



**World Health  
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**Western Pacific Region**

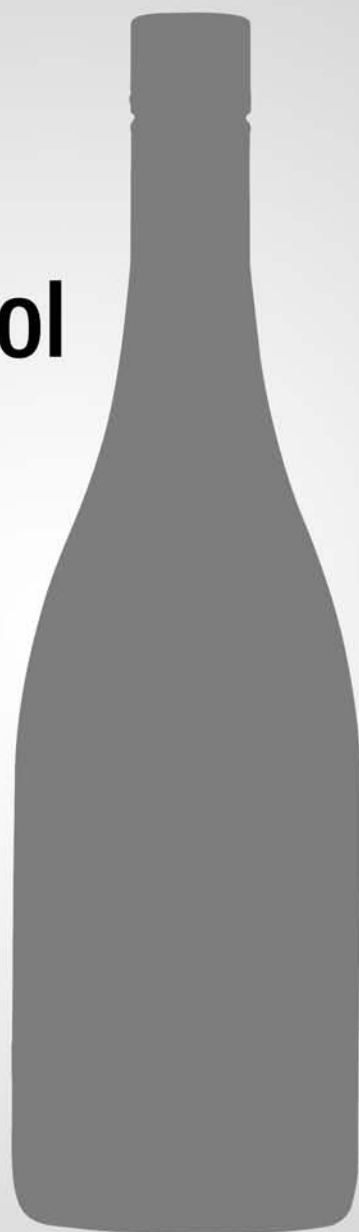
# Addressing the harmful use of alcohol

A guide to developing effective  
alcohol legislation



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# 1.

# Introduction

## **Purpose and audience**

The purpose of this guide is to assist government agencies and ministries in developing country-level legislation to implement, monitor and enforce effective alcohol policies.

The need for this guide was identified by countries in the Western Pacific Region who, after developing their Regional Strategy to Reduce Alcohol-Related Harm, recognized that there was also a need to provide countries with guidance on how to develop legislation to implement the strategy.

Subsequently, in May 2010 the World Health Assembly adopted a Global Strategy to Reduce the Harmful Use of Alcohol, underscoring the importance of this new resource for any country wishing to address this widespread public health challenge.

## **Limitations**

The authors do not attempt to draft standard legislative provisions for all countries as requirements will differ, perhaps considerably, based on local circumstances and existing regulatory frameworks. Instead, the guide draws on alcohol legislation in a range of countries to formulate suggestions for possible legislative wording. These plain language suggestions provide for basic measures that are known to be effective, leaving national legislators to develop any further provisions necessary to address additional local concerns and adapt the measures to local constitutional and administration frameworks. It is hoped that the legislative suggestions will be a useful starting point for policy-makers and those involved in the drafting of legislation aimed at curbing alcohol-related harm.

Effective alcohol policy requires not only good legislation, but also effective implementation and enforcement. Some suggestions in this guide, tried and tested in other countries, may be ambitious for some smaller countries to implement. It is crucial that careful consideration be given to their implications before adoption. In broad policy terms, these proven strategies are appropriate for all countries, but how they are legislated will differ. In regard to implementation



and enforcement, in particular, current institutional structures and available fiscal and human resources may suggest the suitability or otherwise of various options, perhaps including some that go beyond those discussed in this guide.

## **Alcohol-related harm**

Alcohol consumption is one of the most significant risks to health. Globally, alcohol is responsible for 3.8% of all deaths and 4.5% of the burden of injury and disease as measured in disability-adjusted life years (DALY) lost. It is the third largest contributing factor to injury and disease worldwide, almost equal to tobacco, and in developing countries with overall low mortality, it is now the leading factor.

While overall consumption levels are levelling off in some countries with mature alcohol markets, there are increased levels in others. Patterns of drinking are changing. Heavier drinking occasions, particularly by young people, tend to lead to harm and have increased in many countries (Australian Bureau of Statistics 2006; Habgood et al. 2001; Milne 2003). The low proportion of drinkers in some countries and communities masks a tendency for those who do drink to drink large amounts per occasion (Huakau et al. 2004; Secretariat of the Pacific Community 2004, 2005).

Despite different levels of per capita consumption, countries face many similar types of alcohol-related harm. Transport-related injuries are strongly linked to the harmful use of alcohol. There also is a close relationship between drinking and violent crime, including domestic violence.

Drinking by young people is of growing concern in many countries. In many countries and areas, young people are beginning to drink at a younger age and heavier occasion drinking is on the rise (Australian Bureau of Statistics 2006; Habgood et al. 2001; Secretariat of the Pacific Community 2004).

In many countries, public health policy responses are either absent, weak or need updating. This situation, together with growing global consumption trends, urgently necessitates that public health-oriented alcohol strategies be taken up at national, regional and global levels.

## **Responses from WHA and WHO**

In May 2005, growing concerns about alcohol-related harm led WHO Member States to adopt a report and a resolution at the Fifty-eighth World Health Assembly (WHA) on Public Health Problems Caused by the Harmful Use of Alcohol (WHA58.26). The resolution refers to the

alarming “extent of public health problems associated with harmful consumption of alcohol and the trends in hazardous drinking, particularly among young people in many Member States.” It requests Member States “to develop, implement and evaluate effective strategies and programmes for reducing the negative health and social consequences of harmful use of alcohol.”

In May 2008, the WHA again passed an alcohol resolution calling for a WHO-sponsored Global Strategy to Reduce the Harmful Use of Alcohol (WHA61.4). Following a broad consultation process, the Global Strategy to Reduce the Harmful Use of Alcohol was adopted at the World Health Assembly in May 2010.

In light of the global strategy, many countries are developing national alcohol policies and action plans, and considering legislation to give effect to these policies. This guide is a further resource document to support countries in implementing effective legislation for alcohol control.

### **Prioritizing policies for legislative action**

In implementing the global strategy, each country will consider which evidence-based policies and legislative options are appropriate and feasible to adopt. The strategy emphasizes that policy effectiveness depends on using a combination of effective measures together.

Research reviews conducted under the auspices of WHO have identified the alcohol policies that are most effective and cost-effective in reducing alcohol-related harm (Babor et al. 2010; Babor et al. 2003; Holder and Edwards 1995; World Health Organization 2002). Most of the policies with high ratings for effectiveness and cost-effectiveness are alcohol control policies which require legislation to implement. They include alcohol taxation, restrictions on availability, minimum age provisions, measures against drink-driving, and reducing exposure to alcohol marketing.

In 2005 WHO reported to the World Health Assembly as follows on ten ‘best practices’ identified by the research (WHA54/18):

... minimum legal age to buy alcohol, government monopoly of retail sales, restrictions on hours or days of sale, restrictions on the density of sales outlets, taxes on alcohol, sobriety checks, lowered limits for blood alcohol concentration, administrative suspension of licences for driving under the influence of alcohol, graduated licensing for novice drivers (i.e. issuing licences with initial limitations on driving privileges, such as a zero limit for blood alcohol concentration), and brief interventions for hazardous

drinkers. Prevention strategies, such as education and persuasion, although perhaps the most widely applied, are not necessarily effective. Recent evidence suggests that population-based policy measures such as taxation are the most cost-effective public health response to the alcohol-related disease burden in countries with moderate and high levels of alcohol consumption, whereas measures targeted at high-risk or harmful drinkers, such as brief interventions, appear to be more effective where the rates of hazardous consumption of alcohol are lower.

## **The focus of this guide**

Based on recognition by the World Health Assembly of evidence-based strategies and interventions to reduce alcohol-related harm, this guide focuses on policies that research reviews have identified as most effective and cost-effective, and that require legislation to implement.

The guide provides legislative advice for implementing policies:

- To reduce the affordability of alcohol through policies on taxation and price;
- To reduce the availability of alcohol by restricting and/or regulating the sale of alcohol to the public;
- To reduce alcohol consumption by children and young people by setting a minimum age for sale and purchase;
- To monitor and enforce legislation and policy;
- To reduce exposure to alcohol marketing; and
- To deter drinking and driving.

Alcohol legislation should be undertaken with careful consideration of local circumstances and the preparation of an implementation plan. The last section of this guide offers a checklist for an implementation process and discussion of implementation issues.

## 2.

# The importance of public health objectives

### Rationale

Alcohol legislation has historically focused on establishing a licensing scheme for the sale of alcohol. Recognizing that excessive alcohol consumption can have significant detrimental effects on public health, alcohol legislation now places greater emphasis on alcohol control policies to reduce harmful use of alcohol. It is important, therefore, that alcohol control legislation include an explicit statement of the government's public health objectives in passing the legislation. Statements of legislative aims are now common practice. A clear statement of legislative intention is useful in subsequent interpretation of alcohol control laws and to guide decision-makers in applying the provisions of the legislation.

Laws regulating alcohol sales may require detailed decision-making by licensing authorities or enforcement officers, which may later be challenged in court. Reference to the objectives section of the legislation should be included in any decision-making criteria listed in the legislation. Establishing public health and social goals as both the objective and the criteria of alcohol control legislation will enable those empowered to make decisions under the act to take the wider health impacts of alcohol consumption into consideration.

A suitable over-arching objective for national alcohol legislation may be the words of the World Health Assembly's recommendation to Member States, quoted above: "To reduce the negative health and social consequences of harmful use of alcohol." Another common goal in recently passed legislation is the "reduction of alcohol-related harm." Others include "protecting public health" or "community health and well-being." Narrow objectives related to the behaviour of individual drinkers, such as reducing liquor abuse or misuse, are likely to be insufficient on their own.

Broad goals such as those above are often accompanied by more specific sub-goals or objectives. Depending on the national situation, these may focus on reducing consumption by younger people or reducing harm associated with public drunkenness, violent crime or traffic

crashes. Such phrases as ‘reducing crime and disorder’ and ‘the protection of children’ might be considered suitable. In some countries in which drinking is less prevalent, but in which the market is expanding, a goal of arresting the spread of drinking might be appropriate.

## Issues to consider

Legislation regulating business activities is often tested through appeals to higher courts. These test cases tend to lead to narrow interpretations of what the law means and may undermine the law’s ability to meet public health objectives (unless these objectives are explicitly stated). This is why the social and public health goals and objectives of alcohol control policy should be stated clearly and broadly in the legislation. Successive new acts in England and Wales, Scotland and Northern Ireland, quoted below, illustrate the trend to wider goals stated in alcohol legislation. Australian licensing law objectives have shifted from economic growth to now focusing on reducing harm, including violence and disorder. In Australia, New South Wales’ objective requires those responsible for liquor licensing to act in the public interest to minimize harm. Norway’s legislation is explicit in its aim of reducing consumption, a policy shared by several other Nordic countries. The French government’s action plan for 2004-2008 on illicit drugs, tobacco and alcohol included an objective of reducing average alcohol consumption per capita by 20% (Riviere 2004).

Objectives such as ‘reducing liquor abuse’ or ‘reducing misuse’ may be insufficient on their own as they focus decision-making on particular drinker behaviour rather than outcomes and impacts for the community as a whole. In New Zealand, for example, a legislative objective of reducing liquor abuse, together with narrow licensing criteria, has limited the licensing authority to considering evidence of intoxication attributable to the premises. It has been unable to consider evidence of the wider impacts of alcohol (Hill 2003a; Liquor Licensing Authority 2003).

The value of a clear statement of public health and social objectives is also demonstrated when legislation is challenged under trade agreements (see Regional Strategy 4.3.3., Resource Book, s.3; Babor et al. 2010; Hill and Casswell 2006). Alcohol control policies may be perceived by some as running counter to competition policies or principles of market access, putting the policies at substantial risk. However, World Trade Organization trade agreements allow for the adoption or enforcement of any measure necessary to protect human life or health or to maintain public order (General Agreement on Trade in Services (GATS) Article XIV). A clear statement in legislation of the government’s social and public health goals and objectives and care in the design of restrictive alcohol control measures can avoid the need to defend such policies against legal challenges (Baumberg and Anderson 2008; Zeigler 2009).

For example, Sweden's restrictive alcohol advertising policy was challenged as a barrier to market access, but upheld by European Court of Justice as a measure to address government health goals (ECJ C-405/98). There was a legal question about the 'proportionality' of the measure and Sweden adjusted its policy to allow print advertising only and strengthened its defence by passing a Public Health Objectives Act in 2003.

### Table 2.1 : Legislative examples

#### **Liquor Act, Queensland, Australia (1992)**

To regulate the liquor industry in a way compatible with minimizing harm arising from misuse of liquor; and the aims of the National Health Policy on Alcohol; and to regulate the sale and supply of liquor in particular areas to minimize harm caused by alcohol abuse and misuse and associated violence.

#### **Liquor Control Reform Act, Victoria, Australia (1998)**

4. The objects of this Act are—
  - a) to contribute to minimizing harm arising from the misuse and abuse of alcohol by—
    - i) providing adequate controls over the supply and consumption of liquor; and
    - ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
    - iii) restricting the supply of certain other alcoholic products; and
  - b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
  - c) to contribute to the responsible development of the liquor and licensed hospitality industries.

#### **Liquor Act, New South Wales, Australia (2007)**

1. The objects of this Act are as follows:
  - a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community;
  - b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality; and
  - c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
2. In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour);
  - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and
  - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.'

**Alcohol Act, Norway (1989)**

“...to curb to the greatest possible extent the harm to society and the individual that may result from the consumption of alcoholic beverages. To this end the Act aims at limiting the consumption of alcoholic beverages.”

**Public Health Objectives Act, Sweden (2003)**

Target area No. 11 includes: “Reduced use of tobacco and alcohol...”

National Action Plan to Reduce Alcohol-Related Harm, 2001-2005:”To reduce the harmful medical and social effects of alcohol.”

**United Kingdom Alcohol Acts**

**England & Wales (2003)**

Prevention of crime and disorder  
Prevention of public nuisance  
Public safety  
Prevention of harm to children

**Scotland (2005)**

Prevention of crime and disorder  
Security of public safety  
Preventing public nuisance  
Protecting and improving public health  
Protecting children from harm

**Northern Ireland (proposed for new Act)**

Promotion of public health  
Promotion of public safety  
Prevention of crime and disorder  
Prevention of public nuisance  
Protection of children from harm  
Fair treatment of all stakeholders

**National Policy on Prevention and Control of Alcohol Related Harms, Viet Nam (2007)**

**Overall objective:**

Reduce the use, minimize alcohol abuse, control and reduce supply of high alcoholic beverage to reduce alcohol-induced health and social harms, making contributions to improved health status, quality of life and poverty reduction for Viet Nam.

**Alcohol Beverage Control Act, Thailand (2008) (Explanatory Note)**

The reason for the promulgation of this Act is that it is recognized that alcohol beverage has caused health, family, accident, and criminal problems, which affect the overall social and economic condition of the country. It is deemed expedient to stipulate measures for control of alcohol beverage as well as treatment or rehabilitation of the alcoholics in order to reduce social and economic impacts and improve public health by making people realize the dangers of alcohol beverage and protect children and youths against easy access to alcohol beverage. It is therefore necessary to promulgate this Act.

**Table 2.2 : Suggested legislative texts**

**Legislative objectives**

From the World Health Assembly's recommendation to member states:

“To reduce the negative health and social consequences of harmful use of alcohol.”

Or

“The object of this Act is to regulate the sale and supply of alcohol to the public with the aim of contributing to the reduction of alcohol-related harm and the protection of public health and community wellbeing.”

Or

“The object of this Act is to regulate the sale and supply of alcohol to the public in the interests of public health and well-being, with the particular purposes of protecting children and young people, reducing alcohol consumption, and preventing violent crime, disorder and other forms of alcohol-related harm.”



# 3.

## Reducing affordability

### Rationale

The price of alcohol is a key factor influencing levels of consumption and subsequent alcohol-related harm. There is considerable evidence that low alcohol prices encourage higher consumption, including heavier drinking per occasion and underage drinking, leading to increased alcohol-related harm. When prices rise, the use of alcohol and other drugs decreases, and vice versa (Babor et al. 2010).

National statistics over recent decades reveal a strong relationship between increased alcohol affordability – that is, price relative to income – and patterns of consumption, including increased underage drinking (Academy of Medical Sciences 2004; Scottish Government 2008; Wall 2009).

Young people and heavy drinkers are particularly sensitive to the price of alcohol (Chaloupka et al. 2002; Chaloupka and Wechsler 1997). There is also evidence that the heaviest drinkers seek out cheaper drinks, giving them a unit of alcohol at a lower cost than the drinks more moderate drinkers buy. This means that population-based policies to influence price are also effective for targeting the groups that drink most heavily.

Both alcohol taxes and minimum pricing strategies have a broad reach and are relatively low cost to implement or strengthen, so the impact to be expected from these policies is high relative to other policies.<sup>1</sup> Regulation or taxes that differentially affect lower-priced drinks may be more effective at reducing heavy drinking and harm (Babor et al. 2010).

The policies and legislative examples addressed in this section are:

- alcohol taxation affecting price;
- dedicated funding from alcohol taxes; and
- minimum pricing.

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<sup>1</sup> Note, taxes have the benefit of raising revenue for government health promotion programmes, which is not the case for minimum price schemes where price increases are retained by industry.

## Alcohol taxation

### Rationale

Alcohol taxation<sup>2</sup>—that is, a specific commodity tax on alcohol products, in addition to any general sales or company taxes—is an important and cost-effective means by which policy-makers in both developed and developing countries can influence the price of alcohol and help reduce alcohol use and related harms (Babor et al. 2010; Thamarangsi et al. 2006).

Part of the cost-effectiveness of this policy strategy lies in the fact that most countries already have a customs system in place that imposes tariffs on imports and/or an excise duty system that imposes special taxes on locally produced alcohol and tobacco when these goods enter the domestic market.

Tariffs on alcohol imports and excise duties on local production have historically been a source of government revenue, and this practice continues to be particularly important in many developing economies (Narsey 2003; Room 1991; Room et al. 2002). Revenue from alcohol excise duties can potentially contribute to off-setting the economic impacts of alcohol-related harm.

Alcohol tax policy provides an opportunity to look beyond issues of government revenue, however. The evidence shows that governments can use their alcohol excise rates as a public health tool to reduce levels of alcohol-related harm (Easton 2003).

For example, to promote healthy lifestyles and reduce social ills, the Malaysian government increased alcohol excise duties in September 2004 by 26% on beer and 20% on other alcoholic beverages. Industry reports showed a decrease in beer consumption of 5% in 2005 and 8% in 2006 (Euromonitor International 2005; Heineken NV 2006).

### Issues to consider

#### Government revenue

The revenue gained from alcohol taxation means that a government's fiscal interests can be broadly compatible with public health goals. Some of the effective actions required under the global strategy will require expenditure. The specific taxes on alcohol contribute to government funds and offset these costs as well as help offset fiscal costs arising from alcohol-related harm.

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2 Commodity taxes on alcohol and tobacco within a country are often termed 'excise duties', a term used in this Guide.

The effect of price changes on alcohol consumption is described as the price elasticity of demand. It has been shown (in many high-income countries) that alcohol is inelastic. That is, when the price of alcohol increases, there is a drop in consumption, but this drop is not large enough to reduce the excise tax take (often a concern of governments). Therefore, taxation can be used as a strategy to reduce harm without negatively impacting on government revenue.

## **Trade obligations and public health**

Attention has been drawn to the potential impact on harmful alcohol use of international trade and trade agreements, which aim to increase product availability, price competition and marketing. Trade agreements (such as General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) on which many bilateral and regional agreements are modelled) require equal treatment of imported and locally produced goods. Tariffs that are considered to discriminate against foreign products or companies in favour of local products or companies are seen as protectionist and are likely to be challenged. Governments ease the impacts of globalization for vulnerable industries by reducing tariffs over an agreed number of years. For example, in the late 1990s Nigeria liberalized economic policies and signed trade agreements but, despite criticisms, used tariffs to safeguard its domestic alcohol production during a transitional period as the local industry was based on and supported local agricultural production.

With alcohol, tariff reduction is typically addressed by converting the import tariffs into an excise duty, levied at equal rates on domestically produced and imported alcohol products of similar types. Trade negotiators may advise this strategy to avoid unwelcome reduction in government revenue and may also see it as a sufficient solution to other concerns about liberalizing alcohol imports. It will be important at this point, however, for governments to consider carefully the likely impacts of increased trade, competition and marketing as well as tariff and excise duty levels on alcohol consumption and public health. In moving to equal treatment, some countries replacing tariffs with excise duties have adopted the lower of the two rates. However, the change offers an opportunity to instead set alcohol tax rates at a level that will be effective in addressing public health goals.

The World Health Assembly's 2010 Global Strategy to Reduce the Harmful Use of Alcohol notes that international trade agreements generally recognize the right of governments to take justifiable measures to protect human health, provided these measures are not merely disguised trade restrictions. The strategy recommends that national, regional and international trade negotiations take into account the harmful impacts of excessive alcohol consumption.

## Registering producers and importers for tax purposes

Alcohol excise duties are typically imposed at the wholesale level, collected by Customs and Excise Officers from importers and producers at the point at which products are about to enter the retail market. Collection requires some form of registration or licensing of all producers or places of manufacture. The recommendation in the global strategy for regulatory mechanisms in regard to production, importation and wholesaling of alcohol is largely to facilitate these taxation procedures, although regulation at this level can also have health and safety purposes. Unsafe distillation methods, for example, can accidentally produce highly poisonous methyl alcohol rather than ethanol.

Regulatory controls at the level of production and importing may continue to be most important and useful in countries where informal, illicit or smuggled alcohol is a considerable problem. Licensing or a register establishes records for all legitimate sources of alcohol as a basis for alcohol taxation and enforcement and, if necessary, for tracking product movements to limit diversion to the illicit market.

For example, in Canada the production of spirits or wine without a licence is prohibited by the Excise Act and warehouse permits must be obtained to store goods on which excise duty has not yet been paid. In New Zealand, the Customs and Excise Act prohibits the manufacture of dutiable goods except in a manufacturing area that is licensed under the Act. In Canada it is illegal to possess an unlicensed still. By contrast, in 1996 New Zealand made distilling spirits for personal use legal, as is beer brewing and wine making. With the popularity of drinking at wineries and micro-breweries, both countries have a particular licence for 'fermenting on the premises' for both tax purposes and for regulating sales to the public.

Regulation at the wholesale level appears to be strongest in jurisdictions which formerly had a state monopoly at this level. In Estonia, production is licensed by the state to ensure safe production standards for distilled spirits. In some Canadian provinces, state-owned production and distribution continue on a non-exclusive basis.

