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The Liquor Laws

A Discussion Paper

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U.S. Department of Justice
National Institute of Justice

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LAW REFORM DIVISION
DEPARTMENT OF JUSTICE
JULY 1985

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FOREWORD

Our liquor laws are badly in need of thorough reform.

They are unsatisfactory both in content and in expression. They lack any coherent policy, are full of anomalies and are almost impossible to comprehend. In the past any attempt to produce a coherent law on the subject has quickly been swamped by a mass of further amendments. This process of tinkering should not be allowed to continue.

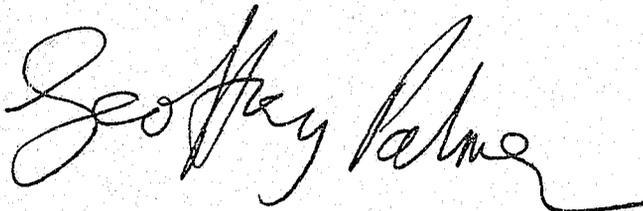
Accordingly I have set up a working party under the Chairmanship of Sir George Laking, the recently retired Chief Ombudsman, to look at the whole of the law governing the manufacture, distribution, supply and sale of liquor, to formulate principles and policies for its reform, and in the light of these to prepare new legislation. The Working Party has been asked to complete its task by August 1986.

This will be a formidable undertaking and the Working Party will not be examining special aspects such as drink and driving, or those relating to health, treatment and rehabilitation.

At my behest, the Department of Justice has prepared a discussion paper in an attempt to stimulate constructive and intelligent debate on some of the basic issues. Hopefully the response will assist the Working Party in carrying out its task.

I make it clear that I am not committed to any particular approach or proposal put forward in this paper, and nor of course is the Working Party. But I do agree with its strictures on the present state of the law.

I hope that in due course a sensible and coherent draft piece of legislation will emerge for Parliament to consider.

A handwritten signature in cursive script, reading "Geoffrey Palmer". The signature is written in dark ink and is positioned above the printed name and title.

Geoffrey Palmer
Minister of Justice

"Lots of things are wrong which neither Parliament nor Government departments nor ministers nor policemen nor judges can cure. And these are the things which depend upon the general stability and good sense of people as a whole and their compassion and common sense."

—Lord Scarman.

INTRODUCTION

Our liquor laws are a mess. They are extensive and numerous; they are highly complex; they are often obscure; they abound in anomalies. It is doubtful if they are at all effective to deal with the social problems and evils that are the reason for their existence. Like all restrictive licensing systems, they create economic distortions.

The cause is largely historical. New Zealanders have long held strong and polarised views about alcoholic liquor. Successive governments have submitted liquor legislation to a conscience vote in Parliament. This has inhibited the development of any rational or coherent policy. Instead our liquor laws have largely evolved through the adoption of ad hoc measures aimed at meeting particular problems and readily influenced by the strong lobbying of sectional interest groups.

The principal legislation, the Sale of Liquor Act 1962, was enacted 23 years ago. It was an attempt to produce some order out of the previous jungle of liquor laws. But since then it has been amended 22 times. Under this and other Acts there are now no less than 30 separate forms of licence, in addition to what might fairly be called a maze of permits, exemptions, exceptions and exclusions that regulate the manufacture, sale, supply and consumption of liquor in a host of different circumstances.

Hardly any statement can be made about our liquor laws that is not subject to qualifications, exceptions or doubts. The only consistent policy apparent is that no liquor may be sold without some licence or permit. Even that has a number of exceptions. The only discernable principle is that the sale and consumption of liquor ought to be tightly and elaborately regulated. Implicit in this is a faith that the social and personal dangers of alcoholic liquor can be cured or at least alleviated by a mass of detailed sumptuary legislation. There is very little solid basis for this belief.

The liquor laws are long overdue for review. But effective and lasting reform is impossible without some broad principles and policy behind the law. The vast majority of New Zealanders recognise the freedom to drink alcoholic liquor, and it has long been an accepted part of our lifestyle. On the other hand everyone agrees that alcohol abuse continues to be a major social and health problem. What has been lacking is anything like a consensus as to the manner in which society should deal with that problem, and the role that legislation can and should usefully play in this.

