

REGULATORY IMPACT STATEMENT: ALCOHOL REFORM BILL – POLICY AMENDMENTS FOR INCLUSION IN THE GOVERNMENT SUPPLEMENTARY ORDER PAPER

Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice. It provides an analysis of the main proposed changes to the Alcohol Reform Bill (the Bill), which will be included in a Supplementary Order Paper (SOP) at the Committee of the Whole House stage of the Bill.

This RIS builds on the RIS that accompanied the Alcohol Law Reform Cabinet Paper, which sought policy approval for the Bill (August 2010). It also builds on the RIS that accompanied the Cabinet paper that sought policy approval for changes to the Bill following its consideration by the Justice and Electoral Committee (July 2011).

The analysis provided in this RIS is commensurate with the expected level of impact for each of the matters under consideration. These matters are covered in separate parts of this RIS.

Ready-to-drink alcoholic beverages (RTDs) (Part 1)

The primary focus of this RIS is on RTDs as placing regulatory restrictions on this alcohol product category could potentially have significant impacts. The Government has indicated its intention to target RTDs and has recently announced that maximum limits of 6% alcohol content and 1.5 standard drinks per container could be introduced for RTDs sold from off-licence premises.

The proposal in the Cabinet paper is to give the alcohol industry an opportunity to introduce their own measures to limit the harm to young people caused by RTDs, as well as to include a regulation-making power in the Bill to allow restrictions on the sale of RTDs in the future. This option gives the Government an opportunity to monitor the effectiveness of industry measures in this complex and constantly evolving area.

The identification and analysis of options to target RTDs, and possible outcomes, are constrained by the following factors.

- The analysis has been informed using the evidence available, which includes information provided by submissions on the Bill and further information provided by RTD producers. Some assumptions have been made to provide an expression of the direction and approximate sense of impact for each of the options.
- We are aware that RTDs are not the only influence on youth drinking behaviour. There are also cultural and family/peer group influences, such as drinking to get drunk, modelling adult drinking behaviours and being supplied alcohol by parents and older siblings. The Alcohol Reform Bill includes a number of proposals that aim to help address such factors.
- As restricting the composition of RTDs is an innovative solution the impact on alcohol consumption and related harm is unclear. While other countries have chosen to target RTDs via increases in excise tax, we are not aware of countries that have placed restrictions on the composition of RTDs.

Targeting RTDs will impose some costs on the alcohol industry, and there may be downstream impacts on market competition. The level of impact is dependent on the option selected. Consideration will need to be given as to the consistency of any regulations with the Government's statement on improving the quality of regulation ("Better Regulation, Less Regulation").

Other matters (Parts 2-5)

Cabinet policy decisions are also being sought on the following matters: winery off-licences, private supply to minors, irresponsible promotion of alcohol and permanent charter clubs. These matters allow the Bill to better achieve its objectives and have only minor impacts, over and above the decisions that have already been taken by Cabinet on alcohol law reform.

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Background

1. The Sale of Liquor Act 1989 (the 1989 Act) provides the regulatory framework for the sale and supply of alcohol in New Zealand. In August 2010 the Government introduced the Alcohol Reform Bill (the Bill), which proposed changes to the 1989 Act and related legislation to reduce the harm arising from excessive alcohol consumption, particularly among young people.
2. The Bill had its second reading on 13 September 2011. Since then, Ministers, officials and key stakeholders have raised matters that are considered necessary or desirable to address through changes to the Bill. The focus of this Regulatory Impact Statement (RIS) is on the main matters where further Cabinet policy decisions are required, for inclusion in a Government Supplementary Order Paper (SOP) at the Committee of the Whole House stage of the Bill.
3. Given the range of matters under consideration, the level of analysis provided for each of these matters differs depending on the expected impact, with the most analysis on RTDs.

Objectives and considerations

4. The objectives and considerations that were identified for the wider alcohol law reform package continue to apply.

Objectives

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

Considerations

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

5. Consistent with the previous RISs, the analysis assesses options according to the following areas of impact:
 - reduction of harmful consumption by heavy drinkers
 - effect on moderate drinkers
 - effect on business and economic performance, and
 - reduction of costs borne by Government sectors (health, policing and enforcement).