## Setting alcohol tax rates

Comparing national legislation on alcohol taxation can be complex. Alcohol taxes are typically included in legislation on customs and excise in general that may cover both import tariffs and local excise taxes. In some alcohol may be addressed by listing it along with other dutiable commodities in an attached schedule (trade agreements also take this approach). Excise duty rates on different products are typically set or changed by regulations. Different rate-setting systems may be used, based on volume or value. Methods of determining or metering

volumes and absolute alcohol content of products, powers of inspection and administrative procedures are generally set out in regulations.

A complicating factor in comparing alcohol excise duty rates is that countries may be phasing out tariffs as part of their obligations under trade agreements (see above) and reconsidering their domestic excise duty policies on alcohol to ensure equal treatment of imported and domestically produced alcohol. Alcohol excise duty rates in other jurisdictions, such as Australia and a number of American states, may also be in flux as governments address anomalies or move to raise rates for public health reasons.

Changes to import tariff regimes as a result of trade agreements are an opportunity to reconsider the rates at which a new or existing excise duty is set. Often the key consideration is to safeguard the existing level of government revenue from this source. However, another important consideration is the direct fiscal costs to government of alcohol-related harm, particularly in countries where alcohol consumption is rising. As a consequence, governments may wish to consider calculating the direct cost associated with alcohol-related harm when considering tax rates and tax collection systems for alcohol, and setting tax rates at a level which allows a government to recover its direct costs associated with this harm.

Direct costs include emergency, hospital and health services, policing and traffic control, monitoring and enforcement of alcohol laws, including taxation. Social costs are more difficult to quantify. Governments also need to take into account the costs of alcohol harm that are not met directly from their own budgets but nevertheless have tangible economic impacts on households and businesses. These might include the costs of lost earnings, lower productivity due to absenteeism, and the costs that crime and road traffic accidents also impose on households. These are real costs but are not part of the government's budget.

The trend internationally is towards setting alcohol excise rates that reflect the alcohol content of different alcohol products or beverage types (Thamarangsi et al. 2006), rather than rates based on wholesale or retail price. The excise duty on spirits is typically higher because production costs in relation to the alcohol-by-volume are lower than for other beverages. In some countries, such as China, this may be because the government wishes to discourage a troublesome tradition of heavy spirits drinking.

In 2008, as part of stronger alcohol policy, Viet Nam replaced alcohol excise duty rates that varied for different alcohol products with rates based on alcohol content, to be raised over the next few years. By 2013 there will be a 50% excise duty on spirits above 40% alcohol by volume (ABV) and on beers of all types, and 25% excise duty on other alcohol products below 20% ABV (Hanh 2009; Viet Nam-Sweden Health Corporation Program 2007).

### 3. Reducing affordability

From the mid-1990s sweet, ready-mixed spirit drinks (RTDs, alcopops) began to be marketed. They are very attractive to young starter drinkers, and also to young women (Copeland et al. 2007; Huckle et al. 2008b; Mosher and Johnsson 2005). With an alcohol by volume content of 5% to 9% per drink, some countries initially categorized these drinks for excise duty purposes with beer, not as spirits. France, Switzerland, Germany and Denmark have all ensured that their alcohol excise rates no longer favour alcopops.

Other examples of excise duty scales that encouraged disproportionately cheap alcohol contributing to problem drinking have been a low tax on Australian cask wine and 'lite' spirits in New Zealand that slipped under the 23% ABV excise duty band, making the pricing attractive for young drinkers. The rate was raised, removing the cost advantage, and production in this category dropped by 90% (Anderton 2003).

In setting rates to reflect the alcohol content of different beverage types, alcohol excise duty scales should be graduated as finely as practicable. A scale based on steps of alcohol content that are too broad may encourage changes in production to fit a product into the top end of a lower taxed band, resulting in a cheaper price in relation to alcohol content. This is what happened in New Zealand where a new category super-light spirits was created by a manufacturer to fit within the new tax bands.

### **Indexing alcohol tax rates against inflation**

Alcohol prices have been falling in many countries over recent decades because of changing industry cost structures, but also because many governments have allowed alcohol excise duty and its effect on prices to be eroded by inflation in the general cost of living. It is important, therefore, for countries to have tax legislation for alcohol that allows ready adjustment of rates for various alcohol products on an annual basis and which allows rates to be adjusted for inflation.

In New Zealand, legislation provides an annual process for indexing excise duty rates to the inflation rate, but is written so as to limit any adjustment to the amount of inflation only. Any larger increase requires a legislative amendment and the support of Parliament.

For greater detail about methods of setting alcohol excise duty rates and inflation adjustment, see the WHO's background paper Alcohol Taxation in the Western Pacific Region (Thamarangsi et al. 2006).

## **Adjusting taxation to prevent increasing affordability**

The effective price of alcohol to the consumer can also be affected by changing income levels within a country. In times of increasing incomes, excise tax levels may also need regular adjustment to ensure alcohol does not become more affordable (Rabinovich et al. 2009).

## **Setting excise tax rates to increase minimum prices**

Awareness of the importance of the availability of lowest priced beverages has led to calls for minimum pricing regimes (see below). A taxation system can also take into account minimum prices if a monitoring system is in place to assess cheapest prices and base tax levels on these.

## **Unrecorded alcohol**

The effectiveness of raising alcohol taxes to reduce alcohol-related harm may, in some countries, be undermined by a possible increase in illegal or unrecorded alcohol production or, in some cases, by cross-border smuggling. The risk of this varies among countries.

Most countries of the Region have some level of unrecorded alcohol production on which tax, for various reasons, is not collected. For example, Australia and New Zealand allow home brewing or distilling for personal use only – around 4% of reported consumption in New Zealand (Habgood et al. 2001). Production for sale and supply to others must be reported and taxed. Many Pacific Island countries and areas as well as countries in Asia have traditions of producing alcohol locally, some of which is fermented and some distilled. There may be issues in regard to quality and toxicity, particularly as this informally produced alcohol is increasingly for sale rather than for personal use. The existence of a widespread informal alcohol markets threatens the viability of some of the more effective policy interventions of taxation and control of availability.

In some countries with high levels of informal production, attention is being given to bring this alcohol under regulation and taxation. Mongolia is currently doing so with a programme of quality inspection and accreditation. Bringing home production under regulation may reduce the number of producers, or it may encourage producers to move up to a commercial scale. In South Africa and Japan, one outcome of regulation and taxation of village production of traditional beverages is that global companies are now producing these drinks on an industrial scale (Babor et al. 2010).

In Thailand, alcohol producers and importers are registered, licensed and taxed, so any unregistered products – lacking excise duty stamps – are known to be illegally produced or

smuggled (sometimes by registered producers or importers). Most illegally produced alcohol is traditional white spirit ('arrack') which is very cheap, but not fashionable with young people.

## **Monitoring and enforcement**

The cost-effectiveness of alcohol taxes as a public health strategy is in part based on the fact that countries typically already have customs and excise systems in place as a source of government revenue, which means that administrative systems for collection are already in place. Regulation, reporting and taxing from importers and local producers involves fewer points of collection and enforcement than, for example, sales tax.

Higher alcohol taxes (and possibly minimum pricing policies) may possibly lead to an increase in illegal unreported alcohol production, particularly in countries where home brewing or distilling is a traditional and wide-spread skill. In some countries, there may possibly be a risk of increasing cross-border smuggling from neighbouring countries with lower alcohol excise rates or prices. These risks will vary between countries.

Effective monitoring and enforcement, backed by sanctions is, therefore, an important part of tax policy to be addressed in legislation. Enforcement costs may be offset by excise duty revenue or by lower fiscal, economic and social costs as a result of reducing heavy consumption of cheap alcohol. Dedicated funding from alcohol taxes may be a way of increasing resources for enforcement (see below).

In markets where informal or illicit alcohol is an issue, excise duty stamps or labels may be a useful means of verifying that the appropriate duties have been paid. The stamps will need to be carefully designed to avoid counterfeiting. Rates should be set at least high enough to cover additional monitoring and enforcement costs without diminishing revenue.

Higher taxes affecting alcohol prices may shift consumption to less expensive and possibly, in some countries, more hazardous beverages. This will depend on the alternatives available.



### **Table 3.1 : Suggested legislative text**

Inflation-indexed taxes on imported and domestic alcohol

- 1) The Minister may from time to time impose such rates of excise duty and excise-equivalent duty on any alcoholic beverage type or class of alcohol beverage.
- 2) The rate of any duty established under subsection (1) shall be set out in an order of the Minister made under this section. Any change in the rates of excise duty and excise-equivalent duty made under subsection (1) of this section:
  - a) shall have regard to movements in the Consumers Price Index All Groups excluding credit services; and
  - b) in the case of a change in the rates of excise duty and excise-equivalent duty for alcoholic beverages, may come into force only on XX in any calendar year.
- 3) When setting a duty under subsection (1) the Minister shall ensure that the duty is set in a manner which ensures that the rate of duty for domestically produced product and imported product is the same.

## **Dedicated funding from alcohol taxes**

### **Rationale**

Revenue from taxes on alcohol typically goes into the general accounts of government. There is no requirement that this revenue will be spent on reducing or meeting the costs of alcohol-related harm although it can contribute to police and justice budgets, offsetting costs arising from alcohol-related traffic crashes, alcohol-related crime and public disorder. As general revenue, it also offsets public health and health care arising from alcohol-related disease and injury. At the same time, implementation and enforcement of effective alcohol policies, including collection of excise duties, incur their own costs and may be perceived as expensive if they are competing for budget against the full range of government services rather than viewed separately in an alcohol cost-benefit analysis. In general though, government revenue is not linked to government spending and spending will only relate to alcohol if it is a policy priority.

Consideration can be given to dedicating a proportion of alcohol excise duties or a separate levy on alcohol to alcohol control, health promotion and harm prevention activities. In some jurisdictions, a commodity tax on petrol or proceeds from traffic fines is set aside for traffic enforcement or prevention. In other jurisdictions, excise duty on tobacco is set aside for health promotion and other programmes designed to reduce smoking-related harm. These are often referred to as earmarked taxes as the spending is linked to the revenue stream.

### 3. Reducing affordability

Even a small additional levy (0.5% to 2%) could provide a basis for alcohol control efforts. For example, in 1992-1997, the Northern Territory of Australia placed a small levy on alcoholic drinks stronger than 3% ABV (that is, exempting low alcohol beer) to fund a variety of alcohol harm reduction programmes. The combination of price increase and programme implementation significantly reduced acute alcohol-related mortality in the Territory, an effect which did not continue after the levy was removed (Chikritzhs et al. 2005). In New Zealand dedicated funding from tobacco tax was used to replace sponsorship funding for sporting or cultural activities that came from tobacco companies.

A number of countries use dedicated funding from taxes or a separate levy on tobacco and/or alcohol to support a Health Promotion Foundation and its activities. In 1987 a state levy, separate from federal excise tax, was dedicated to funding the first Health Promotion Foundation in the state of Victoria, Australia. There are now Health Promotion Foundations in several states of Australia, New Zealand, Tonga, Fiji, Malaysia, Singapore, the Republic of Korea, Mongolia, Switzerland, Austria and a number of other countries.

This body's role may be specific to health promotion on tobacco or alcohol (i.e. its source of funding) or, like the Mongolian Health Promotion Foundation, it may have wider public health purposes and activities. This purpose could include supporting community initiatives, research projects and meeting the costs of improved monitoring and enforcement. It may also have a policy advisory or regulatory role, with purposes and functions established by legislation.

Evaluation of tobacco-funded examples suggests that this approach could have the following advantages:

- no cost to government;
- no diversion of funds from other government programmes;
- no need to compete in the annual government budget round;
- potential funds for a comprehensive alcohol control campaign, including monitoring and enforcement;
- increased prices of alcohol products, helping reduce consumption and alcohol-related harm;
- less public resistance than general taxation as taxpayers are much more aware of where the revenue is being spent; and
- its existence and activities can contribute to changing societal attitudes about alcohol (Victorian Health Promotion Foundation 2002).

The World Health Organization advises that health promotion foundations require a clearly formulated and strong legislative framework for organizational structure with good governance,

clear objectives and established funding mechanisms (Rehn-Mendoza 2010). The WHO publication *The Establishment and Use of Dedicated Taxes for Health* relates to tobacco but is a useful resource for establishing a Health Promotion Foundation (Carol 2004). In addition, the International Network of Health Promotion Foundations offers support for the development of new foundations.

## Issues to consider

### Funding options

Funding for health promotion or enforcement from government revenue in a consolidated account can be affected by changing priorities and competition between departments in the annual budget round. Dedicated funding is more stable and may be secured in one of two ways. Tax legislation on alcohol excise duty can include provisions that set aside a percentage of the revenue for specific purposes related to alcohol control, treatment or health promotion. To maintain general government revenue at the existing level, this percentage will be an increase in the alcohol excise rate. Alternatively, separate health legislation can establish a levy on the tobacco or alcohol industry, over and above current alcohol or tobacco excise duties, for a particular purpose such as health promotion fund or agency.

In several countries, the levy approach has been preferred. The funds come directly from the industry concerned to the Fund or Foundation. Public debate can focus on the benefits to health, not the sensitive politics of government tax increases. It decouples the dedicated fund from any increases in alcohol (or tobacco) excise duty rates.

In some countries, however, the Finance Ministry may be reluctant to allow control of any revenue to pass to another department or agency in the form of a dedicated fund but it is noteworthy that the legislation establishing Thailand's Health Promotion Foundation was proposed by the Finance Minister.

In New Zealand, the legislation creating the Alcohol Advisory Council imposed a two per cent levy on alcohol sales to fund it and its activities (separate from and additional to alcohol excise tax). This was raised to three per cent in 2006. Thailand has an additional levy on alcohol and tobacco that funds Thai Health, a government advocacy and health promotion agency that covers all drugs (Siwaraksa 2005). After studying the Victoria and New Zealand models, ThaiHealth was funded from levies on both tobacco and alcohol. It currently receives a third of its funding from tobacco and two thirds from alcohol. Activities include support for a widespread network of NGO organisations, specific community campaigns (e.g. no alcohol during funerals) and a strong role in policy development. There is now a new proposal to set

aside a further one per cent of alcohol tax revenue as dedicated funding for an enforcement agency to address illegal production of alcohol that goes untaxed. In all three countries, the levy is legislated for in the Act that established these public health agencies and their functions, but is collected under the same rules as excise taxes by Customs and Excise.

A further issue to consider is whether to source funds from levies on several health-harming industries and establish a fund or Foundation to address a wide range of issues related to noncommunicable disease control. For example, as well as alcohol and tobacco taxes, some countries are debating a tax on fat levels in food.

### **Fund or foundation?**

Dedicated funding ensures a long-term investment in a stable programme of public health activities. The creation of an Alcohol Advisory Agency or Health Promotion Foundation provides an appropriate organizational structure for the management of monies and activities and can ensure good governance of the fund. Transparency is assured by requiring regular reporting to the elected national body. The board of the foundation may include members with public health expertise or representing communities, or may exclude persons with vested interests. A foundation can be mandated by its legislation to perform a set of functions and activities that may be less appropriate to the role and politically-led priorities of a government department. It also provides greater insulation of the budget in times of economic difficulties.

Funding from levies or excise duty on more than one health-harming commodity can ensure a foundation address a wider range of functions and health promotion activities. For example, the Mongolian Health Promotion Foundation is funded from alcohol and tobacco sales, but its activities also include the promotion of health through physical activity. A broad funding base can support greater expert knowledge, integrated studies or programmes and independence of advice from the influence of any one industry.

A broadly based foundation need not limit its public health focus to alcohol-related harm. It could also be used to address a wide range of public health issues, such as tobacco use and nutrition.

The choice of fund or foundation may be a matter of capacity. For example, in the Western Pacific Region a number of small Pacific island countries and areas are currently investigating the establishment of foundations. Tonga has set up a foundation. Tonga's Foundation is partly funded from the consolidated fund. In case of smaller Pacific island countries and areas with limited administrative capacity, a Health Promotion Fund is being preferred to the creation of a foundation. This fund can be administered by an existing government agency, such as the

Ministry of Health, but with a resulting loss of relative autonomy that could be achieved by having a stand-alone body whose sole focus is on public health activities.

Whatever mechanism is chosen, care is needed to design and implement appropriate governance and accountability arrangements for a fund or a foundation. These arrangements should include mechanisms designed to ensure independence from political and commercial interests.

## **Effective use of dedicated funding**

In setting aside alcohol taxes for particular purposes, it is important to consider whether these resources are being dedicated to strategies of proven effectiveness in reducing alcohol-related harm. The health promotion purposes of a fund or foundation should be broadly defined to include all effective policy strategies and avoid ineffective strategies, such as expensive, stand-alone media campaigns, which may be made viable by the availability of funding.

For example, mass media campaigns and school-based education increase awareness and knowledge about alcohol, but they have limited effect on drinking behaviour if nothing changes in the social, legal or economic environment around the drinker (Babor et al. 2010; Edwards et al. 1994). The best use of media campaigns may be to raise public awareness about the package of effective laws and policies that the government is putting in place. This was the approach being taken by the Norwegian Directorate for Health and Social Affairs in a 2004 campaign (“Alvorlig talt”), which aimed to increase knowledge about harms from alcohol consumption, to advise parents on communicating with their children about alcohol, and to increase public awareness of the need for and effectiveness of restrictive alcohol policy measures (Rise 2005). Evaluation of New South Wales’ drink-drive policies suggests media campaigns are ineffective if focused on social harm, but they can be important in contributing to high awareness of police enforcement and convincing the average motorist that there is a high chance of being caught (Homel 1993). Media campaigns may also add value if they directly support and are clearly linked to organized nongovernmental organization (NGO) activity.

Alcohol control laws require monitoring and enforcement to be effective (Babor et al. 2010). Costs, often met from police, justice or local government budgets, often limit this work. Dedicating a portion of alcohol excise duty or a levy to ensure an effective level of monitoring and enforcement of alcohol laws and policies is something that governments should consider as part of an effective policy package.

### Table 3.2 : Suggested legislative text

#### **Dedicated fund for alcohol control activities**

- 1) A fund is established called Alcohol Control Fund [or Health Promotion Fund].
- 2) The fund shall comprise the proceeds of a levy on all importers and manufacturers of alcohol.
- 3) The rate of the levy shall be set annually by regulations.
- 4) In every financial year a levy of the amount set by regulations is payable by every person who—
  - a) imports for consumption any imported alcohol that contains more than 1.15% volume of alcohol; or
  - b) manufactures within the country any alcohol that contains more than 1.15% volume of alcohol.
- 5) All levies payable under this Act are payable to the Customs & Excise Department under the Customs Act for payment to the Fund.
- 6) The fund shall be administered by the [Ministry of Health] for the purposes and activities in subsection (7) below:
- 7) The fund shall be used for the purpose of reducing harms related to the use of alcohol, including:
  - a) programmes and activities aimed at promoting public health and reducing harmful use of alcohol;
  - b) collection, monitoring and enforcement of excise duty under the Act;
  - c) monitoring and enforcement of alcohol control laws and policies; and
  - d) research and evidence-based advice to government.

#### **Alternative, in tax law:**

- (1) A fund is established called Alcohol Control Fund [or Health Promotion Fund].
- (2) The fund shall comprise X% of the proceeds of excise tax on alcohol payable by importers and manufacturers of liquor.
- (3) The fund shall be used by the [Ministry of Health] for the purposes of reducing harms related to the use of alcohol, including:
  - (a) programmes and activities aimed at promoting public health and reducing harmful use of alcohol;
  - (b) collection, monitoring and enforcement of excise duty under the Act;
  - (c) monitoring and enforcement of alcohol control laws and policies; and
  - (d) research and evidence-based advice to government.

### **Dedicated Foundation for alcohol control purposes**

- 1) The purpose of this Act is to:
  - a) provide for the establishment of a health promotion foundation having as its primary objective the reduction of harms related to the use of alcohol;
  - b) define the Foundation's functions and powers; and
  - c) make provision for the funding of the Foundation's activities by means of a levy on alcohol imported into or manufactured in (country).

## **Minimum pricing**

### **Rationale**

There is evidence that the heaviest drinkers and young people, in particular, seek out lower priced alcohol. The affordability of alcohol can be affected by alcohol marketing strategies based on price discounting and also by situations and policy changes that result in lower prices. There is evidence that raising the minimum price of the cheapest beverages can be an effective way of reducing alcohol-related harm and that it will be especially effective in influencing heavy drinkers (Babor et al. 2010).

Large retailers, such as supermarket chains, have the ability to purchase in bulk and then sell alcohol very cheaply to draw people into the store. These are known as 'loss leaders' (i.e. below cost). In New Zealand, for example, the bulk buying power of the two big supermarket chains means 'specials' can cost less than the wholesale price to other alcohol retailers (New Zealand Herald 2010). This kind of discounting has led some high-income countries, such as Scotland, to consider a minimum price approach.

A minimum price policy sets a floor under price competition. It does not dictate all pricing, and may not affect the pricing of many products. It does not intervene in other aspects of fair competition, such as quality, service or profitability.

### **Minimum pricing policies**

A number of governments have set minimum sales prices to reduce rates of alcohol problems, although currently the practice is not common. It is most easily done in jurisdictions where government monopoly alcohol outlets can alter retail prices to meet certain objectives. Minimum prices have also been set by regulating privately owned retail outlets and at the wholesale level by licensing or other regulation of producers or importers (Babor et al. 2010).

There is little research that directly measures the impact of minimum pricing. However, the effectiveness of minimum pricing as an intervention can be inferred from the alcohol tax

### 3. Reducing affordability

research literature which shows that increasing price does have an impact on consumption. The effects of minimum alcohol pricing and banning discounting by off-licensed outlets have been modelled for England and Scotland. For Scotland, the model showed a steep increase in effectiveness as the minimum price rose. A price of 35 pence (U.S. 55c) per standard unit of alcohol would decrease consumption by just over 1%, with the least effect on wine and little reduction in harmful behavior. By contrast, a price of 70 pence (U.S. \$1.10) decreased consumption by nearly 19%, with sharp reductions in alcohol-related hospital admissions and deaths criminal offending, work absenteeism and unemployment.

A ban on all forms of price promotion and discounts would reduce consumption by 3%, similar to a minimum price of 40 pence to 45 pence (U.S. 63c-71c) per unit. Implementing both policies together – that is minimum price and ban on price promotion discounts - doubled the impact only at low minimum prices; banning discounting added little to the effectiveness of a 70 pence (U.S. \$1.10) minimum price. When prices increase by, say, 10%, drinkers tend to reduce the amount they drink by less than 10%. Therefore, although these policies will reduce consumption, particularly hazardous and harmful drinking, retailer revenue is expected to increase (Purshouse et al. 2009).