How our liquor laws are to be framed will ultimately depend upon our basic perceptions about society and about liquor itself. Should society protect people against themselves? What concessions should the laws make to the imperfections of human nature? Is liquor something bad that because of human weakness has to be tolerated? Or conversely, is liquor good but because of its susceptibility to abuse has to be regulated? The answers to such questions will have a considerable effect on the emphasis and indeed the content of the liquor law.

The Minister of Justice has announced the setting up of a working party to undertake this review of the liquor laws. It is to report by August 1986 with full and detailed proposals. The purpose of this discussion paper is to assist that exercise by stimulating a full and principled discussion on how our liquor laws should be framed to meet the conditions and needs of the 1980s and beyond.

Two points must be stressed. First, no policy decisions whatever have yet been made. Second, the issues covered in this paper are by no means exhaustive. It attempts only to deal with the more general and basic issues likely to be important in shaping any coherent legislation, and a few topics of particular contention, such as Sunday sales. In particular, it does not attempt to discuss such matters as liquor taxation or the treatment of alcoholics and chronically excessive drinkers. Nor does it deal with the merits or demerits of licensing trusts, or their functions and powers. These latter issues were canvassed in an earlier discussion paper circulated in 1982.

1. Why Legislate about Liquor?

The potentiality of alcoholic liquor for abuse, and the social and personal ills this brings in its train, are too well known to need demonstration. Few, if any, societies have ignored these evils in their law. But legal intervention can take two forms—

- (a) Controlling or penalising abuses and behaviour that flows from these abuses (for example drink/driving laws, compulsory treatment), and attempting to protect vulnerable classes, especially minors;
- (b) Restricting and regulating the availability of liquor.

Few would query the need for the first. And New Zealand has always had controls on availability of liquor through a licensing system. The advantage of licensing liquor sellers is that it can keep out the criminal fringe, promote accountability and assist enforcement. By regulating the environment in which liquor can be bought and consumed, it can help to engender more responsible attitudes towards the use of liquor generally. It is improbable that public opinion would accept removal of a licensing system for the sale of liquor.

2. Characteristics of a Liquor Law

Nevertheless, the power of the law to cure or greatly reduce many social evils is much less than is often supposed. It is doubtful if any but the most draconian legislation can do a great deal to prevent excessive drinking in a free society. American experience from the prohibition era, and our own experience with large dry areas, suggest that even this is dubious.

The following are suggested as being qualities of good liquor laws for New Zealand. (They are also characteristics that good laws on most subjects should have.) If they are found acceptable, the possibility of satisfactorily rewriting the Sale of Liquor Act will be much enhanced.

They should be based on consistent and realistic principles.

They should embody only those objectives that can be effectively achieved through legislation.

They should accord with the views and with the behaviour of sensible and moderate men and women.

They should allow the maximum freedom of choice and behaviour for adults compatible with the social purposes they serve.

They should be concerned with social evils rather than with economic regulation.

They should be intelligible and clear.

Both the substance of the law and its administration and procedures should be as simple as is practicable.

Desirably, they should be capable of accommodating themselves to changes in social patterns and preferences without frequent amendment.

In short, if we want liquor laws to be effective and respected they should accord with the expectations of responsible consumers, maximise freedom of choice of the times and circumstances where liquor may be bought and consumed, and be directed towards those social abuses that are susceptible to control by legislation.

3. What Should be the Objectives of our Liquor Law?

If we are to control the availability of liquor through a licensing system, what should its goals be?

Perhaps the germ of a liquor policy exists in the primary statutory objective of the Alcoholic Liquor Advisory Council. This is "to encourage and promote moderation in the use of liquor, to discourage and reduce its misuse, and to minimise the personal, social and economic evils resulting from the misuse of liquor".

