



SUBMISSION BY THE SALVATION ARMY TO THE LAW COMMISSION'S "ALCOHOL IN OUR LIVES" ISSUES PAPER

The Salvation Army is a Christian evangelical movement that was established in New Zealand in 1883 from its origins in London's East End. Since its inception in Britain and subsequent arrival in New Zealand, The Salvation Army has been directly involved in addressing the harms caused by the abuse of liquor. This involvement has been at both the practical and political levels.

Practically, the Army has offered and continues to offer support, refuge and treatment to alcoholics and addicts as well as support, advice and relief to those experiencing hardship and poverty often as a consequence of liquor and drinking. The Salvation Army also has a proud history of political activism around the sale, promotion and consumption of liquor. This activism was most prominent during the era of the temperance movement in the early decades of the twentieth century but has continued through to today with the Army's active involvement in commenting on liquor legislation at both local and national levels. This latter involvement is the driver of this submission.

1. POSITION OF THE SALVATON ARMY ON ALCOHOL

Over the past century The Salvation Army's perspective on liquor has changed, and it is important to rehearse these changes so that the Law Commission and the general public can gain an understanding of the Army's motives in making this submission and in its ongoing activism around liquor.

The Salvation Army requires all its members to make a commitment to abstain from drinking liquor, from smoking and from taking illicit drugs of any kind. This "tee-total" position is not unique to The Salvation Army but it one for which the Army is well known.

This ethical position has its antecedence in The Salvation Army's origins in the slums of London in the 1860s where the misery caused by liquor was clearly apparent. At that time this ethical position was wrapped in the rhetoric and imagery of sinfulness and evilness, and the consumption of liquor was represented as being morally deficient.

Our stance on liquor has changed considerably over the past century, and the Army now believes that the question of liquor consumption is not only a moral one but a health one. It is a matter of scientific fact that alcohol harms the health of those who consume it in even moderate quantities¹ and there is irrefutable evidence of the broader social cost of its consumption.² The Salvation Army believes that this health perspective should be the dominant framework into which New Zealand's various policies and laws around liquor are assembled.

We regret the prevailing wisdom of the past twenty years that has presented liquor and its consumption as a matter of consumer choice and personal responsibility.

This regret is based on the irreparable damage that has been done to individuals, their families and their communities by allowing such a laissez-faire approach to the promotion, sale and consumption of liquor. Framing of the debate around liquor in terms of consumer choice and personal responsibility has allowed other concerns such as those around social risk and community harm to be trivialised or ignored.

The Salvation Army accepts and supports the notion of personal choice and personal freedoms but believes that these should not come at the expense of the wider social good. There will, of course, always be a dispute around where the balance between the rights of the individual and the collective rights of the community lies, but it is difficult to resolve such a dispute when any debate is defined narrowly as being about property rights and legal obligations.

New Zealand's current debate around liquor should be much broader than a discussion around how the law should control people's drinking. We believe that the Law Commission is attempting to elevate this current debate above that of a narrow legalistic one, and the Army supports this. But to do so requires those involved in the debate to appreciate the limits to using rules and regulations to change peoples' values, attitudes and behaviours, and then to appreciate the need to look for other mechanisms to achieve such change.

In its comparisons of drinking cultures (in Chapters 3 and 7 of the Issues Paper) the Law Commission correctly identifies some of the cultural aspects of New Zealanders' drinking and (perhaps too subtly) hints at the need for reflection and even change. Based on the experience of what it sees and encounters, The Salvation Army believes that New Zealanders, in general, have an unhealthy attitude toward alcohol that is often one of complacency and occasionally one of recklessness. We also believe that such attitudes are culturally imbedded. To change cultural attitudes around drinking requires more than a refinement of current liquor laws. It therefore needs to be acknowledged that the Law Commission can, through its present review, only contribute part of the solution to our problems with alcohol.

Developing more healthy cultural values towards alcohol requires leadership, and The Salvation Army applauds the leadership that the Law Commission has shown in raising the issues contained in its Issues Paper. Further leadership needs to come both from state agencies and from agents within civil society such as churches, iwi organisations and community leaders.

The Salvation Army hopes that, as a result of the debate and deliberations around its Issues Paper, the Law Commission will recommend appropriate leadership responses that might bring about this cultural change.

2. BASIS FOR THE SALVATION ARMY'S SUBMISSION

The Law Commission's terms of reference set down in page v of the Issues Paper provide a good basis for addressing the key questions raised in this review. The comments below provide The Salvation Army's perspective on each of these questions.

2.1 Proliferation of Outlets

Over the twenty years since the enactment of the Sale of Liquor Act 1989 the number of liquor licenses has more than doubled while New Zealanders' consumption of alcohol has more or less remained the same.³ This suggests that, in general, the expansion of the number of liquor outlets cannot be linked directly to any extension of the harm that liquor abuse is causing in New Zealand. In The Salvation Army's view such a claim is not entirely true.

The expansion in the number of liquor outlets has been the result of a number of factors; some benign some not so. Almost two-thirds of the increase in licensed premises numbers is from on-licence premises and while there is no reliable information to support this view, it would appear that the bulk of this increase is from licensed cafes and restaurants. Certainly, much of this increase would be related to food and is likely to represent quite moderate and responsible drinking.

Almost all of the remaining increase in licence numbers since 1990 is for off-licence premises. Between 1990 and 2009 the number of off-licence premises increased 150%, from 1,675 to 4,199. This increase has meant that the ratio of stores to people almost halved from one store for every 1,430 adults in 1990 to one store for every 767 adults in 2009. During this period the off-licence purchasing of liquor has become more popular, although most of this popularity is on account of supermarket sales, which may account for up to 50%⁴ of all off-licence sales. Supermarkets have probably contributed only 300 of the additional 2,500 off-licence premises between 1990 and 2009. This suggests that the remaining stores have largely divided up a fairly limited market and that many of them are quite marginal as businesses. The concern here is that marginal operators in the off-licence liquor trade have limited ability to cover the necessary compliance costs of the business and will always be under pressure to cut corners and lower standards and levels of compliance. In such a competitive market it can become a race to the bottom where those businesses with lowest standards and the poorest attitude to compliance survive. The poor record of compliance of liquor stores in South Auckland is evidence of this.

