is not, in itself, a valid reason to seek to control or restrict it. Mature adults understand that when they drink, they are taking a risk to themselves and potentially to others, depending on how much they drink and how they behave. But any harm must be balanced against the benefits associated with drinking and the principle of consumer sovereignty. Many costs of drinking are internalised, but for those that are not, and are borne publicly, taxations exists.

In a free society, this is the trade-off we have to make, and which is acknowledged by the commission's admission that it is a 'question of balance.'<sup>12</sup>

## Alcohol liberalisation and drinking levels

The Palmer report noted that the pendulum has swung too far towards liberalisation in New Zealand,<sup>13</sup> citing as evidence the large number of submissions that the commission received from people testifying to the damaging effects of alcohol. But there is nothing remarkable about this. We know alcohol has terrible effects on the lives of those whose consumption is a problem. The social effects and externalities of excessive drinking are

**The liquor liberalisation process has overwhelmingly been successful in New Zealand.**

extensive. The commission argues that these statistics have got worse, that alcohol consumption per capita has increased, and that given these circumstances, liberalisation has produced unacceptable results. The commission points to the increase in the availability of alcohol per capita over the past decade as evidence of this. 'There are many convenient but wrong explanations for why the availability of alcohol should not be tightly regulated. But in the end, reality must be faced: it is the product alcohol itself that is the problem.'<sup>14</sup>

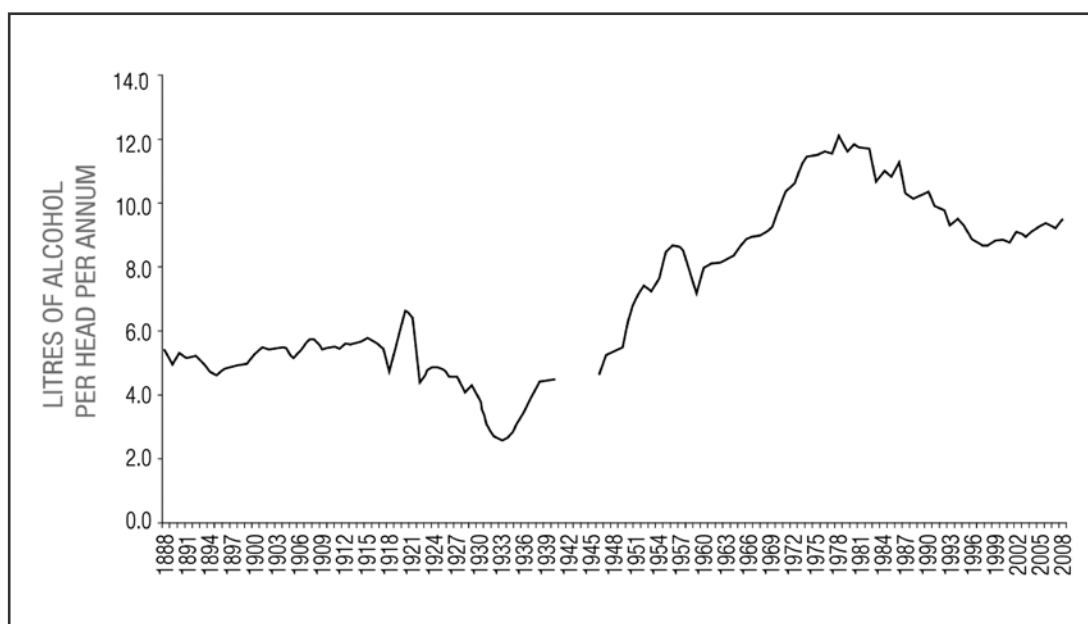
But this begs the question: What is the 'right' amount of alcohol available for sale nationally? What is the 'right' amount of consumption? If there is such a level, maybe government should allow a certain amount of production per year and institute rationing.

The commission gives the impression that we are experiencing the worst alcohol-related problems ever and that there is a ‘national alcohol crisis,’<sup>15</sup> when in fact the actual amount consumed is significantly lower than it was in the late 1970s (Figure 1). The reality is that the liquor liberalisation process has overwhelmingly been successful in New Zealand. Per capita consumption, despite rising over the past decade (there has been a recent tail off) is significantly lower than in the 1970s. Consumption has also normalised in responsible ways; spawned a new café culture; allowed far greater choice for consumers; and promoted a vibrant micro-brewing culture, wine industry, and associated tourism benefits. That the same binge-drinking culture has persisted alongside these positive developments is no indictment on the policy.

Alcohol consumption patterns have also changed over the past 25 years: the amount of **spirits** consumed per person has remained relatively constant, but the consumption of spirit-based drinks has increased; **wine** consumption has risen greatly, while **beer** consumption has reduced greatly. Sprawling booze barns (and accompanying car parks) have been replaced by a large and diverse array of new and varied alcohol outlets, restaurants, boutiques wine shops, cafes, bars and restaurants.

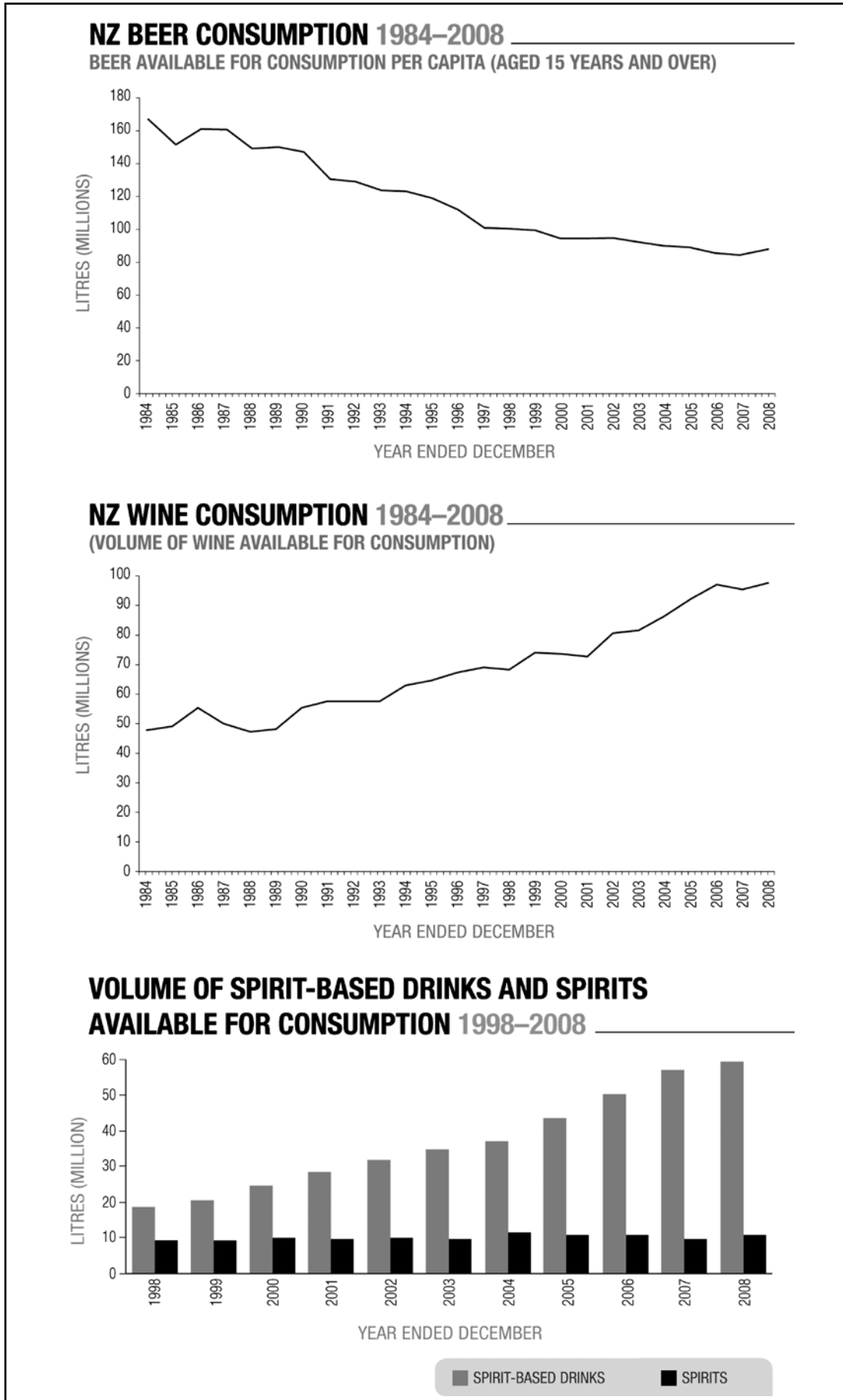
On the flip side of this otherwise rosy picture, groups such as Alcohol Action NZ rightly claim that ‘figures and statistics ... do not adequately capture the misery, pain and loss that many New Zealand families suffer as a result of excessive alcohol use.’<sup>16</sup> However, if the consumption per capita is used to measure harm, then harm has reduced since liberalisation. Aggregate consumption is the easiest thing to tackle via legislation, but it doesn’t reflect the individual cultural circumstances in which people consume alcohol.