Again, there is the requirement placed on the Licensing Control Commission in the Sale of Liquor Act (section 75 (4)) that in deciding whether to authorise a hotel or tavern licence it should follow the objective of providing adequate and reasonable facilities "so that those who wish to do so may drink in reasonable comfort and so that the demand for facilities for the purchase and consumption of liquor is met but not stimulated".

Few people would disagree with these objectives. But they would not easily translate into the specifics of legislation dealing with the control and regulation of liquor sales. They (or other statements) could perhaps serve as policy directives to be observed by licensing authorities.

At a more concrete level, there are many possible objectives. Not all of them are necessarily exclusive.

- (i) To promote the accountability of suppliers and to provide a framework for special protections that may be necessary;
- (ii) To protect against their own weaknesses individuals whose health and welfare will be harmed by drinking alcoholic liquor;
- (iii) To reduce consumption of liquor by restricting opportunities for drinking;
- (iv) To assist in the provision of other facilities and amenities; in particular and for historical reasons accommodation;
- (v) To control competition (either by way of encouragement or discouragement);
- (vi) To secure the proper siting and good standard of premises and amenities;
- (vii) To regulate the environment and circumstances in which alcoholic liquor may be sold and consumed as a means of educating and promoting responsible attitudes towards the use of liquor.

(i) To promote the accountability of suppliers and to provide a framework for special protections that may be necessary

The selling of liquor clearly entails responsibilities. A licensing system is a means of enhancing accountability. It can serve to ensure that premises are conducted in a proper way in accordance with the law and that standards are maintained. Under this approach the emphasis would be on effective sanctions for breach rather than on making licences hard to get.

An alternative means of achieving observance of the law and of proper standards

would be a system of public control. Such control would remove that incentive to seek greater profits that may lead to increased consumption. It would make for direct public accountability. To achieve these results would, however, require the creation of an almost complete monopoly either nationally or on a district basis. (Already a number of licensing trusts operate side by side with private licensees.) Its economic cost would be extremely heavy. It would have the countervailing disadvantages of most monopolies.

(ii) To protect individuals whose health and welfare will be harmed by drinking alcoholic liquor against their own weaknesses

The special case of minors apart, it is unlikely that any tolerable liquor licensing system can protect those individuals who may be specially vulnerable. To do so we would have to identify these persons and deny them the freedom to drink. They are represented in all social, economic and racial groups. The factors leading to alcohol abuse are many and varied.

The Sale of Liquor Act provides for the making of prohibition orders against individuals in certain circumstances. Its efficacy is almost nil. Other statutes that enable the detention or treatment of alcoholics have the same general goal. Legislation of this kind can probably touch only the fringes of the problem. It is reactive. And its extension would raise important questions of personal freedoms.

(iii) To reduce consumption of liquor by restricting opportunities for drinking

Should a primary policy of the liquor law be to reduce per capita consumption, and if so how can this be achieved?

There is an important body of opinion (reflected in the 1983 "Living with Alcohol" paper prepared by the Alcoholic Liquor Advisory Council) that favours legislative and other measures (e.g., heavy taxation) designed to achieve that aim by discouraging or reducing any proliferation of liquor outlets. On this argument there should be no further liberalisation of the law, no new types of liquor outlet, no enlargement of hours of sale, and no reduction in the drinking age.

This approach would necessarily maintain the present pattern of licences and the significant economic rigidities that the present liquor distribution system creates. It would perpetuate existing vested interests, and not provide for changing preferences in modes of consumption.

These disadvantages might be acceptable if the social benefits were great enough. The questions thus arise:

- A. Is there a close relationship between the level of alcohol consumption within a society and the level of alcohol related problems in that society?
- B. Are problems of abuse and excessive consumption proportionate to the number of liquor outlets?

It is true that the correlation between per capita consumption and the level of alcohol related problems has not been proved. The belief that there is a direct

link does not take other possibilities into account. For example, demographic changes (a higher or lower proportion in the drinking age category), changes in drinking patterns within that population (for example, more people drinking the same amount each) or general socio-economic factors (a more affluent society means people spending more on liquor) might have an influence. An apparent increase in alcohol related problems could be brought about by an increase in readiness to recognise and report these problems and a tendency to define more problems as alcohol related. (Those convicted of drinking and driving twenty years ago would probably not consider they had an alcohol related problem.)