Given the significant increases in the number of off-licence liquor outlets it seems unlikely that the pressing policy question into the future will be that of finding ways of limiting the establishment of additional outlets in socially-undesirable locations. The present legislation, with its very limited ability under section 13 to oppose or reject a licence application, has ensured that most neighbourhoods already have a corner liquor store. While it would be useful having more extensive grounds for refusing the granting of a licence, a bigger challenge for legislators and officials is the reduction in the numbers of existing liquor stores, particularly in neighbourhoods where the risk of harm from unsupervised drinking is likely to be greater.

One way of reducing the density or ubiquity of neighbourhood liquor stores is through increased enforcement of liquor laws alongside increases in the severity of

penalties for those who break these laws. While infringements under the Sale of Liquor Act are considered to be criminal offences under the Summary Offences Act the severity of penalties provided to offenders suggests that disregard for the law has only minor consequences. In The Salvation Army's view, the lack of consequence for such law breaking does not provide sufficient deterrent for operators to have regard for the law and the harm that they may be causing.

The Salvation Army submits that that liquor laws should be amended to:

1. increase the penalties for businesses breaking the law by knowingly or carelessly selling liquor to a minor or a grossly intoxicated person, and in particular:
 - ban individuals convicted of such offences from holding a liquor licence for five years; and
 - permanently cancel the liquor licence of premises where two convictions for offences under the Sale of Liquor Act (or its replacement) have been issued within a five-year period.

Furthermore, The Salvation Army submits that:

2. wider criteria for considering and potentially refusing a liquor licence should be included in legislation, including the need for assessment of community impacts to accompany any new application for a liquor licence.

2.2 The Licensing System

Outside of the limited ability for either the public or regulators to oppose an application for a liquor licence, the current system of licensing appears to be working well. The reliance on local authorities to operate the licensing system does, however, lead to variability in the approaches taken, which may reflect local preferences but may also reflect local pressures. In particular, most local authorities are acutely aware of the contribution that the hospitality industry makes to the local economy and to their rating base. This contribution is especially significant in cities with a large CBD and in districts where tourism is an important economic activity.

The Salvation Army believes that more can be done by the Liquor Licensing Authority to ensure that liquor laws are being applied consistently and fairly across the whole country. The Authority's present role appears to be one of endorsing or reinforcing the efforts of district licensing authorities in their regulation and enforcement work and does not appear to have a broader function of setting national guidelines and of monitoring of and reporting on the performance of district licensing authorities and the implementation of the Sale of Liquor Act. The Liquor Licensing Authority could certainly have such wider functions.

While we support participation of local communities in local liquor licensing issues, we do not believe that local liquor policies should automatically be the consequence of such participation. Many communities do not have the resources to participate effectively in what may become local negotiations around local liquor plans between the local authority and the liquor industry in its many guises. In The Salvation Army's view, leaving the outcomes of such plans to the balance of influence between poorly-resourced communities and a well-organised liquor industry lobby hardly seems fair. Some form of national direction and oversight is desirable to ensure that local liquor plans are consistent with liquor laws and with best practice around the implementation of these laws. Such direction and

oversight should come from the Liquor Licensing Authority and could be seen as a resource for smaller local authorities to base any local liquor plan on.

2.3 License Renewals

The present licence renewal system appears to be working satisfactorily. While there might be some merit in having a graduated fee structure based on some measure of social risk posed by the licensed premises, such detail barely seems relevant to the bigger questions at stake in this review.

The Salvation Army understands and accepts the need for the presumption that licences will be renewed. Most licensees are small businesses who rely on the licence to operate their business and as such deserve some certainty over the longevity of the licence for investment purposes. However, the presumption that a licence for a premises should be extended regardless of the non-compliance, risks or harm generated by that premises should be reconsidered. While liquor licences are in effect private property rights, these rights have been socially sanctioned and are (or at least should be) subject to acceptance of some level of social responsibility on the part of the property right holder. Where a licensee has not demonstrated such social responsibility they should not be allowed to presume the continuity of their property rights.

In practice, this conditionality of liquor licence renewals might work along the lines that where a premises has been the site of infringements or offences under the Sale of Liquor Act that an assessment of community impact is required at the time that the premises licence is renewed. Such a review should be the subject of some level of community participation in the decision on whether or not the licence should be renewed. Such a review process would target irresponsible operators for special attention (and most likely higher application fees) and could avoid the practice of the licence changing hands as a means of keeping a premise open following infringements.

The Salvation Army submits that:

3. the renewal of liquor licences should be subject to review by the Liquor Licensing Authority where there has been an infringement or offence under the Sale of Liquor Act (or its replacement) during the term of the licence. This review provision should attach both to individual licensees and to premises licences.

2.4 Unnecessary and Disproportionate Compliance Costs

The Salvation Army does not have a view on this issue.

2.5 Age of Purchase

The Salvation Army believes that the sale of liquor to minors is a widespread business practice, especially by off-licence non-supermarket premises. In The Salvation Army's view, the Sale of Liquor Act, with its prohibition on sales to minors, has not proved effective in preventing young people from gaining access to liquor outside of that supplied by their parent or legal guardian. Given this ineffectiveness, we believe that legal age of purchase of liquor from off-licence premises should be raised to 20 years. We further believe that the current laws around legal age of purchase of 18 years from on-license premises should be

allowed to continue, and that the laws around minors in on-licence premises should also continue in their present form.