PART 1: READY-TO-DRINK ALCOHOLIC BEVERAGES (RTDS)

Status quo

6. There are no restrictions on RTDs in New Zealand. They represent a diverse segment of the alcohol market. For example, RTDs:
 - contain a brewed, fermented and/or distilled alcoholic base, mixed with a variety of other products (carbonated and un-carbonated), such as cola, soda, milk, fruit juices or liqueurs

- range in alcohol content from 4.8% to 14%
 - range in price from \$0.47-\$2.95 per standard drink, with an average price of \$1.30 per standard drink,^{i,1} and
 - are sold in both single-serve and multi-serve containers, which range from 250ml cans to 3 litre casks containing between 1 and 21 standard drinks.
7. The RTD market is growing. Alcohol available for consumption figures indicate that spirit-based drinks (the category that is predominantly made up of RTDs) have increased in availability by 39% since 2006. RTDs accounted for 14% of all alcoholic beverages available for consumption in the year ended March 2012.² The majority of RTDs are sold from off-licence premises (79³-95%⁴).
8. Local producers dominate the RTD market in New Zealand. In 2011, 30,477,406 litres of spirit-based RTDs (6-9% alcohol content) were manufactured in New Zealand.ⁱⁱ Of these, 4% were exported to other countries (1,354,319 litres). Only 1,398,298 litres of RTDs were imported from other countries, for sale in New Zealand, in 2011.^{5,iii}

Previous Government decision and alcohol law reform proposals

9. As part of the alcohol law reform package, in August 2010 the Government agreed to limit the risk of harm posed by RTDs, particularly to young people, by restricting them to 5% alcohol content and 1.5 standard drinks^{iv} per container. There was no regulatory impact analysis undertaken to inform this proposal, as it was a late addition to the alcohol law reform package.
10. Other proposals in the alcohol law reform package that target young people include:
- increasing the purchase age to 20 years for off-licence premises
 - parental consent is required for people other than parents or guardians to supply alcohol to minors in private social situations
 - alcohol must be supplied to minors responsibly
 - it is an offence to promote alcohol in a way that has special appeal to young people, and
 - increasing funding and access to youth alcohol and other drug treatment services.
11. The previous Government decision and the alcohol law reform package form an important part of the status quo.

Problem definition

12. The problem definition is twofold:

Primary problem

RTDs contribute to excessive alcohol consumption and alcohol-related harm among young people

ⁱ This compares to \$1.28 per standard drink for mainstream beer, \$1.84 for cider, \$1.17 for spirits and \$1.40 for wine.

ⁱⁱ RTDs manufactured in New Zealand and cleared through Customs New Zealand for home use/consumption in New Zealand.

ⁱⁱⁱ Note that these data will differ from official trade statistics produced by Statistics New Zealand, which are subject to editing and compiled according to international standards.

^{iv} One standard drink equals 10 grams of pure alcohol.

Secondary problem

Three major international trade agreements impact on the ways in which New Zealand can address the primary problem above, by implementing the restrictions on the alcohol content and volume of RTDs that were previously agreed by the Government.

The Government has already attempted to implement the RTD restrictions through the built-in mechanisms of the Food Treaty with Australia but has not been successful.

Primary problem

RTDs contribute to excessive alcohol consumption and harm among young people

13. RTDs often have a sweet taste that masks the alcohol content. This makes it easy for young people to over-indulge,⁶ particularly when the drinks have a high alcohol content and a large number of standard drinks per container. Brightly coloured RTDs, convenient container size, price, packaging and promotions are also features of RTDs that appeal to the youth market.⁷
14. Evidence suggests that some types of alcoholic beverages are more frequently associated with negative consequences and present specific problems for particular population groups.⁸ RTDs are linked to early onset of drinking⁹ and are popular among young people, particularly females and binge drinkers.
15. Specifically, New Zealand evidence indicates that:
 - 43% of youth drinkers (aged 12-17 years) drank RTDs on their last drinking occasion in 2007/08. In comparison, 35% of youth drinkers drank beer on their last drinking occasion¹⁰
 - 18% of youth drinkers planned to get drunk on their last drinking occasion¹¹
 - among secondary school students who currently drink alcohol, beer and RTDs are the preferred beverage choice compared to spirits and wine/other. Female students mainly prefer RTDs (47%), while male students prefer beer (55%)¹²
 - RTDs are more commonly consumed by past-year drinkers (drinkers who consumed alcohol in the last 12 months) aged 16-17 years compared to past-year drinkers aged 18-64 years (59% compared to 20.5%)¹³
 - among youth drinkers, binge drinkers are more likely than moderate drinkers to report mainly drinking RTDs (51% compared to 34%)¹⁴
 - females are more likely than males to report mainly drinking RTDs (62% compared to 23%),¹⁵ and
 - drinking RTDs predicts higher typical occasion alcohol consumption and heavier drinking better than any other beverage for females aged 14-17 years.¹⁶
16. Adults aged 18 years and older also drink RTDs, but they are the least preferred drink behind wine (44%), beer (36%) and spirits (11%).¹⁷ Standard drinker profiles provided by the alcohol industry indicate that bourbon or whiskey-based RTDs are a likely drink choice among “35 year old blue collar males”, together with beer and spirits (bourbon).¹⁸

