

Alcohol in Our Lives

**Submission of the
New Zealand Police Association**

**Submitted to the
Law Commission**

30 October 2009

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About the New Zealand Police Association

The New Zealand Police Association (the Association) is a voluntary service organisation representing some 8,600 sworn police members across all ranks. The Association also represents nearly 2,300 non-sworn members, who carry out invaluable support roles across the full spectrum of policing. Members are generally very active in engaging in debate and discussion within the Association on matters relevant to policing. The high engagement level of the membership is critical to the Association's ability to speak and act credibly on behalf of members.

In putting together this submission, the Association has consulted with members who have first-hand experience in the matters addressed by this Bill.

Introduction and General Comment

1. The Police Association welcomes the opportunity to submit on the Law Commission's Issues Paper *Alcohol in Our Lives*. There is no doubt problems associated with alcohol misuse have a major impact on members in both their professional capacity, and as members of the communities affected.
2. There is long term statistical evidence in Police's *National Alcohol Assessment* showing alcohol consumption accounts for a large percentage of the offences, accidents and general anti-social behaviour Police encounter on the job. These statistics are reproduced in the Law Commission's paper. Clearly, time spent dealing with these incidents is time that Police could otherwise be spending responding to and investigating offending which at present is not able to be addressed within available resources.
3. However, statistics only tell part of the story. Due to the nature of Police work, our members deal with the 'human face' of alcohol over-consumption and abuse on a daily basis. This includes dealing with abusive drunks; drunken disorder; drunk offenders; drunk victims of crime or people who are vulnerable to crime because of their drinking; and casualties of drink-driving crashes.
4. Consequently, police have an acute and genuine concern to see alcohol-related harm reduced, which is borne of their personal on-the-job experience, where they see a level of harm most New Zealanders do not. They are also able to identify, based on their experience, the major shortcomings of the current regulatory environment, and the areas where changes would be most likely to have a significant positive impact.

5. The key issues in liquor regulation of concern to Police Association members are:
 - **Purchase age:** Virtually all members believe the purchase age should be raised, with the vast majority of members favouring a single purchase age of 20 years old.
 - **Hours of trade:** Hours of trade should be restricted (particularly for off licenses) to reduce the incidence of intoxicated people 'topping up' with cheap off license liquor.
 - **Parental supply:** There needs to be greater regulation controlling the purchase of alcohol by parents, which is later consumed by children and/or their friends in an un-supervised environment.
 - **Licensing:** The existing exemption for Police bars must be maintained. There are sound policy reasons for doing so, to provide a safe place for police to socialise; and only weak grounds for removing the exemption, which appear to amount only to an aversion to the possibility of negative public perception.
 - **Enforcement/penalties:** There should be greater discretion available to Police to close premises immediately, where the situation warrants it.
 - **Drink-driving limits:** The permissible blood alcohol limit for adult drivers should be reduced to 50 mg/100 ml of blood.
6. In April we lodged a submission with Parliament's Justice and Electoral Committee on the Sale and Supply of Liquor and Liquor Enforcement Bill. That submission also contained comment on these key issues.
7. Some issues in the Issues Paper do not fall within the expertise of the Association's membership. Therefore, we do not take a view on areas concerning:
 - Taxing and pricing of alcohol
 - Alcohol advertising, promotion, labelling and serving sizes
 - Treatment options (in terms of the medical risks, diseases, and loss of quality of life associated with alcohol over-consumption)
8. In terms of the general approach to liquor law reform, it is vitally important that, as a nation, we do not fall victim to the mistaken belief that it is possible to legislate our way out of our problems with alcohol. Regulation and enforcement have a role to play in modifying social behaviours, but if these efforts are out of step with New Zealanders' underlying expectations and judgements of what is acceptable behaviour, then we will simply create a situation where the authority of the law is undermined through being routinely flouted.
9. We also need to be careful not to replace one ill with a much greater evil. There is a very real risk that overly strict controls over lawful supply of alcohol will fuel a black market to satisfy demand. Without having to point to the extreme of the US prohibition-era experience, the New Zealand experience of licensing trust monopolies in some areas such as Masterton in the 1970s/80s was that organised criminal gangs were able to expand their sphere of influence through illicit liquor supply. This was achieved both through gang-run 'club house' bars and drinking events at gang-organised and supplied

parties, and also through sly-grogging. Giving organised crime a further vehicle by which to broaden and entrench their presence and relationships within wider society would be extremely detrimental, as such groups leveraging off simple supply of illicit goods into more insidious and harmful actions of standover, loan-sharking, debt collection, extortion, intimidation, and corruption.

