



Liquor Project Co-ordinator  
Law Commission  
Wellington

## **'Alcohol In Our Lives' – Joint Submission to the Law Commission**

ACT on Campus and the Young Nationals are pleased to make this joint submission in response to the Law Commission report titled 'Alcohol in our Lives', and the questions and proposals put forward by the report.

ACT on Campus, the youth wing of the ACT Party and the Young Nationals, the youth branch of the National Party wish to express our joint views raised by the Law Commission's report.

Part I of this document outlines our answers to the questions posed in Chapter 12 of the report. Part II indicates our brief responses to the proposals set out in Chapter 13.

Our answers are informed both by our experiences as young people, and a common sense approach to dealing with the externalities created by alcohol-related behaviour. It is our hope that these answers are of some use to you as an indication of the views of New Zealand's youth on this issue.

Kind regards

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## **Part I: Questions**

In this part we deal with the questions posed in Chapter 12 of the *Alcohol in Our Lives* report, and detail our responses to each.

### **1. Does the level of alcohol-related harm we are experiencing justify a new approach to the law?**

There are two types of harm that have been outlined in the report: crime and antisocial behaviour, and health and wellbeing. These harms are clearly confined to people who drink in a certain way, and it is crucial that any new approach focuses solely on these groups of people, rather than imposing blanket rules that inhibit the freedom of others to use alcohol in a positive manner.

The only mechanism by which this is possible is to focus resources on the harmful behaviour, rather than drinking in and of itself. This means apprehending and punishing those who commit crimes while intoxicated, but not punishing people who are simply drunk, who are not causing harm or offence to anybody else. The appropriate focus of resources ought to be in identifying and punishing the actual criminal or antisocial act. This places the incentive on those who are antisocial to modify their behaviour while they drink, while avoiding targeting those who are causing no harm.

Dealing with health risks is a slightly different matter. Those who cause alcohol-related illness or injury to themselves are a burden on the public health system.

### **2. Do you agree that getting drunk is considered acceptable drinking behaviour in New Zealand?**

Yes we believe that “getting drunk” is acceptable behaviour in New Zealand. We note that “getting drunk” is not harmful in and of itself and there are social benefits associated with drinking as well.

### **3. Do you think the risks associated with heavy drinking are well known? If not, what more could be done to make people aware of them?**

Yes. There is no lack of information. Individuals may simply decide that the benefits they derive from alcohol consumption are worthwhile despite these risks. That is a decision that each individual ought to be able to make for themselves.

### **4. Do you think the cumulative lifetime risks associated with drinking are well known? If not, what more could be done to make more people aware of them?**

Yes. There are similar risks with eating un-healthfully or participating in dangerous sports, however as this only affects the individual themselves the choice should be left with them.

### **5. Is the management of intoxicated people an acceptable use of a large part of the New Zealand Police resources? If not, what are the alternatives?**

If those people are causing significant harm to others, then yes, the Police have a role. However, it ought not to be up to the Police to deal with people who are simply intoxicated but not engaging in criminal, antisocial or disorderly behaviour. The alternative is to place responsibility on the individual for their own wellbeing: if

intoxicated people are simply “managed”, they do not bear the costs of their behaviour and they will have no incentive to change the way they are drinking.

**6. Is the balance in the current law between individual responsibility and providing an environment that is conducive to moderate drinking the correct one? If not, what changes could be made?**

No. The two biggest problems with the current law are the lack of emphasis on individual responsibility, and the ineffective attempts to enforce “moderate drinking”.

In order to reduce alcohol-related harm, responsibility must be placed squarely on the individual who drinks. Attempting to reduce overall consumption, increasing taxes, and placing additional restrictions on sale of liquor and opening hours, are completely ineffective in reducing social harm. The reason for this is that at present responsibility is incorrectly distributed across all drinkers, whilst the intoxicated individual who engages in violent, disorderly, antisocial behaviour, or drinks to excess and ends up in hospital, gets away relatively lightly.

These individuals escape the real cost and consequences of their behaviour, as Police resources are targeted at enforcing liquor bans, licence checks, and bar raids at the expense of dealing with more serious criminal behaviour. Therefore intoxicated people who engage in crime may escape apprehension. The only way to reduce the level of alcohol-related crime, violence, and disorder is to increase the likelihood of apprehension for this behaviour, or perhaps to increase the penalties on those who actually cause harm. In turn, the only way to do this is to redistribute resources to deal with the actual consequences of liquor consumption.