Secondary problem

International agreements impact on our ability to restrict RTDs

17. There are three major international agreements that impact on New Zealand’s ability to implement restrictions on the alcohol content and volume of RTDs.

Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty)

Requires New Zealand and Australia to jointly agree on definitions, labelling requirements and limitations on composition for food (including alcoholic beverages).

Trans-Tasman Mutual Recognition Arrangement (TTMRA)

Facilitates an integrated trans-Tasman economy. Allows goods produced in or imported into Australia and able to be lawfully sold in Australia, to be lawfully sold in New Zealand and vice versa, unless specifically excluded or exempted by both parties.

World Trade Organisation Agreement on Technical Barriers to Trade (WTO TBT)

Commits New Zealand to ensuring that regulations do not provide less favourable treatment to foreign produced products than domestic produced products (Article 2.1), and that regulations are not more trade restrictive than necessary to fulfil a legitimate objective (Article 2.2). If proposed regulations might have an impact on trade, they must be notified to the WTO TBT Committee to allow input from members prior to the regulation being finalised.

Action to date to implement the original Cabinet RTD restrictions has not been successful

18. In 2011 New Zealand sought to develop a joint food standard with Australia to define RTDs and apply the 5% alcohol content and 1.5 standard drinks per container restrictions to both New Zealand and Australian producers of RTDs. This approach would have been consistent with our obligations under the Food Treaty and would have enabled the Government to implement the RTD restrictions effectively. This approach was unsuccessful because Australia indicated that it had recently taken action to target RTDs in a different way, via excise tax.
19. As a consequence, the RTD restrictions previously agreed by the Government could not be implemented effectively in New Zealand unless an exemption from the TTMRA was sought and agreed to by all Australian states and jurisdictions. Without an exemption from the TTMRA, RTDs imported from Australia that exceed the restrictions could legally be sold in New Zealand. This would undermine the effectiveness of the restrictions and unfairly impact on New Zealand producers.
20. Such an exemption is unlikely to succeed. This is because of the high threshold for obtaining an exemption to restrict RTDs on public health grounds.

Options

21. Five options have been identified that respond to the RTDs problem definition:
 - Ban RTDs completely
 - Restrict the alcohol content and volume^v of RTDs sold from all licensed premises, by seeking an exemption from the TTMRA (status quo)
 - Restrict the alcohol content and volume of RTDs sold from off-licence premises only
 - Increase the price of RTDs, through excise or by introducing a minimum price on RTDs

^v For the purposes of the analysis, this document adopts the restriction of 6% alcohol content and 1.5 standard drinks per container. Marginal adjustments to these limitations will not affect the validity of the analysis.

- Encourage industry to adopt voluntary restrictions to limit the harm caused by RTDs to young people.

22. Table 3 (page 11) provides a summary of all of the above options and impacts.

What might happen in the absence of further action to target RTDs

23. If no action is taken (either voluntarily or through regulation) to target high alcohol strength and volume RTDs then these will continue to be available for consumption by young drinkers.

24. The industry is constantly expanding its product range. Without any action there is a risk of further expansion of the RTD market into areas that may exacerbate heavy alcohol consumption and related harm among young people. Some key observations about recent developments in the RTD market include:

- There is a growing number of ‘multi-serve’ RTDs on the market, which are labelled as ‘pre-mixed, ready-to-serve cocktails’ and are claimed by producers not to be RTDs. While these beverages are intended for sharing, they may contain up to 21 standard drinks, are easily portable and carry a risk of over-consumption, particularly among young drinkers.
- Some types of RTDs are available in both low and high alcohol contents (e.g., 5% or 8% alcohol content). For young drinkers who are experimenting with alcohol, this makes it easier for them to graduate to a more ‘premium style’ 8% RTD.¹⁹

Objectives and considerations

25. The objectives and considerations, and the areas of impact against which these options are assessed, are outlined in paragraphs 4-5. Two additional areas that must be considered for RTDs are:

- Consistency with our international trade agreements, which limit the extent to which some of the options can be implemented effectively, and
- Substitution risks – targeting RTDs may result in consumers switching to other alcoholic beverages, such as full-strength spirits, beer or cider. Substitution risks may be outweighed by an overall decline in pure alcohol consumption if consumers switch to drinking low-strength spirits; however an increase in pure alcohol consumption is also possible if consumers switch to high-strength spirits.