In Canada, most provinces set floor prices for alcohol sold in state monopoly stores and in licensed outlets (Giesbrecht 2000). Minimum prices for beer have been justified in Quebec and Ontario as contributing to public health and order (Giesbrecht et al. 2006). In British Columbia, Canada, the Liquor Control & Licensing Act (1996) allows alcohol pricing in licensed establishments to be set by regulations under the Liquor Control and Licensing Act, whereas in Manitoba the legislation empowers the licensing commission to set prices without requiring a formal regulation approval by government. Producers are licensed, allowing investigation and regulation of prices and, in Manitoba, profits at the wholesale level.

Minimum pricing is currently being debated in the United Kingdom. In Scotland, the birthplace of whisky, alcohol is now 62% more affordable than it was in 1980 and there are concerns about cut-price and loss-leader promotions by off-licensed outlets (Scottish Government 2008). In late 2009, the Scottish government introduced a licensing amendment bill that will make minimum pricing a mandatory condition of an off-licence. A minimum price per unit of alcohol will be set by Scottish Ministers through regulations and applied by licensees to products of varying strength and volume using a formula in the bill. Packages of two or more products may not be sold for less than the products individually. The current prohibition of on-premises promotions involving free or discounted drinks will be extended to off-licensed premises.



This approach is already being tried by some towns. The local licensing board for Perth, Scotland, has set minimum prices since 2002 as a standard condition of its off-licences (Scottish Government 2008). In Oldham, Yorkshire, to reduce recent increases in alcohol-related violence, the city council is reviewing the on-licences of 22 bars and nightclubs selling cut-price drinks and threatening to exercise its legal power to restrict other aspects of operation unless the bars voluntarily adopt a minimum price of 75 pence (U.S. \$1.18) a unit (Bilton 2009).

## Issues to consider

### Competition policy and trade

Regulating a minimum price of alcohol in the interests of public health may appear to run counter to other policies, such as market competition or reducing barriers to trade. However, the policy treats all products equally, dictates the bottom of price scale only and does not affect other aspects of fair competition.

Pricing policies may be opposed by some sectors of the alcohol industry as interfering in local and global markets. For example, a producer group, the Scottish Whisky Association, suggests Scotland's proposed policy would contravene European Union trade rules. In the 1970s, the European Court of Justice considered minimum pricing would prevent imported products with lower cost structures from exercising a legitimate price advantage (Northern Ireland Assembly 2009). However, recent European Union rulings have upheld other restrictive alcohol policies, provided they treat all imported and domestic products equally. In principle, restrictive measures to protect public health can be defended under international law if the government goals are clear, a range of options has been explored, there are good reasons to prefer the option proposed and there is evidence that it will achieve the goals.

Specialist alcohol retailers and the hospitality sector may see minimum pricing policy as putting a level playing field under unfair competition and also increasing their profit margin on lower-priced drinks if the margin is retained by them. For example, Scotland's Bar Restaurant and Dance Association does not oppose a minimum price policy if it is consistent across all licensing districts in the country. In public submissions, minimum pricing was supported by nearly 40% of trade and business submitters, as well as 89% of local governments and 90% of health organizations (Scottish Government 2008). Concern has been expressed that increasing profit margin for the industry might result in increased expenditure on marketing.

## Monitoring and enforcement

Ensuring compliance with minimum price regulations will require some additional resources but, in an effective licensing system, would be just part of routine monitoring and enforcement of all sale of liquor laws (see section on Monitoring and Enforcement). Legislation would address how the minimum price is set price (most flexibly by regulations under the Act) and any specific sanctions.

In jurisdictions without a licensing system, checking retail alcohol prices may receive low priority from police. Setting a minimum price at the wholesale level could be considered as an alternative, and monitored when producers and importers report quantities for alcohol taxes purposes. The wholesale level has the advantage of fewer parties to monitor, but does not fully address retail loss leaders sold deliberately below the wholesale cost.

One option is to require wholesalers to submit pricing schedules regularly to relevant government agencies and “hold” those prices for a set period of time. These prices can be then be posted. Monitoring is promoted because government agencies can spot check compliance relatively easily.

### Table 3.3 : Legislative examples

#### **Liquor Control and Licensing Act, British Columbia, Canada (1996)**

The Lieutenant Governor in Council may make regulations as follows:

- z) respecting liquor pricing in licensed establishments.

#### **Liquor Control Act, Manitoba, Canada (1988)**

The commission has the following powers:

- z) To fix the various prices at which liquor of all kinds may be sold by the commission or by any person under this Act, and to provide for the issuing and distributing of price lists showing the prices to be paid for each class, variety, or brand, of liquor kept for sale under this Act.
- gg) To inquire into any matter that relates to, or arises under, the operation of this Act including, without restricting the generality of the foregoing, the operations of brewers, distillers, and other persons holding licences under this Act, and the prices charged, and the gross and net profits made by them, and the cost to them of carrying on their operations.

### **Table 3.4 : Suggested legislative text**

#### **Minimum pricing**

- 1) Alcohol must not be sold at a price below the minimum price per unit of absolute alcohol.
- 2) The minimum price per unit is such price as is set by regulations under this Act
- 3) The minimum price of alcohol is to be calculated according to the following formula—  
MPU x S x V x 100, where—  
MPU is the minimum price per unit (see above),  
S is the strength of the alcohol, and  
V is the volume of the alcohol in litres.

# 4.

## Regulating availability

### Rationale

The evidence is strong that regulating the physical availability of alcohol for sale – that is, preventing easy access to alcohol at any time – can reduce alcohol-related harm.

Availability theory postulates that alcohol consumption and related problems increase when alcohol becomes more accessible and convenient to use. Evidence from a wide range of policy evaluation studies supports this theory. By restricting hours, days, and locations of sale, as well as the density or concentration of alcohol outlets and drinking establishments, policy-makers can reduce overall exposure to alcohol's intoxicating and toxic effects, and thereby reduce alcohol-related problems (Babor et al. 2010).

This principle underpins many commonly used laws and policies on alcohol. State controls over the availability of alcohol for sale is a long standing practice in the mature alcohol markets of the world. The purpose was initially tax revenue, then public order, then public health, as welfare states took up fiscal responsibility for health care in the 20th century (Room 1997). Some countries license, regulate or directly control the production and distribution of alcohol, but regulation of the sale of alcohol to the public is the main means by which governments seek to achieve public health objectives. The most effective of the laws on the sale of alcohol are those that restrict availability.

High numbers of alcohol outlets affect availability and convenience of alcohol use, contributing to increased consumption and levels of alcohol-related harm. Research shows that the density of alcohol outlets has an impact on public health outcomes. The higher the density of alcohol outlets in a country, a region or a locality, then the greater the level of alcohol-related problems, including public order and violent crime. This effect is demonstrated most clearly in studies at the local level. In high density entertainment districts, a complex interaction of factors contributes to this effect. These findings from a breadth of research studies have implications for the management of the vibrant night-time economies that many cities seek to develop (Babor et al. 2010; Livingston 2008; Livingston et al. 2007).

The policies described below are not quantitative restrictions on alcohol products in the market (as, for example, in some import licensing). Rather they aim to reduce ease of access and convenience and ensure the responsible sale and supply of alcohol.

The policy strategies and legislative examples addressed in this section are:

- Reducing alcohol outlets;
- Licensing the sale of alcohol;
- Restricting hours and days of trading; and
- Monitoring, enforcement and sanctions.

## **Reducing alcohol outlets**

Reducing the number or density of alcohol outlets is not a quantitative restriction on alcohol products, but can be an effective way of regulating availability and accessibility and of reducing alcohol-related harm.

Reducing the number of retail alcohol outlets and drinking venues is achieved in different countries by two main means:

- government monopoly ownership of alcohol outlets; and
- restrictions on the number, type, and location of alcohol outlets.

Under previous Australia and New Zealand legislation, the number of licensed alcohol outlets was restricted through licensing criteria that require applicants to demonstrate community need for any new licensed premises.

In countries with high levels of informal (untaxed) production and sale of alcohol some governments, for example, impose tax on sales above a certain monetary level. This might work to reduce informal sales outlets over time as might setting and enforcing licensing fees at levels which cover the costs involved with monitoring and enforcement (see section 7).

## **Government monopoly of retail outlets**

In many jurisdictions around the world – parts of the United States of America, most Canadian provinces, most Nordic countries, and several Indian states – a large share of alcohol continues to be controlled through state monopoly ownership of retail outlets selling take-away alcohol (Kortteinen 1989; WHO 2004). State agencies, sometimes one or several, license private businesses, such as restaurants, bars and accommodation hotels, to sell alcohol for consumption on the premises.

#### 4. Regulating availability

All the Nordic countries except Denmark have a state-owned retail monopoly selling alcohol, although with variation in the strength of the alcohol covered by monopoly rights – from above 2.25% alcohol by volume (ABV) in Iceland to above 4.75% ABV in Norway. The higher rates allow low strength beers to be sold in grocery stores. The monopolies also vary in the number of outlets in relation to population and hours of trading. Each state monopoly sells at the same prices across the country.

Public opinion surveys show majority support for the Nordic countries' restrictive alcohol policies, and two-thirds support for the retail monopolies (Alko 2009).

In most Canadian provinces and territories, liquor control boards have a monopoly on alcohol retail sales or a mix of state and licensed outlets. Only one province is fully privatized. Liquor control boards also import and wholesale alcohol, regulate or supervise aspects of advertising, set the retail prices at which alcohol may be sold, appoint inspectors and conduct public inquiries. In provinces operating a mix of state and private wholesalers or retailers, to avoid conflicts of competitive interest, a separate board makes decisions about licensing for these and for licensing on-licensed premises (Giesbrecht 2000). In other words, the board of the state monopoly which is the key supplier for on-licensed premises does not also make decisions about their licences and regulations affecting them.

Government monopolies on alcohol retail sales have been rated as a low cost and effective way to reduce alcohol-related harm, provided public health and public order objectives are the primary rationale for the system, rather than revenue maximization (Babor et al. 2010). One key mechanism for effectiveness is that jurisdictions with government monopoly systems operate fewer outlets, reducing availability. Their management policies on hours of trading and pricing can also reflect public health objectives.

From a monitoring and enforcement perspective, fewer outlets also has a positive impact on the ability of police and other enforcement authorities to ensure that outlets are complying with relevant alcohol control laws.

Outlet numbers of government retail monopolies vary between jurisdictions and over time. The strongest locational restriction of outlets as part of public health alcohol policy has been in Scandinavian countries and in some Canadian provinces.

## Issues to consider

### A possible model

A government retail monopoly system would be one way of controlling the locational availability of a large proportion of alcohol, and directly ensuring responsible sales policies, thereby contributing to government health objectives. As in other countries with state retail monopolies, this approach could work in conjunction with a licensing system for sale on alcohol for consumption on the premises.

For example, in Niue take-away alcohol can only be purchased from the government's bond store. In other parts of the Pacific, alcohol is readily available in towns and is spreading to rural areas. Some villages and localities, for example, in Papua New Guinea, are setting their own rules restricting the availability of alcohol.

### Trade considerations

A number of international trade agreements and economic treaties have affected the activities of state enterprises and monopolies. While most such agreements recognize the right of partner countries to run monopolies, their activities are subject to trade disciplines (e.g. Article VIII of GATS).

When the Scandinavian countries entered the European Economic Area or European Union their monopolies came under pressure. Their import, export, wholesale, and production aspects were privatized, but their retail monopolies were upheld by the European Court of Justice. The Swedish state monopoly was required to include alcopops in its retail range. Challenges under trade agreements were threatened to the Canadian provincial monopolies (leading to a weakening of the Ontario system, including a lower minimum price for beer) and more recently to the US state monopolies (Giesbrecht et al. 2006). None have proceeded to the World Trade Organization (WTO), however. As of 2009, the status of all currently existing state monopolies is stable.

The key issue under trade agreements is not who owns outlets but that governments allow market entry, impose no quantitative restrictions on products, and treat all imported and domestic products equally. Under GATS Article VI on Domestic Regulation, licensing procedures should not in themselves be a restriction on supply. It is nevertheless possible to implement effective alcohol policies to meet public health objectives (Baumberg and Anderson 2008).

Trade in alcohol can be expected to increase, highlighting the potential impact of trade agreements on alcohol consumption and related harm, and the need for coordination and coherence between trade and health objectives and policies.

## Retail monopoly and licensing

Countries with state retail monopolies typically license private businesses to sell alcohol for consumption on the premises. If this approach is adopted, then legislation will need to address these two situations. The Act will prohibit anyone other than the state monopoly from selling take-away alcohol and establishing a decision-making body for the state monopoly, for example the Alcohol Control Boards in Canada. The legislation should make it clear that the board is the only organization that is permitted to undertake this activity. A production or wholesale monopoly may also prohibit anyone else from warehousing or distributing alcohol.

In addition, the Act will prohibit anyone from selling alcohol for consumption on the premises without a licence or allowing premises to be used as a place of drinking. These key prohibitions are discussed further in the section on law enforcement through prosecutable offences.

### Table 4.1 : Legislative examples

#### **Liquor Control Act, Ontario, Canada (1990)**

Power and purposes of the Liquor Control Board

- 1) The purposes of the Board are, and it has power:
  - a) to buy, import and have in its possession for sale, and to sell, liquor and other products containing alcohol and non-alcoholic beverages;
  - b) to control the sale, transportation and delivery of liquor;...
  - d) to establish government stores for the sale of liquor to the public;
  - e) to authorize manufacturers of beer and spirits and wineries that manufacture Ontario wine to sell their beer, spirits or Ontario wine in stores owned and operated by the manufacturer or the winery and to authorize Brewers Retail Inc. to operate stores for the sale of beer to the public;
  - f) to control and supervise the marketing methods and procedures of manufacturers and of wineries that manufacture Ontario wine, including the operation of government stores by persons authorized under clause (e)...
  - g) subject to the Liquor Licence Act, to determine the municipalities within which government stores shall be established or authorized and the location of such stores in such municipalities;...
  - i) to fix the prices at which the various classes, varieties and brands of liquor are to be sold and, except in the case of... a duty-free sales outlet, such prices shall be the same at all government stores.
  - h) A different Board under a separate Licensing Act is responsible for licensing bars, restaurants and hotels to sell alcohol for consumption on the premises.



## Table 4.2 : Suggested legislative text

### The Alcohol Control Board

- 1) An alcohol control board is established. The board's functions are to: give effect to the purposes of the Act;
  - a) sell alcohol and non-alcoholic beverages for consumption off the premises;
  - b) control the sale, transportation and distribution of alcohol;
  - c) establish and operate stores for the sale of alcohol to the public;
  - d) control and supervise the marketing of alcohol; and
  - e) fix uniform prices for the sale of alcohol in all stores operated by the board.
- 2) Nothing in this section affects the licensing of any person to sell alcohol for consumption on the premises which is under the sole jurisdiction of the [separate licensing board or authority].

### Prohibited to sell alcohol

- 1) No person other than the Alcohol Control Board shall sell or supply alcohol for consumption off the premises.
- 2) No person, other than the Alcohol Control Board, may sell or distribute alcohol from any store, warehouse or other place which is not operated by the board.
- 3) No person shall sell or supply alcohol without a licence for consumption on the premises.
- 4) No person shall allow any unlicensed premises which they own, rent, manage or control to be used as a place of resort for the consumption of alcohol.
- 5) Subsection (2) does not apply to any dwelling house and to a gift of alcohol to another person by the person at their dwelling house.
- 6) Any person who contravenes subsection (1), (2), (3) or (4) commits an offence punishable on conviction by a fine.

For further discussion of these key provisions prohibiting unauthorised sale of alcohol see Section 7 on monitoring and enforcement.

## Planning restrictions

Where liquor licensing legislation does not provide for decision-making on the number and location of different types of alcohol outlet, the issue is likely to arise in locality planning processes. If licensing laws are permissive, then planning for the location of different types of alcohol outlet becomes important.

Typically, in high income countries, national-level legislation will dictate the processes and zone types for local district planning. Then local councils decide what land use activities they

#### 4. Regulating availability

will allow in those zones within their district. By considering the sale of alcohol as a land use activity, decisions are made about what kinds of alcohol outlet – restaurant, bottle store, supermarket, or late-night bar – and what hours of trading are appropriate for particular zones.

In New Zealand, for example, no councils currently restrict licensed premises or outlets in urban commercial districts, and no councils allow licensed premises or outlets (or other new commercial premises) in residential areas. Some allow bottle stores or licensed restaurants in small blocks of shops within residential districts, which has often led to contention in the community. Problems are sometimes resolved through council policies or licence conditions about the nature of the business or the hours of trading in different zones. Under liberal licensing laws and complex planning laws, the proliferation of licensed premises in some localities has become a political issue at local and national level in New Zealand (Hill 2003a, b). Problems are most likely where planners have not given sufficient consideration to the sale of alcohol and its possible impacts on amenity and environment. Legislation, however, can be used to mandate procedures for planners to undertake, including public hearings, before alcohol licenses can be issued.

Liquor licensing legislation often prohibits licensed premises in close proximity to schools, hospitals and places of worship (e.g. the Intoxicating Liquor Act of Tonga). This restriction can be included in the criteria for granting the various kinds of licence. Sometimes it is done by council policies or plans that require a buffer zone of so many metres from sensitive community facilities or from residential housing. In the United States of America, where the most research on alcohol outlet density has been done, many states use zoning to regulate the density of alcohol outlets to protect the health, safety and welfare of the community. Some states have declared a moratorium on new licences (Hill 2003a).

In Australia, the New South Wales' Liquor Act 2007 has addressed issues of outlet density and harm in entertainment districts by allowing the licensing authority to declare a temporary moratorium or “freeze period” on the granting of any new or moved licences, special occasion licences or extension of trading hours within a particular declared precinct. The freeze also restricts any changes likely to increase the number of people who enter the precinct or increase patron capacity of any premises. Some councils in Victoria and the Northern Territory have also recently declared a moratorium on licensing any new alcohol outlets.

#### **Issues to consider**

Some of the above strategies to restrict alcohol outlets through zoning and council policies are pragmatic responses to tension between national level liquor licensing laws and community concerns. Town planners may have little awareness of alcohol issues and public health

impacts. Development of district plans is slow, and changing them slower. It can be helpful to ensure the exchange of expertise at early stages of preparing both liquor licensing legislation and local district plans.

Below is an example of legislative text from Western Australian that limits licensing based on locational impacts. The New South Wales example is a recent amendment that allows the licensing authority to place a moratorium on any new licence in areas with high density of outlet and drinkers.

This can also addressed by giving the licensing authority a clear power to grant or deny a licence and criteria that include locational impacts and outlet density (see suggested text, p.43).

Local government rules related to the location of licensed premises can also be covered by requiring a planning consent certificate to be submitted with the licence application and including local government alcohol policies in the criteria for granting a licence (see suggested text, p.43).

### **Table 4.3 : Legislative examples**

#### **Liquor Control Act, Western Australia (1988)**

An application shall not be granted where the licensing authority is satisfied that an undue degree of offence, annoyance, disturbance or inconvenience to:

- a) persons who reside or work in the vicinity of the place or premises to which the application relates; or
- b) persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school, would be likely to occur.

#### **Liquor Act, New South Wales (2007)**

47B Restrictions on granting new licences...

(2) During the freeze period, the Authority must not grant an on-premises licence (other than an on-premises licence referred to in subsection (1) (c) [ Section 47B (1) (c): on-premises licence that relates to a public entertainment venue]) for subject premises if the Authority is satisfied that the granting of the licence is likely to result in an increase in the number of persons who enter the freeze precinct in which the premises are situated principally to consume alcohol...

#### **47D Restrictions on varying or revoking licence conditions**

- 1) During the freeze period, the conditions to which a licence is subject, being a licence to which this section applies that is held in respect of subject premises, must not be varied or revoked if any such variation or revocation would result in an increase in the trading hours of the subject premises. This subsection does not, however, prevent the granting of an extended trading authorization as referred to in section 47C (c) [the Authority must not grant an extended trading authorization for the sale or supply of liquor for a special occasion if it is likely to result in:
  - i) an increase in the number of persons who enter the freeze precinct principally to consume alcohol, or
  - ii) an increase in the patron capacity of the premises].
- 2) Without limiting the operation of subsection (1), the Authority must not, during the freeze period, take action under any other provision of this Act to vary or revoke the conditions to which a licence is subject, being a licence to which this section applies that is held in respect of subject premises, if the Authority is satisfied that the variation or revocation of the condition is likely to result in:
  - a) an increase in the number of persons who enter the freeze precinct in which the premises are situated principally to consume alcohol, or
  - b) an increase in the patron capacity of the premises.

#### **Table 4.4 : Suggested legislative strategies**

##### **Suggested legislative strategies**

- Give the Authority clear power to refuse as well as grant a licence (see p.42)
- Include criteria related to location and/or density among criteria for granting or refusing the licence
- Incorporate town planning and any local government alcohol policies by requiring a compliance certificate to be submitted with the licence application (see p.42)

Suggested text is not provided here as these issues are covered in more detail in the sections indicated.

## **Regulating the sale of alcohol through licensing**

### **Rationale**

In most mature markets for alcohol, governments operate a system of liquor licensing to regulate alcohol sales for both on- and off-premises consumption. A liquor licence grants a privilege to sell alcohol while others may not. It is a contract between regulators and the licensee with terms and conditions laid down in the legislation or attached to the individual

licence. Some jurisdictions also licence wholesale distributors, which may include a right for small wine or beer producers to provide samples or sell to the public.

There is evidence from a range of industries that a licensing system can be an effective means of regulating business activities in the public interest, provided it is well monitored and enforced. Legislation on the sale of alcohol could simply dictate the law and establish a set of offences to be enforced by police. A licensing system allows greater responsiveness on the detail of regulating business activities and also more responsive enforcement. Responsive regulation through a licensing system can increase compliance with the law (Ayres and Braithwaite 1992).

Legislation regulating the sale of alcohol typically establishes a licensing authority and processes, sets criteria and conditions for different outlets, and lists prosecutable offences and other grounds for the suspension or cancellation of the licence. Offences include selling alcohol without a licence, selling alcohol outside permitted hours of trading, and selling to minors or to already intoxicated customers. The same legislation makes it an offence for minors to purchase alcohol or for other adults to supply alcohol to them (see section 6). The act will also regulate hours and days of trading, either by law for all licensed premises or as a condition of each licence. Recent acts have included prohibited irresponsible promotions by licensees and this may also be the best place for other regulation of alcohol advertising marketing.

