

# REGULATORY IMPACT STATEMENT: ALCOHOL REFORM BILL

## Agency disclosure statement

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This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice. It provides an analysis of further options to reduce alcohol-related harm in New Zealand. It builds on the RIS that accompanied the Alcohol Law Reform Cabinet Paper of August 2010, which sought policy approval for the Alcohol Reform Bill (the Bill). The Bill is currently being considered by the Justice and Electoral Select Committee (the Committee).

The analysis of options outlined in this RIS has been undertaken to address matters that have been identified by submissions to the Committee and by further analysis, to respond to public concerns or to allow the Bill to better achieve its objectives. These matters are:

- **Alcohol advertising** – a large number of submitters testified that the Bill does not go far enough to restrict alcohol advertising and promotion, particularly in light of growing evidence that alcohol advertising is associated with increased alcohol consumption and related harm among young people;
- **Exposure to alcohol in supermarkets and grocery stores** – the Committee has heard evidence that the availability and visibility of alcohol in supermarkets normalises alcohol and fails to protect vulnerable people; and
- **Trading hours** – the maximum trading hours proposed by the Bill can be amended to strike a more appropriate balance between reducing alcohol-related harm and the impact on responsible drinkers and industry.

A strong evidence base supports the use of internationally recognised levers to reduce alcohol-related harm, such as regulating physical availability; implementing price and taxation policies; and restricting advertising and sponsorship. The matters covered in this RIS are supported by this evidence, to a greater or lesser degree. The analysis of the options has been informed by extrapolations from the available evidence and from information provided by submissions to the Committee, with some assumptions made to provide an expression of the direction and approximate sense of impact.

The analysis is complicated by the need to consider the status quo under the Sale of Liquor Act 1989 and the potential impact of the wide scope of changes proposed by the Bill. Some of the options proposed have the potential to complement the proposals in the Bill; however the impacts are largely uncertain due to not being able to predict how the industry and consumers will respond to any potential changes. Some of the options canvassed in this RIS may impose costs on business, and there may be downstream impacts on market competition.

One of the most significant areas of risk is alcohol advertising, as there is limited information available to determine impacts. Some of the options may over-ride fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines), as they may restrict property rights. Additionally, some of the options may not be consistent with the Government's statement on improving the quality of regulation ("Better Regulation, Less Regulation"), as they require increased regulation and monitoring. The Government may wish to consider delaying decisions in this area until such time as appropriate consultation can be undertaken, together with comprehensive consideration and analysis of a range of options for restricting alcohol advertising.



**Jared Mullen**  
Deputy Secretary, Policy Group  
Ministry of Justice  
Date:

## Background

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1. The Sale of Liquor Act 1989 (the 1989 Act) provides the regulatory framework for the sale and supply of alcohol in New Zealand. The Alcohol Law Reform Cabinet paper of August 2010 proposed comprehensive reforms to this legislation and to related Acts, to be implemented by an Alcohol Reform Bill (the Bill). This implemented the Government's response to the wide-ranging review of alcohol laws that was undertaken by the Law Commission in 2009/10.
2. The Government's decisions on alcohol law reform, as outlined in the Bill, are directed at minimising alcohol-related harm, including crime, disorder and public health problems, without impacting unduly on the economy and on responsible drinkers.
3. The Bill was referred to the Justice and Electoral Committee (the Committee) in November 2010. Submissions to the Committee and further analysis have raised matters that are necessary or desirable to address through changes to the Bill, to respond to issues raised by the public or to allow the Bill to better achieve its objectives. These matters are the focus of this Regulatory Impact Statement (RIS).

## Context

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4. The status quo and problem definition for each of the matters are explained separately below. A common set of objectives and considerations apply, which were identified in the RIS that accompanied the Alcohol Law Reform Cabinet paper.<sup>1</sup> The objectives and considerations are:

### Objectives

- 1 Reduce the harm caused by alcohol use, including crime, disorder & negative public health outcomes
- 2 Target the key drivers of harm, with a focus on reducing heavy episodic drinking
- 3 Implement an efficient and sustainable solution to addressing alcohol-related harm.

### Considerations

- 1 Minimise the regulatory impact of reform on New Zealand's economic performance overall
- 2 Minimise the negative impact of reform on low and moderate drinkers.

5. The previous RIS identified options that sat under four broad levers that were applied by the Government in its decisions on alcohol law reform, at varying degrees of intensity. The levers are:
  - 1 **Regulation of the physical availability of alcohol;**
  - 2 **Implementation of price policies;**
  - 3 **Restriction of advertising, sponsorship and promotion of alcohol; and**
  - 4 **Modification of the drinking context.**
6. This RIS will identify how further policy options would fit into the overall package of alcohol law reform proposals. The analysis will build on the previous RIS, assessing options according to the following areas of impact:
  - Reduction of harmful consumption by heavy episodic drinkers;
  - Effect on moderate drinkers;
  - Effect on business and economic performance; and
  - Reduction of costs borne by Government sectors (health, policing and enforcement).



7. An important consideration will also be the degree to which the policy options respond to the substantive issues raised through public submissions on the Bill.
8. The analysis is constrained by limited timeframes and to the consultation undertaken through the Select Committee process, given the stage in the legislative process at which further Cabinet decisions are being taken.

## **Regulatory impact analysis**

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9. Legislative controls can influence the supply and demand for alcohol to varying degrees. Feedback from submissions and further analysis have identified three areas that could be strengthened to provide more effective mechanisms for addressing excessive alcohol consumption and related harm:
  - 1 Alcohol advertising;
  - 2 Exposure to alcohol in supermarkets and grocery stores; and
  - 3 Trading hours.