But lack of proof is not necessarily a reason for rejecting policies aimed at reducing per capita consumption of alcohol. As a long term educative measure, they might be justified given the absence of any other effective alternatives for reducing alcohol abuse. Whether they can or should be achieved by placing constraints on the number or character of outlets is much less certain.

Patterns of liquor consumption in New Zealand have changed significantly over the past twenty or so years. In particular, there are now many more people drinking liquor in the home than in traditional liquor outlets such as hotels and taverns. The liquor industry itself has modified its marketing approach and more emphasis is now placed on the off-sales facilities than on provision for drinking on the premises.

Would severe controls on the number or variety of liquor outlets have much effect in reducing social and health problems?

Limiting liquor outlets cannot of itself control consumption levels. To reduce the number of places where liquor can be bought might merely mean that the abstemious and moderate drank less, while determined drinkers continued to get access to what they wanted. And home drinkers in particular can get virtually unlimited supplies from a relatively small number of places, given the universal use of the motor vehicle.

Moreover, restricting outlets could itself have disadvantages. It would create or enhance a monopoly value for existing premises and it could (as the present law itself is alleged to) encourage centralised liquor outlets with high consumption or sales levels. Is one large "booze barn" socially preferable to say five small neighbourhood taverns? Would this increase the dangers of drinking and driving?

To foreclose the introduction of any new *kinds* of licence could be open to some of the same objections. It would also amount to the assertion that people may not drink when and where it suits them but when and where an arbitrary law dictates. The tendency might be to freeze drinking patterns into their present form. Is this warranted?

Nonetheless certain specific forms of liquor purchase or consumption may be so undesirable as to deserve prohibition. The law has hitherto taken this view, although the range of available licences is substantially greater than it was even 20 years ago. Unlike many overseas countries we have hitherto set our face against the sale of liquor on aircraft and long distance buses (although not on ships or trains), against cafes where liquor and non-alcoholic drinks and light meals may be bought and consumed, and against the sale of liquor for off-premises consumption in places that also sell provisions.

Outside licensing trust areas beer and spirits (but not wine) can be bought in single bottles to take away only at hotels and taverns, the numbers of which are strictly limited, and by members of a very few chartered clubs. (This has not prevented a dramatic increase in off-sales during the past 20 to 30 years.)

(iv) To assist in the provision of other facilities and amenities; in particular and for historical reasons accommodation

The traditional approach has been that the sale of liquor should be a privilege carrying with it specific obligations. In the past our liquor laws linked the privilege of selling liquor with the obligation to provide accommodation. The Licensing Control Commission's first object in considering whether to approve new hotels or taverns is to secure the provision of reasonable accommodation. Hotel-keepers must provide accommodation of an amount and standard approved by the Commission. Tavernkeepers, who do not provide accommodation, are required to pay a levy of 3 percent on the value of their liquor purchases. District and suburban licensing trusts have at law a primary duty to provide adequate accommodation. The authorisation of new wholesale licences is curtailed so as not to impair the position of accommodation hotels. The vast majority of chartered clubs are denied off-sales rights, partly at least for the same reason.

The supposition on which these provisions rest is that providing accommodation and meals is an activity of low profitability, whereas the sale of liquor is highly profitable. The latter should therefore subsidise the former.

This may have made sense in the 1950s and earlier. But since the 1962 Act was gestated two important changes have occurred. A number of new forms of licence have come into existence without any obligation to provide or subsidise accommodation. The accommodation-liquor link is riddled with exceptions. And the proliferation of tourist hotels and motels (and BYO restaurants) has shown that providing accommodation or meals can be sufficiently profitable in its own right without the sale of liquor to the general public. Thus the provision of accommodation may no longer need the support of liquor sales to the general public.