Licensing is a mechanism for policy implementation for the purpose of meeting public health objectives and for encouraging and ensuring the responsible sale of alcohol. Licence application processes enable licensees to be vetted and educated about the alcohol laws. The privilege of a licence enables legislation to go beyond prohibiting specific offences to requiring good management practices, such as training, age verification, providing food and non-alcoholic drinks, noise reduction, etc. Licensing provides regulators with both a carrot and a stick (Ayres and Braithwaite 1992). Suspension or cancellation of a business's liquor licence has a far larger financial impact than prosecution and a fine for serving a minor.

Licensing can also be used to provide flexibility, particularly at the local level, to impose conditions on alcohol sales activities as a means to address local concerns. For example, a license may be granted on condition that noise abatement modifications are made in the design or with early closing hours because of the particular location involved.

#### 4. Regulating availability

The rationale for licensing the sale of alcohol to the public includes the following:

- To establish information and records about which persons or businesses are selling alcohol to the public;
- To monitor compliance with alcohol laws, such as prohibition of sales to minors;
- To set conditions on licences to reduce alcohol-related harm and/or alcohol-related impacts on local communities;
- To establish specific roles and responsibilities for monitoring and enforcing laws related to the sale of alcohol;
- To assist with enforcement of alcohol legislation by allowing for the suspension or revocation of licences for breaches of laws or licence conditions; and
- To levy fees to directly fund compliance monitoring and associated activities.

Arguments against licensing include compliance costs for the hospitality and retail industries and the practicalities of introducing a licensing system, particularly in countries with large numbers of small businesses selling alcohol. In such circumstances, compliance monitoring without a licensing system is likely to be equally difficult. Laws related to the sale of alcohol may receive low priority from police.

The approach taken in this guide is to encourage the implementation of a system of licensing for the sale of liquor to the public.

### Issues to consider

#### **Object of the Act**

As noted earlier, a clear statement of legislative purpose is important to inform later interpretation. This purpose should also be included or referred to in the listed criteria for granting types of licence, focusing on the need to mitigate against problems associated with excessive alcohol consumption.

#### **Controlling the right to sell alcohol to the public**

The key regulatory mechanism that most countries use to control alcohol is legislation that makes it a prosecutable offence for any person to sell alcohol to the public unless authorized to do so. This offence typically incurs the heaviest fine under the legislation. The legislation then establishes a system of powers and processes for authorizing the sale of alcohol. This is done by establishing a government monopoly or a system of off-licences to sell take-away alcohol and on-licences (and perhaps other categories of licence) to sell alcohol for consumption on the premises.

Restricting the hours and days when alcohol may be sold has historically also been a key mechanism in alcohol control legislation, with offences incurring heavy fines.

### **Decision-making authority**

In establishing a licensing system, there are important considerations related to institutional location of decision-making powers. There are pros and cons in locating decision-making at the local level, where licensed premises can be more easily monitored, or at a national level, where decisions cannot to be influenced by close personal relationships and small town politics. The best solution is probably one that suits the scale of the country and its alcohol market, rather than one 'best model' from another country.

The Australian states each have their own legislation, with a licensing authority and appeal body in each state. In New Zealand, changes to a bill in Parliament resulted in a two-tier system, with initial processing and monitoring at the local level and any contested decision referred on to a national-level authority, which holds hearings around the country. In England and Wales, licensing is decided by local committees of Justices of the Peace and in Scotland by committees of local government. In both countries, there are growing discrepancies in the application of the legislation and local policies, with no specialist national agency responsible for maintaining an overview.

If the licensing authority is an appointed body, consideration should be given to its membership: number of members; term of office; whether juridical or public health expertise is required; and avoiding conflicts of interest from any involvement in alcohol-related businesses.

There is variation between countries on whether the licensing authority is a quasi-judicial body or an administrative body under a director with powers of enforcement and also powers to inquiry into any matters relevant to the Act. This decision will also affect how much discretionary power the decision-making body is to have. Devolution of decision-making to the local level may result in discrepancies among districts. This problem can be avoided if legislation is written with narrow criteria and little room for flexibility. But this may lead to dissatisfaction if decision-makers are prevented from reasonably resolving problems. Most jurisdictions allow their licensing authority some discretion to set additional licence conditions. Under New Zealand's legislation, written with full devolution in mind, the national licensing authority handles contested applications, but finds itself unable to respond to community concerns. There are now proposals to include alcohol policies adopted by local councils in the legislation's criteria for granting licences.

#### 4. Regulating availability

The legislation may establish criteria for appointments to the decision-making body – such as the number and qualifications of members, whether a judge is required, public health representation, and rules in regard to conflicts of interest. Thailand’s Alcohol Beverage Control Act 2008 is of interest in requiring appointments from the highest levels of government. It establishes a Policy Committee comprising Ministers with relevant portfolios and expert advisers. Its role is to prepare policy and an action plan for controlling alcohol through taxation and other measures, as well as treatment and rehabilitation, and submit these to the cabinet. It also establishes an Alcohol Beverage Control Committee comprising heads of relevant departments, expert advisers and representative of nongovernment groups “that aim to reduce alcohol consumption, to protect children and youths or women, and to protect consumers.” Advisers and NGO representatives must be Thai, have no recent criminal convictions, no alcohol convictions in the past five years, not be alcoholic, hold no political or political party office, and have no business involvement in the alcohol industry. There are similar appointments to a Bangkok committee and a Provincial committee. The role of the control committees is to advise on detailed regulations under the Act, to be announced by the Minister of Health. In addition, an Office of the Alcohol Beverage Control Committee administers, coordinates, undertakes research and provides public information.

Responsive regulation theory suggests that legislation should focus on establishing regulatory processes, relationships and powers, rather than on concrete requirements that may later need changing. Legislation often provides a process for regulations on details (fees, fines or administrative processes) without the need for legislative amendments. Some requirements can be imposed using the licence itself through the setting of standard or individual conditions (Ayres and Braithwaite 1992).

Scottish licensing boards are required to provide an annual statement of licensing policy, on which decisions will be based. This is developed in consultation with police and other local agencies. The policy may include a statement of ‘over-provision.’ In late 2009, parliament was considering an additional requirement for boards to investigate and report whether local sales of alcohol were having a detrimental effect on young people aged under 21.

#### **Licensing the person or the premises**

A licensing system aims to ensure the responsible sale of alcohol and management of premises by licensing only ‘fit and proper’ or ‘suitable’ persons. The suitability of new applicants is checked by police, including the directors of any company. ‘Suitability’ can be later affected by conviction for licensing offences or other relevant matters (e.g. drugs, drink-driving, violence), and by evidence of poor management and non-compliance with alcohol laws. In the case of a corporate licensee, the legislation may lodge licensee responsibility with an approved



manager, as in New South Wales. New Zealand legislation requires the licensee or a certified manager to be present during all hours of trading. In addition, legislation can also be used to lift the corporate veil and make directors and owners of companies legally liable for non-compliance with alcohol control legislation.

Older legislation often licenses the premises as well as the person, with often complex provisions for transfer of ownership or transfer of the licence to other premises, etc. The simpler procedure of licensing the person only still involves including a designation of a particular area as 'licensed premises' on the licence and on information provided by the licence applicant. This may include designating the area or part of the area as age-restricted.

As with other businesses serving food, licensed premises are subject to other laws and regulations on food hygiene, including inspections, and building and fire regulations to ensure safety, and limited numbers. Any non-compliance may result in temporary or permanent closure.

#### **Table 4.5 : Legislative examples**

##### **Liquor Act, New South Wales (2007)**

Decision of Authority in relation to licence application

- 1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence....
- 3) The Authority must not grant a licence unless the Authority is satisfied that:
  - a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and...
  - b) ... that development consent or approval is in force.
- 4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.

##### **Liquor Control Act, Manitoba, Canada (1988)**

- 23(1) Whereby this Act a licence or permit may be issued, the commission may issue the licence or permit, but nothing in this Act compels the commission to issue any licence or permit.
- 24) A licence does not authorize the sale of liquor, nor does a permit authorize the purchase, sale or use of liquor, unless the purchase, sale or use is in accordance with this Act and the regulations and unless the licence or permit is in force.

### **Table 4.6 : Suggested legislative text**

- 1) The Authority may after considering an application for a licence or an application for the renewal of a current licence and any submissions received by the Authority in relation to the application for either:
  - a) grant the licence or renewal; or
  - b) refuse to grant the licence or renewal.
- 2) In considering any application under subsection (1), the Authority shall have regard to the following matters:
  - a) The suitability of the applicant;
  - b) The certificate of compliance with town planning regulations and local government alcohol policies;
  - c) The criteria and conditions in Article XX; and
  - d) Any other policy matters the Minister of Health has directed the Authority to take into account.
- 3) In considering any application for renewal of a licence, the Authority shall have regard to the following additional matters:
  - a) the management of the premises; and
  - b) compliance with the conditions of the licence and with this Act during the previous licence term.
- 4) The Authority may grant the licence for a term of XX months on payment of an annual operating fee as prescribed by regulations under this Act.

### **Types of licence**

Legislation includes restrictions on the kinds of businesses that may be granted an on-licence or off-licence. Categories, definitions, criteria and consequences should be considered carefully. Should take-away alcohol be sold only by specialist stores, or may some or all beverages be sold by supermarkets? If this privilege is not intended for all stores that sell food or other products, what size or other definitions are needed to avoid these sales. Should businesses that sell petrol or are located in close proximity to petrol stations be permitted to sell alcohol? Can on-licensed premises also have an off-licence? What defines a bar, a restaurant, an accommodation hotel, and what different criteria or conditions or good management practices would be appropriate for each? For example, can an accommodation hotel supply alcohol to guests outside of usual licensing hours? Should some types of on-licensed premises, such as bars and night clubs, be age-restricted, for example, no minors may enter the premises? Should specialist off-licensed premises also be age-restricted to assist in enforcing the law against sale to minors?

Although a wider range of businesses now seek to sell alcohol, the trends in recent legislation have been toward a limited number of licence types. A base set of licence types might be:

- Sale for consumption off the premises ('off-licences' such as bottle stores or supermarkets);
- Sale for consumption on the premises (bars, pubs and night clubs, restaurants and cafés, accommodation hotels);
- Sale by clubs to members only; and
- Occasional event licences.

Definitions and any important restrictions for the different licence types are set by legislation, including any types of business that may not hold a licence. Other standard or particular conditions related to the circumstances or management of the different types of licensed business may be set by the licensing authority or by regulations with guidelines if needed for those administering licence applications. This allows flexibility and avoids the need for continual legislative change as issues arise (Ayres and Braithwaite 1992).

Legislation often requires on-licensed premises whose "principal purpose of business is the sale of alcohol" (taverns in New Zealand and hotels in Australia) to be age-restricted, while licensed businesses whose principal purpose is serving food are not. In New South Wales an off-licensed business whose principal business is not the sale of alcohol (e.g. supermarkets) must nevertheless sell the alcohol in a separate area for easier control. Many countries specifically prohibit businesses that sell petrol from selling alcohol. In Victoria, Australia, alcohol sales are prohibited in petrol stations as well as drive-in cinemas or premises that in the opinion of the licensing authority are used primarily as a milk bar, convenience store or mixed business. New Zealand law allows beer and wine sales only from supermarkets and prohibits licensing dairies (convenience stores) although definitions have allowed slippage. Vanuatu restricts some licensed business to beer and wine sales by issuing a limited on- or off-licence.

Licences for special events on particular dates ('special,' 'occasional' or 'limited' licences) may have different criteria or fewer requirements in regard to monitoring or management. Large events can be granted a special licence with extra conditions related to appropriate management. Guidelines may ensure that occasional licences are not used regularly by groups to avoid obtaining a club licence, or by bars as a regular way of extending limited hours of trading. Licences for clubs that may sell or supply alcohol to members only typically have lighter management requirements. It may need to be considered whether some large sports clubs serving members and guests should have the same conditions of management as pubs.

### **Table 4.7 : Suggested licence types**

- Sale for consumption off the premises (off-licences, e.g. bottle stores, supermarkets).
- Sale for consumption on the premises (bars, pubs and night clubs, restaurants and cafés, accommodation hotels).
- Sale by clubs to members only.
- Occasional event licences.

#### **Criteria and conditions**

Legislation may provide a set of criteria for the licensing authority to consider in deciding whether to grant a licence to an applicant, what kind of licence and what conditions are appropriate. Application forms for new licences and for renewals can give applicants the opportunity to address these criteria when providing information about the business.

It is important for the effective enforcement of alcohol laws that the licensing authority has a clear power to grant or decline an application, and renew or cancel a licence on the basis of these criteria.

Conditions attached to the licence and agreed to by the licensee, tailor the application of national sale of liquor laws and policies to the different types of business selling alcohol and, if need be, to the specific situation of an individual licensee. Restrictions and requirements can be set broadly in the legislation, and standard sets of on- and off-licence conditions for different types of businesses can be developed by the licensing authority. It is helpful for the resolution of problems or objections related to a particular site or business if the legislation permits the attachment of additional conditions. Older legislation often used the phrase “as the Authority sees fit,” but it may be thought preferable to tie discretionary powers to problem resolution or the objectives of the legislation.

If licensing decisions are made at the national level, it may be appropriate for criteria and conditions to include any policy on the sale of alcohol adopted by an elected local council. In New Zealand, the Liquor Licensing Authority has had informal regard to such policies, which relate mainly to type of premises, location and hours of trading. An amendment bill was put before Parliament in 2009 to include this in the Act to make the legislation more responsive to communities.

It is often a legislative requirement that a current licence, showing conditions of operation, is publicly displayed near the entrance of the premises.

### **Table 4.8 : Legislative examples**

#### **Liquor Licence Act, Ontario (1990)**

An applicant is entitled to be issued a licence to sell liquor except if,

(h) the licence is not in the public interest having regard to the needs and wishes of the residents of the municipality in which the premises are located. . . .

The Registrar shall request from the residents of the municipality written submissions as to whether the issuance of the licence is in the public interest having regard to the needs and wishes of the residents.

#### **Liquor Act, New South Wales (2007)**

##### **53 Authority may impose, vary or revoke licence conditions**

- 1) Without limiting any other provision of this Act, the Authority may at any time:
  - a) on application by the Director or the Commissioner of Police, or
  - b) on the Authority's own initiative, impose conditions not inconsistent with this Act to which a licence is to be subject.
- 2) The Authority may at any time:
  - a) on application by the licensee, the Director or the Commissioner of Police, or
  - b) on the Authority's own initiative, vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act. . .
- 4) The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has:
  - a) given the licensee a reasonable opportunity to make submissions in relation to the proposed decision; and
  - b) taken any such submissions into consideration before making the decision.
- 5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.
- 6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to vary or revoke the licence condition.

#### **Liquor Licence Act, Ontario (1990)**

##### **Risk-based licensing (2006)**

The Board may establish criteria for holders of licences to sell liquor and for premises in respect of which a licence to sell liquor is issued based on factors related to the risk to the public, public safety, the public interest and the risk of non-compliance with the Act and the regulations by the holder of a licence.

### Conditions

The Board, where it has established criteria under subsection (1), may specify conditions that may be imposed on a holder's licence to sell liquor and on the premises in respect of which the licence is issued...

- 2) A licence is subject to such conditions as may be consented to by the applicant or licensee, imposed by the Board or prescribed (2002).

### Table 4.9 : Suggested legislative text

#### Criteria

- 1) When deciding whether to grant a licence or refuse a licence, the Authority shall have regard to the following criteria:
  - a) the suitability of the applicant;
  - b) the location and suitability of the premises, in relation to neighbouring land use and proximity to any school, hospital, place of worship;
  - c) the number and density of alcohol outlets currently in the vicinity; and
  - d) the nature of the licensed business proposed, including:
    - i) for on-licenses:
      - a) the food and non-alcoholic drinks to be provided;
      - b) any other goods and services to be provided;
      - c) whether for accommodation guests only; and
      - d) whether for club members only.
    - ii) for off-licenses:
      - a) the definition of specialist bottle store or supermarket;
      - b) restriction in regard to petrol outlets;
      - c) the steps the licensee will take to ensure that alcohol is not sold or served to minors or intoxicated persons;
  - e) the hours and days of trading proposed (unless set by the Act);
  - f) any matters raised by police or local officers;
  - g) any objections raised by the public; and
  - h) the object of the Act.

**Suggested licence conditions:**

- the steps that the licensee will take to ensure that alcohol is not sold or served to minors or intoxicated persons
- the provision of food and non-alcoholic drinks by all on-licences premises
- any standard conditions related to the type of business (e.g., on-licences for bars, restaurants, accommodation hotels, theatres or off-licences for bottle stores, supermarkets)
- designation of the premises or any part of the premises as age-restricted
- any conditions related to impacts on the neighbourhood
- any other conditions that, in the view of the licensing authority, will:
  - i) resolve any matters raised by police, licensing officers or public objections; and
  - ii) achieve the Objects of the Act.

**Licence conditions and offences to increase host responsibility**

Recent legislation makes it an offence to sell alcohol to an already intoxicated customer or to allow “excessive intoxication” on the premises. The degree to which different individuals are affected by alcohol can vary, but guidelines on common indicators of impairment are available for police or hospitality training. As shown in examples below from New South Wales and New Zealand, a shift in legislative focus is occurring from the behaviour of the drinker to the role of the seller. Both countries continue to make it an offence to permit intoxication or unruly behaviour on licensed premises, but recent provisions also makes it an offence to sell more alcohol to any drinker who shows signs of already being intoxicated (whether or not earlier consumption was on the same premises).

Licensing legislation offers the opportunity for requirements of management that improve host responsibility and help reduce intoxication. For example, both New South Wales and New Zealand require all on-licensed premises (not just restaurants or cafés) to have food (substantial meals) and non-alcoholic drinks available at all times. Many licensees have found the sale of food, coffee and soft drinks increases profitability and may help shift businesses away from a focus on heavy drinking.

In many parts of the United States of America, certain retail licenses must ensure a minimum percentage of total sales are food and nonalcoholic beverages. If the minimums are met, then the licensee is classified as a restaurant.

Monitoring these requirements provides an opportunity for health promotion officers to provide other advice and encourage licensees to adopt and display an in-house host responsibility policy, which may contribute to evidence of suitability at licence renewal time.

Including these matters in the criteria for granting a licence requires them to be addressed by licensees in their application for a licence, thereby becoming part of the conditions on which the licence is held (see Suggested Criteria p. 47).

In addition, legislation often includes requirements or offences related to the control of unruly or violent behaviour on licensed premises. For example, police may have the power to close licensed premises for 24 or 48 hours in the case of riot. It may be an offence for licensees to permit intoxicated, unruly or violent persons on the premises, in which case they and their staff will need the necessary powers to refuse to admit or to eject the person, such as a definition of reasonable force, trespass procedures or other means appropriate to the country's legal system.

#### **Table 4.10 : Legislative examples**

##### **Liquor Act, New South Wales (2007)**

##### **Requirement to provide food on licensed premises**

- 1) Liquor may only be sold or supplied on the licensed premises to which an on-premises licence relates if food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied under the authorization of the licence.
- 2) If any requirements are prescribed by the regulations in relation to the nature and quality of any such food, those requirements must be complied with.
- 3) Subsection (1) is subject to such exceptions as may be approved by the Authority in relation to any particular licensed premises.

##### **Prevention of excessive consumption of alcohol on licensed premises**

- 1) A licensee must not permit:
  - a) intoxication, or
  - b) any indecent, violent or quarrelsome conduct, on the licensed premises. **Maximum penalty: 100 penalty units.**
- 2) A licensee or an employee or agent of a licensee must not, on the licensed premises, sell or supply liquor to an intoxicated person. **Maximum penalty: 100 penalty units.**
- 3) A person (other than a licensee or an employee or agent of a licensee) must not, on licensed premises, supply liquor to an intoxicated person. **Maximum penalty: 100 penalty units.**
- 4) If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee proves:
  - a) that the licensee, and the licensee's employees or agents, took the steps set out in subsection (5) or all other reasonable steps to prevent intoxication on the licensed premises, or
  - b) that the intoxicated person did not consume alcohol on the licensed premises.



- 5) For the purposes of subsection (4) (a), the following are the relevant steps:
  - a) asked the intoxicated person to leave the premises;
  - b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises; and
  - c) refused to serve the person any alcohol after becoming aware that the person was intoxicated.

#### **Sale of Liquor Act, New Zealand (1989)**

##### **Sale or supply of liquor to intoxicated person**

- 1) Every person commits an offence and is liable to the penalty set out in subsection (4) who, being the licensee or a manager of any licensed premises, sells or supplies liquor to any other person who is already intoxicated.
- 2) Every person commits an offence and is liable to the penalty set out in subsection (4) who, not being the licensee or a manager of any licensed premises, sells or supplies liquor to any other person who is already intoxicated.

##### **Allowing drunkenness or disorderly conduct on licensed premises**

Every person commits an offence and is liable to a fine not exceeding New Zealand \$4000 who, being the licensee or a manager of any licensed premises,—

- a) Allows any intoxicated person to be or to remain on the licensed premises; or
- b) Allows any violent, quarrelsome, insulting, or disorderly conduct to take place on the licensed premises.

### **Table 4.11 : Suggested legislative text**

#### **Requirement to provide food and non-alcoholic drinks**

At all times at which alcohol is sold for consumption on licensed premises, non-alcoholic drinks and food of a substantial nature must also be available for purchase.

#### **Prohibition of sale to intoxicated persons**

- 1) Every person commits an offence who, being a licensee, manager or server of any licensed premises, sells or supplies liquor to a person who is already intoxicated.
- 2) The penalty is,—
  - a) In the case of a licensee or manager,—
    - i) A fine not exceeding New Zealand \$10 000 [U.S. \$7,488]; or
    - ii) The suspension of the licence for a period not exceeding 7 days; or
    - iii) Both:
  - b) In the case of a person not being a licensee or manager,—
    - i) A fine not exceeding New Zealand \$2000 [U.S. \$1,497]; or
    - ii) The suspension of the licence for a period not exceeding 7 days; or
    - iii) Both:

### **Community participation and objections**

The trend in recent legislation is towards increasing public participation in different ways. The involvement of local communities in decisions on licensing and licence renewals can increase public satisfaction with alcohol control policies. The valuable watchdog role that neighbours and other members of the community play increases the effectiveness of regulators' monitoring of licensing premises (Ayres and Braithwaite 1992).