Consultation

26. The analysis has been informed by submissions to the Justice and Electoral Committee on the Bill (specifically, those submissions that commented on the RTD restrictions)^{vi}, and information provided by RTD producers and industry groups^{vii} via meetings with and/or written correspondence to the Minister and/or officials. Table 1 outlines some of the industry’s main concerns and comments on how they could be addressed.

^{vi} The following submissions were considered: Independent Liquor, Distilled Spirits Association, VnC Cocktails, RTD Producers Group, Lion, DB Breweries, The Mill, Superliquor Holdings Ltd.

^{vii} The following RTD producers met with the Minister and/or officials to discuss the impact of the RTD restrictions: Independent Liquor, DB Breweries, Distilled Spirits Association, Lion, Brewers Association, VnC Cocktails.

Table 1: RTD producers' and industry groups' concerns with proposals to restrict the size and strength of RTDs

Concern	Comment
<p>The risks associated with RTDs are no different to any other alcoholic beverage and there is limited evidence to show restricting RTDs will result in reduced harm</p>	<p>RTDs have been identified as a contributory factor to increased alcohol consumption among young people, over and above other types of alcoholic beverages.</p> <p>Placing restrictions on RTDs has not been implemented elsewhere. However, a similar measure was introduced in remote communities in Australia to ban the takeaway sale of cask wine. This led to a decline in cask wine consumption, which was only partially offset by increased sales of other types of alcohol.²⁰</p>
<p>Industry may innovate to develop alternative products (such as wine-based cocktails and cider)</p>	<p>Products that mimic RTDs, such as flavoured wine products, will be intentionally captured by any restrictions to mitigate this risk.</p>
<p>Young people will substitute RTDs with other alcoholic beverages, or choose to mix their own spirits, which could be more harmful</p>	<p>Substitution effects may be outweighed by an overall decline in pure alcohol consumption if some consumers switch to drinking beer or cider. Increases in consumption of other beverages could also be interpreted as a continuation of long-term trends rather than a substitution effect.</p>
<p>Introducing restrictions on RTDs independently of Australia breaches New Zealand's obligations under the Food Treaty and may be undermined by the TTMRA</p>	<p>New Zealand first sought to take a joint approach with Australia under the Food Treaty. The impact of the TTMRA depends on the option supported by the Government. Our advice is that imposing restrictions on the 'manner of sale' of RTDs (such as limiting the restrictions to RTDs sold off-licence premises only) does not contravene the TTMRA. The restrictions on the types of alcohol that can be sold at supermarkets provides a precedent for restricting the types of alcohol sold at different premises.</p>
<p>RTD restrictions will result in significant compliance costs for the industry</p>	<p>While there will be compliance costs associated with the RTD restrictions, these can be reduced depending on the option chosen and the timeframe provided for implementation.</p>
<p>RTD restrictions could be subject to legal challenge that argues they breach the <i>World Trade Organization Agreement on Technical Barriers to Trade</i> (WTO TBT)</p>	<p>Depends on the option chosen. The regulations should apply equally to imported and domestically produced product to be consistent with the WTO TBT. Because of the potential impact of the RTD restrictions on trade, New Zealand will notify the regulations to the WTO TBT Committee to allow input from members prior to the regulation being finalised. This will help to identify ways to ensure the regulation is not more trade restrictive than necessary.</p>
<p>RTDs are difficult to define and distinguish from multi-serve beverages and cocktails</p>	<p>Officials have developed an approach to achieve the policy intention for RTDs without having to define them. This is to limit the retail sale of alcoholic beverages that are not otherwise defined as beer, wine, fruit or vegetable wine, or alcohol over 15% alcohol content. This approach captures alcoholic beverages commonly thought of as RTDs, however it also captures some low strength liqueurs and ready-to-serve cocktails that have similar attributes to RTDs. It is not possible to exclude these beverages without creating loopholes in the approach.</p>

Quantifying the impacts

27. Most major RTD producers have provided information about the potential impact of restricting RTDs to 6% alcohol content and 1.5 standard drinks per container. Table 2 outlines this information to provide an indicative picture of the nature and degree of impacts on some producers in the RTD market.