Moreover, it can be queried whether (history apart) there is any particular reason why the drinker should continue to subsidise the traveller (whether New Zealander or overseas visitor), or whether there is justification for disguising the true cost of selling meals and beds.

(v) To control competition (either by way of encouragement or discouragement)

If the liquor laws are aimed at social evils, it can be argued that they ought not enter into the sphere of economic regulation. Should licenses be granted or withheld for economic reasons or to restrain competition? Might economic regulation not best be left to the general law governing trade practices, unfair competition and the like?

For example, it is difficult to discern any rational purpose in limiting or controlling the sale of liquor at the level of manufacturing and wholesaling. This question was addressed in 1979 by the Industries Development Commission in its report on the wine industry. Should those who sell liquor not to the public but simply to retailers or others for resale need to be licensed at all? If they do, ought such licences to be available as a matter of course to any importer or distributor of good character?

Ought the effect on existing businesses continue to be an important element in decisions whether to grant certain licences (but not others)?

The reduction of competition by this means could possibly serve a social purpose. Undue competition among retail liquor sellers may be thought to exacerbate the social ills of liquor abuse. But the evidence is that the "freezing" of numbers and kinds of licences in the period from 1920 to 1950 did not prevent often unbridled competition, or poor drinking conditions, or drunkenness and other abuses. Are restrictions on competition short of creating a large measure of public (or private) monopoly likely to be effective?

(vi) To secure the proper siting and good standard of premises and amenities

Is this a legitimate function of liquor legislation? The present law gives a great deal of attention to it. Elaborate and often prolonged procedures, supported by a substantial bureaucratic structure, face those wishing to sell or provide liquor. There are good historical reasons for this. Concern to regulate liquor grew up long before the advent of planning legislation, and before health and safety legislation took on its modern aspect.

Is it sufficient to rely on those controls and on the forces of competition? These are thought adequate for most activities other than the sale of alcoholic liquor.

(vii) To regulate the environment and circumstances in which alcoholic liquor may be sold and consumed as a means of educating and promoting responsible attitudes towards the use of liquor

Using the liquor law to educate and to promote the responsible use of liquor could mean a high degree of regulation and control and paternalistic intervention. This would maintain some of the most criticised aspects of the present law. Care would need to be taken to avoid this.

The legislative form of such an objective might be chiefly to provide guidelines to be followed by the authority or authorities responsible for administering the licensing system. But its relevance and value would almost necessarily be limited to premises where liquor is consumed. It could have little application to off-sales outlets, and of course no tolerable liquor law can regulate drinking conditions or behaviour on private premises.

This highlights two paradoxes. First, the strongest local opposition to new liquor outlets usually relates to premises such as hotels or taverns where liquor is to

be drunk. Off-sales outlets such as bottle stores (in licensing trust districts) and wine resellers do not often encounter the same resistance. Yet it is with on-premises drinking that the law can best ensure good control, responsible behaviour and an environment that encourages moderation.

The second paradox is this. There is wide agreement that liquor taken as an adjunct to food is less likely to cause harm or lead to abuses and is typically associated with moderate and responsible behaviour. But the present law effectively prohibits people in most cases buying liquor where they buy their groceries. Thus liquor is made to appear something apart.

4. Licensing Systems and Procedures

No satisfactory liquor law reform seems possible without a simplification of the present rambling edifice of licences and permits and of the procedures for obtaining, transferring and renewing them. Ideally the law should itself allow for the grant of licences in new circumstances without the need for an amending Act on each occasion. Otherwise the history of the 1962 Act is likely to repeat itself.

This would require defining licences in fairly broad terms, as is done, for instance, in Tasmania. To some extent that has already happened with the food and entertainment licence.

But many complexities remain. There are club licences and club charters with very different characteristics. No licence at all is needed for police, prison service or fire service canteens, or to sell liquor on trains. Ship licences, airport licences, booth licences, wine resellers' licences, wholesale licences (authorising the retail sale of eight litres or more at a time), tourist house licences, and a variety of licences related to hotels and taverns, are defined and provided for in detail by the Sale of Liquor Act.