### **Alcohol advertising**

#### ***Problem definition***

10. The Bill strengthens and extends an offence contained in the 1989 Act that relates to the promotion of excessive consumption of alcohol. Wider problems with alcohol advertising that have been identified include:
  - Alcohol marketing practices that reduce cost may increase consumption;<sup>2</sup>
  - The negative impact of exposure of children and young people to alcohol advertising;
  - Controls on alcohol promotions are limited and not sufficiently enforced; and
  - Alcohol sponsorship establishes a pro-alcohol culture.<sup>3</sup>
11. Submissions have demonstrated strong public concern about alcohol advertising. The new promotions offence in the Bill is not sufficient to address these concerns and the wider problems with alcohol advertising identified above.

#### ***Options***

12. The following options are being explored to respond to the risks associated with promoting cheap or discounted alcohol and a growing evidence base that indicates that alcohol advertising has a negative impact on young people:
  - Status quo (self regulation by the Advertising Standards Authority along with the strengthened and extended irresponsible promotions offence contained in the Bill);
  - Prohibit all advertising that suggests alcohol is being sold at a discount;
  - Legislative measures to prohibit price advertising outside of licensed premises;
  - Legislative measures to reduce exposure, particularly among young people; or
  - Legislative measures to impose a complete ban on alcohol advertising and sponsorship.
13. Table 1 (in the following section) outlines the above options and provides an analysis of impacts.

14. In assessing the policy options, we have considered the impact of further restrictions on freedom of expression under the Bill of Rights Act. In order to comply with the Act, it is necessary to focus on specific types or methods of advertising, where the impact of harm is clear and where there is a rational and proportionate connection between the objective and the provision.<sup>4</sup>

### **Conclusions**

15. All of the options for restricting alcohol advertising, sponsorship and promotions are likely to lead to some degree of industry innovation in response to changing regulatory conditions, thereby producing unintended consequences and mitigating any positive impact of restrictions. In light of the objectives and considerations for reform, the evidence in support of one particular option over other options is not strong. Some key points regarding the analysis of options include:

- Placing restrictions on discount and price advertising may not have the desired effect, as cheap alcohol will continue to be available and any restrictions may be circumvented (for example, by advertising “wine and beer week” or “wine sale now on”). Prohibiting price advertising would inconvenience consumers who are not problem drinkers but who base purchasing decisions on price;
- Limiting exposure to alcohol advertising may go some way to addressing the impact of advertising on young people and may appease public concerns about the overall visibility of alcohol advertising; however industry are likely to respond to any targeted restrictions by diverting funds into other forms of media to market alcohol products; and
- While there is strong public support for a complete ban on alcohol advertising, there is little public information available to accurately assess the impact on the advertising, media and alcohol industries. A ban is more likely than the other options to conflict with the Bill of Rights Act.

16. In order to provide for more comprehensive consideration and analysis of a range of restrictions on alcohol advertising, promotions and sponsorship, and to gather further information about the impact of further restrictions on advertising revenue, the Government may decide to establish a cross-agency experts’ forum to investigate further restrictions. This will also allow for a wider consultation with a range of stakeholders that have an interest in this area. However, it is unlikely to satisfy public support for stronger restrictions on alcohol advertising in the short-term.

### **Exposure to alcohol in supermarkets and grocery stores**

#### ***Problem definition***

17. Alcohol displays are often extensive and prominent, positioned near the entrance, the checkouts, on aisle ends, beside commonly purchase household goods, or in other areas through which shoppers must walk.<sup>5,6</sup>

18. The placement of alcohol in supermarkets and grocery stores impacts on its price (because promotional discounts may be linked to display agreements between suppliers and retailers) and availability, both of which are key factors in affecting levels of alcohol consumption and related harm.<sup>7</sup> Supermarkets and grocery stores encourage impulse purchases of alcohol through bulk displays and price promotions. People recovering from alcohol problems have particular difficulty navigating safely through this sort of shopping environment.

19. Submitters expressed concerns about the sale of alcohol in supermarkets and grocery stores and considered that supermarkets and grocery stores “normalise” alcohol through displaying it alongside everyday grocery products, increasing exposure to children and young people.



## ***Options***

20. The following options are being explored to respond to the concerns outlined above:

- Status quo (alcohol may be sold from supermarkets and grocery stores, with no specific restrictions on display);
- Voluntary code for alcohol display to be developed with industry;
- Regulatory requirement for a single area display restriction for alcohol in supermarkets and grocery stores;
- Regulatory requirement for a single area display and sale restriction for alcohol in supermarkets and grocery stores; or
- Legislate to remove alcohol from supermarkets and grocery stores completely.

21. Table 2 (in the following section) outlines the above options and provides an analysis of impacts.

## ***Conclusions***

22. The analysis of the options for reducing exposure to alcohol in supermarkets and grocery stores identifies two feasible options that are most likely to achieve the objectives for reform, while taking into account the considerations and addressing the concerns raised by submitters. These options are the single area display restriction and the single area display and sale restriction. Both options carry similar advantages in terms of reducing visibility of alcohol products and limiting the ability of supermarkets and grocery stores to communicate discounts on alcohol products by restricting advertisements and promotions to that single area.

23. The two major supermarket chains indicated in their oral submissions to the Committee that there would be minimal compliance costs associated with a single area display restriction. The single area display and sale restriction, on the other hand, is likely to carry significant costs for supermarkets (at least initially), and may not be feasible for grocery stores that have limited floor space. It would also inconvenience responsible drinkers who would have to go through a separate checkout in order to purchase alcohol at a supermarket or grocery store.

24. Introducing a regulatory requirement for a single area display restriction for alcohol in supermarkets and grocery stores is the option that aligns best with the objectives and considerations for reform. While it does not go as far as removing alcohol from supermarkets and grocery stores completely, as supported by many submitters, it would significantly reduce overall exposure to alcohol products and would protect vulnerable persons such as children, young people and people who are trying to refrain from consuming alcohol.