A related issue is the ease with which individuals can access free healthcare for injury which is recklessly self-inflicted whilst intoxicated. In particular, the availability of accident compensation for accidents which occur while intoxicated, allow the individual to receive payment for their damaging behaviour. If individuals had to bear the cost of their injuries, they would be more likely to modify their consumption of alcohol in the future to avoid further injury. Clearly public funding for health care and ACC should be treated as constant factors that are unaffected by this review. However, this point is made to emphasise that the more responsibility devolved to the individual, the more likely it is that the individual will modify his or her harmful behaviour.

The changes, if any, that ought to be made should focus on attaching responsibility for harmful behaviour to the perpetrators of that behaviour. This means increasing the likelihood of apprehension for violence or alcohol-related crime, ensuring that crime is punished so that individuals bear the consequences of their actions.

**7. Do you agree with the current system of four types of liquor licence?**

Yes.

**8. Should the criteria for licences change and, if so, what should the changes be?**

No.

**9. Do you think the Liquor Licensing Authority should be retained as the regulator?**

Yes.

**10. Do you think local views should be taken into account in respect of licences in that area?**

Yes, local views should be a factor in the process. However, it should also be recognised that an application for a licence reflects that there is a demand for a licensed premises in the area, which means that a large number of local people will be supportive of the grant.

**11. Do you think the hours that restaurants, bars, and clubs can be open should be restricted? If so, what should the hours be?**

No. Restaurants, bars and clubs provide relatively safe environments where people can drink. All drinks are standard pours, patrons are generally not served if they are too intoxicated, and the security provided is important. The alternative to this is to have people (particularly young people) spilling onto the streets at a given hour of the morning, looking for somewhere to keep drinking.

The greatest harm with set closing hours is that when the bars close, thousands of patrons attempt to leave the inner city at once, with potentially disastrous consequences. Fights and brawls ensue as crowds hit the streets, taxi shortages mean that people drive themselves home or take rides with people they don't know, and general chaos ensues. This is currently the case on public holiday weekends, and in towns which already have limits on opening hours. The level of alcohol-related disorder invariably increases when such limits exist.

The final point is that disorder usually falls away later in the night. A closing time of, say, 3 am would be ineffective in controlling the perceived problem. By this time, the most intoxicated people have left town, and those who remain have had the time to "cool off" and settle in for the long haul.

**12. Do you think the hours that off-licence premises (including supermarkets and liquor stores) can sell alcohol should be restricted? If so, what should the hours be?**

No. If hours are restricted, people simply go further (often driving themselves further) for alcohol, or substitute wine and beer for other substances that may be available to them.

People who wish to binge drink or drink larger quantities of alcohol are also more likely to stockpile alcohol, so earlier closing hours will not affect them. Early closing then simply becomes an annoyance for those people who wish to drink in a responsible manner.

In the same way, restrictions to the number of off-licence premises have the same effects.

**13. Should we continue to have specific days on which alcohol cannot be sold?**

No. There is no justification for this and, as noted above, it creates chaos at midnight on public holidays when bars are forced to close. There is clearly still a demand for alcohol on these days, and businesses should not be prevented from operating to fulfil that demand.

There is no harm which is decreased by restrictions on the sale of alcohol on specific days. Those who are heavy drinkers can simply stockpile alcohol the day before. The

restrictions are simply outmoded, and prevent people from enjoying alcohol, without good reason.

#### **14. At what age should a person be able to purchase alcohol in New Zealand?**

A person should be able to purchase alcohol at the age of 18. At this age an individual bears all of the responsibilities of adulthood to the state. There is no justification for the state then restricting their rights beyond those afforded to other adults. 18- and 19-year-olds do not engage in more harmful drinking than those who are 20 or 21. The previous failed attempt to raise the drinking age to 20 ended after a resounding show of support for keeping the age at 18, and this is where it should stay. There are several reasons for this:

- At the age of 18 a person bears all of the responsibilities of adulthood to the state. There is no justification for the state then restricting their rights beyond those afforded to other adults.
- It is at this age that most individuals enter the workforce for the first time, or go to university. In both cases they begin associating with adult social groups, and most people experience a distinct lifestyle change. The ability of 18- and 19-year-olds to socialise with their work colleagues and fellow students, usually over a drink or two, is important to the quality of this experience.
- Given that 18-year-olds have the responsibilities of adults and socialise with adults, they find any discrimination against them to be totally arbitrary. This is not conducive to encouraging respect for the law, and this is why most 18- and 19-year-olds broke the law anyway before the purchase age was dropped, creating the “de facto” purchase age of 18.