Table 2: Potential impact of restricting RTDs to 6% alcohol content and 1.5 standard drinks per container

Producer	Impact
Independent Liquor	Approximately 50-60% of RTDs would be captured, ²¹ which would have substantial negative impact that would be disproportionately large relative to its competitors due to RTDs comprising more than half of Independent Liquor's business by volume and revenue ^{22,23}
DB Breweries	Possible positive impacts if consumers switch to drinking beer, due to diverse product portfolio
Lion	Some RTDs would require repackaging and reformulating to comply with these restrictions, with associated costs of between \$750,000 and \$1 million for one-off changes ²⁴
VnC Cocktails Distinguish themselves from RTDs as a 'ready-to-serve cocktail', with an alcohol content of 13.9% and an older target market	Would be captured by the RTD restrictions. Advised that the quality of their products would not be compromised by increasing the alcohol content to sit outside of the RTD restrictions, meaning that while they would be required to pay a higher level of excise, they could continue to produce VnC cocktails for the New Zealand market ²⁵

28. In terms of overall impact on the market, DB Breweries provided figures illustrating that the RTD restrictions of 6% alcohol content and 1.5 standard drinks would affect more than half of RTDs currently available (55%).

29. Our in-house sample of 98 RTDs^{viii} also provided an indicative impact of the RTD restrictions on the market:

- 65% of RTDs sampled (64 RTDs) would be affected by the RTD restrictions of 6% alcohol content and 1.5 standard drinks per container
- 35% of RTDs sampled (34 RTDs) could continue to be sold from off-licence premises because they fit within these restrictions, and
- 14 RTD types were available in different alcohol contents and 10 of these had an RTD with an alcohol content that sat within the RTD restrictions, meaning that the producers of these RTDs would not have to alter their beverages but simply remove one part of the range from the off-licence market.

^{viii} Data was collected for 98 RTDs (including some low-strength spirits under 15% alcohol content) from the following store and on-line delivery sites: www.themill.co.nz, www.topshelfliquor.co.nz, www.lk.co.nz, and www.boozee.co.nz.

Conclusions and recommendations

30. An interim approach of giving RTD producers and retailers an opportunity to introduce their own measures to limit the harm to young people caused by RTDs, with a regulatory backstop in the Bill, is a pragmatic approach that allows Government to manage the risks of immediate regulation. If RTD producers are unwilling to adopt measures strong enough to have an impact regulation can then be considered. A voluntary approach would also be consistent with New Zealand's international trade obligations.
31. If a regulatory approach is to be considered then restricting the alcohol content and container size of RTDs sold from off-licence premises (Option 3) strikes a middle ground between taking action to target RTDs, recognising the harm resulting from these beverages, and balancing the impact on industry in comparison to stronger regulatory options. This approach also ensures consistency with our international trade agreements and can therefore be implemented effectively.
32. Taking stronger and more visible action to target RTDs, such as banning RTDs completely or restricting the alcohol content and container size of all RTDs (options 1 & 2), carries a greater risk of substitution and therefore is unlikely to be as effective in reducing alcohol-related harm. These options are also unlikely to be consistent with our international trade agreements.
33. Taking another type of action to target RTDs, such as increasing the price of RTDs via excise or a minimum price, does not address the root cause of harm from RTDs – high pure alcohol content that is particularly attractive to young people that are drinking to get drunk. Targeting price could be more suitable as an adjunct to restricting RTDs, although further work would need to be undertaken on this option. RTDs are already a relatively expensive beverage choice.
34. There is also room for future action to be taken on RTDs to address other ways that they appeal to minors. For example, Cabinet has agreed to establish an expert forum on advertising and sponsorship, which could consider specific advertising and sponsorship restrictions for RTDs.