## **Trading hours**

### ***Problem definition (and status quo)***

25. The 1989 Act does not set national limits on the hours that alcohol can be sold. Alcohol trading hours are determined on a case by case basis, vary widely between areas and can allow up to 24-hour trading.

26. The previous RIS outlined evidence that largely unrestricted alcohol trading hours are linked to increased alcohol consumption and related harm, including crime, alcohol-related injuries, homicides, vehicle accidents and alcohol overdoses.<sup>8</sup>

27. To reduce opportunities for excessive drinking and alcohol-related harm, while balancing the impact of restricted hours on licensees and responsible drinkers, the Bill sets the following national maximum trading hours for alcohol:

	Default max starting time	Default max finishing time	National exceptions to default hours	Local alcohol policies
<b>Off-licences</b>	7:00am	11:00pm	None	May restrict or extend and allow local exceptions
<b>On-licences, club and special licences</b>	8:00am	4:00am	Anzac Day only	May restrict or extend and allow local exceptions

28. Submissions and further consideration of the national maximum trading hours have identified specific problems with different aspects of the proposed hours framework. These problems fall into the following areas and are analysed separately below:

- Off-licence trading hours;
- Breakfast trading at on-licence premises; and
- Exceptions to national maximum trading hours for on-licences and club licences.

#### *Off-licence trading hours*

29. The Bill proposes national maximum trading hours of 7:00am to 11:00pm for off-licence premises. The problems that have been identified with this proposal are that it will not have an effective impact in terms of:

- Reducing opportunities for pre-loading and top-up purchases by people that seek to purchase alcohol before or after a drinking occasion;
- Reducing late evening disorder outside off-licence premises, because of loitering outside of off-licence premises and late-night consumption; and
- Reducing exposure of children and young people to alcohol who may pass licensed premises on their way to school.

#### Options

30. The following options have been identified for amending the national trading hours for off-licence premises:

- Status quo (7:00am – 11:00pm);
- Change the opening time to 9:00am; or
- Change the opening time to 9:00am and the closing time to 10:00pm.

31. Table 3 (in the following section) outlines the above options and provides an analysis of impacts.

#### *Breakfast trading at on-licence premises*

32. Under the 1989 Act and the Bill, premises where the predominant activity is the sale, supply or consumption of alcohol are not permitted to open outside of their licensed hours. This restriction generally applies to bars, pubs and taverns, but does not apply to restaurants, cafes and licensed clubs.

33. Currently, the permitted trading hours of many bars, pubs and taverns allow them to open in the early morning for breakfast service. However, under the Bill this will not be possible because of the maximum opening time of 8:00am for all on-licence premises. This means that premises that have been categorised as a bar, pub or tavern will not be able to open before 8:00am to serve



breakfast, even without the sale of alcohol, while premises that have been categorised as a restaurant, cafe or licensed club will be permitted to do so (without the sale of alcohol).

34. Breakfast trading (with or without alcohol) is not considered to be a major contributor to alcohol-related harm, regardless of whether it takes place at a bar, pub, tavern, cafe or restaurant. Anecdotally, there has been a recent shift in New Zealand culture towards breakfast dining, and pubs and taverns have adapted the function of their business to cater for breakfasts, whilst continuing to function as a social venue in the evening.
35. The proposal to restrict trading to 8:00am unfairly penalises some on-licence premises because of the way they have been categorised, and gives other premises an advantage. This was a common concern raised by submitters on the Bill.

#### Options

36. The following options are being considered to strike a more appropriate balance between reducing opportunities for excessive drinking and alcohol-related harm, and the impact of restricted hours on licensees and responsible drinkers:
- Status quo (ability to open and serve breakfast without alcohol outside of trading hours dependant on how premises are categorised);
  - Allow breakfast trading without alcohol; or
  - Extend the opening time to allow for breakfast trading with alcohol.
37. Table 4 (in the following section) outlines the above options and provides an analysis of impacts.

#### *Exceptions to national maximum trading hours for on-licences and club licences*

38. Under the 1989 Act, licensees are able to apply for a special licence in order to hold an event or series of events outside of their usual licensed hours. The Bill sets national maximum trading hours for on-licences of 8:00am to 4:00am the following day, with the only exception being Anzac Day. This means that special licences are not available under the national framework outside of the national maximum hours. Local alcohol policies would, however, be able to allow for exceptions in their areas.
39. This proposal does not provide flexibility to allow for early morning events such as live northern hemisphere sporting fixtures and champagne breakfasts. This was a common concern raised by industry submitters.

#### Options

40. Similar to the discussion of breakfast trading above, the following options are being considered to strike an appropriate balance between reducing opportunities for excessive drinking and alcohol-related harm, and the impact of restricted hours on licensees and responsible drinkers:
- Status quo (no exceptions to national trading hours, except via local alcohol policies);
  - Limited exceptions to national maximum trading hours, via special licences; or
  - No national maximum trading hours.
41. Table 5 (in the following section) outlines the above options and provides an analysis of impacts.

## **Conclusions**

42. Given the wide range of options that could be considered for amending trading hours, this RIS outlines only feasible options that align with the objectives and considerations that have been identified for reform. Generally, the evidence indicates that any tightening of hours should lead to reductions in alcohol related harm. However, the evidence is less clear about the impact of small changes on trading hours.
43. In light of the concerns raised by submitters about hours and the Government's intention to balance the impact of reform with the impact on the industry and responsible drinkers, a suitable approach to amending the national maximum trading hours currently proposed by the Bill might be to:
- Change the opening time for off-licence premises to 9:00am – this would address concerns about reducing exposure of children and young people to licensed premises;
  - Allow breakfast trading without alcohol from 6:00am at all on-licences and club licences – this would provide a consistent approach to breakfast trading for all types of on-licence premises, whilst ensuring consistency with the Government's policy on trading hours; and
  - Allow limited exceptions to national maximum trading hours for on-licences and club licences, through the special licence regime – this provides some flexibility within the licensing system, to cater for events that may take place outside of the national maximum trading hours.
44. This grouping of options for amending the national maximum trading hours reflects a compromise position or 'middle ground' in each of the problem areas identified. The suggested options recognise the need to address the problem, without tipping the balance too far towards greatly liberalising or restricting alcohol trading hours.