**Figure 1: Alcohol consumption per capita 15+ (1888–2008)**



**Source:** New Zealand Alcohol and Drug Use Survey (2007–08), New Zealand Law Commission.

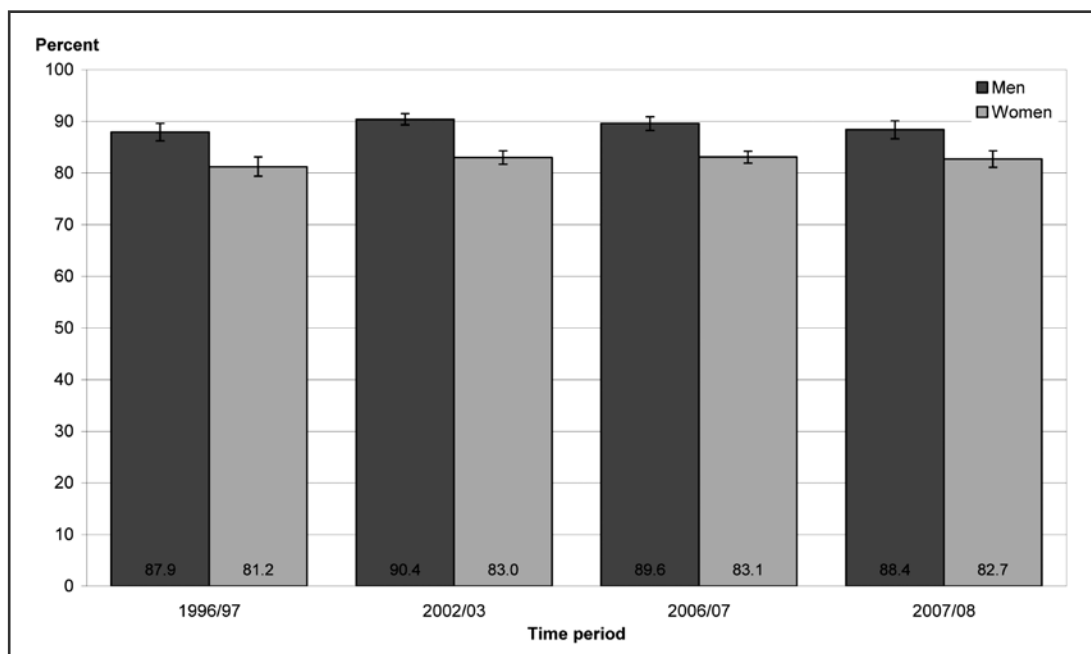
**Figure 2: Beer, wine and spirits consumption (1984–2008)**



Source: Statistics New Zealand; New Zealand Law Commission.

## What we are consuming

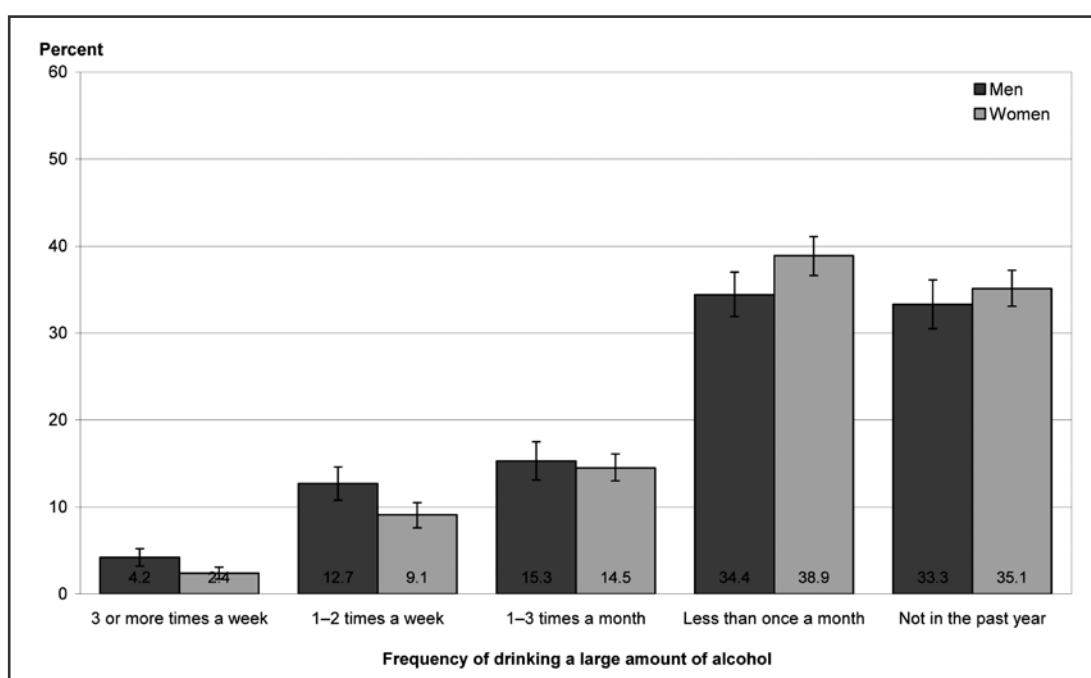
**Figure 3: Prevalence of drinking alcohol in the last 12 months, among total population aged 16–64 years, by gender (1996–97, 2002–03, 2006–07, and 2007–08) (age-standardised prevalence)**



**Source:** New Zealand Health Surveys (1996–97, 2002–03, and 2006–07); New Zealand Alcohol and Drug Use Survey 2007–08

**Note:** Data from these surveys have been reanalysed to allow for comparability.

**Figure 4: Frequency of drinking a large amount of alcohol on a drinking occasion in the last 12 months, among past-year drinkers aged 16–64 years, by gender (age-standardised prevalence)**



**Source:** New Zealand Alcohol and Drug Use Survey (2007–08)

Figure 1 shows there was no meaningful increase in the amount of alcohol consumed between 1996–07 and 2007–08. Figure 2 shows ‘binge drinking’ occurs less than once a month for 67.7% of men and 75% of women. Those engaging in the so-called Kiwi tradition of bingeing on the weekend make up just over 10% of women and about 17% of men. These are significant minorities but do not represent a widespread epidemic of bingeing. Neither is the frequency of drinking as high as one would expect (Figure 4): around a third of the adult population drink heavily once a month.

## Overall and per capita consumption

According to the commission, history has vindicated the Laking Committee on one level. Thanks to the *Sale of Liquor Act 1989* and its subsequent amendments, we now have a highly competitive industry offering consumers unprecedented choice and access to alcohol.<sup>17</sup>

In 2008, 486 million litres of alcohol and alcoholic drinks were consumed: the highest since 1990, 25% higher than in 1986 (although the population has increased by 25% from around 3.3 million to 4.3 million in that time), and 9% higher per capita than in 2000. The 2008 consumption level was significantly lower than the 1970s prior to liberalisation. It should also be noted that 2008 may have been a historically high year of consumption as it was the year the global recession began (primarily caused by debt-fuelled consumption); the subsequent belt tightening by businesses and the state will see a reduction in consumption for all sorts of commodities—alcohol being one of them.

Liberalisation and growth of the wine industry has clearly contributed to changing New Zealand from a primarily beer-drinking to a wine-drinking nation. Wines tend to be drunk with food—at home, in restaurants and cafes, and at outdoor festivals. Beer tends to be drunk at bars, pubs, games, sports clubs, and RSAs.