It is important for community participation in licensing decisions that the public is notified about applications for any new licence or renewal, both on the site and in the public notices section of the local newspaper. As a licence application often requires a prior planning consent, it may be important to also ensure public notification of planning applications for any new licensed premises in zones where the sale of alcohol is a discretionary activity, so that the public may participate in location decisions too.

In British Columbia, Canada, the provincial licensing authority may not issue a licence unless the local government and first nation have been notified and consulted. Their recommendations and advice must address the criteria in the Act and, in certain circumstances, they may survey local residents. The licence cannot be issued if the local government or first nation recommend against it.

New Zealand allows public objections to applications and renewals from individuals with an interest greater than the public in general (neighbours, elected councillors, community leaders). They may address the licence criteria set out in the legislation. There are currently proposals to include any available local government alcohol policy in the licensing criteria. These policies adopted by elected councils are based on a community consultation process.

Recent New South Wales legislation includes a requirement for the licensee to submit a community impact statement with the application and for the licensing authority to consider the views of the local community and ensure that the overall social impact of its decisions is not "detrimental to the well-being of the local or broader community." There is also a public complaints procedure. Victoria allows public objections to any licence grant, move or variation on grounds of detriment to the amenity of the area and specifically provides for objections by the local council. (Legislation often guards against objections from competing licensed businesses or any objections the licensing authority considers "vexatious.")

### **Table 4.12 : Legislative examples**

#### **Liquor Act, New South Wales (2007)**

##### **Community impact**

- 1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain [pub, club or bottle store] licences, authorizations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
  - a) the views of the local community, and
  - b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application...
- 5) The Authority must not grant a licence, authorization or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
  - a) the community impact statement provided with the application; and
  - b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorization or approval being granted will not be detrimental to the well-being of the local or broader community.

##### **Complaints**

- 1) A person may complain to the Director that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:
  - a) the manner in which the business of the licensed premises is conducted; or
  - b) the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
- 2) Such a complaint must be in writing and be made or verified by statutory declaration.
- 3) A complaint under this section may only be made by any of the following persons (referred to in this Division as the complainant):
  - a) a person authorized in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorized in writing by 2 or more other such residents;
  - b) the Commissioner of Police;
  - c) a person authorised by the local consent authority in relation to the licensed premises;  
or
  - d) a person who satisfies the Director that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.
- 4) A complaint may relate to more than one licensed premises.

### **Sale of Liquor Act, New Zealand (1989)**

#### **Objections**

- 1) Any person who has a greater interest in the application than the public generally may object to the grant of an on-licence.
- 2) Every objection shall be in writing, and shall be filed with the District Licensing Agency within 10 working days after the first publication of the public notice of the making of the application.
- 3) No objection may be made in relation to any matter other than one specified in section 13(1) of this Act.
- 4) In any case where—
  - a) The application relates to any premises or conveyance in respect of which an on-licence is presently in force; and
  - b) The applicant seeks the same conditions as those presently applying to that licence,—an objection may be made only in relation to the suitability of the applicant.
- 5) The Secretary shall send a copy of every objection to the applicant

#### **Table 4.13 : Suggested legislative text**

- 1) Any person who has a greater interest than the public generally in an application for a new licence or the renewal of an existing licence may object to the granting or renewal of a licence.
- 2) An objection under subsection (1) may only be considered if it is consistent with the objectives of the Act.
- 3) Every objection shall be in writing, and shall be filed with the Authority within XX days after the first publication of the public notice of the application for licence or renewal.

### **Term of licence and fees**

Monitoring, enforcement and compliance are increased by granting licence for a fixed term, which then lapses unless renewed. The application for renewal provides an opportunity to review the operation of the premises and the licensee's record in regard to infringements, complaints from neighbours, etc. In other words, the licence continues to be a privilege, not a right.

The period of licence should not be more than one year in the first instance, so that the operation of new businesses is well monitored. The costs of licensing, monitoring and enforcement should be met from fees, not subsidized from tax or rates revenue. To this end, the fee should be an annual operating fee, regardless of the term of renewal, and should be set at a level to cover the costs of regular monitoring and enforcement procedures.

In New Zealand, licence application fees are charged. Premises are licensed for one year, and then renewed for three years if there appear to be no problems. However, there is concern that the proportion of fees returned to local governments does not cover the costs of monitoring. The current low administration fee costs businesses only around New Zealand \$5 a week over a three year renewal period. This may have contributed to the proliferation of small convenience stores and cafés licensed to sell alcohol (Hill 2003b). In the United States of America, some communities have reduced the number of alcohol outlets near student campuses by increasing the cost of alcohol licences (Hill 2003a).

To allow for regular review and adjustment, an annual operating fee can be referred to in the legislation with the amount set through regulations.

### **Management certification and training**

Licensing legislation in a number of jurisdictions (e.g. New Zealand, New South Wales, Victoria) require licensees and/or managers to undergo approved training on legal requirements and host responsibility. New Zealand law requires a trained, certified manager or licensee to be present during all hours of operation of on- and off-licensed premises. The Scottish law allows its licensing boards to notify a requirement for training, which must be undertaken within three months.

Training for licensing inspectors and others with statutory responsibilities will also be an important part of implementation and the ongoing operation of the Act.

### **Monitoring and enforcement**

The effectiveness of the licensing system and other laws related to alcohol depends on the extent to which they are regularly monitored and seen to be enforced. This is addressed in a separate section below.

### **Designing alcohol licensing legislation**

The table below sets out standard and recent components of a licensing system for the sale of alcohol to the public with a check-list of options and issues in the design of legislation. It includes offences by non-licensed persons supplying alcohol. This approach may also be the best place to include any laws restricting alcohol marketing. Drink-drive laws are included in legislation regulating driving and other traffic and transport policies.

This strategy is based on the licensing systems that have been established in many mature alcohol markets. They share a similar bone structure but are fleshed out in different ways that reflect different institutional and juridical arrangements and particular policy histories.

The evidence from a variety of industries is that a well-monitored licensing system can be a responsive and effective means of regulating business activities.

### **Transitional measures**

Such a licensing system may be too ambitious for some countries, but some components may be possible as an interim measure or as a transitional stage in moving towards a more comprehensive licensing system. In some emerging markets for alcohol, bars, shops, hotels and other businesses may already be selling alcohol with no requirement for a specific licence (other than a general business licence) to do so. In this case, an implementation period and transitional processes would be required.

For example, in a country with no prior alcohol regulation at all, a set of minimum alcohol offences enforced by police may be a starting point, with monitoring and enforcement improving under a specialist, separately resourced policy unit (as with traffic work).

The offences to be monitored and enforced by police might include:

- sale of alcohol without evidence that alcohol excise taxes have been paid;
- sale of alcohol to minors;
- supply of alcohol to minors by any adult;
- sale of alcohol outside certain hours or days of trading;
- sale of alcohol to already intoxicated persons; and
- restrictions on alcohol marketing (e.g. no ads on broadcast media, no sponsorships by producers or sellers of alcohol, no targeting of young people).

Many countries have such alcohol laws but have not yet legislated adequate systems to ensure monitoring and enforcement – that is, there is a gap between policy and enforcement.

At a later stage of policy development, a register of the alcohol-selling businesses that police are monitoring could be developed and passed to the responsibility of a separate licensing agency.

In a few countries, those selling alcohol have a general business or retail licence, which could provide a first step to licensing alcohol. For example, Viet Nam increased its business regulation of alcohol in 2008 to require alcohol producers or business (wholesale or retail) to obtain licence (except for home-brew for self-consumption).

In late 2009, Scotland was considering a legislative amendment to allow a local authority to impose a social responsibility levy on licensees if it considered it necessary or desirable to remedy adverse impacts on it achieving the objectives of the Licensing Act. The levy could offset the costs of additional monitoring and enforcement, for example.

**Table 4.14 : Designing alcohol licensing legislation: Some options to consider**

An asterisk (\*) marks emerging policies to improve reduction of alcohol-related harm

Core components	Issues and options	Issues and options
Statement of policy objectives	<ul style="list-style-type: none"> <li>Public health</li> <li>Reducing social impacts</li> <li>Protecting young people</li> </ul>	
Licensing Authority	<ul style="list-style-type: none"> <li>Government agency or quasi-judicial body</li> </ul>	<ul style="list-style-type: none"> <li>- National or</li> <li>- Local level or</li> <li>- Partial devolution</li> <li>- Overview, reviews, in</li> </ul>
Powers and functions	<ul style="list-style-type: none"> <li>- to grant or refuse licences</li> <li>- to grant or refuse renewals</li> <li>- to set additional conditions</li> <li>- to vary, suspend, cancel licences for non-compliance</li> <li>- to impose fines</li> </ul>	<ul style="list-style-type: none"> <li>Level of discretionary po</li> <li>To overview the licensin</li> <li>annually to government</li> </ul>
Statutory officers	<ul style="list-style-type: none"> <li>- licence administrators</li> <li>- inspectors</li> <li>- police</li> <li>- public health, other</li> </ul>	<ul style="list-style-type: none"> <li>Roles in legislation:</li> <li>- investigating suitability</li> <li>- monitoring, investigat</li> <li>licence renewal</li> <li>- objection to licence ap</li> <li>initiating procedures for</li> <li>suspension and cancella</li> <li>- prosecutions for offer</li> </ul>
Public participation*	<ul style="list-style-type: none"> <li>- Notification of license applications and renewals</li> <li>- Objection to licence application</li> <li>- Objection to licence renewal</li> </ul>	<ul style="list-style-type: none"> <li>Eligibility definition</li> <li>Discretion to disregard ‘</li> <li>objections from other lic</li> </ul>

	Issues and options	Issues and Options
<p>inquiries</p> <p>power</p> <p>g system and report</p> <p>/parliament</p>	<p>Appointment of members</p>	<p>Appeal body</p> <ul style="list-style-type: none"> <li>- Tribunal under Act or</li> <li>- High court.</li> </ul> <p>Reviews</p> <ul style="list-style-type: none"> <li>- process only, or</li> <li>- full decision</li> </ul>
<p>ty</p> <p>ing, reporting for</p> <p>application or renewal</p> <p>licence variation,</p> <p>ation</p> <p>nces under the Act</p>	<ul style="list-style-type: none"> <li>- Inspectors and police are 'enforcement officers'.</li> <li>- Police may have specific power to close premises temporarily in case of riot, serious disorder etc.</li> <li>- Public health may have role under Act in addition to food and hygiene inspection issues under other legislation</li> </ul>	<ul style="list-style-type: none"> <li>- inspectors employed by national authority or local government?</li> <li>- agency resources, budgets</li> <li>- training requirements</li> <li>- linkages with other legislation (food hygiene, policing powers etc.)</li> </ul>
<p>'vexatious' objection or</p> <p>ensed businesses</p>		







<b>Core components</b>	<b>Issues and options</b>	<b>Issues and options</b>
Host responsibility*	<ul style="list-style-type: none"> <li>- in legislation</li> <li>- condition of licence</li> </ul>	Food, non-alcoholic drinks Steps to avoid sales to minors patrons Related to type of licence crowd management, etc.
Minimum age for sales	Set by legislation Definition: evidence of age documents (driver's licence, passport, other ID.)	Requirement to check evidence of age document*
Promotions*	Prohibit Promotions that may encourage rapid or excessive drinking	Definitions Offence by on- and off-licence Contributes to suspension or cancellation loss of licence
Minimum pricing*	Offence in legislation for licensees to sell below minimum price	Minimum price per alcohol regulations
<b>Enforcement</b>		
Variation of conditions Non-renewal of licence Suspension or cancellation of licence	Procedure initiated by licensing inspectors or police Or on licence renewal	Decision by licensing authority 'to hold a licence', based on: - reports by statutory officers - public complaints
<b>Prosecutable offences under the Act</b>		
Selling alcohol without a licence	Enforcement may be via the licensing authority or the courts or both. Licensing authority may be grounds to suspend or cancel the licence but licensing decisions need to be challenged in court.  Offence	Penalty by court sufficient

#### 4. Regulating availability

	Issues and options	Issues and Options
<p>ks</p> <p>minors, intoxicated</p> <p>re or business e.g. entertainment</p> <p>vidence of age</p> <p>icensees</p> <p>on, non-renewal or nce</p> <p>hol unit set by</p>	<p>Infringements lead to loss of licence and/or prosecution</p> <p>Sanctions for prosecution</p> <p>Alternatively, minimum price could be set at producer/importer level as part of alcohol tax regulations</p>	
<p>uthority that 'unsuitable</p> <p>l on</p> <p>fficers</p>	<p>Evidence 'on the balance of probabilities' (not criminal level of evidence)</p> <p>Evidence may include infringements of law and licence conditions, sales to minors, serving intoxicated patrons, public disorder, association with drugs or criminality and/or, personal unsuitability of licensee etc</p>	<p>Right of appeal but no right to operate business in the meantime ('privilege, not a right')</p>
<p>ing decisions should not require or be based on prosecution but prosecution may lead to loss of licence. Police and inspectors ed not be based on prosecutions</p>		
<p>nt to deter business</p>	<p>Fines, jail</p>	

Core components	Issues and options	Issues and options
<p>Selling alcohol outside permitted hours of trading</p> <p>Minimum age</p>	<p>For selling to a minor</p> <p>For allowing entry to age-restricted premises</p> <p>Supply by other adults*</p> <p>Purchase by a minor</p>	<p>Penalty by court sufficient</p> <p>Requirement to view evidence</p> <p>Exemption for parent or guardian</p> <p>Offence to purchase</p> <p>Offence of using false ID</p>
<p><b>Advertising and marketing*</b></p>	<p>Restrictions on alcohol advertising:</p> <ul style="list-style-type: none"> <li>- television, radio, cinema and/or print media</li> <li>- television or radio programme sponsorship</li> <li>- alcohol sponsorship of sports, music or other cultural events</li> </ul> <p>Requirement for permitted advertising to adhere to</p> <ul style="list-style-type: none"> <li>- law restricting content</li> <li>- code of standard set by regulations-</li> </ul> <p>(See also irresponsible promotions and minimum pricing above)</p>	<p>Offences</p> <p>Penalty sufficient to deter</p> <p>Offence</p> <p>Penalty sufficient to deter</p>

#### 4. Regulating availability

	<b>Issues and options</b>	<b>Issues and Options</b>
nt to deter business	Fines, jail	
vidence of age	Offence by licensee and/or evidence for suspension or cancellation of license Offence by server	Penalty by court Licensing authority to be notified of convictions Penalty by court
guardian	Offence to supply alcohol to a minor	Penalty by court
	Penalty by court or instant fine by police*	Exemption for minors assisting police would assist in monitoring and enforcement of law against selling to minors*
er business	Sometimes in law on broadcasting but wider policy may be the best in law on alcohol, together law against irresponsible promotions by license premises	Independent monitoring and enforcement body <ul style="list-style-type: none"> <li>- to monitor compliance with law on restrictions</li> <li>- to monitor and report on compliance on ad content</li> <li>- to monitor and report on any news forms of marketing</li> <li>- to report annually to government/parliament</li> </ul>
er business	Alternatively, voluntary code developed by advertising, media and alcohol industries	

# 5.

## Regulating hours and days of trading

### Rationale

Consistent evidence links increases in hours or days of alcohol sales to increases in harm, including traffic injury, street disorder and violence. Even small or local changes have significant local harm impacts, but little effect on total sales. This indicates that later or longer trading contributes disproportionately to heavy drinking and drunken behaviour (Babor et al. 2010).

Research in Western Australia linked higher levels of patron intoxication and high levels of local violence to later pub trading hours. In Australia, it has been found that heavier drinkers are more likely to take advantage of longer trading hours than are lighter or more moderate drinkers (Chikritzhs and Stockwell 2002). A study showed that the United Kingdom's recent law change allowing sales up to 24 hours a day trebled night-time alcohol-related emergency admissions to one London inner city hospital (Newton et al. 2007).

Restrictions on the days and hours of trading set either standard hours of trading for all premises or different types of premises, or set hours as a condition of each individual licence. Under either option, some restrictions against selling alcohol on particular religious days or public holidays are set by legislation.

### Issues to consider

There has been a trend towards allowing later hours of trading for licensed premises. Late closing times have been opposed by communities and by health organisations, such as the United Kingdom's Academy of Medical Sciences (Academy of Medical Sciences 2004). Public objections to licences or renewals for late opening premises relate to noise, intoxication levels, public disorder, violence and fears about safety. Later closing times shift intoxicated behaviour and its consequences to later times of night, with implications for policing.

## 5. Regulating hours and days of trading

Setting daily hours of trading by law establishes consistent closing times known to all, which may contribute to ease of enforcement. These typically differ for on- and off-licensed premises, and different rules may also be set for clubs or accommodation hotels. Some Australian states set a standard closing time of 23:00 or 00:00, but allow later trading via extensions permits. New South Wales sets both standard hours and a maximum for extended trading authorizations that may be granted in central Sydney areas and for different types of licence. Vanuatu licensing legislation sets 23:00 for on-licences except nightclubs which may trade until 03:00 but only until 01:00 on Sunday morning. All off-licences close at 21:00 on week nights, but from 11:30 Saturday morning until 19:30 the following Monday.

Standard hours of trading can also be set through regulations under the Act or by the licensing authority. In Samoa, for example, standard hours and days of trading are not addressed in the legislation but are set by the Liquor Board. Currently all bars and restaurants close at 22:00 Monday to Thursday, extended to 00:00 on Friday and Saturday, with no trading on Sundays.

Alternatively, hours of trading can be set licence by licence, which carries a presumption that 24-hour, seven-day trading is permissible. Examples are England, Wales and New Zealand. Different times can be set for drinking on the premises and buying from off-licensed outlets. The Scottish Licensing Act sets hours of trading on each on-licence and allows extended hours to be applied for a special occasion catered for on the premises or a special event of local or national significance, but states that 24 hours licensing may be granted only in “exceptional circumstances” (S.62). Off-licence hours are restricted by the Act to between 10:00 and 22:00.

Setting hours on the licence allow different closing times for on-licensed premises. Views of this differ. In the United Kingdom, it was argued that staggering closing times would help reduce disorder and violence on the streets. In New Zealand, staggered closing times led to “migratory drinking” and problems on the streets as patrons moved from closed bars to open ones. Cutting back the hours of poorly managed late night bars has been a strategy to reduce local harm (Hill and Stewart 1996). In response to migratory drinking, New South Wales and Victoria now allow the licensing authority to make a declaration for a premise, groups of premises or locality that prevents late hour entry by new drinkers while allowing the premises to serve earlier drinkers until its usual closing time.



### **Table 5.1 : Legislative examples**

#### **Liquor Control and Licensing Act, Manitoba (1988)**

No sale or delivery of liquor shall be made on or from the premises of a liquor store or liquor vendor

- a) on Sunday,
  - i) from 00:00 until 12:00, and
  - ii) after 18:00;
- b) on Good Friday, Easter Sunday or Christmas Day;
- c) on Remembrance Day, before 13:00; or
- d) during such other periods; and on such other days, as the commission may direct.

#### **Liquor Licensing Act, Vanuatu (Cap 52 of the Laws of the Republic of Vanuatu Consolidated Edition 2006)**

##### **18. Hours of opening**

- 1) No premises in respect of which there is a General On-Licence or Limited On-Licence obtained under the provisions of section 4 shall be open to the public before 7.30 in the morning and after 11 o'clock at night.
- 2) No liquor shall be sold for consumption off the premises from premises in respect of which there is an Urban General Off-Licence, a Rural General Off-Licence, or a Limited Off-Licence obtained under the provisions of section 3(1) before 19:30 in the morning and after 21:00; Provided that no liquor shall be sold for consumption off the premises from premises in respect of which there is an Urban General Off-Licence, a Rural General Off-Licence, a Limited Off-Licence, a Combined General On- and Off-Licence between the hours of 11:30 in the morning of the Saturday of any week and 07:30 in the morning of the Monday of the succeeding week.

### **Table 5.2 : Suggested legislative text**

- 1) No person may sell alcohol to the public outside of the standard trading periods set by this Act.
- 2) Any person who contravenes sub section (1) commits an offence punishable on conviction by a fine of XX.
- 3) For the purposes of this Act, the “standard trading period” means any day of the week other than Sunday, Christmas day, Good Friday or Easter Monday (or other religious and public holidays appropriate to the country):
  - i) from 10:00 to 20:30 pm for consumption off the premises
  - ii) from 10:00 to 12:00 for consumption on the premises except that this restriction shall not apply to the sale of alcohol to guests resident in a licensed accommodation hotel.

# 6.

## Setting a minimum purchase age

### Rationale

Research shows that the younger people start regular drinking, the more likely they are to experience problems from heavy drinking at a later age (Hingson et al. 2006). Young people experience more harm than adults from drinking the same amounts (Habgood et al. 2001; Wyllie et al. 1996). Recent research also shows that alcohol can have adverse impacts on adolescent brain development (National Institute on Alcohol Abuse & Alcoholism 2004/5). Medical associations in Australia and the United Kingdom now recommend no alcohol at all for those under age 15 years and no more than a very minimal amount for those ages 15 to 18 years (Department for Children 2009; National Health & Medical Research Council 2009).

Legislation that sets a minimum age at which alcohol may be sold to young people, and at which they may buy it, has been found to be an effective policy for reducing harm. This may also be the minimum age for drinking, as in some American states.

Setting the minimum age in licensing legislation means that selling to minors may result in the loss of a licence to sell alcohol and/or prosecution by police in court. A requirement to check proof of age is often included in the granting of the licence. The legislation may also make it a prosecutable offence for underage drinkers to buy alcohol or to show false identification. But the main focus of such legislation is prohibiting adults – licensees and their staff or other adults – from selling or supplying alcohol to underage drinkers.

### Issues to consider

#### What age?

Most countries set a minimum age of 18 years or 21 years for the legal purchasing and drinking of alcohol. China and Cambodia do not currently have a minimum age for the sale of alcohol. The Lao People's Democratic Republic has no minimum age for takeaway alcohol and Malaysia has no minimum age for takeaway beer (World Health Organization 2004). Mongolia has a drinking age of 21 and no one aged under 18 years may work in any aspect of the alcohol industry.

There is currently a debate in the developed alcohol markets of New Zealand, Scotland and Ireland about whether 18 years is high enough, given evidence of increased drinking and disproportionate harm among older teenagers and young adults. When New Zealand reduced the minimum age from 20 years to 18 years in 1999 there was a marked increase in the proportion of 18 to 19 year olds involved in traffic crashes and requiring emergency room treatment. There was also a spill-over effect: an increased proportion of younger teenagers drinking larger quantities (Huckle et al. 2005). When American states put their minimum age back up to 21 in the early 1980s, similar harm statistics improved (Wagenaar and Toomey 2002).