Analysis of impacts

Table 1: Alcohol advertising

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<p><b>Status quo</b></p> <p>Self-regulation by the Advertising Standards Authority.</p> <p>Strengthened and extended irresponsible promotions offence, contained in the Bill (clause 220):</p> <ul style="list-style-type: none"> <li>• Applies to any business selling and promoting alcohol;</li> <li>• Sets out examples of irresponsible promotions, such as advertising free alcohol, advertising discounts on alcohol of 25% or more and advertising alcohol in a way that appeals to minors; and</li> <li>• Applies to any promotion, including television and billboard advertising.</li> </ul>	<p><b>POSSIBLY</b></p> <p>(but potentially low impact)</p>	<p><b>LOW IMPACT</b></p>	<p><b>LOW IMPACT</b></p> <p>Will prevent all types of businesses from using alcohol as a promotional tool.</p>	<p><b>INSUFFICIENT EVIDENCE</b></p> <p>(of direct impact of advertising on alcohol-related harm)</p>	<ul style="list-style-type: none"> <li>• Insufficient evidence of impact of the self-regulatory system, because it is complaints based and not subject to monitoring or oversight.</li> <li>• ASA may consider further enhancements to their Code for Advertising Liquor as part of their review.</li> <li>• Unlikely to satisfy public support for further restrictions.</li> <li>• Not inconsistent with the Bill of Rights Act.</li> <li>• Would not address problems that have been identified with the current self-regulatory system, including the inability of current codes to affect content and exposure to advertising and the lack of rigour in pre-vetting and complaints processes.<sup>9</sup></li> </ul>
<p><b>Prohibit all advertising that suggests alcohol is being sold at a discount</b></p> <p>Further strengthening of the irresponsible promotions offence, outlined above.</p>	<p><b>POSSIBLY</b></p> <p>(but more possible than the status quo)</p>	<p><b>LOW IMPACT</b></p> <p>(but marginally greater impact than the status quo)</p>	<p><b>LOW IMPACT</b></p> <p>(but marginally greater impact than the status quo)</p>	<p><b>INSUFFICIENT EVIDENCE</b></p> <p>(of direct impact of advertising on alcohol-related costs)</p>	<ul style="list-style-type: none"> <li>• Focuses on removing advertising and promotions that reduce cost and create the impression of “cheap” alcohol.</li> <li>• Would require amending the irresponsible promotions offence in the Bill so that it is an offence to advertise or promote any alcohol discounts (instead of just those greater than 25%).</li> <li>• Responds to concerns raised by submitters about the perception of “cheap” alcohol, which is generated by price promotions and advertisements.</li> <li>• Unlikely to prevent price discounting because retailers will still be able to offer cheap alcohol.</li> <li>• Retailers may circumvent restrictions by adjusting the “normal price” of alcohol.</li> <li>• Likely not to be inconsistent with the Bill of Rights Act, as it is relatively aligned with the status quo.</li> </ul>
<p><b>Legislative measures to prohibit price advertising outside of licensed premises</b></p> <p>Price-based advertising and promotions are a key means by which alcohol retailers compete in the current environment. Restricting price advertising may curb price competition between off-licences, thereby addressing cheap prices offered by large retailers and supermarkets.</p>	<p><b>POSSIBLY</b></p> <p>Evidence shows that point-of-purchase promotions are likely to affect drinking levels of under-age and binge drinkers.<sup>10,11</sup></p>	<p><b>MODERATE IMPACT</b></p> <p>Would inconvenience people who make choices about where to shop based on price.</p>	<p><b>MODERATE IMPACT</b></p> <p>Would restrict retailers’ ability to compete on price.</p>	<p><b>INSUFFICIENT EVIDENCE</b></p> <p>(of direct impact of price advertising on alcohol-related costs)</p>	<ul style="list-style-type: none"> <li>• Potentially discourages bulk-buying and excessive drinking of alcohol that is fuelled by cheap prices and heavy promotions.</li> <li>• Unlikely to completely prevent price competition because retailers will still be able to offer cheap alcohol.</li> <li>• Supermarkets will have an advantage because of foot traffic, so they may adjust strategies to offer in-store price discounts, despite being unable to advertise them externally.</li> <li>• Retailers would no longer be able to use cheap alcohol products to attract customers into a store.</li> <li>• May be a barrier to entry for newcomers into the alcohol retail market.</li> <li>• Restrictions could be circumvented by advertising that implies discounted liquor prices (e.g. “the home of great alcohol deals”).</li> <li>• Responds to concerns raised by submitters about the perception of “cheap” alcohol, which is generated by price promotions and advertisements.</li> <li>• Would need to consider how internet advertising of alcohol prices would be regulated.</li> <li>• May be inconsistent with the Bill of Rights Act as it would significantly hamper the ability of businesses to convey commercial information.</li> </ul>



Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<p><b>Legislative measures to reduce exposure, particularly among young people</b></p> <p>Could include:</p> <ul style="list-style-type: none"> <li>Limiting alcohol advertising on television to between 10:30pm and 6:00am;</li> <li>Restricting the number and duration of broadcast alcohol advertisements;</li> <li>Limiting alcohol advertising at cinemas to films with an R18 rating; and</li> <li>Prohibiting alcohol advertising on public transport, including in railway stations and bus shelters.</li> </ul>	<p><b>POSSIBLY</b></p> <p>(particularly for young drinkers, when combined with other interventions to reduce alcohol-related harm)</p>	<p><b>LOW IMPACT</b></p>	<p><b>MODERATE IMPACT</b></p> <p>Reduced revenue for advertising, media and alcohol industries. Also potential impacts on property rights for brands.</p>	<p><b>INSUFFICIENT EVIDENCE</b></p> <p>(of direct impact of advertising on alcohol-related costs)</p>	<ul style="list-style-type: none"> <li>Evidence suggests that partial bans on advertising media are less effective at reducing harmful consumption than comprehensive bans, because industry innovation in response to changing regulatory conditions.<sup>12</sup> However, restrictions on advertising have an additive effect when accompanied by other measures to affect alcohol consumption.<sup>13</sup></li> <li>Controls are difficult to design to specifically target young people, however the suggested measures would target some of the most visible types of alcohol advertising (television and outdoors), thereby reducing overall exposure to alcohol advertising with a particular focus on young people.</li> <li>Industry likely to cut their budgets for television and movie advertising altogether because they would no longer be profitable (peak viewing times for television programming is between 7:00pm and 9:30pm<sup>14</sup> and only five out of 71 films were classified as R18 in 2010).<sup>15</sup></li> <li>Targeting only certain forms of advertising would reduce revenue in specific areas [AC Nielsen data indicates that in 2006, cinema advertising accounted for 1% of total paid advertising spend (\$185,000), television advertising accounted for 37% (\$8,940,000) and outdoor advertising accounted for 9% of total paid advertising spend (\$2,316,000)].<sup>16</sup></li> <li>Industry likely to divert funds into other forms of alcohol marketing such as print media, social networking websites and sponsorship arrangements.</li> <li>May provide a case for consistency with the Bill of Rights Act, given the weight of evidence in this area and the connection between the objective and these targeted restrictions.<sup>17</sup> May also impact on property rights for brands.</li> <li>Would go some way towards responding to public support for further restrictions on alcohol advertising.</li> </ul>
<p><b>Legislative measures to impose a complete ban on alcohol advertising and sponsorship</b></p> <ul style="list-style-type: none"> <li>Government regulation.</li> <li>No alcohol advertising in any media other than communication of objective product information, including the characteristics of the beverage, the manner of its production and its price.</li> </ul>	<p><b>LIKELY</b></p> <p>(particularly for young drinkers, which is where the evidence is strongest)</p>	<p><b>MODERATE IMPACT</b></p> <p>May restrict brand preferences and limit provision of information about new products.</p>	<p><b>HIGH IMPACT</b></p> <p>Significant impact on the recipients of advertising and sponsorship funding, particularly for clubs as a result of loss of income.<sup>18</sup></p>	<p><b>INSUFFICIENT EVIDENCE</b></p> <p>(of direct impact of advertising on alcohol-related costs)</p>	<ul style="list-style-type: none"> <li>Responds to concerns raised by large number of submitters and public support for a complete ban.</li> <li>Little research regarding the effectiveness of a complete ban on alcohol marketing. However, the weight of evidence suggests that a complete ban could have a modest effect on drinking by young people.<sup>19</sup></li> <li>Unlikely to be justified under the Bill of Rights Act because of the significant restriction on commercial expression that is not targeted and proportionate.</li> <li>Significantly limits ability of industry to communicate with customers, especially when releasing new products.</li> <li>Risky given limited time available to analyse full impacts, possible consequences and need to consider possible transitional funding arrangements.</li> <li>Industry may divert funds into other forms of marketing, such as product placement and social networking websites.</li> </ul>

**Table 2: Exposure to alcohol in supermarkets and grocery stores**

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<p><b>Status quo</b></p> <ul style="list-style-type: none"> <li>Alcohol may be sold from supermarkets and grocery stores under an off-licence.</li> <li>No specific restrictions on the display of alcohol in supermarkets and grocery stores.</li> </ul>	<p><b>NO</b></p>	<p><b>NO IMPACT</b></p>	<p><b>NO IMPACT</b></p>	<p><b>INSUFFICIENT EVIDENCE</b></p>	<ul style="list-style-type: none"> <li>Does not respond to public concern and support for further restrictions on alcohol in supermarkets and grocery stores.</li> <li>Voluntary measures could be considered by industry – Progressive Enterprises Ltd commented in their oral submission to the Committee that they are already restricting alcohol displays in some of their newer stores.</li> </ul>



Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<p><b>Voluntary code for alcohol display to be developed with industry</b></p> <p>Content of code dependent on agreement with and compliance by industry.</p>	<p><b>UNCERTAIN</b></p> <p>(dependent on content of Code and compliance by industry)</p>	<p><b>LOW IMPACT</b></p>	<p><b>LOW IMPACT</b></p>	<p><b>INSUFFICIENT EVIDENCE</b></p>	<ul style="list-style-type: none"> <li>Unlikely to satisfy public support for either removing alcohol from supermarkets and grocery stores completely, or imposing regulatory restrictions on alcohol displays.</li> <li>Already some indication of voluntary industry activity in this area, therefore industry may be open to considering development of a code.</li> <li>Would not be enforceable, though non-compliance with the code could impact on decisions about whether a person is suitable to hold a licence.</li> </ul>
<p><b>Regulatory requirement for a single area display restriction for alcohol in supermarkets and grocery stores</b></p> <ul style="list-style-type: none"> <li>Alcohol could only be displayed in one area of the supermarket/ grocery store.</li> <li>Alcohol would continue to be sold through regular check-outs.</li> <li>Legislative controls on where a single display area can be located, to ensure it is not in a prominent area.</li> <li>Alcohol advertising and promotions could only be displayed in the single area.</li> </ul>	<p><b>POSSIBLY</b></p>	<p><b>LOW IMPACT</b></p>	<p><b>LOW IMPACT</b></p> <p>Will impose initial compliance costs for supermarkets.</p>	<p><b>INSUFFICIENT EVIDENCE</b></p>	<ul style="list-style-type: none"> <li>Would reduce exposure to alcohol within supermarkets and grocery stores, possibly reducing "normalisation".</li> <li>Would reduce visibility of alcohol products, thus removing the temptation to purchase alcohol for people with alcohol problems and reducing impulse purchases by people who are trying not to drink.</li> <li>May interfere with supermarkets' and grocery stores' operating arrangements and may also effect supply/display agreements between supermarkets and producers. However, Foodstuffs and Progressive Enterprises Ltd indicated in their oral submissions to the Committee that the costs associated with single area display restriction are likely to be low.</li> <li>May limit price discounts for retailers that are negotiated on basis of display of products in key positions (eg, aisle ends, entrances and checkouts).</li> <li>Would go some way towards responding to submitter concerns about alcohol displays in supermarkets and grocery stores.</li> <li>Restricting advertising and promotions to the single area will restrict the ability of supermarkets and grocery stores to communicate discounts on alcohol products and encourage sales. However, it would limit the use of large advertisements and promotions as a substitute for product displays.</li> </ul>
<p><b>Regulatory requirement for a single area display and sale restriction for alcohol in supermarkets and grocery stores</b></p> <p>Same as the option above, except:</p> <ul style="list-style-type: none"> <li>Separate checkouts for alcohol purchases, located in that area; and</li> <li>Possibly either a physical separation of that area and single entry point.</li> </ul>	<p><b>POSSIBLY</b></p>	<p><b>MODERATE IMPACT</b></p>	<p><b>MODERATE IMPACT</b></p> <p>As above, however compliance costs and impact on supply/display agreements would be much higher.</p>	<p><b>INSUFFICIENT EVIDENCE</b></p>	<ul style="list-style-type: none"> <li>As above. However, having both a single area display and sale restriction would clearly delineate alcohol from other supermarket and grocery store items and may have a greater effect in terms of decreasing visibility and counteracting the "normalisation" of alcohol.</li> <li>Would impose higher compliance costs on supermarkets and grocery stores than the option above, without necessarily achieving a greater affect.</li> <li>May not be feasible to impose such a restriction on grocery stores, due to smaller size relative to supermarkets.</li> <li>Would inconvenience shoppers who purchase alcohol at the same time as grocery items, as they would need to go through separate checkouts.</li> </ul>
<p><b>Legislate to remove alcohol from supermarkets and grocery stores completely</b></p> <ul style="list-style-type: none"> <li>Alcohol could only be sold in designated bottle stores.</li> </ul>	<p><b>LIKELY</b></p>	<p><b>HIGH IMPACT</b></p> <p>Would restrict access and convenience for consumers who purchase their alcohol at the supermarket/grocery store.</p>	<p><b>HIGH IMPACT</b></p> <p>Likely to significantly reduce revenue for supermarkets and grocery stores.</p>	<p><b>INSUFFICIENT EVIDENCE</b></p>	<ul style="list-style-type: none"> <li>Would address concerns that supermarkets and grocery stores contribute to the normalisation of alcohol, but runs counter to decisions that the Government has already made regarding alcohol sales in supermarkets and grocery stores.</li> <li>Could have the unintended impact of consumers 'stocking up' because of the inconvenience associated with purchasing alcohol.</li> <li>May result in unintended consequences – bottle stores may increase in size and buying power and low price/high volume sales would shift from supermarkets to bottles stores, which are able to sell the full range of alcohol products.</li> <li>Supermarkets may move to own bottle stores, so low prices currently available due to the strong buying power of supermarkets would likely remain. Stores could be set up in very close proximity to supermarkets.</li> </ul>



**Table 3: Off-licence trading hours**

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<b>Status quo</b> 7:00am – 11:00pm	<b>LIKELY</b>	<b>LOW IMPACT</b>	<b>LOW IMPACT</b>	<b>LIKELY</b>	<ul style="list-style-type: none"> <li>Does not address concerns outlined above.</li> <li>Does not respond to submitters.</li> </ul>
<b>Change the opening time to 9:00am</b>	<b>LIKELY</b>	<b>LOW IMPACT</b> (although more so than the option above, particularly for people that shop outside of 'normal' retail hours)	<b>MODERATE IMPACT</b> Some compliance costs for off-licence premises that wish to open to sell other products outside of their alcohol trading hours.	<b>LIKELY</b>	<ul style="list-style-type: none"> <li>Would help to reduce visibility of alcohol to children and young people travelling to school.</li> <li>Responds to concerns raised by submitters about the opening time of off-licence premises.</li> <li>Would inconvenience early morning shoppers, such as shift workers.</li> <li>Unlikely to have a major impact on alcohol-related harm, over and above the status quo.</li> <li>Some compliance costs for off-licence premises, if they wish to open prior to 9:00am to sell other products.</li> </ul>
<b>Change the opening time to 9:00am and the closing time to 10:00pm</b>	<b>LIKELY</b> (although more so than the status quo and the option above, because of limiting the potential for late-night 'top-up' purchases)	<b>LOW IMPACT</b> (although more so than the options above)	<b>MODERATE IMPACT</b> (but more impact than the option above due to off-licence premises having to make operational changes if they wish to open to sell other products outside of their alcohol trading hours)	<b>LIKELY</b> (although more so than the status quo and the option above)	<ul style="list-style-type: none"> <li>Would help to reduce visibility of alcohol to children and young people travelling to school.</li> <li>Would reduce excessive drinking that is fuelled by late-night purchases, more so than the status quo.</li> <li>Responds to concerns raised by submitters.</li> <li>Would inconvenience late-night and early morning shoppers, such as shift workers.</li> <li>Some compliance costs for off-licence premises, if they wish to open outside of their alcohol trading hours.</li> <li>Possible that people would adjust their alcohol purchase and consumption habits, so total consumption and revenue for businesses may not be significantly reduced.</li> </ul>