Purchase age

10. Survey company Nielsen conducted a survey of members for the Police Association during November 2008. More than 5,500 members currently serving across the full spectrum of police roles, both sworn and non-sworn, completed it. Some of the results are relevant to the issues addressed by this bill.
11. One of the questions asked in our survey was whether members believed 18 or 20 is a more appropriate drinking age. Virtually all (90% in total) favoured raising the age of purchase in at least some circumstances. 18% favoured the split age approach suggested by the Law Commission. However an overwhelming majority of respondents (72%) believed the age should be raised to 20 for both on- and off-license purchases.

Table 1

<i>Which of the following best describes your opinion on lifting the drinking age from 18 to 20 years of age:</i>	
Support leaving the drinking age at 18 for both on license and off license premises	11%
Support the lifting of the drinking age to 20 for off license premises only	18%
Support the lifting of the drinking age to 20 for both off license and on license premises	72% ¹

12. Sworn officers, who would seem more likely to come into regular contact with the negative consequences of alcohol use by young people, were slightly more likely to favour raising the drinking age than were non-sworn (73% compared to 68%). Otherwise, there was extraordinary consistency of views on this topic across the Association membership.
13. Anecdotal feedback from members supports the survey results. A member comment that lowering the drinking age in 1999 was “a big failure causing more harm than good to communities” is typical of views expressed.
14. Anecdotal member feedback on the Law Commission’s ‘split age’ proposal suggests such a change would be viewed positively, notwithstanding that members would prefer a purchase age of 20 across the board. On-license premises can generally be categorised as supervised environments, albeit that levels of supervision can vary widely. Overall, the split age was thought to be workable as, in one member’s words, “most bar managers have got the message and are more responsible now than in years gone by.”

¹ Total does not add to 100% due to rounding.

Option of an actual drinking age not favoured

15. Another option mooted by the Law Commission is to introduce an actual drinking age. The Police Association's view is this would be problematic to enforce, not least because such a law would technically make it an offence for a parent to supply a child with alcohol in their own home under responsible supervision. This would risk alienating responsible parents, risk discrediting the law, and create enforcement difficulties.

Hours of trade

16. Simply reducing the hours that alcohol is sold would effectively limit the overall availability of alcohol during a time of day when alcohol over-consumption and abuse is currently at its worst, without unreasonably impacting on responsible drinkers.
17. Police officers' concern about the availability of off-licence alcohol is mostly directed at supply to underage drinkers, and others who should not be supplied (such as those who are already intoxicated). These problems are exacerbated as the main role of off-licence premises for such drinkers is to supply quantities of relatively cheap alcohol to facilitate 'pre-loading' or continue binges outside the more controlled environment of an on-licence.
18. The best control over off-licence liquor availability would be to restrict hours of trade. Most alcohol-related trouble, including that in and around off-licences, occurs later at night. This is largely a factor of the general nature of the late-night clientele of such premises. It is generally later at night when customers who are already intoxicated try to continue a binge by 'topping up' from the local late-night liquor store. This contributes both to domestic violence and street disorder, the latter often perpetrated by young people who are drinking in public in suburbs outside central city/CBD liquor ban areas, with relatively lower police presence.
19. The current trend appears to be towards 24-hour availability, or close to it. In the policing experience it is inevitable that, whenever and wherever alcohol is made available, patrons will seek to access it. Restricting the hours and reversing that trend will thus inevitably lead to claims that loss of business will result. However, nobody has an unfettered right to sell alcohol in New Zealand and our licensing system is designed to regulate business activity involving the supply of alcohol in a way that balances commerce with the public interest. In this case, the potential social benefits in reducing alcohol-related harm are significant and outweigh any business interest in selling more alcohol late at night, to patrons many of whose judgement is already significantly impaired by alcohol. So long as there is consistency and a generally level playing field between licensees, we do not believe any retailer would be unreasonably disadvantaged.
20. In terms of specific trade hours, there are few reasons for purchasing alcohol late at night, although the trend towards later night dining arguably creates some demand for BYO wine in the late evening – perhaps until around 10 pm or possibly 11 pm in some places. We can however see no conceivable reason for off-licences to be selling alcohol after midnight.