From 2008 Viet Nam prohibited the sale of alcohol to all children and juveniles under the age of 18 years. Previously, juveniles between 16 years and 18 years of age could be sold alcoholic beverages that were less than 14% ABV.

A young minimum purchase age can increase supply to under-age teenagers, as friends or siblings just old enough to purchase alcohol may underestimate risks and be more willing to supply than older adults. The evidence from the United States of America and elsewhere shows that countries wishing to reduce alcohol-related harm among their young people should set a high minimum age for the sale and purchase of alcohol.

### **Secondary supply to a minor**

Legislation makes it an offence for adults to supply alcohol to a minor. Exceptions to this principle make enforcement of the minimum age complex, and may send a mixed message to young people.

Some legislation in Australia and New Zealand makes an exception to allow a parent or guardian to give alcohol to their own child or take them into age-restricted premises. A few Acts also exempt purchase for a minor by a spouse aged over 18 years or a responsible adult but recently enacted legislation does not. A few laws allow supply to a minor by any adult if it occurs in a private social setting. For example, New Zealand police find themselves unable to prosecute adults for irresponsible supply of large quantities of alcohol to out-of-control teenage parties if they are on private property.

Tasmania, New South Wales and Queensland recently prohibited the supply of alcohol to an underage person on private premises without the direct approval of the parent or guardian. In New Zealand, the debate is underway as to whether to require parental permission, or parental supervision of any drinking, or to fully remove these exemptions from prosecution for the offence of supplying alcohol to a minor.

The supply of alcohol to minors by adults, perhaps just above the minimum age themselves, and without the knowledge of parents, is a serious public health issue, but laws are under-enforced. To change this situation, legislation needs to be clear, simple and easily enforceable. A few well-publicised prosecutions raise awareness and may help prevent the serious harm that comes when some teenagers are supplied with large quantities of alcohol by adults.

### **Age verification**

It is often a defence against a charge of selling to a minor or allowing a minor into age-restricted premises if the seller has seen an evidence of age document. These documents should be defined in the legislation and are typically a driver's licence, passport, or other officially authorized identification card (and it should be an offence for purchaser to present false documents). Checking identification is an important host responsibility practice. Expressing this practice in legislation as a defence mechanism may not be sufficient to enable monitoring agencies to require it to be done.

Ontario makes it an offence to serve people known or appearing to be under the age of 19, while Manitoba's regulations require licensees and staff to request proof of age from all young-looking persons. In New Zealand, where seeing proof of age is a defence, supermarket chains themselves adopted a policy of requesting identification from everyone who looks under 25 years – which has been acceptable to customers. In late 2009, Scotland introduced an amendment to its licensing Act to make it a condition of the licence to have an in-house age verification policy. This is a management policy that steps are to be taken to establish the age of a person attempting to buy alcohol if it appears to seller that they may be less than 21 years of age or such older age as may be specified in the policy.

### **Monitoring and enforcement**

Legislation on licensing the sale of alcohol makes it an offence for licence holders or their staff to sell alcohol to minors, and this may also result in loss of the licence. New Zealand and Scotland both require the district court to notify the licensing authority of any convictions.

In some jurisdictions, police now undertake controlled purchase operations to test whether bars or retailers are selling to minors without checking their age. In this test, a minor attempts to purchase alcohol without identification but does not lie about their age if asked. The purchase is made using a cash or credit card, which fails (avoiding the problem of what to do with the alcohol). This may require the law to exempt minors who purchase alcohol to assist police. Police publicize the names of businesses caught selling to minors and may prosecute (Alcohol Advisory Council 2004; Huckle et al. 2008a; Montgomery et al. 2006).

A disadvantage of prosecuting sales to minors in the courts is that magistrates or judges may have low awareness of alcohol issues, consider these offences to be quite minor and impose very low fines. New Zealand police, for example, prefer to apply for variation, suspension or cancellation of the licence to sell alcohol (Lopdell 2002; Webb 2005), and any prosecutions must in any case be reported to the licensing authority. Licensing is the appropriate system for weeding out poor or irresponsible operators.

Licensing legislation also typically addresses other supply of alcohol to minors, making it a prosecutable offence to:

- buy alcohol if you are under the minimum age;
- present false evidence of age; and/or
- supply alcohol to a minor or purchase alcohol on their behalf.

Offences by young people usually carry fairly small fines. Countries such as New Zealand and Victoria, Australia, have amended their legislation to allow police to issue infringement notices (small instant fines) for under-age alcohol offences.

Monitoring and enforcement issues, including monitoring for sales to minors, are also discussed in the next section.

### **Table 6.1 : Legislative examples**

#### **Liquor Licence Act, Ontario (1990)**

Possession or consumption:

- 8) No person under 19 years of age shall have, consume, attempt to purchase, purchase or otherwise obtain liquor...
- 13) This section does not apply:
  - a) to the supplying of liquor to a person under 19 years of age in a residence as defined in section 31 or in a private place as defined in the regulations by a parent of the person or a person having lawful custody of the person...

#### **Liquor Act, New South Wales (2007)**

##### **Offences relating to sale or supply of liquor to minors**

- 1) Selling liquor to minors  
A person must not sell liquor to a minor. Maximum penalty: 100 penalty units or 12 months imprisonment (or both).
- 2) Supplying liquor to minors on licensed premises  
A person must not supply liquor to a minor on licensed premises. Maximum penalty: 100 penalty units or 12 months imprisonment (or both).

## 6. Setting a minimum purchase age

- 3) It is a defence to a prosecution for an offence under subsection (1) or (2) if it is proved that:
  - a) the person to whom the liquor was sold or supplied was of or above the age of 14 years, and
  - b) before the liquor was sold or supplied to the person the defendant was provided with an evidence of age document that may reasonably be accepted as applying to the person and as proving that the person was of or above the age of 18 years.
- 4) Supplying liquor to minors on other premises  
A person must not supply liquor to a minor on any premises other than licensed premises unless the person is a parent or guardian of the minor.  
Maximum penalty: 100 penalty units or 12 months imprisonment (or both).
- 5) It is a defence to a prosecution for an offence under subsection (4) if it is proved that the defendant was authorized to supply liquor to the minor by the parent or guardian of the minor.
- 6) Obtaining liquor for minors from licensed premises  
A person must not obtain liquor from licensed premises on behalf of a minor unless the person is the parent or guardian of the minor.  
Maximum penalty: 100 penalty units or 12 months imprisonment (or both).
- 7) It is a defence to a prosecution for an offence under subsection (6) if it is proved that the defendant was authorized to obtain liquor on behalf of the minor by the parent or guardian of the minor.
- 8) Allowing liquor to be sold or supplied to minors on licensed premises  
A licensee must not, on licensed premises, allow liquor to be sold or supplied to a minor.  
Maximum penalty: 100 penalty units or 12 months imprisonment (or both).
- 9) It is a defence to a prosecution for an offence under subsection (8) if it is proved that the liquor was supplied to the minor by the parent or guardian of the minor.
- 10) Burden of proof  
In the prosecution for an offence under this section, the burden of proving that a person was a parent or guardian of a minor, or was authorised by a parent or guardian of a minor, is on the person charged...
- 12) For the purposes of this section, supply of liquor includes serving liquor to a person.

### **Sale of Liquor Act, New Zealand (1989)**

#### **Sale or supply of liquor to minors**

- 1) Every person commits an offence and is liable to the penalty set out in subsection (2A) who, being the licensee or a manager of any licensed premises, sells or supplies any liquor, or allows any liquor to be sold or supplied, on or from the licensed premises to any person who is under the age of 18 years.
- 2) Every person commits an offence and is liable to the penalty set out in subsection (2A) who, not being the licensee or a manager of any licensed premises, sells or supplies any liquor, on or from the licensed premises to any person who is under the age of 18 years.
  - 2A) The penalty is,—
    - a) In the case of a licensee,—
      - i) A fine not exceeding New Zealand \$10 000 [U.S. \$7,488]; or
      - ii) The suspension of the licensee's licence for a period not exceeding 7 days; or
      - iii) Both:
    - b) In the case of a manager, a fine not exceeding New Zealand \$10 000 [U.S. \$7,488]:
    - c) In the case of a person (not being a licensee or manager), a fine not exceeding New Zealand \$2000 [U.S. \$1,497].

#### **Supply to minors by other adults**

Every person commits an offence and is liable to a fine not exceeding New Zealand \$2000 [U.S. \$1,497] who supplies alcohol to, to any person who is under the age of 18 years.

#### **Purchasing of liquor by minors**

- 1) Every person commits an offence and is liable to a fine not exceeding New Zealand \$2000 [U.S. \$1,497] who, being under the age of 18 years, purchases any liquor on or from any licensed premises.

Subsection (1) does not apply to a person who purchases liquor on or from licensed premises at the request of a member of the police acting in the course of his or her duties.

Every person commits an offence and is liable to a fine not exceeding New Zealand \$2000 [U.S. \$1,497] who falsely represents to the licensee or a manager of any licensed premises, or to any employee of the licensee, that he or she is a person to whom liquor may be sold or supplied under the licence.

## Table 6.2 : Suggested legislative text

### Definition of evidence of age

Evidence of age document means a passport, a driver's license or (specify other official document which provides reliable evidence of age).

### Sales to persons below the minimum age

- 1) No person, being the licensee, manager or server on licensed premises, shall sell or supply alcohol to any person below the age of XX years.
- 2) The licensee shall take steps to ensure verification of the age of any person who appears to be under the age of 25 years by requesting an evidence of age document.
- 3) No person shall allow any person below the age of XX years to enter or remain on age-restricted licensed premises.
- 4) Every person who contravenes subsection (1) commits an offence punishable on conviction by a fine of XX.
- 5) It is a defence against prosecution under subsection (1) and (3) if it is proved that the defendant was provided with an evidence of age document that may reasonably be accepted as applying to the person and as proving that the person was of legal age for sale and supply of alcohol.
- 6) No person may supply alcohol to a person below the age of XX years or obtain alcohol on their behalf from licensed premises.
- 7) Every person who contravenes subsection (7) commits an offence punishable on conviction by a fine of XX.
- 8) No person aged under XX years shall purchase alcohol or enter age-restricted licensed premises, punishable on conviction by a fine of XX.
- 9) No person shall present false or another person's evidence of age document for the purposes of purchasing alcohol or entering age-restricted premises, punishable on conviction by a fine of XX.

Fines for sellers of alcohol should be sufficiently high to deter businesses. Fines for other adults supplying minor should also be high enough to deter as this is a key policy issue. Fines for underage people are typically lower.



# 7.

## Monitoring and enforcement

### Rationale

Effectiveness requires more than the passing of legislation. In some countries it is common that legislation is in place, but it is not enforced. Experience shows that significant reductions in alcohol-related harm can be made from fully enforcing existing alcohol legislation.

Alcohol policies and licensing systems are enforced by making certain actions prosecutable offences, or grounds for suspending or cancelling a business's licence sell alcohol. The legislation needs also to establish procedures systems for licence removal (including right of appeal), to allocate responsibility for regular monitoring, and to ensure resources are available to support this action.

Licensing allows regulators to be more responsive to the situation of different kinds of businesses selling alcohol and also more responsive in their enforcement practices (Ayres and Braithwaite 1992).

Part of the job of administering, monitoring and enforcing alcohol laws is education and persuasion about what is required and the consequences of not complying. Regulators are most effective and cost-effective when enforcement is based on assumptions of cooperation and compliance, but they can respond when necessary with an escalating set of enforcement practices and formal sanctions.

Since a licence grants a right to sell alcohol, regular monitoring of outlets and the suspension or cancellation of that licence may be a more appropriate and effective strategy for enforcing standards of outlet management than prosecution. Both forms of "enforcement" are discussed below.

Regular monitoring includes irregular monitoring – such as unexpected visits at peak times or closing time, and purchase attempts by under-age people assisting police or inspectors. Publicizing the results of controlled purchase operations and also of licence suspensions can increase compliance by other licensed businesses.

## Issues to consider

### The importance of regular monitoring

The enforcement actions above depend on effective monitoring at the local level. The priority given by police to monitoring and enforcing licensing laws on local premises depends on resources, but also on full recognition of the contribution that alcohol makes to police work. Most legislation establishing a licensing system also provides for monitoring and enforcement by licensing inspectors, employed by the Justice Department or by local governments (whichever the Act makes responsible for administering licensing). Licensing inspectors report on licence applications and renewals, monitor all licensed premises and initiate enforcement, as do police.

Under New Zealand legislation, public health officers also monitor and report on on-licensed premises, alongside police and local government inspectors. They have raised the profile of host responsibility practices, such as provision of food and non-alcoholic drinks, transport options, safe entertainment and responsible promotions by on-licensed premises.

Effective regular monitoring includes irregular unexpected monitoring, at peak times and closing times. It can also include controlled purchase operations to monitor practices to prevent sales to minors.

As well as setting out the functions and powers of the Licensing Authority, legislation should describe the statutory roles of those who will carry out administration, investigation, reporting and enforcement roles under the Act and provide for any particular powers that may be necessary, such as right of entry, investigation and power to seize in evidence. In many jurisdictions, the police or a Minister of government has the power to summarily close premises temporarily in the case of riot or other serious public disorder.

### Prosecutable offences

Legislation on the sale of alcohol typically makes it a prosecutable offence:

- To sell alcohol to the public without a licence;
- To allow premises to be used as a place of public drinking without a licence;
- To sell alcohol outside permitted hours and days of trading;
- To sell or supply alcohol to a minor; and
- To sell alcohol to an already intoxicated person.

The first three offences above attract very heavy fines, as these restrictions on selling alcohol underpin the licensing system. Fines for sale to minors or intoxicated patrons may vary

depending in size on whether the offender was the holder of the licence, a manager in charge, or a server employed by the licensee.

Some Acts include other prosecutable offences by sellers of alcohol. In some Acts, the offence of selling without a licence includes a subsection prohibiting licensees from selling outside any of the terms of their licence. New South Wales, for example, grants licences indefinitely, but makes extensive use of prosecutions in the courts as its main means of enforcement, including taking prosecutions when a licensee fails to conform with a licence condition. Victorian enforcement also relies on a large number of prosecutable offences and infringement notices (instant fines by police). While most Acts make infringement of certain key policy mechanisms liable to prosecution and fines, some such as British Columbia take a blanket approach and make any non-compliance with the Act and its regulations a prosecutable offence.

Alternatively, and in addition to the more limited number of typical offences listed above, the licensing system itself is used to responding to problems and infringements of the law or of licence conditions by varying, suspending or cancelling the licence to sell alcohol (see below). Convictions are required to be reported to the licensing authority. This procedure is discussed further in the next section.

In countries that do not have a licensing system, the best way to enforce legislation may be including a prosecutable offence and sanctions to cover any non-compliance with the Act and its regulations (such as the example of British Columbia), in addition to any specific offences included in the Act, such as sale to underage drinkers.

Thailand's legislation details the entry, investigation and seizure powers of "competent officials" and sets maximum fines or terms of imprisonment for violations (including obstruction of officials) together with a fine that accumulates for every day that violation continues. The Control Committee established by the Act has the power to fine the offenders itself.

In general, offences under alcohol legislation are prosecuted by police in the district court, with appeal to a higher court possible. These offences may relate only to the licence holder or manager or alone, or may allow serving staff to be prosecuted, with a suitably lower level of fine. The legislation sets a maximum fine, which should be high enough to deter businesses of any size. To avoid constantly changing legislation to update fines against inflation, some jurisdictions set penalty points for offences under all Acts and then adjust the fine value of a penalty point. Some recent legislation encourages greater responsiveness by providing a hierarchy of sanctions that the court may choose from to match the severity of the offence (Ayres and Braithwaite 1992). Sanctions for sale of alcohol offences may also differ for

licences, a manager or employed serving staff. Examples are provided below, and a short hierarchy of sanction is included in several of the suggested legislative texts.

Licensing legislation also includes alcohol offences by non-licensed people. It is typically a prosecutable offence:

- for any person under the minimum age to buy alcohol;
- for any person to present false evidence of age; and
- for any person to supply alcohol to a person below the minimum legal age or to purchase alcohol on their behalf.

These offences are discussed above in the section on Setting a Minimum Purchase Age.

### **Table 7.1 : Legislative examples**

#### **Liquor Control and Licensing Act, British Columbia, Canada (1996)**

##### **Offences and penalties**

- 1) A person who contravenes this Act or the regulations commits an offence.
- 2) Subject to subsection (3), if the person convicted of an offence is an individual, the individual is liable...to a fine of not more than Canada \$10 000 [U.S. \$9,894] or to imprisonment for not more than 6 months, or to both.
- 3) If the person convicted of an offence is a corporation or a licensee that is not a corporation, the person is liable...to a fine of not more than Canada \$50 000 [U.S. \$49,469].

#### **Sale of Liquor Act, New Zealand (1989)**

##### **Selling alcohol without a licence**

Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding New Zealand \$40 000 [U.S. \$29,954] who, not being the holder of a licence, sells or exposes or keeps for sale, any liquor.

**Table 7.2 : Examples of a hierarchy of sanctions for levels of responsibility**

**Licensing Act, Scotland (2005)**

**Prohibition of unlicensed sale of alcohol**

- 1) Alcohol is not to be sold on any premises except under and in accordance with—
  - a) a premises licence, or
  - b) an occasional licence, granted under this Act in respect of the premises.
- 2) Subsection (1) does not apply to the selling of alcohol—
  - a) on exempt premises, or
  - b) to trade.
- 3) A person who—
  - a) sells alcohol, or
  - b) knowingly allows alcohol to be sold, in breach of subsection (1) commits an offence.
- 4) A person guilty of an offence under subsection (3) is liable on summary conviction to—
  - a) a fine not exceeding £20 000 [U.S. \$31,545],
  - b) imprisonment for a term not exceeding 6 months, or
  - c) both.

**Sale of Liquor Act, New Zealand (1989)**

**Sale or supply of liquor to intoxicated person**

- 1) Every person commits an offence and is liable to the penalty set out in subsection (4) who, being the licensee or a manager of any licensed premises, sells or supplies liquor to any other person who is already intoxicated.
- 2) Every person commits an offence and is liable to the penalty set out in subsection (4) who, not being the licensee or a manager of any licensed premises, sells or supplies liquor to any other person who is already intoxicated.
- 3) Subsection (2) of this section applies irrespective of any liability that may attach to the licensee or any manager in respect of the same offence.
- 4) The penalty is,—
  - a) In the case of a licensee,—
    - i) A fine not exceeding New Zealand \$10 000 [U.S. \$7,488]; or
    - ii) The suspension of the licensee's licence for a period not exceeding 7 days; or
    - iii) Both:
  - b) In the case of a manager, a fine not exceeding New Zealand \$10 000 [U.S. \$7,488]:
  - c) In the case of a person (not being a licensee or manager), a fine not exceeding New Zealand \$2000 [U.S. \$1,497].

### **Table 7.3 : Suggested legislative text**

#### **For countries without a licensing system:**

##### **Sale of alcohol**

- 1) No person may sell alcohol to the public in contravention of this Act or regulations made under this Act.
- 2) Every person who contravenes (1) above commits an offence punishable on conviction by a prison term of XX months or a fine of XX.

#### **For countries with a licensing system:**

##### **Sale of alcohol without a licence**

- 1) No person may sell or supply alcohol to the public without a licence.
- 2) No person may allow any unlicensed premises which they own, rent, manage or control to be used as a place for the consumption of alcohol.
- 3) Subsection (2) does not apply to any premises in which the person resides and to a gift of alcohol to another person by the person in the premises in which they reside.
- 4) Any person who contravenes subsection (1) or (2) commits an offence punishable by a fine of X or imprisonment for up to 12 months, or both.

##### **Keeping or using unlicensed premises**

- 1) A person must not:
  - a) open, keep or use any premises for the purpose of selling liquor, or
  - b) permit any premises over which they have control to be opened, kept or used by another person for the purpose of selling liquor, or
  - c) have the care or management of any premises opened, kept or used for the purpose of selling liquor, or
  - d) assist in conducting the business of any premises opened, kept or used for the purpose of selling liquor, unless the premises are licensed premises or are otherwise authorised under this Act to be used for the sale or supply of liquor.
- 2) Any person who contravenes subsection (1) commits an offence punishable on conviction by a fine of x or imprisonment for up to 12 months, or both.

### **Enforcement through licensing**

In addition to prosecution, a licensing system is also a system of enforcement. The privilege of a licence to sell alcohol is granted only to suitable persons (following a check by police) and can be suspended or removed. Grounds may include evidence of infringements, management practices, neighbourhood impacts and similar matters that reflect on the person's suitability to hold a licence. Evidence of sales to minors should be considered strong grounds for suspension or loss of the licence.

Using the licence as a means of enforcement is made more effective by granting licences for a fixed but renewable term, as in Australia and New Zealand. This ensures that the operation of the premises or retail outlet will be monitored and reported on by local regulators (at least) at the end of each period. There is no right or assumption of renewal. The renewal process provides for reporting by police and inspectors and objections from the public. In addition, local regulators may also apply for a variation, suspension or cancellation of the licence at any point during the term of the licence.

Licensing legislation should state who may apply to the licensing authority for variation, suspension or cancellation of the licence (police, inspectors, health officers). Specific criteria could be included but, as suggested above, it is better practice to focus on relationships and powers and allow the licensing authority to judge evidence presented and the appropriate response. Often the problem is not one or two sales to minors or a court conviction but a series of repeated infringements, poor practices and problems associated with the premises that do not improve despite advice and warnings. The principle is that the licensee has overall responsibility for the operation of the premises, including any infringements by staff in his employment.

Allowing flexibility of decision-making about licence variation, suspension or cancellation provides a hierarchy of available sanctions. Some legislation, such as that of New South Wales, spells out a list of actions that the licensing authority may choose to take, or not. A few problems may be resolved by making some physical change to the premises as a condition of the licence, or by cutting back hours of trading (in systems where this is set on the licence). Suspension of the licence over a busy weekend can be sufficient sanction in that it may cost a business more than the maximum court fine. Cancellation of the licence removes the poorest operators from the market and encourages compliance by others.

It is important that all sanctions have immediate effect, whether or not an appeal is lodged. Experiences in New Zealand and Scotland have shown that, if this is not the case, appeals always will be lodged, business will continue as usual and the enforcement provisions of the law will be rendered meaningless.