The view is often expressed that the age might be raised to 20 to increase this “de facto” purchase age from 16 to 18. This argument is troubling, as it ignores the importance of the law (as written) reflecting the outcomes desired in practice. Disjuncts between the de jure and de facto law should always be avoided, as they make the law unstable, unclear, inaccessible and difficult to understand. And if there is a problem with 16- and 17-year-olds drinking, 18-year-olds should not be punished for that.

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

18, as above.

#### **16. Should it be an offence for anyone other than a parent or guardian to supply alcohol to someone under the purchase age?**

Yes.

#### **17. Do you think there are any alcohol products that should be banned?**

No. There are two types of products that are occasionally subject to calls for bans – these will be dealt with in turn.

The first is low-alcohol, “easy drink” products like alcopops which are generally consumed by young people. The calls to ban these products are misguided. As the Australian experience shows, the only result of this is that young people substitute alcopops for stronger drinks – in particular, bottles of spirits, which they then “mix” themselves with juice or carbonated drinks. Young people are inclined to include a greater proportion of alcohol in self-mixed drinks than in pre-mixed drinks like

alcopops. The result is not that young people drink less, but that they drink more, and switch consumption to stronger, more harmful products.

The second is “extremely” alcoholic substances like absinthe. There is no good justification for drawing an arbitrary line where something becomes “too” alcoholic to be available for purchase. Those who abuse products with a high alcohol content are presumably irresponsible enough to abuse other alcoholic substances as well, so no product is necessarily more harmful than any other. Meanwhile, other consumers derive great utility from these products, and it is pointless to penalise them while a ban achieves nothing.

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

Yes.

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

No. Those who engage in harmful drinking do so whatever the price of alcohol – for them, getting drunk is a way of life, and an inherent part of their social activities. Raising the price increases the cost to them, but does not deter them from drinking. Those causing the most harm are the least likely to be affected by any law change.

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

Often this will influence where young people drink. Equally, sometimes it won't, as price is not the only factor – many people enjoy the experience of drinking in a bar or at a club. We would also like to note that there is a benefit to lower prices as this means individuals have more money to spend on other things.

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

Absolutely not. There are several very good reasons that increased taxes are totally ineffective:

- Increasing price will have little effect consumption of alcohol. Alcohol is an important part of many individual's lives, and demand is relatively inelastic. Most people would be willing to pay more for alcohol if necessary.
- Furthermore, any reduction would be by the less serious drinkers as individuals who binge drink regularly are the ones who are more likely to pay more for alcohol, given that alcohol is a more important part of their social lives. For young people and heavy drinkers, drinking regularly is often a way of life, and they will not stop drinking simply because the price is higher. Increased taxes thus penalise responsible consumers while not solving the real problem.
- Any if “problem drinkers” do in fact drink “less”, this does not mean that harm will be reduced. They will instead substitute for stronger alcohol, drink in more harmful ways, or substitute alcohol for other drugs. This means substituting for alcohol which offers more drinks per dollar (bottles of spirits rather than wine or beer), drinking more quickly, or without eating, to get drunk on less alcohol,

and substituting for relatively cheap illegal drugs like party pills, ecstasy and marijuana.

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

No. The restrictions on advertising are already extensive.

**23. Do you think there is a need for greater emphasis on treatment for people using alcohol in a risky manner?**

We believe this option is preferable to law changes and increased regulations. Further discussion or research in this area would be justified.

**24. Should there be increased penalties for serious breaches of the liquor laws?**

No. The current penalties are high enough. If there is a perceived problem, more effort should be directed into apprehending those who do breach the laws.

**25. Should there be greater use of infringement offences for minor breaches of the liquor law?**

No. This is a waste of resources. Minor breaches do not cause any serious harm – there are bigger problems to be concerned with. Police officers already regularly waste their time arresting people for breaching liquor bans etc, when they are not actually causing any harm to anybody. Resources are better directed elsewhere.