ALAC's drinking monitor reports that 9% of young people aged between 14 and 17 had purchased liquor themselves. A youth drinking survey reported that 15% of high school students had purchased liquor and that just 20% of them had been asked for some form of ID.⁵

There are around 250,000 people aged between 14 and 17 years old, so if the 9% figure from the ALAC survey was applied to this population it indicates that around 22,500 young people purchased liquor mainly from off-licence premises. There are no reports of frequency of such purchases but if each under-age purchaser bought liquor just once this would amount to at least 5,000 such purchases each year. Yet in 2008 only 291 people⁶ were charged with selling liquor to a minor, suggesting that an average licensee has a 1:25 to 1:100 chance of being caught breaking the law.

The Police undertake covert-purchase operations where 17 year olds attempted to purchase liquor. The results of these operations suggest around 19% and up 28% of liquor store owners disregarded the laws relating to sales of liquor to minors.⁷

A recent report in the *Manukau Courier* said that a South Auckland store caught in a covert-purchase operation selling liquor to an underage customer had their liquor licence cancelled for 48 hours.

The current picture of liquor sales to minors is one of poor levels of compliance with the law, low probability of being caught for breaking the law, and minimal penalties for those who are caught. Such a set of circumstances is scarcely conducive to liquor retailers or their customers being inclined to obey the law.

The biggest risk from illegal liquor sales to underage customers is the unsupervised nature of their subsequent drinking. Young people who purchase their liquor from a bottle store are unlikely to take it home and share it with their parents. They are most likely to drink it with similar-aged friends in unsupervised situations. In such situations the rate of drinking and the behaviour resulting from excessive drinking are unlikely to be checked by more mature and perhaps more sober people. Such circumstances are a recipe for chaos and are probably repeated throughout New Zealand on hundreds of occasions each week.

One solution to such a set of outcomes is to lift the purchase age for off-licence sales to 20 years as a means of preventing 15 year olds and 16 year olds from buying their own liquor. With a higher purchase age the excuses for selling liquor to 15 and 16 year olds are considerably weaker and because of this the penalties for doing so can reasonably be expected to be much higher. With tougher standards, tougher penalties and more stringent enforcement, the level of compliance, and hopefully the standards of behaviour, are likely to improve.

The Salvation Army submits that:

4. the minimum legal age to purchase liquor from an off-licence should be 20 years while the minimum age to purchase from an on-licence or club licence should remain at 18 years.

2.6 Parental Supply of Liquor

Most young people are introduced to drinking by their families or peers.⁸ This socialisation into a drinking culture appears to be a critical determinant of the drinking behaviour a young person will adopt into their late teens and early twenties, so it is essential that public policy focus on this process if we are to reduce alcohol-related harm in New Zealand. Possible policy interventions include social marketing and more specific laws around the legal obligations of those who supply liquor to minors.

Drinking alcoholic beverages appears to be part of family life for many and perhaps most New Zealanders. Across the spectrum of family drinking behaviours⁹ there is most likely an at-risk group of families who have a laissez-faire, though not intentionally irresponsible, attitude towards drinking. The size of this group¹⁰ is not known but it is most likely the target groups for social-marketing campaigns aimed at asking people to reflect on the wisdom of their behaviours and, in particular, on the example they are setting for their children. Such a social-marketing campaign could include a media campaign with supporting resources for self-evaluation and behavioural change. At some point on this “drinking behaviours spectrum” there may also be some value in having family counselling available where there is evidence that drinking behaviours within families are becoming harmful.

There is some international evidence that social marketing is limited as a minimising tool for alcohol-related harm.¹¹ It appears that any social-marketing campaign works best when there is an environment that is supportive of the behavioural change the campaign is attempting to bring about. This suggests that merely leaving the question of behavioural and attitude change to a social-marketing campaign without also considering questions of alcohol availability and its promotion and pricing is half-hearted at best and cynical at worst. These other issues are addressed elsewhere in this submission.

2.7 Taxation

The Salvation Army’s Social Policy and Parliamentary Unit has recently completed a report on alcohol taxation and this report will be sent to the Law Commission on its publication in early November 2009. The report, entitled “*Excising Excess: Options for using alcohol taxes to reduce New Zealanders’ harmful drinking*” considers ways in which alcohol excise duties might be applied more comprehensively and deliberately as a harm-minimisation tool.

The World Health Organisation’s Expert Committee on Problems Related to Alcohol Consumption reported that it “viewed alcohol taxes as being a highly cost-effective strategy for reducing rates of alcohol-related problems and as a strategy that can be justified on the grounds of recouping the costs associated with alcohol-related harm”. Based on its investigations and research the Committee also found that “particularly in countries with high levels of hazardous drinking, taxation is likely to be a more cost-effective means of reducing alcohol-related problems than other policies”.¹²

New Zealand appears to be a prime candidate to use alcohol taxes to minimise alcohol-related harm. We have comprehensive and robust tax and border control systems and high levels of hazardous drinking. The greatest barriers to making use of alcohol taxes are our history and the settings of the present excise duties.

Historically, New Zealand has collected alcohol excises as a revenue raising exercise because liquor was not viewed virtuously and because demand for it was reasonably inelastic to price increases brought about by taxes. By the late 1980s

the secondary justification of offsetting public expenditures caused by alcohol had entered policy speak. The use of taxation to moderate demand for liquor and perhaps to better reflect the true social costs of alcohol abuse has not been considered to date.

The present settings of excise duties and the favourable treatment these give to wine and wine drinkers makes it politically difficult to develop a simple and fair alcohol tax regime. While there is evidence that younger drinkers drink RTDs or alco-pops, and many do so hazardously, there appears to be as much hazardous drinking by wine drinkers, who pay less than half the rate of excise duty. Changing this approach will result in significant increases in wine costs; for example, to increase wine excise duties to the same level as alco-pops will increase the cost of an average bottle of wine by 15% and the cheapest cask of wine by around 65%.