### **Table 7.4 : Legislative examples**

#### **Liquor Licensing Act, Vanuatu (Cap 52 of the Laws of the Republic of Vanuatu Consolidated Edition 2006)**

##### **Suspension or Withdrawal of Licences**

- 1) The Minister may order the suspension or withdrawal of any licence for any of the following reasons: conviction of the licensee for a breach of any of the provisions of this Act or regulations made there under; for theft; receiving stolen property; fraud; larceny; false pretences; harbouring criminals; indecent conduct; corruption of minors; allowing games of chance on the premises; sale of counterfeit goods; and goods dangerous to the public health.
- 2) Any member of the Vanuatu police force who is of or above the rank of sergeant or any licensing officer may order the immediate closure of any licensed premises in the interest of peace and good order -provided that such closure shall not be maintained for a period exceeding 3 days without a confirming order to this effect issued by the court.

##### **Penalties**

- 1) Any person who contravenes the provisions of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12(4), 13 and 15 or any regulations made under this Act shall be guilty of an offence and upon conviction thereof shall be liable to a fine not exceeding Vanuatu Vatu VT50,000[U.S. \$527], and for any subsequent offence committed within a period of 5 years of the previous offence to a fine not exceeding 100,000, or to a term of imprisonment not exceeding 6 months, or to both such fine and imprisonment.
- 2) Any person who contravenes the provisions of sections 16, 18, and 20 shall be guilty of an offence and upon conviction thereof shall be liable to a fine not exceeding Vanuatu Vatu VT 25,000 [U.S. \$264], and for any subsequent offence committed within a period of 5 years of the previous offence to a fine not exceeding Vanuatu Vatu VT 50,000 [U.S. \$527], or to a term of imprisonment not exceeding 1 month, or to both such fine and imprisonment.

#### **Liquor Licence Act, Ontario (1990)**

##### **Revocation, suspension or refusal to renew licence**

The Registrar may issue a proposal to revoke or suspend a licence to sell liquor or refuse to renew such a licence for any ground under subsection 6 (2), (4) or (4.1) [Objections] that would disentitle the licensee to a licence if the licensee were an applicant or if the licensee has contravened this Act, the regulations or a condition of the licence (2002).



Section 6. (2) Subject to subsection (4) or (4.1), an applicant is entitled to be issued a licence to sell liquor except if,

- a) they are not financially responsible for the business;...
- d) their past or present conduct affords reasonable grounds for belief that they will not conduct business in accordance with the law;
- e) they provide false information in an application under this Act;
- f) they are currently conducting activities that are in contravention of this Act or the regulations;
- g) the premises, accommodation, equipment and facilities are not in compliance with this Act and the regulations; or
- h) the licence is not in the public interest having regard to the needs and wishes of the residents of the municipality in which the premises are located.

4) A licence to sell liquor shall not be issued,

- a) to a manufacturer; or
- b) to a person who by reason of an agreement, arrangement or understanding with any person is likely to promote the sale of liquor or to sell the liquor of a manufacturer exclusive of any other manufacturer.

4.1) Subject to subsection (4.2), a licence to sell liquor shall not be issued,

- a) to a person who is under agreement with any person to sell the liquor of any manufacturer;
- b) to a person who is associated or connected or financially interested with a manufacturer;
- c) to a person who is likely to promote the sale of liquor of any manufacturer;
- d) to a person for premises in which a manufacturer has an interest; or
- e) to a person in respect of a business in which a manufacturer has an interest by way of a franchise agreement.

### **Sale of Liquor Act, New Zealand (1989)**

#### **Variation, suspension, or cancellation of licences**

- 1) Any member of the police or any inspector may at any time apply to the Licensing Authority in accordance with this section for an order—
  - a) Varying or revoking any condition of a licence, other than a special licence, imposed by the Licensing Authority or a District Licensing Agency, or imposing any new condition (relating to any matters specified in section 14(5) or section 37(4) or section 60(2) of this Act); or
  - b) Suspending the licence; or
  - c) Cancelling the licence.

## 7. Monitoring and enforcement

Every application for an order under this section shall—

- a) Be made in the prescribed form and manner; and
- b) Contain the prescribed particulars; and
- c) Be made to the Licensing Authority.

The grounds on which an application for an order under this section may be made are as follows:

- a) That the licensed premises have been conducted in breach of any of the provisions of this Act or of any conditions of the licence or otherwise in an improper manner;
- b) That the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence; and
- c) The licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public.

The Secretary shall—

- a) Send a copy of the application to the licensee;
- b) Fix the earliest practicable date for a public hearing of the application; and
- c) Give at least 10 working days notice of the date, time, and place of the hearing to the applicant and the licensee.

The applicant and the licensee shall be entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses.

If the Licensing Authority is satisfied that any of the grounds specified in subsection (3) of this section is established and that it is desirable to make an order under this section, it may, by order,—

- a) Vary or revoke any condition of the licence imposed by the Licensing Authority or a District Licensing Agency; or
- b) Impose any new condition (relating to any matter specified in section 14(5) or section 37(4) or section 60(2) of this Act); or
- c) Suspend the licence for such period not exceeding 6 months as the Licensing Authority thinks fit; or
- d) Cancel the licence.

Instead of making an order under subsection (6) of this section, the Licensing Authority may adjourn the application for such period as it thinks fit to give the licensee an opportunity to remedy any matters that the Licensing Authority may require to be remedied within that period.

### **Table 7.5 : Suggested legislative text**

#### **Vary, suspend or cancel the licence**

- 1) At the time of renewal of the licence or at any other time,
  - a) the Authority may instigate an order, or
  - b) any member of the police or any local government officer with responsibility under this Act or other category of person as specified in regulations may apply to the Authority to instigate an order
    - i) to add, vary or revoke any condition of the licence,
    - ii) to suspend the licence for any period up to XX days, or
    - iii) to cancel or decline to renew the license to sell alcohol.
- 2) The grounds on which an order under this section may be made are as follows:
  - a) that the licensed premises have been conducted in breach of any of the provisions of this Act or of any criteria for or conditions of the licence or otherwise in an improper manner;
  - b) that the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence; and
  - c) that the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public.
- 3) The licensee shall be notified 30 days before the order comes into force and may request a public hearing before the Authority in writing within 10 days of receipt of the notification.
- 4) The Authority's decisions shall be based on the balance of evidence before it.

#### **Right of appeal**

Licensing decisions affect both communities and livelihoods and, therefore, decisions may be contested, particularly in the first years following enactment. In Australasia, liquor licensing authorities are a form of specialist court, but with decisions made “on the balance of evidence” rather than to a criminal justice level of proof, on the grounds that alcohol is no ordinary commodity.

All jurisdictions with licensing systems allow a right of appeal to a higher specialist appeal body established under the Act, or to the high court under civil law. New Zealand, for example, allows appeal to the High Court against decisions of its specialist Licensing Authority on the suitability of the licensee or on points of law, but not on matters of fact.

It is important, however, that poorly licensed businesses should not be permitted to continue operating pending their appeal against suspension, cancellation or refusal to renew the licence. A licence to sell alcohol while others may not is a privilege, not a right.

Legislation may provide for public hearings on contested licence applications or renewals, particularly if these arise from public objections. Public hearings should be held in the locality

concerned, although this may not be possible for appeals that go to a high court. Where no objections are received and no problems are anticipated or experienced, routine decision-making may proceed on the basis of applications and reports from statutory officers.

### **Table 7.6 : Suggested legislative text**

#### **Appeals**

- 1) Where the Licensing Authority:
  - a) declines a licence application on grounds of the suitability of the applicant;
  - b) declines an application for renewal of the licence;
  - c) makes an order cancelling the licencethe applicant or licensee may appeal for a review of that decision to (an Appeals Tribunal or the High Court) in writing within 10 working days of receiving the decision of the Authority.
- 2) The decision or order of the Authority continues in force unless and until overturned by the decision of the appeal body.

### **Monitoring the operation of an alcohol control Act**

Differences in local circumstances, cultures and regulatory frameworks will mean that similar legislation and even similar options for implementation will play out differently in different countries. A licensing system, which may involve regulatory responsibilities by several agencies or at both local and national level as well different types of licensed business is likely to require a “bedding in” period after which it is appropriate to review how well the system is operating and what changes or adjustments can be made to improve its operation.

It may be appropriate for the national alcohol policy underlying the legislation to include a requirement or expectation of an operational and legislative review after five years. Some jurisdictions also include a requirement in the legislation itself that the Act be reviewed after a set period of time.

Depending on design, the law may allow minor changes, as licence application requirements, fees or fines, through regulations. Some changes will be merely operational. Others will require legislative amendment.

The alcohol market is a changing one, with new products, new kinds of businesses emerging and new policy proposals in response. In countries with well-established licensing systems, some aspects of alcohol legislative are amended about once every ten years. This review may come as the result of political pressures or it can be part of on-going formal process of periodic policy review.

# 8.

## Regulating alcohol marketing

### Rationale

The advent of sophisticated marketing and the availability of mass media and new technology (such as the Internet and mobile phones) have allowed a level of alcohol marketing that has never been seen before. The global alcohol producers have enormous resources to employ in marketing. This advantage makes the regulation of marketing a major challenge for governments concerned about the impact of marketing on the rate of uptake of drinking in traditionally low alcohol communities. This uptake includes the earlier and more widespread recruitment of younger people and women to drinking. It is also of concern, particularly in relation to the impact on younger people, in established alcohol markets.

About half of alcohol marketing budgets now goes to non-advertising forms of marketing, such as sponsorships and direct promotions. In many countries, there is considerable sponsorship of sports teams and events, and therefore linkage of brands with recreation and excitement. Alcohol sponsorship of international sports events reaches all countries via satellite or local television. These international sponsorships are leveraged with local advertising, website coverage, point-of-sale displays, competitions and branded merchandise, to the extent that local policy permits.

Research has linked levels of exposure to alcohol marketing to earlier onset of drinking and heavier drinking among young people. A large body of alcohol research now shows that children and teenagers, who like ads the most, have more positive beliefs about alcohol, think their friends drink more frequently, are more likely to drink, to drink larger amounts and to experience drinking problems at a later age (Babor et al. 2010). Studies in the United States of America have shown that the exposure of children and young people to alcohol advertising on radio and television and in magazines is widespread and often greater than that of adults (Jernigan et al. 2005; Jernigan 2010).

Many WHO member countries have legislation or regulations prohibiting certain kinds of alcohol advertising, which restricts the amount of commercial messages about alcohol to

which the public is exposed (World Health Organization 2004). A number of countries have policy statements in place that recognize the importance of restricting exposure of young people to alcohol marketing, although policy implementation methods are not always adequate. Studies show that bans or partial bans on alcohol advertising, which influence early onset and increased drinking by young people, can contribute to reducing alcohol-related harm (Babor et al. 2010; Saffer and Dave 2002a, b).

In 1996 China passed regulations on the content of alcohol advertisements and their frequency in various media. In 1998 the government banned alcohol advertising from television. In 2009 Cambodian state television stopped advertising alcohol in response to a public petition, but no regulation prevents ads on commercial television. Mongolia prohibits promotional activities, including lucky draws and branded merchandise and also alcohol sponsorship of sport and cultural activities.

Restricting the amount of alcohol advertising and other marketing is contrary to the commercial interests of the alcohol, advertising and media industries and the pressures of competition. Restricting and monitoring the promotion of alcohol is appropriately the responsibility of governments and government agencies.

Industry promotion of the use of voluntary codes on the content of alcohol advertising (known as self-regulation) has led to the mistaken perception in some countries that there is an international convention or agreement around alcohol marketing. This belief is incorrect.

The strongest model for regulating alcohol marketing is likely to be one in which government establishes a regulatory framework to reduce exposure and monitor all forms of marketing and the relevant industries develop and implement detailed codes of conduct on how they market their products within this framework.

### Issues to consider

#### Freedom of commercial speech

It is often argued by industry that restrictions on alcohol advertising are contrary to rights of freedom of speech and a country's Bill of Rights or Constitution. This argument overstates the limited protection given to commercial speech in most countries. The rights and freedoms typically provided by Bills of Rights and Constitutions are usually subject to a limitation on the right such as the ability to limit the right through reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society (New Zealand Bill of Rights) and protect the rights and freedoms of others or in the interests of public safety and order, or

the general welfare or the security of the country concerned (Cook Islands Constitution) (See further discussion of constitutions and legal systems on p. 103).

Legislated restrictions in the interests of public health on certain business activities related to alcohol are well within these parameters, as testified by court rulings and legal opinions from several countries. National laws restricting alcohol advertising are not uncommon and the trend is towards more restrictive policies.

### **Market access and competition**

International trade rules also permit legislation restricting alcohol advertising. France and Sweden have been challenged in both local and international courts on restrictive alcohol advertising policies under trade rules about freedom of market access. These countries' policies banning alcohol advertising in most media were upheld by local and European Union courts (see ECJ C-262/02, C-429/02 and ECJ C-405/98). Rulings found that freedom to provide services did not preclude a prohibition on alcohol advertising to protect public health and that this measure was proportionate to government goals. The World Trade Organization's General Agreement on Trade in Services (GATS) specifically permits government to take "exceptional" measures to protect human health.

### **Industry self-regulation**

Industry voluntary codes (known as self-regulation) are the preferred option of the alcohol advertising and media industries, and they lobby actively for its adoption and retention. It might be argued that self-regulation is a more proportionate policy for addressing government goals. However, as noted, industry voluntary codes are not appropriate for limiting the amount of alcohol advertising and other marketing to meet a government objective of reduced exposure to commercial messages that encourage alcohol use by young people. Voluntary industry codes are frequently infringed, tend to be under-enforced and are prone to collapse if one or more advertisers no longer participate (Babor et al. 2010; Federal Trade Commission 1999; Hill and Casswell 2004; Jernigan 2003; Jones and Donovan 2002; Ministerial Council of Drug Strategy 2003).

In the most recent evaluation of research and public policies on alcohol, industry self-regulation of alcohol advertising through voluntary codes is rated as ineffective as a strategy for reducing consumption or alcohol-related harm (Babor et al. 2010).

### **Options to restrict marketing**

To reduce exposure to alcohol marketing and in particular its influence and harm among young people, comprehensive restrictions are needed. To be effective, national policy on alcohol

marketing should be as comprehensive as possible in its coverage, including coverage of new and emerging technologies. If alcohol advertising, programme sponsorship and sponsorship of sports, music and cultural events are restricted, then there will be displacement to print media or other marketing strategies, but these are less effective and more expensive media for reaching mass audiences.

The research supporting the need to restrict advertising and other forms of marketing comes mainly from studies of the impact of different levels of exposure on young people (Babor et al. 2010). Studies of national level data on advertising expenditure and total consumption have shown mixed results. A recent cross-country study of legislative bans found a significant effect.

National laws restricting alcohol advertising are common. In the Canadian provinces, legislation is used to enable more responsive restriction and standards of alcohol advertising via regulations. In the European Region, Norway, Iceland and the Faroe Islands ban alcohol advertising completely, and many countries combine partial bans in legislation (restricting types of media, times of broadcasting, and/or types of beverage) with voluntary codes on advertising content. Most Western European countries have partial bans set by legislation (New Zealand Drug Foundation 2006; World Health Organization 2004). A number of countries allow alcohol advertising in print media (except publications for young people) but not in broadcast and other media.

Some countries have partial restrictions, often by agreement with the industries concerned. These reduce exposure a little, but are unlikely to be sufficient to reduce the influence of alcohol advertising and other marketing. Australia and New Zealand limit advertisements for alcohol brands only on television before 20:30 and on radio. In the Republic of Korea, alcohol ads may be shown only after 22:00 on television, (Chun, Welch and Shin, in press). In Malaysia, alcohol advertising is not allowed in the broadcast media or on billboards, except in the state of Sabah and Niue also does not allow broadcast alcohol advertising. In the Cook Islands, a 1998 Healthy Islands Committee recommended a ban on all forms of alcohol advertising and sponsorship. As a result, alcohol ads are no longer shown on television, except during live sports coverage of international events.

In the emerging markets of China, Mongolia and Viet Nam advertising is allowed for alcoholic beverages below a specified pure alcohol content, although beer consumption is growing in these countries and is the main beverage resulting in alcohol-related harm in developed alcohol markets, such as Australia and New Zealand. Mongolia prohibits all alcohol sponsorship, alcohol prizes or competitions and alcohol branded merchandise. In the Lao People's Democratic Republic, there is heavy outdoor advertising and other marketing by breweries.



In 2008 Thailand passed legislation that included a prohibition on advertising or display of names or alcohol brands deemed to promote their qualities or to persuade people to drink alcohol, either directly or indirectly. These restrictions do not apply to advertisements broadcast from outside Thailand. However, the failure to exclude advertising with an element of social good has led to widespread branded promotion of such things as sponsorship of academic scholarships for young people.

France has the most comprehensive regulation on alcohol marketing, limiting both exposure and content. Following a period of unregulated marketing of alcohol, a high level of community and medical concern led to the adoption of the Loi Evin in 1991. It has also been applied in the French territories of the Western Pacific Region. The law states that alcohol advertising is authorized only in print media (other than for young people), on radio and on billboards or signage and related to places of manufacture or sale and trade communications. That is, alcohol advertising on television and in cinemas is not permitted. (Canadian legislation uses a similar approach, prohibiting all alcohol advertising except that which is permitted.) The French law specifically prohibits alcohol sponsorship and also the sale of alcohol in gyms and other sports facilities. The combination of these provisions means there is no longer alcohol signage on sports fields captured by televised sports coverage (and controversy arose over trans-border sports broadcasting that transmitted alcohol advertising in this way).

The French law also restricts the content of advertising to product characteristics such as provenance, quality, the “terroire” of wines, etc. This content is less attractive to young people than image advertising based on attractive young adult lifestyles, humour or music. This law has resulted in the language of advertising losing most of its seductive character. There has been a complete disappearance of the drinker and drinking environments from the images, in favour of highlighting of the product itself.

Global alcohol companies have considerable resources to spend on alcohol advertising; so to ensure deterrence, the French law allows the court to impose an additional fine proportionate to the amount spent on the offending alcohol advertising or sponsorship.

As noted, this law was upheld by French and European Union courts. The final judgement of the European Court of Justice was that the ban constituted a restriction on the freedom to provide services across the common market of the EU (including the Audiovisual Media Services Directive) but that this was justified by the aim of protecting public health (ECJ C-262/02, C-429/02). This ruling supporting restrictive policy on alcohol advertising is also in line with exemptions under WTO trade agreements for measures protect human health.

### **Table 8.1 : Legislative examples**

#### **Loi Evin, France (1991)**

A clear definition of alcoholic drinks is given: all drinks over 1.2% alcohol by volume are considered as alcoholic beverages.

Places and media of authorized advertising are defined:

- no advertising should be targeted at young people;
- no advertising is allowed on TV and in cinemas; and
- no sponsorship of cultural or sport events is permitted.

Advertising is permitted only:

- in the press for adults;
- on billboards\*;
- on radio channels (under precise conditions); and
- for special events or places, such as wine fairs and wine museums.

When advertising is permitted, its content is controlled.

Messages and images should refer only to the qualities of the products, such as degree, origin, composition, means of production, patterns of consumption.

A health message must be included on each advertisement: "Alcohol abuse is dangerous to health." (France 2001)

\* The text limited billboard advertising to places of production and sale. Later, a law change permitted billboard advertising anywhere that alcohol was served or sold.

#### **Options on the content of alcohol advertisements**

In a number of countries, including Australia and New Zealand, the content of alcohol advertisements is not regulated by government, but comes under systems of industry self-regulation and voluntary codes that set standards for advertising alcohol (alongside codes for other products, advertising to children, etc.). These alcohol advertising codes include restrictions that originated as government policy, such as no television advertisements before 20:30 or 22:00. Many code rules, such as not linking alcohol to sex or social success, health or violence, and not using actors under 25 years, reflect past complaints by the public or public health organizations. Industry self-regulation of alcohol advertising now typically includes pre-vetting and a committee to review complaints that may include non-industry members. Some codes now include cable, satellite or Internet in their definition of broadcast advertising, but very few address other forms of marketing.

In the European Union, a 1989 Directive on Television without Frontiers included a set of minimum rules on the content of alcohol advertising (Article 15), as a basis for national standards. Some member countries have included this in legislation regulating marketing,

while in others it informs a voluntary system. Article 15 was retained when the directive was updated in 1997 and 2007 to cover all forms of audiovisual media, including programme sponsorship and product placement (European Parliament and Council 1989, 2007).

Experience in this Region of industry self-regulation on alcohol advertising standards has shown that it is not possible to rely on complaints by the public or the industry itself to adequately pre-vet, interpret and enforce alcohol marketing standards in the public interest (Federal Trade Commission 1999; Jones and Donovan 2002; Ministerial Council of Drug Strategy 2003).

As noted, the Loi Evin not only restricts the media in which alcohol may be advertised, but also restricts the content of permitted advertisements to factual information on the quality and origins of the alcohol product advertised. This approach was a response to highly sexualized imagery in alcohol ads in the 1980s. By restricting the content of ads, French alcohol is no longer linked to the young adult lifestyles, humorous situations or masculine imagery that make alcohol ads attractive to young people in many other countries (Austin et al. 2006; Chen et al. 2005).

The Western Pacific Regional Strategy to Reduce Alcohol-Related Harm recommends that an independent government agency be made responsible for monitoring and enforcement of marketing regulations. This action can include monitoring compliance with legislation to reduce exposure and industry voluntary codes on standards. As an independent body, it could replace the industry's complaints committee. It can also monitor and report to government on any new forms of alcohol marketing that may arise, and commission research as required. It could be funded from excise tax or an additional levy on alcohol (see section on Dedicated funding).

### **Table 8.2 : Legislative examples**

#### **Alcohol Beverage Control Act, Thailand (2008)**

Section 32. Advertising or displaying names or trademarks of alcohol beverage deemed to show their qualifications or persuade people to drink such alcohol beverage either directly or indirectly is prohibited.

Any advertising or public relations made by manufacturers of alcohol beverage of all kinds can be done only for the purpose of giving information and creative knowledge without displaying pictures of the products or packages, except for the display of symbol of such alcohol beverage or the symbol of the company manufacturing the alcohol beverage. This shall comply with the Ministerial Regulations.

Provisions of the first and second paragraphs shall not apply to advertisements originated from outside the Kingdom of Thailand.

**Liquor Licence Act, Ontario (1990)**

62 (1) The Lieutenant Governor in Council may make regulations:

- 10 controlling the advertizing of liquor or its availability for sale and requiring that advertisements be subject to the approval of the Registrar;
  - 10.1 controlling the advertising of goods and services provided in connection with the making of beer and wine at a ferment on premise facility and requiring that advertisements be subject to the approval of the Registrar;
  - 10.2 governing the information that may or must appear on labels and containers of liquor sold or kept for sale at a government store.