Parental supply

21. The issue of parental supply of alcohol was not, in the Association's view, addressed adequately in the Sale and Supply of Liquor and Liquor Enforcement Bill. While we recognise that this is a controversial issue, we are not satisfied the present law appropriately balances the rights of parents with the responsibilities of adults who supply alcohol to under-age drinkers to play a reasonable role in minimising the harm that alcohol may cause.
22. Currently, significant disorder issues (and regular deaths) are associated with 'private social gatherings' attended by dozens or hundreds of under-age drinkers, the majority of whom are drinking alcohol supplied to them by parents, parents of friends, or other older people who have lawfully purchased the alcohol. The Law Commission's proposal that any alcohol purchased by parents for their children (or for others' children, with the consent of that person's parent/guardian) should be consumed under the supervision of the person who supplies it, has considerable merit.
23. Such a change would reinforce that adults who supply under-age people with alcohol must share in the responsibility for the consequences. Requiring supervision of the consumption, instead of allowing parents to turn a blind eye, may also draw more parental attention to the behaviours associated with youth drinking, which parents may not have previously been aware of, and prompt more parental guidance and better role modelling.
24. The Association has no wish to legislate against parents who allow minors to consume alcohol responsibly under their direct supervision. However, officers should be provided with powers allowing them to better police those parents who are acting irresponsibly in this respect.

Licensing

25. Although there is an administrative cost to Police in being part of the licensing process, it remains important to have police staff involved in the assessment of licensee applications. Through being part of this decision making process, Police are able to gather information on licensees and their premises. This information is valuable in better monitoring and protecting patrons in the future.

Lack of consistency in the issuing of licences by DLAs

26. There is currently some inconsistency surrounding the issuing of licenses by District Licensing Authorities (DLAs) – particularly in designation of supervised areas. Better training, to help DLAs reach a consistent level of experience and expertise amongst those responsible for making licensing decisions, would help improve licensing practices overall.
27. There also appears to be a widespread perception amongst DLAs that there are few grounds for declining license applications. Where there are good working relationships with Police, outcomes tend to be better, with Police able to ensure undesirable applicants are not granted licenses, especially in areas

already prone to alcohol abuse, misuse and over-consumption. Establishing Local Alcohol Plans will assist in giving more grounds for weighing applications against the wider community interest.

Local Alcohol Plans/community involvement

28. Areas with a large number of liquor outlets in close proximity to each other, such as in Manurewa, are a concern for police. While it is the case that, if alcohol is available for sale in the community at all, consumers will attempt to access it, whether it is sold at one shop or three, an overabundance of alcohol outlets in one area inevitably leads to the attitude that if one outlet is closed, or refuses to sell a person alcohol, the one down the road will supply instead. This may negatively influence the behaviour both of clients and retailers.
29. Local Alcohol Plans, as proposed by the Sale and Supply of Liquor and Liquor Enforcement Bill, have the potential to give a greater level of control over licensing back to the community. This may result in reduced liquor outlet density, and help reduce alcohol-related harm.
30. However, reducing outlet density alone is not the answer. Having to travel a longer distance to buy more liquor to continue a binge may deter some consumers; equally it may encourage other (intoxicated) consumers to drive to the closest liquor outlet. So, density of outlets may have some bearing on the ability of a young person, or a drinker who is already intoxicated, to access the 'last drink' that leads to trouble – but the bigger factor is hours of trade.

Police canteens

31. The proposal to remove the existing exemption applying to Police canteens is a matter of considerable concern to the Police Association. While ending the exemption under the Sale of Liquor Act is not the same thing as abolishing Police bars, the practical reality is that without the exemption, the continued existence of the vast majority of (if not all) Police bars would be impossible.
32. We are aware that there are a number of viewpoints around this issue. However, we do not see any sound policy reasons for ending the exemption which would outweigh the policy considerations in favour of retaining it.
33. It has been suggested by various parties that Police ought to be seen to comply with the law they enforce. This is a somewhat simplistic viewpoint. In deciding how much weight to give this view, it is important to bear in mind the fact that the exemption is not new. So far as we are aware, the exemption has never been cited as a factor prompting wider non-compliance with licensing requirements or otherwise undermining the effectiveness of the licensing regime in achieving its policy outcomes. This suggests any 'ill' a policy change to remove the exemption would remedy is not a failing of the licensing regime, but rather a negative public perception or a perceived moral inconsistency. Those are weak grounds given sound policy reasons exist for keeping the exemption.