Table 3: Analysis of impacts

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	International trade agreement considerations	Substitution risks
1 Ban RTDs completely	YES (provided that heavy drinkers don't substitute RTDs with high-strength spirits) RTDs, including large volume, multi-serve RTDs, will be completely removed from the market	HIGH IMPACT (for moderate drinkers that consume RTDs)	HIGH IMPACT	INSUFFICIENT EVIDENCE (of direct impact of restrictions on alcohol-related costs) But POSSIBLE reduction of costs borne by government sectors if pure alcohol consumption is reduced (thereby reducing the potential for alcohol-related harm) and consumers do not substitute with full-strength spirits.	INCONSISTENT with the TTRMA, and therefore cannot be implemented effectively CONSISTENT with the WTO TBT, as a ban would not be a 'technical regulation' that falls under the umbrella of the WTO TBT	HIGH RISK
2 Restrict the alcohol content and volume of RTDs sold from all licensed premises, by seeking an exemption from the TTMRA (status quo)	POSSIBLY (particularly for young drinkers) RTDs will be a lower-strength alcoholic beverage Prohibits large volume, multi-serve RTDs	MODERATE IMPACT	MEDIUM – HIGH IMPACT Will require all retailers to only sell RTDs that meet the restrictions	INSUFFICIENT EVIDENCE (of direct impact of restrictions on alcohol-related costs) But POSSIBLE reduction of costs borne by government sectors if pure alcohol consumption is reduced and consumers do not substitute with full-strength spirits.	UNLIKELY to succeed in getting an exemption to be consistent with the TTMRA, as it would require the consent of all Australian states and territories and the rationale is not strong Could be implemented in a way that is CONSISTENT with the WTO TBT Would need to notify the WTO TBT Committee given the potential impact on trade	MODERATE RISK
3 Restrict the alcohol content and volume of RTDs sold from off-licence premises only	POSSIBLY (particularly for young drinkers) RTDs sold from off-licence premises will be a lower-strength alcoholic beverage Prohibits large volume, multi-serve RTDs being sold from off-licences	MODERATE IMPACT (but marginally less impact than option 2)	MEDIUM IMPACT (but marginally less impact than option 2) The majority of RTD sales are from off-licence premises Possibly prevents expansion of the RTD market	INSUFFICIENT EVIDENCE (of direct impact of restrictions on alcohol-related costs) But POSSIBLE reduction of costs borne by government sectors if pure alcohol consumption is reduced and consumers do not substitute with full-strength spirits.	CONSISTENT with the TTMRA, because the TTMRA does not relate to where or how goods are sold, an exemption is not required Could be implemented in a way that is CONSISTENT with the WTO TBT Would need to notify the WTO TBT Committee given the potential impact on trade	MODERATE RISK (but marginally less risk than option 2) RTDs (that meet the restrictions) will still be available and visible in off-licence premises – may have perception of limited impact
4 Increase the price of RTDs, either via excise or by introducing a minimum price	YES (provided that heavy drinkers don't substitute RTDs with high-strength spirits)	MODERATE IMPACT	HIGH IMPACT	INSUFFICIENT EVIDENCE	CONSISTENT with the TTMRA and the WTO TBT, as it does not restrict trade or place restrictions on composition or labelling of RTDs	MODERATE RISK Dependent on level of price increase
5 Give the alcohol industry an opportunity to introduce their own measures to limit the harm to young people caused by RTDs	POSSIBLY (dependent on restrictions adopted by RTD producers, and if all RTD producers adhere to the voluntary restrictions)	LOW IMPACT (although also dependent on restrictions adopted by RTD producers)	LOW IMPACT Relies on all industry members adopting the restrictions	INSUFFICIENT EVIDENCE (of direct impact of restrictions on alcohol-related costs) But POSSIBLE reduction of costs if voluntary restrictions encourage a reduction in harmful alcohol consumption and related harm.	CONSISTENT with the TTMRA and the WTO TBT as the restrictions are only voluntary	LOW RISK

PART 2: WINERY OFF-LICENCES

Status quo and problem definition

35. The Bill maintains the existing requirement in the Sale of Liquor Act 1989 for wineries to have an off-licence to sell alcohol from their cellar door. This is called a winery off-licence. Winery off-licences account for 9% of all off-licences (386 of 4,284 off-licences as at 21 June 2012).²⁶
36. There is limited data available about harm arising from winery off-licences. Winery off-licences are perceived to be low risk, due to the nature of their business and the scale of their operations in comparison to other types of off-licences. Despite this, they are subject to the same requirements and costs as other types of off-licences, such as:
- a manager must be present at all times that alcohol is being sold
 - off-licences need to be renewed every three years (for a current fee of \$793.24), and
 - if a winery wants to sell their wine at a wine show or other special event, they need to apply for a special licence (for a current fee of \$64.40), which can be issued for a single event or for a series of events.
37. The wine industry makes a significant contribution to the New Zealand economy, in terms of export value, employment and tourism. For example wine is ranked as New Zealand's 12th largest goods export item and in 2006, an estimated 225,000 international wine tourists visited New Zealand, spending around \$907 million.²⁷
38. The Bill could be amended to strike a more appropriate balance between regulating winery off-licences and recognising their low potential for alcohol-related harm and the benefits they bring to the New Zealand economy.