Permits are of two broad types—permits issued to the holders of licences to authorise activities not within the terms of their licence, and permits issued to unlicensed persons or organisations seeking to sell or supply liquor in particular circumstances and for particular purposes.

Of the former it may be asked whether most of them could not simply be subsumed under the various licences. Already they have often in practice become not much more than extensions of the licence, enabling liquor to be provided at times or to persons not authorised by it. With the latter, the issue is how far controls are needed at all where sale or supply is trivial or incidental or not for the purpose of making a profit.

Given the continuation of a licensing system in some form, how can it best be administered? The present administrative structure is elaborate and unwieldy, and the procedures often technical, time consuming, and confusing to all but the expert.

The major role is played by the Licensing Control Commission comprising up to four members. The Commission is located in Wellington but travels extensively to many parts of the country to conduct hearings. With a heavy workload and an often complex procedure, delays in dealing with applications in various districts are inevitable. A number of minor or uncontested matters may be dealt with on the papers, in some cases by the Secretary. To assist the Commission is a small group of licensing inspectors, who are concerned not with the observance of the law (a Police responsibility) or health or safety matters but with general standards of premises and facilities and such questions as the adequacy of existing licences to satisfy public need.

In addition there are 22 licensing committees, each chaired by a District Court Judge and with four members elected by the territorial licensing authorities of the licensing district.

The existence of a strong central authority in the liquor licensing field has real advantages. In particular it permits a consistent, coherent and objective policy and provides a body with knowledge and expertise in an extremely complex area. Its directives in such

matters as standards and facilities carry greater clout. With a restrictive licensing regime and a strictly limited number of licences available such an authority is almost indispensable.

Especially if the law is further relaxed and procedures are simplified, the future role of the Commission needs to be examined.

The argument can be made that decisions about the grant of licences should reflect local feeling and be dealt with locally. Would it be appropriate for all liquor licensing matters to be dealt with by a district committee, or even by individual local authorities? If so, what constitutional and structural changes would be necessary for them to be able to do their work expeditiously and effectively?

What procedural reforms are needed to enable applications to be dealt with promptly while allowing public interest considerations to be taken into account and giving objectors a fair opportunity to be heard? Can the present overlap between planning procedures and liquor licensing procedures be avoided? Should a person seeking a licence be required to show that the licence is "needed" in the locality, or should this restriction be done away with?

To preserve the advantages of consistency and adherence to national liquor policies a commission might perhaps in that case be retained, with the functions of issuing guidelines and acting as an initial reviewing authority, with a further appeal to the High Court on a point of law.

5. Subsidiary and Related Issues

1 Polls

Present liquor laws provide for two main types of poll:

- (a) The national licensing poll held at each general election on the issues of continuance, prohibition and state purchase and control. This referendum has been taken in its present form since 1919. For almost 60 years continuance has been favoured by a wide margin and the result is never in doubt. Moreover the alternatives are illogical and, in the case of state purchase and control, simply impracticable.

In no other country in modern times is the question whether its citizens should be allowed to buy liquor thought to require a regular referendum. The abolition of the national poll has been frequently recommended but no government has hitherto been prepared to introduce the necessary legislation.

Associated with this national poll is the triennial poll taken in each of the remaining no-licence districts on the issue whether licences should be restricted in those districts.

- (b) Specific local polls that may be sought when the Licensing Control Commission contemplates the grant of a new hotel or tavern licence or the removal of an existing licence to a new site. These polls may embrace the issues:

- (i) whether the licence should be granted; and
- (ii) if it is granted, whether or not it should be offered to a local trust.

The Commission may in certain circumstances grant or remove a licence notwithstanding the result of such a poll. Invariably this action gives rise to vigorous protests at such an "undemocratic" course. Again the uniqueness of liquor issues for New Zealanders shows up. We do not demand polls on the subject of new TAB premises, or places of entertainment, or CNG stations, or noxious industries.