Although the amount of spirits consumed has not changed, the sale of drinks containing spirits has increased. While alcoholic beverages are deliberately targeted at young drinkers as they are sugary and sweet, this trend is an obvious outcome of a society exercising the range of choices it has: liberalising the sale and supply of alcohol has meant greater choice, especially for those who do not like beer or wine or pure spirits. This can also be seen in the rise of micro-breweries, new kinds of wine, and boutique producers of all stripes and shapes.

All this indicates the current *Sale of Liquor Act* is working well, and is working to its strengths. The ‘paradigm shift’ advocated by the commission amounts to little more than the institutional capture of the commission by lobby groups concerned about alcohol consumption and assuming that stringent limits will do away with the problem.

**Thanks to the *Sale of Liquor Act 1989* and its subsequent amendments, we now have a highly competitive industry offering consumers unprecedented choice and access to alcohol.**

## Headline figures and the meaning of statistics

So what are the rates of drinking in New Zealand? Why are we so concerned? First some figures from Palmer (23 November 2009)<sup>18</sup> followed by a layman’s explanation:

- 10% of adults (289,000) indulged in binge-drinking once a week (equivalent of four glasses of wine or two pints of beer).
- According to police reports, approximately 21,000 people were either taken home, a place of safety, or a cell in 2007–08 as they were deemed a risk to themselves or others. This averages to about 403 per week or 57 per day across New Zealand. This figure is based solely on police reports.
- The ‘cost of alcohol’ to the community is \$5.3 billion<sup>19</sup> (since then, this figure has been discredited).<sup>20</sup>



- ‘Breach of liquor ban’ offences increased from 5,050 in 2003–04 to 9,359 in 2007–08. (The ban did not exist before 2002, which explains the increase as more local councils adopted ban policies.)

These numbers are high but do not signal a crisis if taken in the context of police in cities and towns taking drunks home or feel it is a good idea to do so. Of course, this is not acceptable behaviour, but neither does it constitute a crisis. Any number greater than zero is higher than it should be, but that is the price we have to pay in a free and democratic society for not compelling people to do certain things or banning certain substances.

The Palmer report uses big numbers to tell a story, but the picture is much less extreme once the figures are broken into components. Moreover, figures have been kept only for the last two decades and are both cyclical and cynical. A headline figure or incidents involving alcohol does not mean alcohol caused the incident.

Further, a lot of the information used in the commission’s issues paper was based on other assessments that used contested figures of cost<sup>21</sup> (see Eric Crampton’s section). For example, the *National Alcohol Assessment*<sup>22</sup> was cited by the commission in compiling a number of its statistics on police actions. This assessment produced many numbers where alcohol was a factor but without demonstrating how much of a factor it was, and it will always be difficult to determine. Alcohol-related problems making a substantial contribution to police work should not necessarily lead to policymakers removing restrictions (therefore removing compliance work for police) because minimising work for police is not the aim of alcohol policy (or any other policy for that matter). If necessary, the sale of alcohol could be banned except under certain highly controlled circumstances. Headline figures do not (and should not) automatically lead to different or new policy outcomes, but instead involve a complex set of social tradeoffs.

In reality, these tradeoffs have improved the drinking culture in some areas but not in others. The increasing number of liquor licenses since the 1989 Act reflects the corresponding explosion in New Zealand’s tourism. In a paper written for the journal *Social Policy* before the 1997 changes, Linda Hill and Liz Stewart noted that much of the initial growth in the number of liquor licenses complemented the trend of more cafes and different styles of dining places that served alcohol with food and wanted more flexibility.<sup>23</sup> It was not a case of pubs opening randomly and increasing binge drinking.

**Ignoring the benefits people derive from consumption and focusing only on cost is an unsound measurement.**

It has been argued that the proliferation of licenses in New Zealand dwarfs ‘similar jurisdictions’ such as NSW in Australia, which is viewed as more desirable regulatory environment, but this is a bizarre view. NSW laws have been highly restrictive up until very recently. Sydney is the home of the mega-pubs—huge establishments that have made huge investments and need a high flow of patrons consuming a lot of alcohol (primarily beer). Compared to New Zealand, there is comparatively little choice for consumers in NSW, and the hospitality lobby has a vested interest in maintaining this arrangement: if a publican spends a lot of money on starting a huge pub with an expensive license, a rule change would potentially see that investment drop in value.

## Alcohol: Really no ordinary commodity?

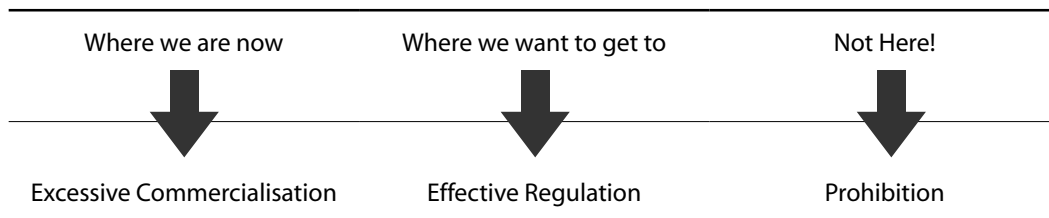
According to the commission’s report, alcohol is no ordinary commodity. This is because, were it classified, it is the equivalent of a Class B drug and has the associated effects on the brain. It causes social harm and short- and long-term harm and so cannot be treated as an ordinary commodity and traded as such. Leaving aside the question of what an ‘ordinary commodity’ is (besides the title of a public health book), it is an interesting claim as its implications are not immediately clear. Because of the ‘negative’ effects of alcohol, its sale must be restricted to reduce the trading of what is a Class B drug, were it not socially acceptable.

One of the key texts cited in the Palmer report is named, conveniently enough, *Alcohol: No Ordinary Commodity*.<sup>24</sup> This text reflects the approach taken by many in the public health field: count all the costs of an activity in terms of health outcomes while disregarding or discounting the benefits, which are almost never measureable in health outcomes.<sup>25</sup> For example, apart from protective benefits of moderate alcohol consumption (which are disputed), there are few epidemiological health benefits from alcohol consumption.

In conventional economics, consumption benefits of commodities are often measured as ‘consumer surplus’: what consumers are willing to pay in excess of the amount they actually pay. Although there can be difficulties in measuring this, and it is complicated by addictive commodities (although there are theories of rational addiction), the estimates of this consumer surplus can be substantial.<sup>26</sup> Ignoring the benefits people derive from consumption and focusing only on cost is an unsound measurement.

*Alcohol: No Ordinary Commodity* is the best summary of the public health literature on alcohol. It does not, however, accept the validity of the beneficial properties of alcohol and its consumption. Instead, it argues that alcohol is a drug (if it were classified on epidemiological merit), and that the only legitimate public policy agenda for governments is to reduce the harm from this. *Alcohol: No Ordinary Commodity* puts forward a policy agenda that involves co-opting the government into implementing a spate of policies to reduce consumption (and often hypothecating taxes to continue to fund public health projects to find more things wrong with alcohol consumption). It is sort of a mixture of epidemiology, sociology and advocacy. This approach has been taken up by groups such as Alcohol Action NZ that claim ‘Effective regulation’ is needed to curb NZ’s drinking epidemic. They support the 5+ solution, which includes raising the purchase age, increasing the price, reducing accessibility, reducing marketing and advertising by law, and increasing counter drunk driving measures (Figure 5).<sup>27</sup> They produced the following graphic:

**Figure 5:** Alcohol Action NZ’s flowchart



**Source:** Alcohol Action NZ.

Unpacking this graphic is revealing. First, ‘excessive commercialisation’ is a value judgment; second, ‘effective regulation’ is non-specific and a moving target based on the history of these sorts of lobby groups;<sup>28</sup> and third, trying to price people out of the alcohol market is little more than prohibition by stealth.

It is no surprise that one of the success stories of alcohol cited in *Alcohol: No Ordinary Commodity* is the former Soviet Union, where harm from alcohol use dropped after vodka was rationed in the 1980s (government forced reduction in production and supply).<sup>29</sup> There can be little doubt of the veracity of this claim, but the fact that this draconian rule was adopted by a communist power should set off alarm bells about the end goal of these policy solutions. Prohibition may be off the cards, but at what level is ‘effective regulation’ achieved? We simply don’t know.