A politically-viable approach would be to increase excise duties across the board by 25% and to look long-term at ongoing increases in wine and beer excises to close the gap between these excises and those on spirits and spirit-based drinks. Ideally, too, all liquor should be taxed on the basis of its ethanol content to avoid incentive problems around ethanol content bands.

While it is difficult to accurately predict the impacts of a liquor excise tax increase of 25%, it is possible that such an increase could reduce liquor consumption by 5 to 10% and the harmful use of liquor by 10%, and could raise \$160-180 million in extra taxes. These extra taxes could be used to fund other harm-minimisation policies, such as those of social marketing and increased enforcement.

The question of taxes is most likely outside the mandate of the Law Commission, so it would not easily fall into the set of responses that the Law Commission may suggest to Government. The Salvation Army believes, however, that increasing liquor taxes and basing excise duties solely on ethanol content would provide a powerful element in a multi-pronged approach to harm minimisation. **We ask the Law Commission to strenuously recommend alcohol taxation as a key policy initiative.**

2.8 Liquor Advertising

It is The Salvation Army's view that liquor advertising is not a benign activity whereby consumers are informed about products and where brands are developed and maintained as a way of retaining or building market share. Liquor advertising goes beyond such objectives and is responsible for expanding its market by encouraging more people to drink more. Ultimately, such an objective is socially destructive. Serious thought needs to be given to placing bans on liquor advertising, at least on television, and on print-based price-focused advertising.

Television New Zealand claims that on average New Zealanders watch three-and-a-half hours of television per day and that 65% of New Zealanders watch this on a daily basis with 97% watching TVNZ at least every month. If these claims are correct then a typical New Zealander will be seeing over half-an-hour of TV advertising every day.

The Group Against Liquor Advertising has cited an unreferenced study claiming that "the average viewer over a week sees between 6:30 and 9:30pm, an average of 149 positive messages about alcohol".

The main problem with television advertising of liquor is its lack of balance. Generally, television advertising of liquor presents liquor consumption as a glamorous, fun, sophisticated activity with no negative consequences. These messages are typically targeted at a young audience and have been identified as creating expectations among young people around the results of drinking alcohol.¹³ These expectations are, of course, not entirely accurate.

In lieu of a ban on television advertising of liquor, it may be possible to balance out the messages contained in liquor industry advertisements with social-marketing messages that highlight the risks and dangers of misusing alcohol. Such advertisements already feature though ALAC campaigns, although it may be possible to extend such campaigns with greater advertising frequency and a wider range of messages. Such an extended campaign could be funded through additional revenue from alcohol excise taxes.

Print-media price-based liquor advertising typically focuses on discounted liquor sales and is most popular with supermarkets and liquor store chains. Claims have been made that supermarkets use wine and beer specials as loss leaders to attract customers, although these claims have been denied by the supermarket chains and have not been able to be substantiated because the evidence to do so is not publicly available. Clearly, discounted liquor is an attraction for supermarket shoppers, or otherwise supermarket chains would not bother to spend effort and money on mailers, flyers and newspaper advertising in an effort to promote these products.

The two supermarket chains and their related liquor store chains have considerable buying power and they have been able to subdue liquor prices, especially those for wines. For the five years to September 2009, for example, liquor prices rose 14%, while grocery food prices rose 22% and food prices overall rose 24%.¹⁴ Arguably, this is part of a market-driven economy, but the availability of cheap liquor creates further opportunity for its misuse and for the harms that emerge as a result. At some point a balance has to be struck between market-driven outcomes that may benefit most consumers and the social consequences of these outcomes for a minority of citizens.

The Salvation Army submits that:

5. bans should be placed on all television liquor advertising and on print-media price-based advertising as a key initiative in a comprehensive alcohol-harm minimisation programme.

2.9 Relationship between Sale of Liquor Act & Summary Offences Act

The Salvation Army is concerned that non-compliance with the Sale of Liquor Act may be trivialised through the use of infringement notices. We accept the reasons for the use of infringement notices where an offence has been committed by a member of the public but do not believe that offences committed by licence holders should be treated as mere infringements. The holding of a licence under the Sale of Liquor Act brings with it a number of responsibilities, and a failure to meet these responsibilities should not be dealt with through an infringement notice process.

The Salvation Army endorses the suggestion made in paragraph 11.37 of the Issues Paper of the need for increased penalties for offences against the Sale of Liquor

Act and, in particular, for those offences that involve sales to minors or intoxicated people.

We believe that it should be a misdemeanour to be drunk in a public place, and that such behaviour should be punishable by an infringement notice and on-the-spot fine. The Salvation Army supports the retention of the provisions of section 49 of the Summary Offences Act related to police powers to detain or take home people found intoxicated in a public place. Such responses are not common enough in our view considering that they work well to prevent harm coming to people as a result of their intoxication. Ideally, people receiving assistance under this provision should be expected to contribute towards the cost of such assistance, and the imposition of an infringement notice and fine is one of achieving this. The use of infringement notices to penalise public drunkenness would also allow habitual offenders to be identified and perhaps offered assistance or direction to deal with the underlying causes of their behaviours.

The Salvation Army submits that:

6. greater use should be made of infringement notices to identify and penalise minor misdemeanours by members of the public under the Sale of Liquor Act.
7. penalties for offences committed by licensees under the Sale of Liquor Act should be increased as a clear signal that such offending is taken seriously by the community. In particular penalties for offences involving sales to minors and to intoxicated people should be increased.
8. public drunkenness should be introduced as a new category of infringement subject to a modest on the spot fine and with some supporting infrastructure of detoxification centres.