The question is whether the use of polls in relation to liquor issues should be done away with, retained or extended. Should the result of a poll in relation to the grant of a licence be binding on the authority responsible for granting licences?

2 Power to Exclude from Public Bars

The vast majority of businessmen can please themselves whom they will deal with. This is subject to the restrictions of the Race Relations Act 1971 and the Human Rights Commission Act 1977. There is no right to discriminate in the provision of goods and services on the grounds of race, sex, religious or ethnic belief, or marital status.

Most licensees selling or supplying liquor have a similar freedom. However, there are special constraints on hotel and tavernkeepers in respect of public bars—but not otherwise. The basic rule is that no one over the age of 20 may be excluded from a public bar, or denied service there, except in limited and precisely defined circumstances. These are broadly—

- (a) persons who because of previous drunkenness or violent or disorderly conduct, have been warned not to enter the premises.
- (b) anyone who a licensee has reasonable cause to believe will engage in violent or disorderly conduct if permitted to remain on the premises.
- (c) persons who are intoxicated, or engaged in violent or disorderly conduct.
- (d) any person who the licensee considers should not, in the interests of that person's welfare or the welfare of his or her family, be supplied with liquor.

Some people claim that these powers are still too narrow to allow effective control and to preserve order. Should the powers of hotel and tavern keepers to exclude persons from public bars and to refuse to serve them be extended, and in what manner?

A broader question is whether the time has come to place the right to drink in a public bar on the same footing as most other activities. Could it be left to the discretion of licensees, subject to the general law in the Race Relations and Human Rights Commission Acts, to decide whom they will and will not serve? This might be qualified by a provision that repeated and unreasonable refusal to serve any person or group of persons is a ground for cancelling the licence.

Would such a provision lead to the unfair exclusion of non-conforming or unpopular groups, or eccentric but law-abiding individuals? Would it be effective, or simply transfer the potentiality of violence to the time when admission to a bar is first sought? Would violent and offensive behaviour then occur elsewhere?

3 Sanctions

In any restrictive licensing system affecting large numbers of people, the question of enforcement becomes important.

There are two opposite dangers. The first is that sanctions will be so weak, or so seldom or so unevenly applied, that they are ineffective to prevent the law being flouted. The second is that proper enforcement will be permitted to distort the substance of the law, and restrict individual freedoms simply for the sake of making the law easy to enforce. The law in a sense comes to be written around its own enforcement.

The present Act creates a multiplicity of criminal offences, both for those who sell or supply unlawfully and for those who buy and consume unlawfully. In addition licences may be cancelled or suspended on various grounds. This very rarely happens. If licences are to be more freely granted, the importance of enforcement becomes even greater. Given the admitted evils resulting from alcohol abuse, the penalties on those who are guilty of serious breaches need to be sure and adequate.

Should more emphasis be placed on the suspension and cancellation of licences? The argument may be made that those who are convicted of serious or repeated breaches of the law are presumptively unfit to hold a licence. In that case cancellation or suspension might perhaps be automatic unless special circumstances are shown. Might this be linked with procedures for "padlocking the premises", such as have existed in the United States?

If this approach were thought justified, it would need to be linked with provisions to prevent evasion by the timely transfer of the licence or through company structures.

4 Drinking by Minors

One group—minors—has always been recognised as requiring protection against exposure to the dangers of alcoholic liquor.

The law does not forbid and has never attempted to forbid drinking by minors, except in public places. It deals with sales to minors and the supply of liquor to minors on licensed premises. With certain exceptions, mostly related to the supply of liquor as part of a meal, no licensee may sell or supply liquor to persons under 20. Again with some qualifications, the presence of minors where liquor is sold or publicly consumed is itself prohibited.

The presence of minors where liquor is sold or publicly consumed could have a moderating effect on the way in which liquor is consumed by others even though minors themselves might be prohibited from drinking. There is some evidence of this point in the success of family bars and licensed restaurants (where there are no such restrictions). Moreover, to allow minors access to premises where liquor is sold and consumed could, by removing the stigma of such premises, help to engender amongst minors more responsible attitudes towards liquor so that when they do become of age they are more prepared to exercise responsibly their freedom to drink liquor.