**Liquor Control and Licensing Act, British Columbia, Canada (1996)**

51.1 (1) Except as provided in the regulations, a person must not advertise liquor or the availability of liquor.

(2) Subsection (1) ceases to operate to the extent that it conflicts with or is inconsistent with legislation enacted by the Parliament of Canada for the control and regulation of liquor advertising.

**Table 8.3 : Suggested legislative text**

**Restrictions on the promotion of alcohol**

- 1) Except as authorized by subsection (2), no person shall advertise or promote or arrange for any other person to advertise or promote alcoholic beverages.
- 2) Despite subsection (1), a person may do any of the following:
  - a) Place advertisements for alcoholic beverages in newspaper media other than publications intended for young people;
  - b) Display signs and posters inside licensed premises and inside an alcohol manufacturer's place of business;
  - c) Undertake trade communications between producers, manufacturers, importers and sellers of alcoholic beverages;
  - d) Display the name, address and logo only of an alcohol manufacturer or distributor on the exterior of delivery vehicles for alcoholic beverages;
  - e) Use labeling and packaging for alcoholic products that complies with regulations under this Act; and
  - f) Display materials related to winemaking in museums or education establishments as well as at presentations and tastings of alcoholic beverages.
- 3) All advertising for alcoholic beverages and other materials authorized by subsection (2) shall be limited to describing or depicting the type, strength, origin, composition and other production characteristics of the alcohol product and the name and address of the manufacturer and agents, as well as methods of sale and consumption.
- 4) All advertising for alcoholic beverages except in trade communications must carry a health message specifying that "Alcohol can be dangerous for your health."

- 5) Any person who contravenes subsection (1), (3) or (4) commits an offence punishable on conviction by a fine of XX.
- 6) In addition to the fine under subsection (5) the Court may impose a penalty comprising up to 50% of the total cost of the advertising in question.

#### **Alcohol sponsorship prohibited**

- 1) This section applies to any event or activity if its name or any item used or associated with it or in connection with the organization, promotion, marketing or merchandising of the event or activity includes or is associated directly or indirectly with:
  - a) any alcohol product; or
  - b) any trade mark of an alcohol product; or
  - c) a company name or any part of a company name which may be included in that alcohol product trade mark.
- 2) No person shall:
  - a) organize or promote any such event or activity which is to take place, in whole or in part, in (name of country); or
  - b) make any financial contribution towards the event or activity which is to take place, or is taking place, or has taken place, in whole or in part, in (name of country); or
  - c) make any financial contribution to any person in respect of:
    - i) the organization or promotion of the event or activity by that person; or
    - ii) participation by the person.
- 3) Any person who contravenes subsection (2) commits an offence punishable by a fine of XX.
- 4) In addition to a fine under subsection (1), the Court may impose a penalty comprising up to 50% of the total cost of the sponsorship in question.

#### **Promotions by licensed premises**

Concerns about promotions by licensed premises that may encourage excessive drinking and disorder have led to offences related to this being included in licensing legislation. In Victoria, Australia, it is an offence only if the Director of the licensing authority notified the licensee to desist. In New Zealand this was added in 1999, but not prosecuted until 2004 in a case that showed public health officers or inspectors, not just police, can initiate prosecution for an alcohol offence.

Scotland's 2005 Act included an offence for irresponsible drinks promotions by on-licensed premises that has more concrete detail than the Victoria or New Zealand examples.

### Table 8.4 : Legislative examples

#### **Liquor Reform Act, Victoria, Australia (1998)**

115A Prohibited advertising or promotion

- 1) The Director may give a notice to a licensee banning the licensee from advertising or promoting—
  - a) the supply of liquor by the licensee; or
  - b) the conduct of licensed premises by the licensee—if, in the opinion of the Director, the advertising or promotion, or the proposed advertising or promotion, is likely to encourage irresponsible consumption of alcohol or is otherwise not in the public interest.
- 2) A licensee to whom a notice applies must comply with the notice. 120 penalty units.

#### **Sale of Liquor Act, New Zealand (added 1999)**

154A. Promotion of excessive consumption of alcohol- Every person commits an offence and is liable to a fine not exceeding New Zealand \$5000 [U.S. \$3,744] who, being a licensee or manager of licensed premises, does anything in the promotion of the business conducted on the premises, or in the promotion of any event or activity held or conducted on the premises, that is intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent.

#### **Alcohol Beverage Control Act, Thailand (2008)**

30. Sale of alcohol beverage in the following methods or manners is prohibited: ...

- 3) Discount for sale promotion purpose;
- 4) Giving or offering to give the right to attend a competition or performance or to win some rewards, or any other privileges in favour of alcohol beverage buyers or those bringing the packages, labels or any other materials related to the alcohol beverage to exchange or trade with anything;
- 5) Distributing, attaching, giving or trading with alcohol beverage or with other products or providing other services, as the case may be, or distributing alcohol beverage as sample of the beverage or motivating the public to consume alcohol beverage as well as setting sale conditions in the manner that the consumers are directly or indirectly forced to buy the alcohol beverage; and
- 6) Sale of alcohol beverage by any means or manners announced by the Minister with advice of the Committee.

### Table 8.5 : Suggested legislative text

Every person commits an offence punishable on conviction by a fine of XX who undertakes a promotion or other activities (including price discounting or supply of alcohol free of charge) that is likely to encourage rapid or excessive consumption of alcohol.

# 9.

## Deterring drink-driving

### Rationale

Alcohol-related traffic crashes are a significant contributor to alcohol-related harm. A number of countries have experienced rapid increases in numbers of vehicles, including motorcycles, together with rising traffic injury rates to which increased or changing patterns of drinking have contributed.

There is a measurable increase in driving impairment at low levels of alcohol in the blood. Compared to drivers with zero blood alcohol, drivers with a blood alcohol content (BAC of 0.05gm/100ml) are 38% more likely to be involved in a crash and drivers with 0.08gm/100ml are almost 2.7 times more likely to be involved in a crash (Dubowski 2007).

Worldwide, drink-drive legislation in 60 out of 83 countries (excluding countries with religiously mandated zero limits) now set a BAC limit of 0.05 g or less per 100 ml. In the Western Pacific Region, Fiji, Malaysia, Singapore and New Zealand have limits of 0.08 g/100 ml (although New Zealand's Land Transport Safety Authority has recommended a change to 0.05 g/100 ml). The Republic of Korea has a BAC of 0.05 g/100 ml, as have all states and territories of Australia since 1989. China and Japan have a BAC of 0.03 g/100 ml. Not all countries in the Western Pacific Region have established legal BACs. However, countries with otherwise limited policy or law on alcohol have in the last few years been making progress on drink-driving legislation. Viet Nam's 2008 Traffic Laws, implemented in July 2009, prohibit driving of cars or trucks with any alcohol in the blood, subject to a fine and two months suspension of licence, or a fine and a one month suspension for motorcyclists with more than 50 mg/100ml of blood (Hanh 2009). Accidents due to alcohol use are not covered by health insurance or state compensation.

The Organization for Economic Cooperation and Development (OECD) and the European Union now recommend a BAC of 0.02 g/100 ml or less for novice drivers or young drivers, who are more susceptible to alcohol than older drivers. For example, in 2006 the Netherlands lowered its BAC for the first five years of driving, based on evidence that young male drivers in particular were involved in a quarter of all crashes and were not responding to existing measures.

Blood alcohol level provides accurate evidence for impairment. Modern breath-testing equipment, however, gives traffic police a practical means of check for impairment at the roadside and the law should allow such test results to be used as evidence in court. The usefulness of the BAC level as a strategy is reduced if breath/blood analysis technology is not readily available to police. Once the BAC level is established in law and the technology is available, a commitment to enforcement is needed. Several countries, such as Viet Nam and Mongolia, report a need for capacity-building with breathalyser equipment and police training. The Lao People's Democratic Republic reports receiving breathalysers as part of an aid package, but there is no current budget for random breath testing work by police, although a third of injury admissions to Vientiane's largest hospital relate to drink-driving.

Random breath testing (RBT) is an effective means of ensuring compliance with drink-driving laws. The key element of RBT is random but highly visible police enforcement. "The community must understand and believe that if they drink and drive there is a strong likelihood of both detection and prosecution" (Global Road Safety Partnership 2007).

The speed with which a penalty is applied also affects its effectiveness. Legislation which provides for automatic administrative suspension of driver's licences allows immediate action when drivers are detected with BAC levels beyond the legal limit.

The World Health Organization's publication *Drinking and Driving: A Road Safety Manual for Policy Makers and Practitioners* provides detailed evidence and information for development of drink-driving policy (Global Road Safety Partnership 2007).

### Issues to consider

#### **Defining both breath and blood alcohol limits**

In some countries there appears to be confusion about how blood and breath alcohol concentrations are defined. Sometimes, the concentrations do not match accurately. The ratio of alcohol concentration between blood and breath is approximately 1:2100. That is, the weight of alcohol in 100ml of blood is the same as in 210 litres of breath. A number of jurisdictions, including Victoria, Australia, and New Zealand, set a double definition in law of 50mg per 100ml blood or 210 litres of breath.

#### **Implementation of Random Breath Testing**

The aim of the Random Breath Testing (RBT) is to create a sense of unease about drinking and driving among potential offenders, by giving the impression that monitoring and enforcement of the drink-driving laws is unpredictable, unavoidable and ubiquitous. RBT is performed at



selected, highly visible checkpoints – often on main roads. The checkpoints are not announced publicly and locations vary from day to day and from week to week. All motorists passing a checkpoint are stopped for a preliminary roadside breath test, regardless of personal or vehicle characteristics. Drivers returning a negative breath test result are not detained and usually drive away after a delay of less than one minute. Those who fail may be prosecuted on that result or asked to undertake an evidential blood test.

To be effective, the law must require random breath-testing of any and all drivers on request by an authorized officer. Refusal to take a breath or blood test should be an offence, with sanctions equal to those which would have been incurred if the person failed the test and had a previous drink-driving conviction.

### **Administrative suspension of licence**

An automatic administrative suspension of a driver's licence for drink-driving avoids slow and expensive court processes to bring the penalty closer to the teachable moment of being apprehended for Blood Alcohol Content (BAC) levels above the legal limit. As a deterrent, it may be particularly effective with young males.

In Ontario, Canada, the government introduced administrative licence suspensions for drink-driving in 1996. This required that anyone charged with having a BAC over 0.08 g/100 ml or refusing a breath test would have their licence suspended for 90 days from the time the charge was laid. This change was followed by an estimated 17.3% reduction in fatally injured drivers who were over the legal alcohol limit.

In 2003, France strengthened its penalties for drink-driving, including suspension of licence, and increased BAC testing. For example, a BAC of 0.05-0.08 gm per 100 ml results in a loss of six points (on a points system leading to loss of licence), suspension of licence for three years, and a fine of Euro €135-750 [U.S. \$179-\$993]. A BAC above 0.08 gm per 100 ml adds two years in prison and raises the fine to Euro €4,500 [U.S. \$5,959]. A repeat conviction increases imprisonment to three years and doubles the fine. In 2003, alcohol-related fatalities dropped from 38% to 20% of all traffic fatalities compared to 2002, and alcohol-related traffic injuries fell by 60%. In 2004, 60% of drivers reported not drinking and driving compared to 45% in 1999 (Riviere 2004).

A few countries currently based drink-drive penalties on whether a resulting accident has caused injury or death. However, the research evidence is clear that above 0.05gm/100ml levels of blood alcohol, driving is impaired and risk of accident increases markedly (Global Road Safety Partnership 2007; Land Transport Safety Authority 2003). This risk to the public is

why drink-driving is an offence in itself. Many countries' traffic laws include offences such as dangerous driving or driving causing injury, which may apply together as aggravating factors with a charge of drink-driving, increasing the penalties. In some countries, including New Zealand and Australia, a drunk driver who causes a fatality may be charged with manslaughter.

### **Table 9.1 : Legislative examples**

#### **Land Transport Act, New Zealand (1998)**

Drivers not to exceed specified alcohol limits.

A person may not drive or attempt to drive a motor vehicle while—

- a) The proportion of alcohol in the person's breath, as ascertained by an evidential breath test subsequently undergone by the person under section 69, exceeds 400 micrograms of alcohol per litre of breath; or
- b) The proportion of alcohol in the person's blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or section 73, exceeds 80 milligrams of alcohol per 100 millilitres of blood; or
- c) If the person is younger than 20,—
  - i) The proportion of alcohol in the person's breath, as ascertained by an evidential breath test subsequently undergone by the person under section 69, exceeds 150 micrograms of alcohol per litre of breath; or
  - ii) The proportion of alcohol in the person's blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72 or section 73, exceeds 30 milligrams of alcohol per 100 millilitres of blood.

#### **Highway Traffic Act, Ontario (1990)**

- 48 (1) A police officer, readily identifiable as such, may require the driver of a motor vehicle to stop for the purpose of determining whether or not there is evidence to justify making a demand under section 254 of the Criminal Code (Canada).
- 2) Where, upon demand of a police officer made under section 254 of the Criminal Code (Canada), the driver of a motor vehicle or the operator of a vessel provides a sample of breath which, on analysis by an approved screening device as defined in that section, registers "Warn" or "Alert" or otherwise indicates that the concentration of alcohol in the person's blood is 50 milligrams or more of alcohol in 100 millilitres of blood, the police officer may request that the person surrender his or her driver's licence.
- 3) Where, upon demand of a police officer made under section 254 of the Criminal Code (Canada), the driver of a motor vehicle or the operator of a vessel provides a sample of breath which, on analysis by an instrument approved as suitable for the purpose of section 254 of the Criminal Code (Canada), indicates that the concentration of alcohol in his or her blood is 50 milligrams or more of alcohol in 100 millilitres of blood, a police officer may request that the person surrender his or her driver's licence.

- 4) Upon a request being made under subsection (2) or (3), the person to whom the request is made shall forthwith surrender his or her driver's licence to the police officer and, whether or not the person is unable or fails to surrender the licence to the police officer, his or her driver's licence is suspended from the time the request is made for the period of time determined under subsection (14).

### **Table 9.2 : Suggested legislative text**

#### **Driving while intoxicated is prohibited**

- 1) No person shall drive a motor vehicle or motorcycle who:-
  - a) being a person aged 20 or less:
    - i) has a concentration of alcohol present in the blood of more than 0 grams per 100 millilitres of blood, or
    - ii) a concentration of alcohol present in the breath of more than 0 grams per 210 litres of exhaled air;
  - b) being a person aged 20 or more:
    - i) has a concentration of alcohol present in the blood of 0.05 grams or more per 100 millilitres of blood; or
    - ii) has a concentration of alcohol present in the breath of 0.05 grams or more per 210 litres of exhaled air;
- 2) A person who is guilty of an offence under sub-section (1), is liable:
  - a) in the case of a first offence:
    - i) to a fine of XX, a term of imprisonment of XX days or both; and
    - ii) the court must order the person to be disqualified from holding or obtaining a driver's licence for x months or more
  - b) in the case of a subsequent offence:
    - i) to a maximum fine of XX, a term of imprisonment of XX months or both; and
    - ii) The court must order the person to be disqualified from holding or obtaining a driver's licence for XX years.

#### **Random breath and blood testing**

- 1) Any person driving a motor vehicle or motorcycle or who is believed on reasonable grounds to have recently been driving a motor vehicle or motor cycle shall take a breath and/or blood test when requested to do so by a police or traffic officer.
- 2) Testing for evidential purposes shall be undertaken by the police or traffic officer using analyzing instruments or procedures authorised for this purpose by the Minister of Transport in regulations.
- 3) Refusal to take the test is an offence punishable by a fine of XX (equal to the fine for failing the test) or disqualification from holding a driver's licence for X years.

# 10.

## Implementation

### The importance of planning

Successful implementation of any legislation is likely to require:

- Resources;
- Trained enforcement officers and competent managers;
- Committed nongovernment organizations;
- Media organizations that are “on-side,” or at least briefed on the evidence so that they present an objective and informed view; and
- Public awareness about, and confidence in, the proposed new legislation.

This last point is essential as the primary objective of the legislation will be to promote public health and safety.

To ensure the successful implementation of any new legislation, it is also recommended that Departments or Ministries prepare an implementation plan. As a minimum this plan should:

- Appoint a project manager responsible for the delivery of the plan;
- Describe the goal, scope and parameters of the project;
- List the tasks that will need to be completed to implement the legislation;
- Identify the timing for the completion of each task;
- Identify the persons responsible for completing each task;
- Set out reporting requirements for persons working to implement the legislation; and
- Identify the risks (and strategies for minimizing these risks) to the successful implementation of the legislation.

The authors suggest that an implementation plan be developed well before legislation comes into force to ensure the smooth commencement and implementation.

The plan should include:

- Measures to ensure appropriate consultation with interested parties, including public health and community interest groups, representatives of the affected industries, and the general public (see discussion below on appropriate consultation).
- Consultation with other departments on the content of the legislation, outlining the purposes, and seeking their input on such matters as:

- The final form that provisions should take (such as compliance with domestic legislative drafting style, identifying appropriate penalties, identifying enforcement powers for officers under similar legislation, identifying appropriate provisions for the establishment of, appointments to, and accountability of, and statutory bodies).
- The effect of the country's Constitution and other laws on any proposed alcohol control law (see discussion below).
- Compatibility of the measures with any international obligations (e.g. trade agreements).
- Means of minimizing compliance costs while achieving the desired outcomes.
- Best means of conveying the rationale for, and explaining the requirements of, the legislation to the public. and
- Strategies to respond to criticism and lobbying by opponents of the legislation, such as the alcohol industry.
- The identification of resources (persons and financial) to facilitate the implementation of the legislation.
- The development of an information/education plan for those affected by, or interested in, implementation of legislation, such as a new or strengthened licensing system. This plan should ideally include a range of measures to inform people of:
  - Exactly what the legislation provides for, and explaining peoples' obligations under it;
  - The rationale for the legislation (what it will achieve, e.g. public health benefits) and the evidence in support of the measures that are proposed;
  - Time-frames for compliance with the legislation (including any transition times);
  - How the legislation will be implemented (commitment to enforcement, but focus initially on education and encouraging compliance); and
  - Where to go for further information.
- The establishment of bureaucratic structures, mechanisms and processes to give effect to the legislation (e.g. mechanisms for licensing, development of signage for retail outlets).
- The appointment and warranting of enforcement officers, and effective training of those officers.
- The development of regulations in support of and to give effect to the primary legislation.

### **Consultation of interested parties**

The implementation plan should also include measures to ensure appropriate consultation and information exchange with stakeholders and the general public. This approach may be by way of a public discussion document and meetings with public health interest groups and also with industry representatives prior to drafting a bill. The formal political processes of law-making also offer all parties opportunities to express their views and concerns.

Public interest groups, local community leaders and local agencies such as police contribute to the policy-making process in many countries at an early stage. They can offer information, insights and practical suggestions that can assist in the design and implementation of effective legislation and enforcement. Nongovernment organizations and communities play a valuable role in maintaining compliance with alcohol and licensing laws at the local level, increasing regulatory efficiency (Braithwaite 1993). In many countries this includes a formal role for local groups and individuals through a public objections process in licensing and licence renewal procedures. Alcohol retailers, producers, importers and the hospitality sector, as well as the advertising and media industries, are also interested parties in the alcohol policies covered by this guide. Early information exchange with industry can be helpful. Issues for discussion may include industry's ability to comply, appropriate time-frames and transition periods, and fair administrative, enforcement and appeal procedures.

Caution is advisable, however, in regard to industry's role in the development of alcohol policy. There is a conflict of interest between these industries' obligations to shareholders and policies that restrict alcohol affordability, availability, marketing and consumption in the interests of public health.

For this reason, a WHO Expert Committee has spelled out a role for the alcohol industry in WHO consultation processes that is equally appropriate to policy consultations by member governments. The committee recommended:

... that WHO continue its practice of no collaboration with the various sectors of the alcohol industry. Any interaction should be confined to discussion of the contribution the alcohol industry can make to the reduction of alcohol-related harm only in the context of their roles as producers, distributors and marketers of alcohol, and not in terms of alcohol policy development or health promotion (WHO Expert Committee 2006).

### **Constitutions and legal systems**

It is important to consider the (written or unwritten) constitution of the country for which alcohol control legislation is being contemplated before adopting provisions set out in this guide. Opponents of alcohol control legislation may attempt to use the constitution or Bill of Rights of the country to argue that the legislative proposals are inappropriate and unconstitutional. This is a standard tactic used by opponents to alcohol and tobacco control measures.

Most constitution's guarantee certain fundamental rights and freedoms. Usually included will be the right to freedom of speech and expression. Opponents to alcohol control legislation will

often argue that limitations on advertising or the requirement to display a health warning on containers for example, amount to a limit on freedom of speech and expression.

However, most constitutions provide for limitations on the right to freedom of speech and expression – particularly in respect of commercial interests. Constitutions will often include a statement acknowledging the right of the parliament of the country concerned to make laws for the peace, good order, and good government of the country. It may be expressly stated that an individual has duties to others and accordingly needs to be subject in the exercise of his/her rights and freedoms to such limitations as are imposed by any enactment or rule of law for protecting the rights and freedoms of others or in the interests of public safety and order, or the general welfare or the security of the country concerned.<sup>3</sup>

Thus, even though freedoms of expression and speech are recognized as important, most constitutions will not prevent lawmakers from restricting this right where it is detrimental to the public as a whole. Many countries impose restrictions on such things as the promotion of discrimination or hate crimes, censor broadcasts and publications, and more recently, have imposed restrictions on tobacco advertising and legislated for bans on smoking in certain places. The evidence to justify such measures (on public health grounds) is strong.

### **Periodic review**

Differences in local circumstances, cultures and regulatory frameworks will mean that similar legislation and even similar options for implementation will play out differently in different countries. Systems of operation and enforcement for licensing, RBT or marketing may involve responsibilities and practices by different agencies or at local and national level and are likely to require a “bedding in” period after which it is appropriate to review how well the system is operating and what changes or adjustments can be made to improve its operation.

It may be appropriate for legislation or the national alcohol policy underlying legislation to include a requirement or expectation of an operational and legislative review after five years. National alcohol policy documents can include a requirement for periodic review of the operation of the legislation and policy strategies adopted.

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<sup>3</sup> Paraphrased from the Constitution of the Cook Islands (as at 1 November 1998).

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