Options

39. Three options were considered to reduce the administrative burden of licensing on winery off-licences, particularly for smaller wineries, and costs to winery licensees.
- Remove the requirement for a manager to be on duty at all times when alcohol is being sold from a winery off-licence
 - Introduce a regulation-making power to vary the notification requirements for renewal of a winery off-licence, and
 - Add a new type of off-licence endorsement to make it easier for wineries that currently hold off-licences to get special licences for events that involve the sale of alcohol for off-site consumption.
40. These options could be implemented as a package or independently, depending on the desired level of impact. Table 4 outlines these options and provides an analysis of impacts.

Table 4: Analysis of impacts

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors
1 Retain existing requirements (status quo)	NO	NO IMPACT	LOW NEGATIVE IMPACT	NO
2 Add a new type of off-licence endorsement for wineries to get special licences	NO	INSUFFICIENT EVIDENCE	POSITIVE IMPACT	UNLIKELY
3 Introduce a regulation-making power to vary the notification requirements for renewal for wineries	NO	INSUFFICIENT EVIDENCE	POSITIVE IMPACT	UNLIKELY
4 Remove the requirement for a manager to be on duty at all times when alcohol is being sold from a winery cellar door	NO	INSUFFICIENT EVIDENCE	POSITIVE IMPACT	UNLIKELY

Consultation

41. The analysis has been informed by the New Zealand Winegrowers⁹ submission to the Justice and Electoral Committee on the Alcohol Reform Bill,²⁸ and further information provided by New Zealand Winegrowers via meetings with and/or correspondence to the Minister and/or officials.

Conclusions

42. All three options (alongside the status quo) will reduce compliance costs on wineries. Due to the administrative nature of the options presented, the options are also unlikely to result in any corresponding increase in alcohol consumption and related harm because they target specific regulatory aspects of winery off-licences' business.
43. There is a risk that relaxing some of the requirements for winery off-licences will result in other alcohol producers that consider themselves low risk, such as craft breweries and premium distilleries, to request similar treatment.

⁹ New Zealand Winegrowers is the national organisation for New Zealand's grape and wine sector. All grape growers and winemakers in New Zealand are members of New Zealand Winegrowers, accounting for approximately 1,000 grower members and 700 winery members.

PART 3: PRIVATE SUPPLY TO MINORS

Status quo and problem definition

44. The Bill makes it an offence for a person to supply alcohol to a minor (someone under 18 years of age) unless the alcohol is supplied by a parent or guardian or the person supplying the alcohol has the consent of the minor's parent or guardian. The Bill also requires alcohol to be supplied responsibly.
45. This means that someone has a defence if they believe that he or she has the consent of the parent or guardian of the minor, and supplies the alcohol in a responsible manner. The Court may take into account a range of factors when deciding whether alcohol was supplied responsibly, such as the level of supervision, the time period over which the alcohol was supplied, the strength and volume of the alcohol, and the minor's age.
46. Thirty-nine percent of young drinkers (12-17 years) drank five or more standard drinks on their last drinking occasion.²⁹ This is a concern because:
- early initiation of drinking can have adverse effects on physical and cognitive development and increases the risk of alcohol problems later in life, and
 - young people (particularly those under 15 years of age) experience significantly more alcohol-related harm than older drinkers.
47. Most young people obtain alcohol from their parents (57%) or friends aged over 18 years (28%). Young people aged 15-17 years are more likely to get alcohol from older friends than 12-14 year olds.³⁰
48. The parental consent and supply to minors offences currently contained in the Bill could go further towards protecting young people from heavy alcohol consumption and related harm, by:
- tightening the circumstances in which alcohol can be supplied to minors in private social situations
 - giving parents greater control over their children's' drinking, and
 - preventing heavy consumption of alcohol by young people at events such as after-ball functions and house parties.

Options

49. Alongside the status quo, one option has been identified to respond to the above concerns, which is to revise the offence so that it is an offence to supply alcohol to a minor without their parent or guardian's express consent. In the event that this consent is provided the alcohol must still be provided responsibly.
50. Table 5 outlines these options and provides an analysis of impacts. An additional consideration that helps to differentiate between the two options is the impact on the general public – i.e., those that might consider supplying alcohol to a minor in a private social setting.