Nonetheless, there would be little or no support for a general removal of restrictions on minors. The question of the drinking age (that is, the age above which liquor may lawfully be bought and may be drunk on licensed premises) is more contentious.

In setting the age at 20, New Zealand is more restrictive than the comparable societies of Australia and Great Britain. It can be said that the present law does nothing to prevent young people drinking in private homes, that it is widely disregarded by young people in late adolescence, and that licensed premises are more likely to provide a controlled environment for drinking than houses and flats.

These arguments might tend to suggest that the drinking age should be lowered. However, Parliament has clearly rejected more than once proposals to lower the drinking age to 18. The last occasion was as recently as 1980. There is little to suggest that in doing so it has misinterpreted the weight of public opinion in New Zealand.

5 Sunday Sales

Traditionally, and for many years, the general rule "no liquor sales on Sunday" has prevailed. Until the early 60s this was almost absolute, the only exception being the supply of liquor to hotel guests and with meals in hotel dining rooms. A number of other exceptions have since been created, directly when certain new types of licences were created and indirectly through the availability of various permits.

The present picture is complex and replete with anomalies. However, off-sales on Sunday remain completely prohibited, as does the supply of liquor in bars except to persons lawfully staying on the premises.

Opposition to the general sale of liquor on Sundays continues to be widespread in New Zealand, again in contrast to the situation in many comparable countries.

On the other hand, there may be general acceptance that most if not all of the existing avenues for drinking on Sunday are justifiable.

The law may need to remain pragmatic rather than logical.

6 Liquor Advertising

At present there are no general legislative restrictions on liquor advertising in New Zealand.

A voluntary code has been agreed upon by the liquor and advertising industries and by the media. Thus, advertisements are to be directed to adult audiences and are to show only persons clearly over 20 years of age drinking liquor. They are not to suggest drunkenness or encourage excessive drinking but should reflect people drinking responsibly in natural situations. Nor should they suggest that alcohol is a necessary element of success in life or "an essential part of the pleasure and excitement of living".

The code is administered by the Committee on Advertising Practices. Informal persuasion is a principal vehicle for ensuring compliance with the code's requirements. Formal sanctions are seldom used. They can involve a refusal to accept the advertisements of the offender.

Legislative controls do exist on liquor advertising in the electronic media. The Broadcasting Rules Committee has formulated a set of rules governing the advertising of liquor on television and radio. These prohibit brand advertising of liquor, but allow advertising of points of sale subject to certain restrictions. Failure to comply can result in the television or radio warrant being cancelled or suspended.

The extent of liquor advertising in recent years, especially with the advent of price discounting, has led to a demand for curtailing or even prohibiting liquor advertising. Whether liquor advertising should be permitted or should be subjected to restrictions is an issue of considerable importance. On the one hand open incitement to buy or consume liquor may well be thought contrary to the public interest. On the other hand, legal control over advertising a lawful product is a step not to be taken lightly. Insofar as the effect of advertising is to provide information, it is virtually essential to commercial activity. It can also be argued that liquor advertising in as much as it encourages moderation can play a positive as well as a negative role.

The consequences of a complete ban on all forms of liquor advertising would be drastic. Its effect on some parts of the liquor industry (for instance winemakers) could be grave. Restrictions falling short of prohibition might be less open to these objections. The problem would be to define the restrictions with the necessary degree of precision and to enforce them. Inevitably there would be some risk of literal observance coupled with a breach of the spirit of any such legislation.

CONCLUSION

This paper has looked at some of the issues surrounding our liquor laws.

The working party which has been set up to review the liquor laws will be calling for submissions. Interested groups and individuals are invited to submit their thoughts on the issues raised in this paper to the Working Party by mid-November 1985.

Comments should be sent to:

The Secretary
Working Party on the Liquor Laws
c/- Tribunals Division
Department of Justice
Private Bag
Wellington.