Many of the policy recommendations of the commission are similar to those of *Alcohol: No Ordinary Commodity*. This would be fine if public policy decisions were based only on harm and health risk factors, but they are not. All sorts of things in life are difficult, dangerous and unhealthy, but harm is not the only factor considered. Arguing that alcohol fits into an arbitrary epidemiological definition of a Class B drug makes no difference to the validity of the argument that health is more important than competing considerations, and that individuals cannot or should not make decisions based on their preferences at the time.

The core argument of *Alcohol: No Ordinary Commodity* is that alcohol is ‘no ordinary commodity,’ according to the authors, and a premise that is supported by the commission, because it has the potential to harm, and harm greatly. This may be the case, but *potential* for harm is not a justification for interfering with people’s lives. Science may tell us the consequences of our actions, but it does not justify limiting our choices and actions.

**Box 1: Counting the ‘cost’ of harmful alcohol use, and counting the cost of consultants.**

**Eric Crampton**

Early in the Law Commission’s review of New Zealand’s alcohol legislation, Sir Geoffrey Palmer began citing the very high social costs of alcohol, contrasting them to the relatively low aggregate alcohol tax take, and arguing that those figures provided sufficient reason for regulatory or tax changes to bring the two more closely into balance.

Unfortunately, the \$5.3 billion social cost figure he cited, produced by Business and Economic Research Ltd (BERL)—a Wellington-based consultancy firm—included half of the aggregate tax take as a social cost of alcohol. Comparing the two figures was a misrepresentation but was successful in influencing the public debate surrounding the need for reforming New Zealand’s alcohol legislation.

Commissioned consultancy reports have figured prominently in the current debate. While the Ministry of Health and the Accident Compensation Corporation (ACC) commissioned the cited BERL study, it was heavily relied on in the commission’s early workings. BERL cited figures of \$4.8 billion in harmful alcohol use, and \$5.3 billion for the joint use of alcohol and other drugs. This was done using a ‘cost of illness’ framework broadly consistent with that used in Australia by David J. Collins and Helen M. Lapsley and recommended by the World Health Organization’s (WHO) *International Guidelines*, authored, among others, by Collins, Lapsley and Brian Easton. Matt Burgess and I reverse engineered BERL’s figures and found that the vast bulk of BERL’s tabulated costs were inadmissible from an economic cost perspective.

Only \$675 million of the \$4.8 billion could be counted as a net cost falling externally (i.e. cost created by drinkers but falling to the public purse at large)—roughly matching that year’s aggregate tax take.

We published our findings as a University of Canterbury Economics Department Working Paper. Our work was not commissioned by any party, nor did we receive compensation from anyone. The impetus for our research came from the fact that a somewhat dodgy number seemed likely to perniciously influence policy.

The commission’s first discussion document noted the dispute between BERL’s figure and ours. The commission hired independent economist Brian Easton to adjudicate between the competing figures. This was an interesting choice as Easton is hardly a neutral party: he previously had been commissioned by the Alcohol Advisory Council of New Zealand, the Health Research Council, and the Public Health Commission to quantify the social cost of alcohol abuse; he found alcohol imposed social costs on New Zealand of over \$16 billion (roughly 4% of GDP). He also was co-author of the WHO paper recommending the cost-of-illness method for cost estimation. As one colleague in the Economics Department at the University of Canterbury put it, ‘Hiring Easton to adjudicate on alcohol is like hiring the Pope to adjudicate on abortion.’

Easton’s report to the commission advised that the main groups whose consumption is sensitive to price changes are ‘the young; binge drinkers; and, heavy drinkers.’ This is of course inconsistent with the best available evidence on the price elasticity of demand, where Wagennar’s comprehensive meta-study found that heavy drinkers are roughly 60% as price sensitive as moderate drinkers. Why does this matter? If heavy drinkers respond less to a price increase than moderate drinkers, a tax increase aimed at heavy drinkers will do proportionately more harm to moderate drinkers. Easton further argued that discounting private costs relied heavily on strong assumptions of a rational economic man; BERL’s reply to our critique made similar assertions.

In our submission to the commission, we pointed out that none of our cost estimates relied heavily on assumptions of strong rationality.

BERL assumed that all drinkers consuming more than four standard drinks per day, enjoyed zero benefit from any portion of their consumption, and that anyone encountering an adverse experience from drinking also enjoyed zero consumption benefit. We assumed instead that, over the set of all drinkers considered harmful, excess costs imposed by irrational consumption were no greater than the consumption benefit from rationally consumed drink. We further recommended that the commission abandon both our and BERL's cost figures and commission an independent analysis using an economic framework: we suggested the Treasury as best placed to commission such work.

Instead, the commission hired an Australian consultancy called Marsden Jacob Associates, whose report was included as Appendix to the commission's final report.

Marsden Jacob's corporate website advertised key competencies in water, environmental and natural resource management, climate change, and energy but not alcohol. However, John Marsden, principal author of the report, presented a paper at the Australian 'Thinking Drinking 3: Action for Change' conference in Brisbane in April 2009, where Sir Geoffrey Palmer also presented. *Official Information Act* (OIA) requests for correspondence between Marsden Jacob and the commission show that the consultancy had submitted its draft proposal to the commission in September 2009. The 'tight timeframe' precluded a competitive tendering process, according to the commission. The work was due to be delivered mid-November for a total payment of \$60,000.

Despite Treasury recommending in February 2010 that the Marsden Jacob report be subject to independent quality assurance, the commission again decided that the timeframe for publication precluded such review.

The commission's final report was published in late April 2010. It didn't take long to find rather substantial flaws in the Marsden Jacob analysis, a great deal of which seemed devoted to debunking my prior work. Professional courtesy, as well as prudence, might have suggested that the commission run the report by us to check for any obvious flaws; it chose not to.

The Marsden Jacob report makes several claims contrary to fact:

- It claims that our figures are highly sensitive to overestimates of the cardioprotective effects of alcohol. In actuality, we took no account of the cardioprotective effects of alcohol but rather noted that our social cost figures would be even lower were we to make such an accounting.
- It asserts our figures rely heavily on strong rationality assumptions, when in fact, we had a detailed argument about why our figures do not rely on such assumptions.
- It questions our discounting of fiscal externalities, a method with which Marsden Jacob argues Treasury and the New Zealand Business Roundtable would find fault. In actuality, we note towards the end of our paper rough figures showing the effect of using that method instead of our primary method, which did incorporate those costs.

This is a serious error: we could have eliminated about three weeks' work if we had dismissed these costs out of hand. Our report explicitly tabulates all these fiscal costs; we further made public the spreadsheet showing all of our workings.

Other serious problems with the Marsden Jacob report:

- It conflated economically irrational consumption with epidemiologically harmful consumption. The two cannot be equivalent unless every consumer cares only about health. If consumers are happy to trade some health costs against product enjoyment, then declaring choice as irrational involves serious value judgments.
- It argues that because drinkers' families bear some of the costs of their drinking, drinkers do not fully internalise the costs of consumption. But surely this argument proves too much: what are the social costs of Corvettes if men in their 50s buy them against their family's wishes? What are the social costs of Manolo Blahnik shoes?

- Its review of the literature on the health benefits of moderate drinking is biased: weighing heavily the statistical concerns aired about a decade ago and failing to note that those concerns have been very well answered since.
- It suggests that the entire notion of consumer surplus may be questionable if advertising affects preferences.
- It ran a simulation exercise specifying that heavy drinkers are no less price responsive than moderate drinkers. The results of this were used as evidence against concerns we raised that, because moderate drinkers are more price elastic than heavy drinkers, price increases aimed at heavy drinkers will strongly affect moderate drinkers. Using an *assumption* about relative elasticities to counter the implications of *empirical* findings of differential elasticities begs some questions.

The quality of the economic consultancy reports that have influenced the commission's recommendations is wholly inadequate for the scope of the proposed changes. Speculations about the commission's motivations in using such work would be inadvisable given the costs of defending against defamation claims.

## Who is allowed to debate?

According to the commission's report and the literature on which it relied heavily, there is a saturation of alcohol advertising in the market. This saturation has led to alcohol becoming more culturally acceptable than it would be otherwise, and has resulted in increased demand and consumption. This is reminiscent of the fear that prompted banning women working in bars, namely that 'an attractive, pleasant barmaid ... which was considered to be one way in which publicans enticed numbers of men, into young bars.'<sup>30</sup>

The commission does not provide conclusive evidence to justify heavy restrictions on advertising and its effectiveness. Indeed, in Treasury's Regulatory Impact Statement (RIS), the analysis of the advertising restrictions cites 'a lack of cases where a complete or string bans have been applied so effect sizes of actual imposed restrictions are small.'<sup>31</sup>

Figures are cited about how much the alcohol industry spends on advertising without breaking them down into components or the effect of such spending. The report explains how traditional advertising has decreased, while sponsorship and informal internet-based marketing have increased. It lists a series of public events and their sponsors.<sup>32</sup> Most of these events are not televised and cost a substantial amount of money to participate in, so it is difficult to see how, apart from brand exposure, this corrals people into drinking.