2.10 Resource Management Act & The Sale of Liquor

The Resource Management Act is principally legislation designed to manage the bio-physical environment. While Part 2 of the Act and section 5 in particular provides a wide but perhaps imprecise definition of the environment, the interpretation and practice behind the legislation has tended to adopt a perspective that sees the environment in bio-physical terms. The Resource Management Act, in fact, comes from an era when such notions as social planning were being rejected, so it is understandable that the Act was interpreted by local government planners to be about physical things and, in particular, about physical effects that could easily be measured and managed by way of district plan rules.

Few, if any, attempts have been made by city and district councils to change their district plans to specifically control for the location of liquor outlets. This antipathy could be as much about the lack of political will to do so as it is about the inability of planners to grapple with the social effects of neighbourhood liquor stores. Such antipathy notwithstanding, however, it may still be difficult to develop a credible argument that the social effects of neighbourhood liquor stores or local bars are sufficiently predictable and precise to be able to be considered as an environmental effect under the Resource Management. If such an argument cannot be developed then it would be difficult to limit the location of liquor outlets in district plans on the basis of their environmental effects.

In terms of the way forward it would seem clumsy to amend the Resource Management Act to specifically allow for controls over the location of liquor outlets when there are a number of other socially-desirable or socially-undesirable activities that could similarly warrant specific mention. Other jurisdictions, such as New South Wales, Australia, specifically link their liquor licensing processes with environment management legislation, perhaps to provide some level of local scrutiny over the suitability or otherwise of liquor outlets. Such linking does not necessarily make for better environmental management legislation.

To The Salvation Army the main issue at stake here is the value of having a review mechanism available to establish the social suitability of a proposed liquor outlet or licence renewal. Such a review process could as easily sit within liquor legislation as within the Resource Management Act or Local Government Act. Given the enormity and complexity of these latter two pieces of legislation it may be easier to include within any new liquor legislation a community impact assessment process alongside some scope for local input and the ability to reject or decline applications where the community impacts are seen to be too onerous.

2.11 Application of Competitive Law to the Sale of Liquor

The Salvation Army applauds local initiatives, accords and protocols that seek to limit harm through voluntary agreements to modify business practices. The Army appreciates the implications of such voluntary agreements for competition law and in particular part 2 of the Commerce Act.

There clearly needs to be some recognition within the Commerce Act that liquor is a regulated good and subject to restrictions on its supply for social reasons. The Commerce Act at present only permits regulated goods to be those where “there is little or no competition and little or no likelihood of a substantial increase in competition” (s.52). This appears to be an unfortunate and unnecessary limitation to the concept of regulated goods and the definition should be broadened to include goods and services that are regulated by another Act. Such a broader definition would create a clear link, and perhaps a clear hierarchy, over the respective policy objectives being pursued by the various Acts.

The application of competition law to the Sale of Liquor Act also requires that some attention is given to how standards such as those around host responsibility are applied. If any amendment to or replacement of the existing Act provides for a broader set of conditions being applied to the issue or renewal of a licence then these conditions need to be applied evenly across all operators within a local market. The imposition of more stringent licence conditions on one operator but not on another may be seen as anti-competitive and should be avoided if only for the reason of fairness.

2.12 Balance between Harm & Consumer Benefit

The debate around the extent of law changes required to address the harm caused by some alcohol consumption has been couched in terms of the benefits that the majority of drinkers derive from their drinking. The argument goes that drinking alcohol provides enjoyment and other benefits to those who drink; it is therefore reasonable to accept some risk of harm or harm itself in exchange for the widespread enjoyment that alcohol provides to over 85% of the population.

This is a typical neo-classical economist's argument based on notions of Pareto efficiency and "the greatest good for the greatest number". However, this is a morally-dubious line of argument because it assumes that the harm caused by alcohol and the pleasure derived from it are exact opposites that can somehow be measured in monetary terms and traded off through simple arithmetic. This line of argument also presumes that the losers from this trade-off are happy losing, content in the knowledge that others are made happier for their losses.

In deciding any policy question there will inevitably be trade-offs between someone's rights and others' obligations. Deciding such trade-offs is essentially a political exercise that advisors such as the Law Commission can really only offer advice on. While such trade-offs are political, they are often also trade-offs between competing values. It is important that this values component in any trade-off is clearly identified so that the basis for the choices made or not made is clearly visible.

The values at stake in the trade-off between consumers' enjoyment of liquor and the harm caused by some liquor consumption include the following:

- **Liberty:** the right of individuals to make choices about what they consume or don't consume.
- **Enjoyment:** the opportunity to consume something that gives you enjoyment
- **Profit:** the right for businesses to make a profit by supplying a good to consumers
- **Safety:** the right not to be harmed by the activities of others

These are, of course, not entirely consistent with each other, which means, amongst other things, that the status quo in effect represents an existing or established trade-off that has perhaps served moderately well to date. However, the status quo often has an inertia that makes it difficult to argue for a new trade-off because those who will lose from the shift away from the status quo may protest more loudly than those who will benefit from it. This inertia can mean that fairness or reasonableness is judged in terms of what already exists and in terms of the extent of change being contemplated, and not in terms of some absolute or objective measure of what is fair and reasonable.

For example, a shift in the balance of rights around liquor will be judged by the majority of the community in terms of their existing entitlements and the degree to which these entitlements are negatively effected. A proposal to lift alcohol excise duties by 25% as a means of perhaps reducing alcohol-related harm by 10% will, most likely, be judged simply in terms of how much extra an individual will have to pay for their liquor. Such a proposal will not assessed in terms of the harm and damage avoided, or by comparison with Australians, who pay far higher excise

duties for their liquor, or by comparison with the past, when the burdens of such excise duties were higher.