**26. Should the Police have greater powers to close down bars where there are breaches of law occurring?**

No. Existing powers are sufficient to enforce the law and we believe existing laws should be enforced rather than new laws being introduced. Individuals misleading bars should also be held responsible for breaches of the law.

**27. Should liquor bans be retained?**

No. Harmful behaviour should be prohibited. Drinking in public is not harmful in itself – the Police should be empowered to deal with people who are disorderly, violent, or engaging in criminal activity, but no further than this.

Enforcing liquor bans wastes a lot of Police time, at the expense of Police officers actually being there to break up fights when they do occur, or deal with people who genuinely need help. In addition, the use of the law to prevent harmless drinking in public is perceived by many to be an arbitrary abuse of power by the Police, which damages respect for law enforcement where it actually is necessary.

**28. If so, can the liquor ban provisions on notification be improved?**

N/A.

**29. Do you think an offence of drinking in a public place, rather than the liquor ban system, is preferable?**

No. As discussed repeatedly above, drinking in a public place does not in itself cause harm to the consumer or to anybody else. It is not a behaviour that should be considered harmful. Resources should be directed into targeting, locating and punishing behaviour, which has harmful consequences in reality.

**30. Do you think it should be an infringement offence to be drunk in a public place?**

No, for the reasons given above and in addition this would be highly impractical. Would it be an offence to be drunk walking from a Bar to a taxi or walking home?

**31. Do you have any further comments or suggestions?**

We wish to emphasise that the problems and harms associated with alcohol are not caused by all young people, or even by a small minority of young people, but by a small minority of people of all ages. Targeting all alcohol consumers, or all young alcohol consumers is unfair on the majority who consume alcohol responsibly and will not address the existing problems. Furthermore, those who currently ignore laws are unlikely to change their behaviour simply because a new law is passed.

We also believe it is crucial that law is clear, fair and not arbitrary and that the law should focus on targeting actions that cause harm to others. If being drunk in public, something that is considered acceptable and causes no direct harm, is made illegal then it is put on the same level as being violent while drunk, something that does cause harm. This is likely to lead to a loss of respect for the law among the public, rendering any law change ineffective and possibly leading to further breaches of other laws.

There is a consistent trend within the questions presented by *Alcohol in our Lives* to address drinking issues in isolation. This approach is one of the great weaknesses of the current law as well. Alcohol abuse and the problematic behaviour associated with it may be clearly linked to a broader culture of irresponsibility. Until the issue of individual responsibility is addressed at a much broader level, we are unlikely to see improvements in New Zealand's drinking culture.

## **Part II: Range of Options**

In this part we deal with the range of options outlined in Chapter 13 of the *Alcohol in Our Lives* report, and indicate our preferences under each heading.

### **SUPPLY CONTROLS**

Attempting to target the supply of liquor will achieve little in the way of reducing problem drinking. Rather, it creates increased costs for businesses, which then have fewer resources to devote to creating a safe and enjoyable environment for their patrons. Heavy drinkers consider alcohol to be a vital part of their life and social activity. Restricting purchase options will therefore simply mean that they source alcohol elsewhere, whilst the increased restrictions create higher costs for those who wish to sell alcohol, or those who wish to enjoy alcohol in a legitimate manner.

#### **Purchase/drinking age options**

- (a) No change
  - This is the best option – as discussed above, it is important to continue to allow 18- and 19-year-olds the right to drink.
- (b) Increase purchase age
  - This proposal is completely untenable, as evidenced by the most recent failure to raise the age to 20, and as discussed above.
- (c) Split purchase age
  - This creates a distinction which will certainly be viewed as arbitrary by those between the ages of 18 and 20. Arbitrariness breeds disrespect for the law, and the distinction is likely to be meaningless in practice. 18- and 19-year-olds can simply get others to purchase their alcohol for them from off-licence premises.
  - Moreover, it is unclear that it is actually true that it is preferable for young people to be drinking in bars and clubs, rather than at home.
- (d) Introduce drinking age
  - This would be very difficult to enforce. Underage people are unlikely to drink in public locations, as they cannot (generally speaking) get into bars and clubs. And it is difficult to imagine how Police would prove that underage people were drinking, if it was at a *private* location.
  - Such a policy seems like it would be targeted at young people having booze-fuelled parties at their homes. Presumably if the party is not causing any trouble the Police will have no cause to enter the premises. Presumably if it *is* causing trouble, the Police will have the ability to break up the party regardless of whether the participants are underage. A drinking age therefore seems like it would become redundant in practice.
  - It is a positive experience for many young people to share a drink with family members or close friends in private. By removing the ability for them to legally have a glass of wine at dinner, or have a quiet drink at home, this positive factor would be overridden.
- (e) Mandatory age verifications.
  - Already operate in practice in most off-licence premises anyway. Likely to be unwieldy in practice if extended.