**The commission does not provide conclusive evidence to justify heavy restrictions on advertising and its effectiveness.**

Other than arguing that the liquor industry is a vested commercial interest, the Palmer report does not make a compelling case for barring the alcohol industry from advertising a legitimate product or contribute to public debate.<sup>33</sup> This is a commonly held view.

The public health literature is quite explicit on this point, further claiming that any legitimate alcohol policy should ultimately be the preserve of policymakers, community groups, and public health academics. The alcohol industry should have little or no part in the policymaking process because they are driven by profit and predisposed to act against the interests of public health and discourage any action that advocates reducing the consumption of alcohol. This view is best summed up in a report titled *Eurocare: Advocacy for the prevention of alcohol related harm in Europe*.<sup>34</sup>

Governments need to implement evidence based policies to reduce the harm done ... with such policies formulated by public health interests, recognising that the view points of social aspects organisations [alcohol companies and lobby groups] are not impartial and represent the vested interests of the beverage alcohol industry.

A proportion of alcohol taxes, hypothecated for the purpose, should be used to fund relevant independent nongovernmental organisations to implement evidence based campaigns to reduce the harm done by alcohol.

In a recent article for *Addiction Theory and Research*, Stanton Peele says such thinking is rife among what he calls the ‘gatekeepers’ of acceptable scientific opinions with regard to alcohol. According to Peele, many alcohol public health scholars have ‘moved on from arguments concerning research and public policy and are devoting substantial energy to suppressing alternative views according to their funding source.’<sup>35</sup> He points out that some academics (primarily clustered around the academic journal *Addiction*, many of whom heavily influenced the commission’s report) even argue that researchers who have received funding from the alcohol industry for any research ever (no matter how tangential it was to the research) should be required to disclose it and avoid any relationships with the alcohol industry in the future.<sup>36</sup>

There are no disinterested parties when it comes to alcohol regulation. The best approach is to enact a framework where tax is levied to cover the genuine external costs of alcohol consumption and where the law recognises the guiding principle of personal responsibility.

### **Box 2: Personal responsibility and drunk driving**

Drunk driving is a tragedy, and is a disgraceful act. Recidivist drunk driving is a scandal. In 2010, there was a watershed court case in Australia in regards to drunk driving. The ruling involved the case of a drunk driver in Tasmania. The motorcyclist gave his keys to the barman at the pub before he started drinking. After a number of drinks, the patron became upset and demanded his keys back. Faced with violence and threats, the barman handed back the key. The patron jumped on his motorbike and drove off, only to tragically crash and die. His widow took the pub owner to court for irresponsible service of alcohol and causing her husband’s death.

The Tasmanian High Court ruled in the widow’s favour, but the case was later dismissed by the High Court of Australia. The court’s ruling and comments made in the judgment were some of the clearest articulations of the importance and centrality of individual responsibility around the consumption of alcohol.<sup>37</sup>

- Publicans owed no duty of care to patrons to minimise the amount of alcohol a patron chooses to drink, but do have statutory obligations to provide a safe environment within licensed premises.
- The ruling points out that terms such as ‘intoxication, inebriation and drunkenness’ are hugely difficult to define as they affect people in different ways, are difficult to observe, and problematic information for bar staff to try to obtain. It is unreasonable to expect bar staff to keep an eye on everyone who might be drunk, as drunkenness is both subjective and manifests in very different ways.
- The court also notes following passage, worthwhile quoting at length:

Then there are issues connected with individual autonomy and responsibility. Virtually all adults know that progressive drinking increasingly impairs one’s judgment and capacity to care for oneself[59]. Assessment of impairment is much easier for the drinker than it is for the outsider[60]. It is not against the law to drink, and to some degree it is thought in most societies—certainly our society—that on balance and subject to legislative controls public drinking, at least for those with a taste for that pastime, is beneficial. As Holmes J, writing amidst the evils of the Prohibition era, said: ‘Wine has been thought good for man from the time of the Apostles until recent years.’[61] Almost all societies reveal a propensity to resort to alcohol or some other disinhibiting substance for purposes of relaxation. Now some drinkers are afflicted by the disease of

alcoholism, some have other health problems which alcohol caused or exacerbates, and some behave badly after drinking. **But it is a matter of personal decision and individual responsibility how each particular drinker deals with these difficulties and dangers.** Balancing the pleasures of drinking with the importance of minimising the harm that may flow to a drinker is also a matter of personal decision and individual responsibility. **It is a matter more fairly to be placed on the drinker than the seller of drink.** To encourage interference by publicans, nervous about liability, with the individual freedom of drinkers to choose how much to drink and at what pace is to take a very large step. It is a step for legislatures, not courts, and it is a step which legislatures have taken only after mature consideration. **It would be paradoxical if members of the public who 'may deliberately wish to become intoxicated and to lose the inhibitions and self-awareness of sobriety'[62], and for that reason are attracted to attend hotels and restaurants, were to have that desire thwarted because the tort of negligence encouraged an interfering paternalism on the part of those who run the hotels and restaurants.** (all emphasis added)

People need to take responsibility for alcohol consumption. Unfortunately, the Palmer report is skewed in favour of policy outcomes contrary to individual choice and responsibility.

In his cabinet paper on reform, Minister Simon Power recommended adopting the following definition of intoxication:

[I]ntoxicated means observably affected by alcohol, other drugs or substance to such a degree that speech, balance, coordination, or behaviour is clearly impaired.<sup>38</sup>

This was despite the 1989 and 1997 reviews of liquor laws in New Zealand deciding that such definitions were too difficult, and the HCA pointing out the same. How such a definition will make determining intoxication easier is unclear, as the Australian ruling points out.

## Public health and policy prescriptions

The central claim of the commission's review was based on a modern notion of public health—that 'public health' exists. This relates to public health (rather than, as was once the case, infectious diseases, vaccinations and the like) and how government can act against legitimate threats to it. This is certainly true for infectious diseases, vaccinations and a raft of illnesses but not for alcohol consumption. For example, vaccination benefits both the person who gets the jab and other people who don't through reduced risk of getting an infection. This is different from arguing for paternalism in unhealthy choices. A person can't get cirrhosis of the liver from coming in touch with an alcoholic.

In the case of alcohol, and because it 'decreases the public health,' appropriate remedies need to be adopted to protect citizens from making wrong or unhealthy choices. This has resulted in a mish-mash of policies that do very little to improve the long-term social outcomes of drinking (although they may have epidemiological aggregate benefits), but that may soothe the conscience of those worried about serious drinking problems.

Both theory and practice tell us that there is no simple policy suite that can yield all the desired results. But the public health literature on alcohol harm tells a different story: alcohol is everywhere, is almost always evil, and inevitably wreaks havoc on the lives of all those who choose to partake.

**It is also instructive to note that the WHO recommends instituting 'public health oriented non-profit monopolies' to regulate and sell alcohol worldwide.**

This of course takes a utilitarian view of public health, which deals in aggregates and which is how all policy is made. But alcoholism and alcohol consumption cannot be reasonably measured in such a way because people make decisions about drinking at a personal level. Alcohol consumption does result in some negative externalities, not because there are amorphous forces at work that encourage people to consume<sup>39</sup> but because the systems that deal with them are socialised or public. Policing is public, hospitals are public, and the Accident Compensation Corporation (ACC) is public. This is why some level of tax on alcohol (above the usual taxes) is justified to pay for negative side effects: in socialised systems of health, some of the costs associated with public policing are not borne by the individual but by society at large.

**Although the risk of alcohol-related death rises with every drink, the overall risk of death from all sources or mortality does not show the same relationship.**

So really, public health insofar as it relates to alcohol has little to do with health per se but with the costs borne by taxpayers for the feckless behaviour of certain individuals. It is instructive that many public health writers are not doctors but sociologists. It is also instructive to note that the *WHO strategies to reduce the harmful use of alcohol: Draft global strategy* recommends instituting ‘public health oriented non-profit monopolies’<sup>40</sup> to regulate and sell alcohol worldwide.