To counteract this bias for the status quo it is necessary to recast the debate around the need for change. If the public debate around changes to liquor laws and liquor-related policies is simply cast as a need to find a new balance between consumer benefit and harm, it seems likely that the extent of any change will be limited. If, however, the debate is cast more strongly in terms of the damage and harm that is already being done by liquor and in terms of the equity of the incidence of this harm, then there is the potential for more extensive change. To a degree this latter approach is how the Law Commission has cast the debate in its issues paper.

The question of the equity of the incidence of harm is a useful way of framing this debate around the need for change. There are few arguments to justify the incidence of harm caused by liquor, perhaps outside of some of the harm which an individual drinker causes to him or herself. The family experiencing domestic violence because of liquor don't deserve it. The victim of a road accident caused by a drunk driver did not deserve it, and the neighbourhood disrupted by youth drinking resulting from cheap booze sold at a corner liquor store does not deserve it either. Perhaps even the alcoholic whose life has been wrecked by alcohol didn't deserve their suffering as well.

Arguments that such harm is justified in balance because other people who haven't contributed to this harm enjoy their glass of wine or beer, miss the point on at least three counts. Firstly, the misuse of alcohol is more widespread than many people imagine; ALAC's Drinking Monitor suggests that as many as 20% of drinkers drink hazardously from time to time.¹⁵ Secondly, it is difficult to design public policy that separates out the drinking activities of hazardous and non-hazardous drinkers before harm occurs, which means that a blanket approach to the control of the sale and consumption of liquor is required. This is especially so where more and more liquor is being consumed through off-licence purchases and, hence, there is less direct control on its consumption, and where fundamental rights such as those offered through the Bill of Rights Act and the Commerce Act cannot be limited for groups who just might cause harm. The third weakness in the argument for a balance of benefit and harm is that once the harm has occurred simply requiring the person who caused the harm to account for the damage they have done does not undo this harm. For example, holding a drunk driver to account for the injury they have caused to another road user does not remove the suffering and loss of the person injured regardless of how punitive the consequences to the drunk driver are. We believe that, given the irreversible nature of some of the harm caused by liquor, the framing of liquor policies and laws around rights (to drink) and responsibility (for your drinking) is lacking, ethically and practically.

In The Salvation Army's view, harm reduction and not finding some notional balance between the risks and returns from alcohol use should be the dominant focus of policy. The present policy focus is more or less one of harm optimisation: that of achieving the least harm for the least inconvenience to the liquor industry and the drinking public. A true harm-minimisation policy would start by looking at how much liquor-related harm can be reduced by (perhaps based on international experience) and then to set about providing the circumstances that might achieve this level of harm reduction. For example, what would it take to reduce alcohol related violence to the levels experienced by the least violent OECD country?

2.13 The Health Effects of Alcohol

The health effects of alcohol are well canvassed in international literature that has reported in some breadth the extent of the harmful health impacts of long-term and/or excessive use of alcohol. There appears little dispute of these findings and there is little point in rehearsing these findings in this submission given that its focus is on public policy and legislative frameworks.

The prevalence of the negative health effects of alcohol provide us with a useful alternative lens to view liquor policy through. This is the public health lens. While the theory and study of public health science is less developed and concise than other areas of health science, it does start from a sound empirical basis. This empirical basis is that it is easily and repeatedly observed that an individual's health status is usually not unrelated to their social and economic position. In particular, poorer people and those from indigenous ethnic groups (in societies dominated by non-indigenous ethnic groups) tend to have poorer health and shorter lives than others. Such observations have led to the study of the relationship between social, cultural and economic factors and health outcomes and in particular to the socio-economic determinants of health. Such determinants are highly relevant to the health effects of alcohol and so should be of some interest to those developing public policy around alcohol.

If a public health approach was taken to developing alcohol policy, the focus of policy would move beyond the individual and their propensities, morbidities and mortality, to look at the environments in which people live, including their social environments.

It is The Salvation Army's view that the social environment in which alcohol is presented, sold and consumed is a determinant of the harm that this alcohol does to individuals and the families and communities they are part of. It is not possible, in our experience, to extract the individual from his or her social environment or the harm caused by alcohol from the context in which it is provided. This means that alcohol policy has to pay serious regard to the social environment around alcohol. By this we mean not only the shop or bar or supermarket in which liquor is sold but also the communities in which these premises are located, the medium by which liquor is presented and promoted to consumers, and the economic arrangements that drive its production distribution and sale.

To reduce the harm caused by liquor, The Salvation Army believes that attention needs to be given to re-designing the social environment around liquor. Relevant elements of this environment include the locations where liquor is sold, how it is promoted and presented and the times at which it is available. Important environmental changes that The Army believes alcohol policy should be attempting to achieve include:

- the removal of liquor outlets from locations where they are likely to have a detrimental of social impact on a community or neighbourhood
- tighter restrictions on the hours when liquor is available for sale, both from on-licence and off-licence premises
- tighter restrictions on how liquor is promoted and offered for sale

Specific proposals around these changes are provided elsewhere in this submission.

2.14 Alcohol & Criminal Offending

The relationship between alcohol and criminal offending is well documented¹⁶ and well understood and need not take up space in this submission. The main policy question here is how to remove this link and, by doing so, hopefully reduce rates of criminal offending.

The Salvation Army has active ministries in the courts and prisons in New Zealand, where we offer advice and support to offenders and convicted criminals in the hope that they will, at some point, turn their lives around. It is the Army's experience through these ministries that alcohol is at least a contributing factor in the majority of criminal offending leading to a person's imprisonment. We have previously called for more and improved drug and alcohol addiction treatment programmes in prisons and have been disappointed that this has not been a priority of previous Governments or of the Corrections Department. The recidivism of New Zealand's prison population is persistently high (around 50% reoffend within 12 months), and will remain so if steps are not taken to address the factors that contribute to reoffending, both before a person ends up in prison and while he or she is in prison.