34. We believe unjustified weight is being attached to the perceived need to deal with a negative public perception, because there is a thread of public opinion, reflected in the media and elsewhere, that police bars *per sé* are undesirable and should be abolished. Policymakers in Police and other agencies are, in our view, over-sensitive to such criticisms and believe that by removing the exemption they will shut down one avenue of potential future criticism and controversy. It is important to realise the media controversy around Police bars has been fuelled by a tiny number of high-profile instances involving individual Police employees, which have been generalised without any sound foundation into judgements about a Police drinking culture. It is notable that at least one of the cases concerned involved an employee who was drinking at a licensed Police bar.
35. It is also important, in interpreting criticism about 'different standards being applied to police than anyone else', to differentiate between the *licensing regime compliance* that may be demanded of those who operate a Police bar, and the *standards of behaviour* that may be demanded of patrons who frequent such a bar. Standards of behaviour of Police employees on and off duty, in Police bars and elsewhere, are already regulated through means other than Sale of Liquor Act licensing compliance, such as the Code of Conduct, to a much higher standard than apply to the general public.
36. Police bars play a vital role in giving Police staff (particularly constabulary staff) and their families a 'safe place' to socialise together with alcohol. It is an unfortunate reality that there is a sizable minority of the New Zealand public who harbour an irrational dislike for police. Those people subject individual police officers to routine harassment and abuse, ranging from name-calling, taunting, vitriol, spitting, through to physical confrontation. This treatment is suffered both on and off duty. In environments like public bars, taunting can extend to deliberate 'bumping', spilling of drinks, blowing of smoke and various other relatively minor but deliberately aggravating acts that at the very least destroy an officer's ability to enjoy their social activity, and at worst may prompt a more serious confrontation that can have criminal consequences for both parties. The risks of such confrontations are very much higher in bars than elsewhere, both because alcohol may affect the judgement of all involved, and because officers' families (e.g. wives) may be targeted with offensive comments designed to provoke the off duty police officer.
37. The majority of Police are relatively thick-skinned and become somewhat accepting of the abuse they receive from some members of the public on virtually a daily basis while at work. They accept that this is one of the personal consequences they endure for their service to society. The *quid pro quo*, through the current Sale of Liquor Act exemption, is that society recognises that personal cost by ensuring those who serve as police are able to recover their right to socialise off duty, without enduring such abuse, through allowing for Police bars.
38. Forcing police to drink at public bars would also mean police become patrons, off duty, of the bars and licensees they are required to police while on duty. This potentially exposes officers to difficulties and allegations of perceived favouritism or inappropriate dealings when being seen policing a bar in which

they are a regular patron, and risks associated with being offered free drinks or other hospitality from managers or other patrons while off duty.

39. All these issues are particularly acute in provincial and rural communities, where police officers are well known in their communities and easily identified both on and off duty. Police in larger cities are more able to frequent public bars with relative anonymity. Yet ironically, Police bars in bigger cities, with larger staff numbers, would be the bars most likely to be able to survive a removal of the exemption.
40. Currently, the exemption means that Police bars are able to operate relatively inexpensively, by avoiding the need to pay licensing fees or a certified manager. Removal of the exemption would create additional compliance costs which would impact seriously on the viability of such bars.
41. There is also a real concern that Police managers will view removal of the exemption as a signal that Police bars are a thing of the past, and that they can be closed. Without the Sale of Liquor Act specifically contemplating Police bars, the support shown by Area and District Managers for bars in their stations will inevitably decline over time. Similarly, it seems inevitable that future designs for new or refurbished Police stations will begin to eliminate provision for Police bars from plans, with recovered floor space instead devoted to other uses.
42. Removing the exemption for Police bars would likely lead to the closing, over a period of time, of many if not all Police bars. This would in turn force police officers to socialise in public, exposing them to the risks of unpleasant and potentially career-threatening confrontations, and risks in policing bars which they frequent as patrons whilst off duty. From the Police Association's point of view, the negative consequences of removing the exemption provide a sound policy foundation for its retention. As there is no countervailing policy argument beyond a desire to mitigate negative public perceptions about inconsistent application of standards, the exemption should be retained.