One of the authors, social scientist Sally Casswell from Massey University of Auckland, said in the *New Scientist* that the WHO’s strategy ‘challenges the neoliberal ideology which promotes the drinker’s freedom to choose his or her own behaviour.’<sup>41</sup> People do not (or should not) *a priori* have the first choice over whether they drink; government should hold this choice in trust. While not suggesting that academics should not take strong stands on issues they feel important, it must be pointed that this view is shaped by values and ideology, not just by ‘evidence based policy.’ This does not have much to do with health but a lot to do with a certain view of society and human agency.

## Recommendations

The focus here will be on several of the commission’s recommendations but not all of them (as there were very many, some of which are well outside the scope of this monograph).

In its summary, the Palmer report notes that ‘the New Zealand Police’s conviction that alcohol misuse is a major contributor to rates of violent offending, including family violence, in this country, weighed heavily on this review.’ This statement, while indicating the well-intentioned nature of the commission and its willingness to listen to police, represents a misplaced faith in legislative tools. One of the most sensible aims of the *Sale of Liquor Act* is to help contribute to *the reduction of liquor abuse so far as can be achieved by legislative means*. It seems that the commission jettisoned this approach by focusing on procedural issues such as streamlining enforcement and improving treatment for those with alcohol problems.

The commission argues that personal responsibility should take on a bigger role for unacceptable and harmful behaviours from alcohol. This is a positive move but is undercut by other recommendations that deny choice and the implied responsibility that comes with it. These issues will be addressed below.

In the section on policy levers, the commission takes the ‘international literature’ (read public health industry) as a guide. It claims that the recognised levers to prevent harm are:

- regulating the physical availability of alcohol through restrictions on times, place and density of outlets
- regulating conduct in commercial drinking establishments
- taxing alcohol and imposing controls on price
- regulating advertising, promotions and marketing
- imposing penalties for alcohol-related anti-social behaviour such as drunk driving

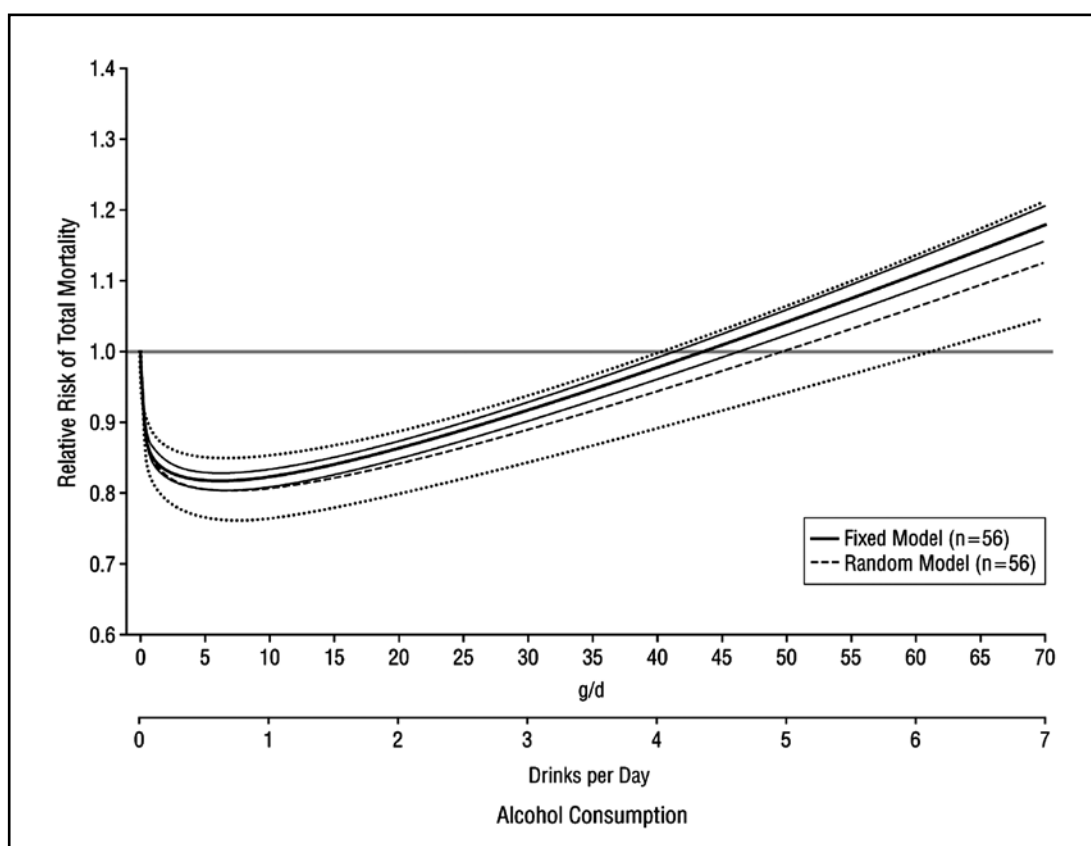


- education and persuasion with the provision of information, and
- increased availability of treatment programmes with screening and brief interventions in health care.<sup>42</sup>

The consensus among public health experts about preventing alcohol-related harm is not shared by those outside the field. As Eric Crampton’s insert suggests, the commission uses dubious assumptions in its economic modelling. The figures used to demonstrate risk are based on an Australian report on the health effects of alcohol, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*.<sup>43</sup> The report mentions that any possible benefits were not included in its calculations because the health benefits of alcohol consumption are uncertain. Crampton and Burgess (2009) reiterate this point in arguing that any alcohol-related benefits have been consistently ignored or discounted in economic modelling and cost calculations.<sup>44</sup>

‘Risk of alcohol related death’ is not even the key measure, but it is the most often used one. What does matter is all-source mortality. Indeed, a 2006 meta-study of alcohol dosing and total mortality concluded that ‘low levels of alcohol intake (1–2 drinks per day for women and 2–4 for men) are inversely associated with total mortality in both men and women.’<sup>45</sup> This meta-study is remarkable and robust—primarily because it is a survey and analysis of the results and findings of a range of studies. It does confirm the hazards of excessive drinking, but suggests a ‘less is better’ policy approach. It demonstrates a so-called ‘J-curve’ for total mortality risk, where at moderate levels of consumption, relative total mortality risk is reduced before increasing with high levels of consumption.

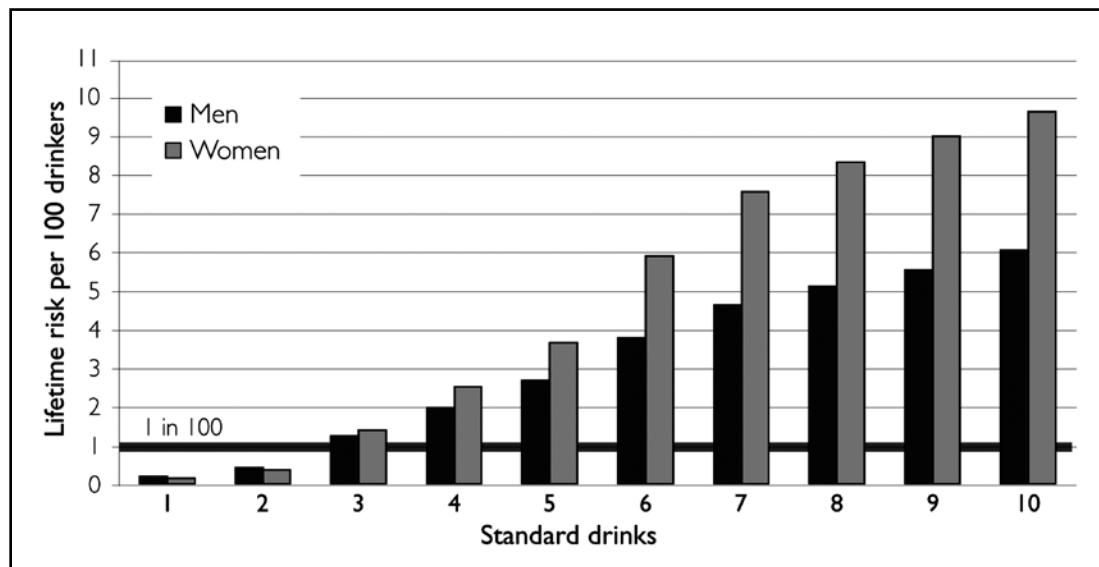
**Figure 6: Relative Risk of Total mortality (95% confidence interval) and alcohol intake extracted from 56 curves using fixed- and random-effects models**



**Source:** Castel nuovo, et al. (2006).

This is contrasted with the figures for risk for death from alcohol in Australia (it is assumed that similar trends are present in New Zealand).