We believe there is a link between a person's propensity to commit a crime and the level of their intoxication; the drunker someone is, the less rational they become, the more impaired their judgement and self-control and the more likely they are to become violent or take unnecessary and unwarranted risks. Levels of intoxication are related to the length of time people have available to get drunk, and while gross intoxication will not cease if opening hours are shortened, the trouble caused by late night drinking will be reduced with some reduction in these hours.

The Salvation Army submits that:

9. more resources should be made available to provide counselling services to those at risk from alcohol and drug use, and for drug and alcohol addiction treatment programmes both inside and outside of prisons. In particular, opportunities for counselling and addiction treatment should be made freely available to at-risk youth and young adults to reduce their likelihood of criminal offending.
10. national standards should be applied to compulsory closing times for on-licence and off-licence premises, both to avoid the cost of local disputes and to limit levels of gross intoxication that arise from extended drinking episodes. The compulsory closing times should be 3 am for on-licence premises and 9 pm for off-licence premises.

2.15 Enforcement

Evidence is available that the restrictions and prohibitions relating to liquor in various laws, such as the Sale of Liquor Act and the Land Transport Act, are not modifying behaviours sufficiently and are being consistently flouted. As discussed above, the levels of prosecutions for sale of liquor to minors perhaps represents just one percent of the actual cases of such sales and as many as 28% of liquor retailer have been found to be breaking the law when random checks were undertaken. As well, the rates at which drivers are being caught with excess alcohol in their blood have not changed significant over the years despite various social-marketing campaigns. Such trends indicate that enforcement remains a problem.

The Salvation Army believes that compliance with liquor laws, especially by those selling liquor, will only improve if levels of surveillance are improved and if penalties are increased.

We do not support a law that would absolutely prohibit the consumption of liquor in all public places. It is not necessarily drinking but drunkenness in public that is offensive and potentially harmful, and emphasis should be placed back on discouraging public drunkenness rather than on extending local liquor bans and expecting police to enforce these. If an emphasis was placed on public drunkenness as a misdemeanour offence then attention would once again have to be given to the provision of detoxification centres for those found to be drink in public. The Salvation Army supports the provision of such centres in the main cities where public drunkenness is already a problem but believes that such centres should be funded from the fines revenue generated from those committing the misdemeanours.

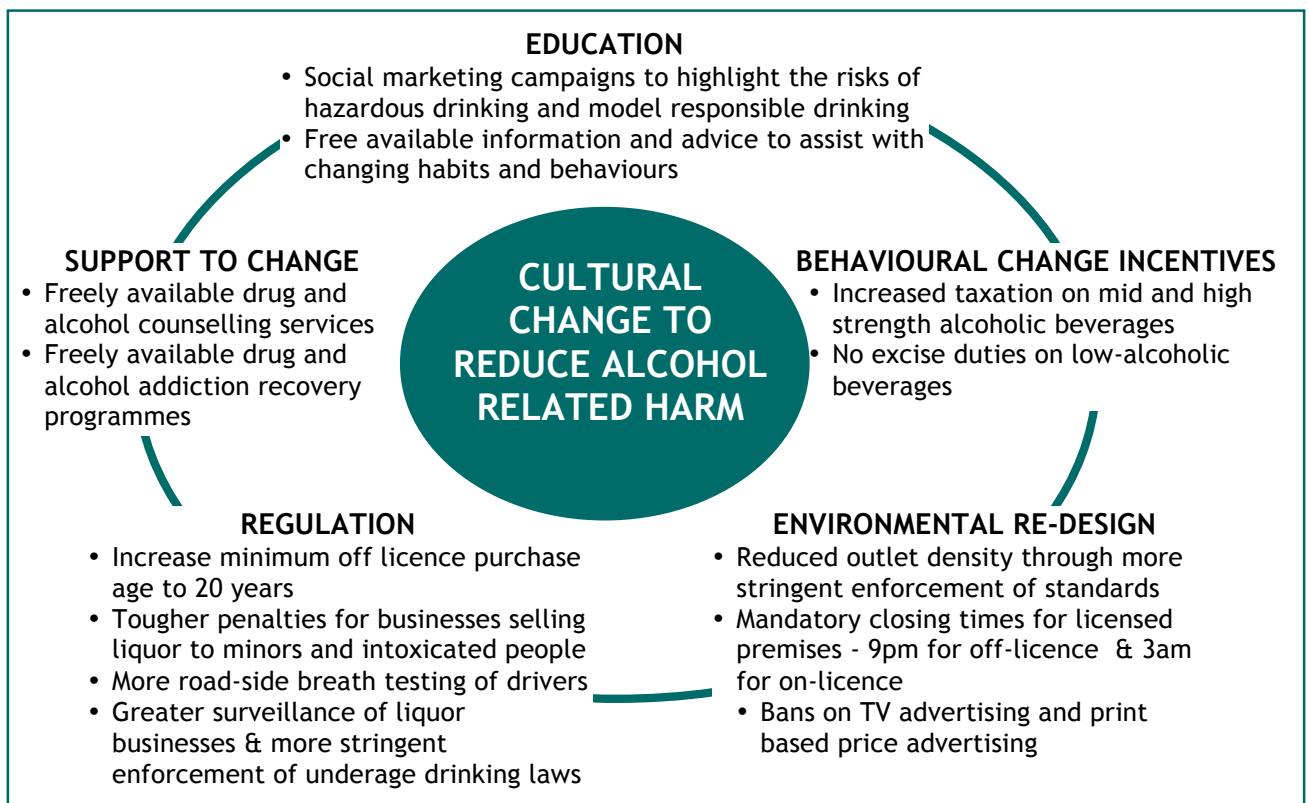
The Salvation Army submits that:

11. more resources should allocated to surveillance of liquor related laws and, in particular, to conducting more roadside breath testing of drivers and controlled purchase operations for liquor sales to minors.