Enforcement/penalties

43. The drinking environment in New Zealand has changed markedly in the last 10 years. The tools available to police for dealing with the problems arising from alcohol over-consumption and abuse do not adequately reflect this change in our drinking culture.
44. The Police power to close a bar is one area that could benefit from some attention. At present, there is little ability for Police to take immediate action against a licensee or licensed premise: the only grounds for doing so are under section 173 and 174 of the Sale of Liquor Act, when there are concerns about rioting or fighting. Those provisions have a very high threshold, and arguably do not give Police sufficient powers to act where the overall situation at a premise is out of control and posing a risk to the safety and well being of some of the patrons or neighbours of the premise. The analogy would be with an out-of-control private party: Police can close parties down, but not licensed premises. As a result, if the licensee/manager chooses not to cooperate by voluntarily winding down the occasion, Police either have to remain to monitor

the situation or allow matters to run their course and take licensing action after the event.

45. As the Law Commission paper notes, in New South Wales, police have the power to 'immediately close a bar where there is a significant threat or risk to the public interest, such as a threat to public health or safety, a risk of substantial damage to property, a significant threat to the environment, or a risk of serious offences being committed on the premises'. A similar broad discretion should be available to New Zealand Police, to allow them to take immediate action where the circumstances warrant it.
46. It may not be necessary to require a premise to close completely. Having the power to require the premise to stop supplying alcohol, but continue with entertainment and supplying food and non-alcoholic beverages, may allow out-of-control situations to wind down naturally and with less aggravation or risk of confrontation.
47. Other measures suggested by the Law Commission that we believe have considerable merit include introducing a legal definition of 'intoxication'; making it an infringement offence to present fake evidence of age documents; and empowering licensees to confiscate fake evidence of age documents and hand them to police.

Drink-driving limits

48. The members' survey referred to earlier in this submission also asked members about their attitudes towards lowering the permissible (adult) blood alcohol level for driving, from the current 80 mg per 100 ml of blood, to 50 mg per 100 ml (or its breath alcohol equivalent, which would see a reduction from the current 400 mcg per litre of breath to 250 mcg per litre of breath). Members were clearly in favour of the proposed lower acceptable limits:

Table 2

<i>Do you support or oppose lowering the maximum permissible blood alcohol level to drive a motor vehicle from the current 80 mg per 100 ml of blood, to 50 mg per 100ml (or its breath-alcohol equivalent)?</i>	
Support	62%
Oppose	28%
Not sure	10%

49. Again, those members who we would expect to deal most directly and often with the consequences of alcohol impaired driving were more in favour of the proposal: 64% sworn staff (compared to 55% of non-sworn) were in favour. Particularly strong support came from road policing staff (82%) and Commercial Vehicle Investigation Unit staff (81%).
50. Young people under the age of 20 are relatively inexperienced both as drinkers, and as drivers, and are likely to be poorer judges both of their own alcohol limits and driving competence. Teenagers are also widely acknowledged to be more inclined towards risk-taking. The Sale and Supply of Liquor and Liquor Enforcement Bill proposes to set a zero-alcohol limit for such drivers if they are on a graduated driver's licence.

51. Front-line officers, especially those on road patrols, witness all too often the results of mixing speed, youth, lack of driving ability and experience, and alcohol. For that reason, there is also considerable anecdotal support for the blood/alcohol limit to be lowered to zero across the board for under 20-year-olds (i.e., not only for those on graduated licences). This would eliminate any room for confusion, standardise expectations of behaviours within under-20 peer groups, and simplify the social marketing exercise needed to back up a change.

Alcohol ignition interlocks

52. Alcohol ignition interlocks may have some potential to reduce further repeat offending by some drink drivers with previous convictions. However, a determined driver could easily bypass the device simply by driving a different vehicle. We have not seen any evidence of the general effectiveness of such devices either as a general deterrent, or in significantly reducing repeat drink-driving offending.

Banning alcohol in open containers in motor vehicles

53. Banning the possession of alcoholic beverages in an open container in a moving or stationary motor vehicle carries some merit, particularly as it relates to the youth culture which frequently combines excessive alcohol consumption, vehicles, and racing or other risky driving behaviour. Reducing the peer influence drunk or partying passengers may have on the sober driver may have a positive benefit. However, and laws in this regard would need to avoid unnecessarily penalising behaviour that is not of concern, such as responsible family barbeques or picnics where open vessels of alcohol may be in a stationary vehicle or be being transported home unfinished.

Greg O'Connor
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