**Figure 7: Lifetime risk of death from alcohol related disease per 100 drinkers, by number of standards drinks per occasion, Australia 2002**



**Source:** Rehm et al (2008)

So although the risk of alcohol-related death rises with every drink, the overall risk of death from all sources or mortality does not show the same relationship.

In a 2007 paper,<sup>46</sup> Eric B. Rimm and Caroline Moats from Harvard University also concluded that although there is enough evidence (30 years' worth, in their opinion) to suggest an inverse association of alcohol with coronary heart disease, it is causal and not confounded by healthy lifestyle behaviours (i.e. alcohol has a positive association with CHD and this is not disproved by those who also lead healthy lifestyles). Further, their paper shows that moderate alcohol consumption reduces 'mortality in individuals with hypertension, diabetes and existing CHD.'<sup>47</sup>

There is substantial evidence to suggest that the relationship between alcohol consumption and health is simply 'bad.' This is not the case, and there is a substantial body of evidence suggesting that moderate alcohol consumption has positive effects on all-source mortality. The relationship between tax and death from alcohol consumption is of course contentious and difficult to prove in any direction. However, it is likely that a general tax on alcohol would discourage moderate drinkers and be counterproductive in lowering or improving overall mortality rates.<sup>48</sup>

### **Box 3: The licensing conundrum**

In New Zealand, liquor licenses are relatively easy to get—a licensee must meet certain conditions, act responsibly as a host, and comply with local council bylaws and conditions.

The process generally flows as follows: An application is made to the District Licensing Agency (DLA), a local authority in the city or district council, empowered under the relevant legislation. If there are no objections to the application, the DLA makes a determination.

In cases where there are objections by the police, the DLA or other interested parties, the decision is handled by the Liquor Licensing Authority (LLA), the nationalised body empowered to make such determinations. The LLA also considers changing licensing conditions and practising certificates at the behest of police, DLA or public.<sup>49</sup>

The DLA and LLA work with reporting authorities to determine whether a person or business is responsible enough to hold a license and sell alcohol. They include agents representing police and the Ministry of Health.<sup>50</sup>

There four categories of license (with Wellington DLA prices; other jurisdictions have similar prices):

1. **On license**—for purchase and service of alcohol on premises (BYO expected)  
Price: \$793.24 (+\$134.93 for BYO endorsement)
2. **Off license**—sale and supply of liquor for consumption off premises  
Price: \$793.24
3. **Club license**—for sale and service of alcohol at the club, for club members, club visitors, and club functions at, for example, sports clubs and RSAs  
Price: \$793.24
4. **Special license**—granted for a one-off occasion or event

New licenses are granted for one year and can be renewed for up to three years at a time for the same price of \$793.24.

This approach to licensing is consistent with the current Act and its tenor, which is to facilitate the sale of alcohol without too much red tape or large costs. Second, the appeals system operates on two levels: local in the first instance, and national in the second. This means that narrow parochial or commercial interests or 'nimbyism'<sup>51</sup> cannot use local influence to subvert opening what might be perfectly acceptable premises. This of course cuts both ways. The current laws, while perhaps needing more resources to aid enforcement and compliance, and need tidying up around the edges, do strike a good balance. Reshaping of the laws to make it more difficult or costly to obtain licenses may be tempting, but there is little evidence it will help mitigate the alcohol-related problems identified by the commission and submissions to its review.

## Discussion

At what level does the harm or social disruption that comes from alcohol justify measures from the government to curb drinking? Some form of alcohol control exists in most countries, and it is usually subject to substantial taxes and restrictions. Most people would agree that in a country where the general taxpayer pool is burdened with the consequences of alcohol use and abuse, an appropriate sum be calculated and taxes levied at that rate. In New Zealand, the 2001 McLeod tax review argued precisely this; it also pointed out that excise taxes in New Zealand exceeded taxpayer liabilities<sup>52</sup> and that it was both inequitable and undesirable to use tax policy to police personal behaviour.

The modern case for alcohol restriction is curious. On the one hand, it relies on notions of unruly behaviour, self harm, and the undesirability of drinking because it is harmful. Therefore, government should do something to curb the harm, even if it is against the best interests of the consumers of alcohol. In many ways, it is a bastion of what F.A. Hayek called 'the socialist conceit,' a group of enlightened and educated individuals wrongly believing they can better direct the lives and choices of others than those individuals themselves. In this case, people should be protected from themselves by having to pay more for alcohol, being able to purchase it less, and not being informed of their choices through advertising.

**It is hubristic to suggest that restrictive legislative measures will change a drinking culture anywhere but at the margins.**

On the other hand, the modern anti-alcohol lobby argues that very few of the costs borne by alcohol are private. Those in favour of further restrictions commonly cite the concept of social cost and lament that some models are restricted to only costs imposed through the health and justice system and do not reflect the wider costs borne by society or private families. Domestic violence, breakdown in personal relationships, marriages, families and dependency can all be the result of alcohol usage, and these are tragedies. But they are also complex phenomena, of which alcohol often plays only one part. And even where it the cause, is it a case that a) restrictions and taxes on alcohol will help to avert these problems, and b) is it actually the responsibility of government to try and sort these problems? Much of the literature says a resounding yes to both questions.

**As tempting it is to turn to the levers of government power to solve the problem, it is a naive notion because an increase in tax will penalise light drinkers while making only a marginal difference to heavy drinkers.**

And yet we know that wherever there are serious problems, the commission's proposed measures will only help at the margins. For those who drink very heavily, price elasticity of demand (consumers' sensitivity to rising prices) is low.<sup>53</sup> In Australia, the alcopops tax ended largely in substitution by drinking something else—most likely heavy spirits.<sup>54</sup> It is hubristic to suggest that restrictive legislative measures will change a drinking culture anywhere but at the margins.

This is why the case for alcohol restriction is made on cost and emotion: look at all the terrible things alcohol does and the high costs it imposes on society as a whole. The higher the cost, the greater is the justification for control, as was pointed out by Eric Crampton above. When the figures don't stack up, the argument changes—the state has a responsibility to protect people from themselves by curtailing the influence of the 'evil' alcohol companies. This is because people are irrational and cannot be trusted to make a legitimate trade off between health and other pleasures. It is a value judgment.

This increasing trend towards control and restriction should be of concern to all New Zealanders for several reasons. First, it undermines the great gains made under the *Sale of Liquor Act 1989*: vibrant clubs, pubs, restaurants and cafes providing consumers with real choice of where to drink and positive flow-on economic effects. Second, it has given rise to a whole new industry selling different sorts of liquors. Third, the rise of specialist wineries and micro-breweries has seen the rise of a 'European drinking culture' as desired by some. The proposed *Alcohol Harm Reduction Act* favoured by the commission tilts the pendulum backward; even its name implies the assumed key role of government in regulating liquor production.

## Conclusion

The issue of alcohol in New Zealand generates a lot of heat and debate and excitement. It is a difficult issue precisely because of the many detrimental effects associated with it, which our best efforts, government policy, and legislation can do little to solve. The problems are real and affect families, friends and loved ones. As tempting it is to turn to the levers of government power to solve the problem, it is a naive notion because an increase in tax will penalise light drinkers while making only a marginal difference to heavy drinkers.

If policies like this do get approved and acted on, it will be a victory of policy based evidence over evidence based policy. New Zealand has enough poor policies without adding regressive taxes and restrictions that have not been proven to solve the problems the public perceive to be looming large, and will serve to impose costs on many and help a few.

People who take the risk and potentially trade off some health later for some pleasure now cannot simply be written off as irrational, in thrall of liquor advertising, or as ignorant fools. To claim that people don't understand the risks of alcohol consumption is as unproven as it is untrue.

Deciding to consume alcohol is still a personal choice, and claims to the contrary require value judgments by experts about the way people live their lives not based on evidence.