**Table 4: Breakfast trading at on-licence premises**

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<b>Status quo</b> <ul style="list-style-type: none"> <li>Ability to open and serve breakfast without alcohol outside of trading hours dependant on how premises are categorised (restaurant, cafe, licensed club versus bar, club, tavern).</li> <li>Alcohol may be served with breakfast from 8:00am for all on-licence premises (depending on hours of each premises).</li> </ul>	<b>POSSIBLY</b>	<b>MODERATE IMPACT</b>	<b>MODERATE IMPACT</b> Negative impact on revenue of businesses that engage in breakfast trading.	<b>POSSIBLY</b>	<ul style="list-style-type: none"> <li>Does not respond to identified problems and concerns raised by submitters.</li> <li>Does not strike an appropriate balance between reducing opportunities for excessive drinking and alcohol-related harm, and the impact of restricted hours on licensees and responsible drinkers.</li> <li>Creates fairness issues by giving a commercial advantage to some types of licensed premises over others.</li> </ul>
<b>Allow breakfast trading without alcohol</b> <ul style="list-style-type: none"> <li>All on-licences may open from 6:00am to serve breakfast, but no alcohol may be served until their licensed trading hours start.</li> <li>Alcohol may be served with breakfast from 8:00am (depending on licensed trading hours of each premises).</li> </ul>	<b>POSSIBLY</b>	<b>LOW IMPACT</b>	<b>LOW IMPACT</b> Negative impact on the revenue of businesses that engage in breakfast trading with alcohol.	<b>POSSIBLY</b>	<ul style="list-style-type: none"> <li>Ensures there is a consistent approach in terms of breakfast trading for all types of on-licence premises.</li> <li>Will continue to be a mandatory closure period of 4:00am to 6:00am (with alcohol only permitted to be sold after 8:00am in most cases), which will encourage dispersal of late night drinkers before the next day's trading.</li> <li>Responds to submitters to some degree, although industry still likely to be concerned about not being permitted to serve alcohol with breakfast.</li> <li>Local alcohol policies could extend the maximum trading hours to allow for breakfasts with alcohol, if agreed by the community.</li> </ul>



Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<b>Extend the opening time to allow for breakfast trading with alcohol</b> <ul style="list-style-type: none"> <li>All on-licences may open from 6:00am to serve breakfast with alcohol.</li> <li>Essentially provides for the status quo under the 1989 Act, where businesses are able to open to serve breakfast and serve alcohol, if their licensed trading hours allow for this.</li> </ul>	UNLIKELY	NO IMPACT	NO IMPACT (because option maintains the status quo under the 1989 Act)	UNLIKELY	<ul style="list-style-type: none"> <li>May not allow for a long enough closure period to encourage dispersal of late night drinkers.</li> <li>Lengthens the overall trading hours of on-licence premises, providing greater opportunities for increased consumption and related harm.</li> </ul>

**Table 5: Exceptions to national maximum trading hours for on-licences and club licences**

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Comments
<b>Status quo</b> <ul style="list-style-type: none"> <li>No exceptions to national maximum trading hours, except via local alcohol policies.</li> <li>Special licences only permit events within national maximum trading hours.</li> <li>Special licences can only be used in respect of events or occasions, not for business as usual.</li> </ul>	LIKELY	MODERATE IMPACT	MODERATE IMPACT Will have a negative impact on the revenue of businesses that hold special events currently.	LIKELY	<ul style="list-style-type: none"> <li>Does not provide flexibility for licensed premises to cater for special events that may take place outside of national maximum hours.</li> <li>Possible that local alcohol policies could extend hours or provide exceptions, however local alcohol policies are not mandatory so this would be at the discretion of each community.</li> <li>Will have the greatest impact on businesses that currently hold special events and for members of the public that attend such functions.</li> <li>Sets a firm policy on national maximum trading hours.</li> </ul>
<b>Limited exceptions to maximum trading hours</b> <ul style="list-style-type: none"> <li>Special licences can permit exceptions to national maximum trading hours.</li> <li>Special licences can only be used in respect of events or occasions, not for business as usual.</li> </ul>	UNLIKELY (but more likely than the option below)	LOW IMPACT	LOW IMPACT	POSSIBLY Will create more costs for District Licensing Committees and Police, due to having to consider, report on and administer more special licence applications.	<ul style="list-style-type: none"> <li>Provides a controlled mechanism to allow premises to open for events that take place outside of the maximum hours.</li> <li>Risk of an increase in alcohol related harm is low as special licences can only be used in respect of events or occasions, not for business as usual.</li> <li>However, will provide virtually unlimited opportunities for licensed premises to extend their hours. Therefore, making the default national hours meaningless.</li> <li>Will impose increased compliance costs on businesses that hold special events currently, but will have to apply for a special licence to do so under this proposal.</li> <li>More special licence applications will mean that Police will be undertaking more administrative functions rather than frontline duties.</li> <li>Risk of an increase in special licenses issued could be reduced by providing guidance to District Licensing Committees on the issuing of special licences.</li> </ul>
<b>No national maximum trading hours</b> <ul style="list-style-type: none"> <li>Essentially the status quo under the 1989 Act.</li> </ul>	UNLIKELY	NO IMPACT	NO IMPACT (because option maintains the status quo under the 1989 Act)	UNLIKELY	<ul style="list-style-type: none"> <li>Runs counter to previous Government decisions regarding national maximum trading hours.</li> <li>Would be inconsistent with the objectives and considerations.</li> <li>Risks an increase in consumption and related harm.</li> </ul>



## Final comments

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45. Some of the options identified in this RIS may complement the proposals contained in the Bill, by falling under two different levers that impact on alcohol consumption and related harm: restricting advertising, promotion and sponsorship (which affects the demand for alcohol) and regulating the physical availability of alcohol (which affects the supply of alcohol).
46. Ultimately it will be up to the Government to decide on which options will be implemented as part of the Bill, in line with the objectives and considerations. The available evidence and information provided by submissions has largely informed the analysis of impacts provided in this RIS. Due to the complex nature of alcohol law reform there will always be some degree of uncertainty, such as how the industry and consumers will respond to changing regulatory conditions.
47. This produces some residual risks, which are further heightened by the need to consider the status quo alongside the potential impact of the breadth of changes proposed by the Bill. The biggest area of risk of unintended impacts due to the lack of information available is alcohol advertising.