#### **Individual and parental responsibility for young people's drinking options**

- (a) No change – as discussed above.

#### Licence options

- (a) Leave the system of four basic licences as it is - this ought to be the preferred option. None of the problems identified in the Report are created by licensing issues. The system appears to work fine. The exemptions for chartered clubs, canteens, police canteens, defence establishments, fire-fighters' facilities and Parliament should stay. Very little of the harmful drinking identified occurs in these establishments. Though the exemptions are somewhat arbitrary, they do not cause any harm in practice.

#### Liquor licensing authority options

- (a) Maintain the status quo with regard to the functions and powers of the Liquor Licensing Authority.

#### District licensing agency options

- (a) Leave the powers and functions of DLAs as they are.

#### Licence criteria and objections options

- (a) No change – no further restrictions are required.

#### Hours options

- (a) No change – as outlined in the above discussion, restricting hours of sale creates far more harm than it does good. Nor does it prevent heavy drinkers from simply stockpiling alcohol or getting it elsewhere.

#### Prohibited days options

- (f) Allow the sale of alcohol from all types of licensed premises on all days of the year, including the prohibited days – as discussed above.

#### Types of off-licence premises options

- (b) Irrespective of the type of premises, allow an off-licence to be issued provided the application meets the general licence criteria – there is no logical reason for a distinction based on the type of premises, as long as the criteria are met.

#### Off-licence product options

- (c) Allow all off-licence premises to sell all alcohol products – this would result in immense improvements in convenience for general consumers. Supermarkets are usually even more stringent than liquor stores in their internal regulation of alcohol sales. If problems are created by increased theft et cetera from smaller licensees, surely the solution is to focus on the crime rather than preventing businesses from selling these products. Why should businesses and the public be further punished for the government's inability to protect them from this crime?

#### Options on product labelling and serving sizes

- (a) No change – requirements are already stringent.

#### Licence renewal options

(a) No change.

#### Licensing trust options

(a) No change.

### **DEMAND REDUCTION**

As stressed in the earlier discussion, increases in price and restrictions on advertising will not decrease alcohol-related harm. The demand of heavy drinkers for alcohol is relatively price insensitive. To the extent that heavy drinkers *are* price sensitive, this only means that they will substitute their consumption for cheaper alcohol and other drugs, and will potentially engage in more harmful drinking behaviour.

In addition to this, these options unfairly penalise those who use alcohol responsibly, and those who sell alcohol.

#### Excise tax options

(a) Leave the current system as it is; (c) Reduce tax on low alcohol products; or reduce tax altogether.

#### Pricing options

(a) No change.

#### Advertising options

(a) No change – prohibitions are already extensive.

#### Promotions options

(a) No change.

### **PROBLEM LIMITATION**

#### Enforcement and penalties options

(a) No change; (b) Increase the penalties for breach of license conditions; or (d) Provide the Police with the ability to request an urgent hearing with the Licensing Authority if there are serious concerns or repeated breaches.

We do not support any of the other proposed options.

#### Alcohol in public places options

(c) Place no restrictions on drinking in a public place – as discussed above, it should not be an offence to engage in behaviour which is not in itself harmful to yourself or to others.

#### Transport options

(a) No change.

Lowering the blood alcohol limit will not affect the incentives that operate on those who drink and drive. In particular, having a limit of 0 for those under 20 will not reduce the number of young people who drive while intoxicated. Young people who drink and drive do so despite the law, not because any particular limit exists.

Nor do we support option (d), banning the possession of alcoholic beverages in an open container in a moving or stationary motor vehicle. If the suggestion is that drunk people in the car are a distraction to the driver, why do we encourage sober drivers to carry drunk passengers at all? If it is the actual consumption of alcohol that is the issue then we do not understand the rationale behind this proposal as drinking inside a vehicle, by passengers, does not in and of itself create any harm.

#### Treatment options

(a) No change – the other options will be effective only in the most extreme cases.