Government should continue to set liberal liquor laws with properly funded compliance mechanisms. But only so much can be achieved by legislative means, and much of the cultural problem of drinking is due to tolerating bad behaviour. This is a vexed policy issue, and the commission and government are certainly correct in wanting to make legislation work better. But a concerted programme of retaxing and reregulating closing hours, prices, venue type and density will foist costs on many in an attempt to help the few.

While legislating these new changes, the government should bear in mind that to rush through new, half-baked changes to liquor reform on the basis that people cannot be trusted to self regulate is a dangerous signal to send. It alerts interested parties that all areas of policy, if put under enough pressure, will adopt populist and largely ineffective programmes that over time will impinge on people's freedom to a greater degree. If the government seeks to impose a highly restrictive and taxing regime beyond the socialised cost of alcohol consumption, it should stop hiding behind faux evidence and front up with a moral case for doing so.

## Endnotes

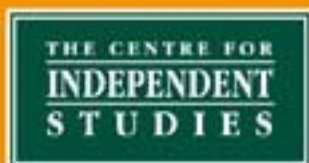
- 1 Simon Power, 'Government outlines balanced plan for alcohol reform,' *The Beehive* (Wellington: 23 August 2010).
- 2 See the submitters list in the Law Commission's reports. They are understandably dominated by NGO and community groups, who have seen alcohol-related problems first hand.
- 3 Lianne Dalziel, 'Law Commission to do a full review of liquor laws,' press release (Wellington: 6 August 2008).
- 4 NZ Law Commission, *Review of the Sale of Liquor Act 1989 Terms of Reference* (2008).
- 5 NZ Law Commission, *Alcohol Legislation and the Conscience Vote* (Wellington: May 2009).
- 6 NZ Law Commission, *Review of the Sale of Liquor Act 1989 Terms of Reference* (2008).
- 7 NZ Law Commission, *Alcohol in our Lives*, Issues Paper (Wellington: 2009), 15.
- 8 As above, 12.
- 9 An Unauthorised History of New Zealand, [www.youtube.com/watch?v=YDeKQdWc73k](http://www.youtube.com/watch?v=YDeKQdWc73k).
- 10 Tim Mulcare, *The Political Economy of Six o Clock Closing*, New Zealand Institute for the Study of Competition and Regulation (1999), 1.
- 11 As above.
- 12 NZ Law Commission, *Alcohol in Our Lives*, Issues Paper, as above, iv.
- 13 As above.
- 14 NZ Law Commission, *Alcohol in Our Lives: Curbing the Harm (Summary)* (Wellington: 2010), 10.
- 15 Alcohol Action NZ, *Issues Page*, [www.alcoholaction.co.nz/Background](http://www.alcoholaction.co.nz/Background).
- 16 As above.
- 17 NZ Law Commission, *Alcohol in Our Lives*, as above, 6.
- 18 Geoffrey Palmer, *What New Zealanders Told the Law Commission's Liquor Review* (23 November 2009).
- 19 Geoffrey Palmer, *The Law Commission's Liquor Review*, address to NZ Police's 'Alcohol Related Harm Breakfast' (24 April 2009), 4.
- 20 See Eric Crampton and Matt Burgess, *The Price of Everything, The Value of Nothing: A (Truly) External Review of BERL's Study of Harmful Alcohol and Drug Use*, Department of Economics and Finance Working Paper No. 10/2009 (University of Canterbury, 2009).
- 21 See Eric Crampton, <http://offsettingbehaviour.blogspot.com/>.
- 22 NZ Police, *National Alcohol Assessment* (April 2009).
- 23 Linda Hill and Liz Stewart, 'The Sale of Liquor Act, 1989: Reviewing Regulatory Practices,' *Social Policy* (Wellington: 1997).

- 24 Thomas Babor, et al. *Alcohol: No Ordinary Commodity* (Oxford University Press, 2003).
- 25 Eric Crampton and Matt Burgess, *The Price of Everything*, as above, 36–38.
- 26 Donald S. Kenkel, 'New Estimates of the Optimal Tax on Alcohol,' *Economic Inquiry* 32:2 (April 1996), 296–319.
- 27 Alcohol Action NZ, [www.alcoholaction.co.nz/FivePlusSolution](http://www.alcoholaction.co.nz/FivePlusSolution).
- 28 The comparison with the anti-tobacco lobby is constructive in this regard.
- 29 Thomas Babor, *Alcohol: No Ordinary Commodity*, second edition (London: Oxford University Press, 2010), 29.
- 30 NZ Law Commission, *Alcohol in Our Lives*, as above, 12.
- 31 Treasury, *Alcohol Reform 1020: Regulatory Impact Statement* (Wellington: 2010), 13.
- 32 NZ Law Commission, *Alcohol in Our lives: Curbing the Harm* (Wellington: 2010), 329.
- 33 Alcohol Action NZ, *The New Alcohol Law Reform Bill: We need more than just tinkering with the problem*, submission to Select Committee. This submission sums up the general arguments about alcohol industry influence in a New Zealand context.
- 34 Peter Anderson, *The Beverage Alcohol Industry's Social Aspects Organisations: A Public Health Warning* (Eurocare, 2003), 2.
- 35 Stanton Peele, 'Alcohol As Evil: Temperance and Policy,' *Addiction Research and Theory* 18:4 (August 2010). 379.
- 36 As above.
- 37 High Court of Australia, *C.A.L. No 14 Pty Ltd v. Motor Accidents Insurance Board* [2009] HCA 47 (10 November 2009).
- 38 Office of the Minister of Justice, *Alcohol Law Reform Cabinet Paper* (Wellington: 2010), 103.
- 39 For a good example of this thinking, see Doug Sellman, 'Stemming the tide of alcohol,' *The Dominion Post* (1 October 2009).
- 40 WHO (World Health Organization), *Strategies to Reduce the Harmful Use of Alcohol: Draft Global Strategy* (Geneva 2009), 14.
- 41 Coghlan Andy, 'WHO Launches Worldwide War on Booze,' *The New Scientist* 2730 (14 October 2009).
- 42 NZ Law Commission, *Alcohol in Our lives: Curbing the Harm* (Wellington: 2010), 12 (quoting Thomas Babor, *Alcohol: No Ordinary Commodity 2010*, as above).
- 43 NHMRC (National Health and Medical Research Council), *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Government of Australia, 2009).
- 44 Eric Crampton and Matt Burgess, *The Price of Everything*, as above.
- 45 Di Castelnuovo, et al. 'Alcohol Dosing and total mortality in men and women. An Updated meta-analysis of 34 prospective studies,' *Archives of Internal Medicine* 166 (11–25 December 2006), 2437.
- 46 Eric B. Rimm and Caroline Moats, 'Alcohol and Coronary Heart Disease: Drinking Patterns and Mediators of Effect,' *Annals of Epidemiology* 17:5 (2007), sections 3–7.
- 47 As above, section 3.
- 48 For a summary of some of the literature and its treatment in New Zealand, see these posts on Eric Crampton's blog: *Moderate drinking and health* (31 March 2010); *The J-curve: Science versus politics* (6 August 2010); *Saying it again, louder* (6 August 2010).
- 49 Wellington City Council, *Guide to Liquor Licensing* (Wellington: District Licensing Agency, 2009), 5.
- 50 Wellington City Council, *Liquor Licensing: Applying for a License—Fees*.
- 51 NIBMY (Not In My Back Yard) is an acronym for when people are happy for development provided it is not near where they live.
- 52 NZ Treasury, *Tax Review 2001 (the McLeod Tax report)* (Wellington: 2001), 38–41.
- 53 Eric Crampton and Matt Burgess, as above.
- 54 Paul Kirby. *The impact of the RTD tax increase: 12 months on...* (Nielsen 2009).



## About the Author

**Luke Malpass** is a Policy Analyst at the New Zealand unit at The Centre for Independent Studies.



CIS Policy Monograph • PM118 • ISSN: 0158 1260 • ISBN: 978 1 86432 205 7 • AU\$9.95  
Published May 2011 by The Centre for Independent Studies Limited. Views expressed are those of the authors and do not necessarily reflect the views of the Centre's staff, advisors, directors or officers.  
© The Centre for Independent Studies, 2011  
This publication is available from the Centre for Independent Studies.  
PO Box 92, St Leonards, NSW 1590 Australia • **p:** +61 2 9438 4377 **f:** +61 2 9439 7310 **e:** cis@cis.org.au