3. CONCLUSION

The Salvation Army believes that a cultural change is required by New Zealanders if we are to effectively address our collective attitudes towards liquor and the harm that the abuse of liquor is causing our families and communities. This cultural change requires leadership from agencies of the State and civil society as well as from community leaders. There is a limit to the extent to which State agencies can and should attempt to bring about cultural change. Ultimately, such changes need to influence our beliefs, values and attitudes and so really need to occur at a personal and communal level. State agencies can, however, contribute to the environment in which cultural change takes place. Therefore, attention needs to be given by the Law Commission, Parliament and other State agencies on what such a contribution might look like.

The diagram below attempts to summarise the proposals which The Salvation Army puts forward in this submission and to provide a possible framework for considering how agencies of the State might influence the cultural change that we believe is necessary.



Finally, The Salvation Army wishes to acknowledge the initiative and imagination that the Law Commission has shown in raising a broader debate around the place of alcohol in New Zealand life. We believe that the time for such a debate is well past due and that the issues raised in the Law Commission’s Issue Paper “Alcohol in our lives” are highly relevant to this debate. We acknowledge that debate is only the first step in the process of reform and hope that the Law Commission will be encouraged both by our submission and in the feedback from others to continue with the process of reform. We wish the Commission well in its efforts.

AUTHORISATION

This submission has been authorised by the Territorial Commander of The Salvation Army New Zealand Fiji and Tonga Territory, Commissioner Donald C. Bell.

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ENDNOTES:

¹ For a brief discussion of the both the risk and protective health effects of alcohol see the World Health Organisation's "Global Status Report on Alcohol 2004" pp37-43 (available at http://www.who.int/substance_abuse/publications/global_status_report_2004_overview.pdf). This report cites evidence of alcohol increasing risks of some cancers (particularly mouth, throat and liver cancers) and liver cirrhosis and some mental illnesses. On the other hand the moderate consumption of alcohol has been associated with some protective effects against cardiovascular disease, ischaemic stroke and diabetes.

² See BERL (2009) "*Cost of harmful alcohol and other drug use*" who estimate the social costs of alcohol at \$5.3 billion (2005/06) and the fiscal costs at \$1.2 billion. Easton (2002) "*Taxing harm: Modernising alcohol excise duties*" estimated the fiscal impact of alcohol misuse at \$2,150-\$2,590 million for 2002/03

³ See comments by Bruce Robertson CEO of Hospitality Association in his article "*Knee Jerk Reaction*" in the Hospitality magazine 10th June 2009.

⁴ There is no publicly available data on supermarket liquor sales. Usually supermarkets would devote floor space to various categories of merchandise in proportion to their contribution to total turnover. Most supermarkets appear to devote between 5% and 10% to wine and beer. Statistics New Zealand in its Retail Trade Survey June 2009 reported total supermarket sales for the year to 30 June 2009 of \$14.8 billion which suggests that supermarket liquor sales would be between \$750 million and \$1.5 billion annually. The Retail Trade Survey also reported liquor store sales of \$1.25 billion and bars and clubs sales of \$1.21 billion for the same period.

⁵ Alcohol Advisory Council (2009) "*ALAC Alcohol Monitor - Adults & Youth 2007/08 Drinking Behaviours Report*" p.26 and Youth Alcohol Survey

⁶ SOURCE: Statistics New Zealand Crime statistics

⁷ See New Zealand Police (2009) "*National alcohol assessment*" p.30

⁸ Alcohol Advisory Council (2009) report (p.26) that 62% of underage drinkers reporting obtaining their liquor from family members while 27% obtained it through friends who were older than 18. Insert note on teenage drinking from ALAC Drinking Monitor

⁹ Attempts have been made to categorise drinking behaviours according some distinctive characteristics such as frequency of drinking, drinking setting, quantities of liquor consumed, the expectations of drinkers, drinking companions and history of alcohol related problems or incidents. This work has been applied particularly to adolescence drinking (see Cable & Sacker(2007) in *Alcohol & Alcoholism* 43:1). The creation of such typologies allows policy makers to consider the risk of harm to certain groups and the value of various specific and targeted harm minimisation programmes.

¹⁰ Alcohol Advisory Council (2009) report that just over half (52%) of youth (12-17 years) reported drinking while just under half these people (24% of all youth) could be described as binge drinkers. Furthermore (p26) reports that around half of binge drinkers reported their parents or other family members as the source of their liquor suggesting that perhaps one in ten families is providing liquor to their younger families member who then subsequently use it hazardously.

¹¹ See for example Stead et al. (2006) "*A review of the effectiveness of social marketing: Alcohol, tobacco and substance misuse interventions*" available at http://www.nsms.org.uk/images/CoreFiles/NSMC-R3_alcohol_tobacco_substance.pdf who report mixed although generally positive results in school based and youth focused social marketing interventions.

¹² World Health Organisation (2007). "WHO Expert Committee on Problems Related to Consumption of Alcohol: Second Report". World Health Organisation, Geneva p.27-28

¹³ Alcohol expectancy refers to the expectations which particularly young people have about the consequences of their consumption of alcohol. These expectations include those

of having fun, being popular especially with the opposite sex and being more confident in social settings. In some ways these expectations are created by marketing and advertising which show such possibilities.

¹⁴ Source Statistics New Zealand Consumer Price Indices dataset

¹⁵ Alcohol Advisory Council (2009) reports that 25% of adults could be classified as binge drinkers (p.6) and that 12% of drinkers reported getting drunk on their last drinking session and 9% reported that they planned to (p.11)

¹⁶ New Zealand Police (2009) "*National alcohol assessment*" reports that 31% of reported crime and 33% of violence is linked to alcohol and intoxication. (p.7)