## Consultation

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48. The Ministry of Justice has consulted on this RIS with the following agencies: Ministry of Foreign Affairs and Trade, Ministry of Economic Development, Ministry of Culture and Heritage, Ministry of Agriculture and Forestry, New Zealand Police, the Treasury, Department of Internal Affairs, Ministry of Health, Ministry of Defence, Ministry of Transport, Ministry of Women's Affairs and Te Puni Kōkiri. Agencies that have a direct interest in alcohol-related harm have been consulted throughout the alcohol law reform process.
49. Submissions to the Committee have informed the analysis of further options for alcohol law reform. The Committee received close to 9,000 submissions on the Bill, approximately 1,600 of which are substantive. Alcohol advertising, supermarket and grocery store sales and display of alcohol and trading hours were key areas of submission to the Committee. No specific consultation has been undertaken on the options outlined in this RIS due to time constraints and Select Committee privilege issues.

## Implementation, monitoring and review

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50. Each of the areas covered in this RIS will have different implementation, monitoring and review issues to be considered, depending on the option chosen. Any legislative options will be best included in the Bill.
51. Implementation of options for alcohol advertising will need to include consultation with the advertising and media industries. Any legislative options implemented will require consultation with the Advertising Standards Authority to determine areas of overlap with the self-regulatory system and how this will work in practice, particularly for monitoring and enforcement. Transitional arrangements may need to be considered.
52. Options for restricting exposure to alcohol in supermarkets and grocery stores will require consultation with supermarkets and grocery stores, and it is likely that a transition period will be necessary to allow time for them to meet any new requirements. The two major supermarket chains indicated in their oral submissions to the Committee that there would be low compliance costs associated with a single area display restriction. It may therefore be possible for this proposal to be implemented along with the majority of the Bill (12 months after Royal Assent).



53. Further policy options for amending the trading hours do not carry major implementation or monitoring issues, over and above what is already proposed by the Bill. As previously indicated, initial training will be provided to territorial authorities and their district licensing committees on the new legislation. Licensing inspectors and Police will continue to monitor trading hours of licensed premises.

## Endnotes

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- <sup>1</sup> Ministry of Justice (2010). *Alcohol Law Reform: Regulatory Impact Statement*. Available at: <http://www.justice.govt.nz/policy/crime-prevention/documents/alcohol/alcohol-law-reform-ris.pdf/view>.
- <sup>2</sup> Kuo M, Wechsler H, Greenberg P, Lee H (2003). *The marketing of alcohol to college students: The role of low prices and special promotions*. *American Journal of Preventative Medicine*. 2003; 25(3) (pp. 204-211).
- <sup>3</sup> Ibid at 1 (p. 13).
- <sup>4</sup> Law Commission (2009). *Alcohol in Our Lives*. Wellington: Law Commission (p. 182).
- <sup>5</sup> Law Commission (2010). *Alcohol in Our Lives: Curbing the Harm*. Wellington: Law Commission (p. 169).
- <sup>6</sup> Gunter B, Hansen A, Touri M (2008). *The Representation and Reception of Meaning in Alcohol Advertising and Young People's Drinking*, United Kingdom: University of Leicester.
- <sup>7</sup> Ibid at 5 (p. 170).
- <sup>8</sup> Ibid at 5 (pp. 183-187).
- <sup>9</sup> Ibid at 5 (p. 330).
- <sup>10</sup> University of Sheffield, School of Health and Related Research (2008). *The Independent Review of the Effects of Alcohol Pricing and Promotion: Summary of Evidence to Accompany Report on Phase 1: Systematic Reviews*. Sheffield: University of Sheffield.
- <sup>11</sup> Jones S (2009). *Alcohol Point-Of-Sale: Under the Regulations Radar?* Thinking Drinking 3: Action for Change Conference, Brisbane, 5-7 August 2009.
- <sup>12</sup> Babor T, Caetano R, Casswell S, Edwards G, Giesbretch N, Graham K, Grube J, Hill L, Holder H, Homel R, Livingston, M, Osterberg E, Rehm J, Room R, Rossow I (2010). *Alcohol: No ordinary commodity: Research and public policy*. Oxford: Oxford University Press.
- <sup>13</sup> Ibid at 12.
- <sup>14</sup> Television New Zealand (2010). *Peak time schedules for TV ONE and TV2 for Week 50: 11-17 December*. Available at: <http://tvnz.co.nz/planit-opportunities/schedules-3086439> (Accessed 2 December 2010).
- <sup>15</sup> Office of Film & Literature Classification (2010). *Annual Report of the Office of Film & Literature Classification for the year ended 30 June 2010*. Available at: [www.censorship.govt.nz](http://www.censorship.govt.nz).
- <sup>16</sup> AC Neilson data provided by the Foundation for Advertising Research to the Steering Group for the Review of the Regulation of Alcohol Advertising (2007). Email correspondence to Ministry of Health dated 8 February 2007.
- <sup>17</sup> Ibid at 4 (p. 182).
- <sup>18</sup> Sport and Recreation New Zealand (2010). *Alcohol and Sport*. Wellington: SPARC.
- <sup>19</sup> Ibid at 12.