Table 5: Analysis of impacts

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors	Impact on alcohol supplier
1 Retain the current drafting of this offence by requiring the consent of the young person's parent or guardian and requiring all alcohol to be supplied responsibly (status quo)	POSSIBLY	MODERATE IMPACT	NO IMPACT	POSSIBLY	LOW RISK of committing an offence (because supplier could have a reasonable belief of parent or guardian's consent, despite consent not being <u>expressly</u> given)
2 Revise the offence so that it is an offence to supply alcohol to a minor without their parent or guardian's <u>express</u> consent. All alcohol must be supplied responsibly.	POSSIBLY (may be slightly more significant than under option 1)	MODERATE IMPACT	NO IMPACT	POSSIBLY	MODERATE RISK of committing an offence (because must have parent or guardian's <u>express</u> consent) Relies on Police enforcement and people being appropriately informed of their responsibilities in relation to supply.

Consultation

51. The analysis has been informed by information provided by the Police. There is a risk that no consultation has been undertaken with the general public except for through the select committee process. The degree of impact is potentially large due to the scale on which private supply to minors currently occurs. The risk of this impact is dependent on Police enforcement and people being informed of their responsibilities in relation to supply.

Conclusions

52. The differences between Options 1 and 2 in terms of overall impacts are minimal, because there are insufficient differentiating criteria on which to undertake a detailed analysis. The key difference is that Option 2 has a greater impact on the alcohol supplier than Option 1, as well-intentioned people that supply alcohol to a minor would be inadvertently committing an offence if they did not obtain express consent, even if they believe consent exists or they have previously supplied alcohol to that minor with the consent of their parent or guardian.

53. However, option 2 removes ambiguity around the level of consent required. Express consent can be given directly either verbally or in writing.

PART 4: IRRESPONSIBLE PROMOTION OF ALCOHOL

Status quo and problem definition

54. The Bill strengthens and expands the existing offence of promotion of excessive consumption of alcohol that is contained in the Sale of Liquor Act 1989. It does this by making the offence apply to all types of licensed premises and to any other business, and by setting out examples of unacceptable promotions such as:
- Doing anything that encourages people to consume alcohol to an excessive extent (whether on licensed premises or at any other place)
 - Promoting or advertising discounts on alcohol in a way that indicates there is 25% or more off the normal price (except within licensed premises)
 - Promoting or advertising alcohol that is free of charge (except within licensed premises)
 - Offering goods or services on the condition that alcohol is purchased (whether on licensed premises or at any other place) [clause 220(1)(d)], and
 - Promoting or advertising alcohol in a manner that is likely to have special appeal to minors (whether on licensed premises or at any other place).
55. Clause 220(1)(d) has a wider application than two other components of the irresponsible promotions offence: promoting or advertising free alcohol and promoting or advertising discounts of 25% or more, which are permitted within licensed premises provided that they are not visible from outside.
56. The original rationale for the wider application of clause 220(1)(d) is that point of sale promotions have been shown to have particular appeal to young people.³¹ There is also evidence to suggest that competitions (particularly those offering branded merchandise on prizes) increase purchase volume and contribute to creating a pro-alcohol environment.³²
57. However, the wider application of this offence may:
- focus market behaviour on price-driven volume growth, instead of value growth, and
 - hinder the ability to build a brand and encourage brand recognition and loyalty by consumers.
58. Clause 220(1)(d) could be more closely aligned with similar aspects of the irresponsible promotions offence and to strike a more appropriate balance between prohibiting inappropriate advertising practices and giving flexibility to promote new brands and products.

Options

59. Alongside the status quo, one option has been identified to respond to the concerns with clause 220(1)(d) above, which is to revise the offence to narrow its application to advertising and promotions external to licensed premises only.
60. Table 6 outlines these options and provides an analysis of impacts.

Table 6: Analysis of impacts

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors
1 Retain the current drafting of this offence, by applying it to advertising and promotions both internal and external to licensed premises (status quo)	POSSIBLY	LOW IMPACT	MODERATE IMPACT	UNLIKELY
2 Revise the offence to narrow its application to advertising and promotions external to licensed premises only (least restrictive option)	POSSIBLY (but less impact than Option 1)	LOW IMPACT (but less impact than Option 1)	LOW IMPACT	UNLIKELY

Consultation

61. The analysis has been informed by information provided about the options by alcohol producers and industry groups, via meetings with and/or written correspondence to the Minister and/or officials.

Conclusions

62. The differences between the options in terms of overall impacts are minimal. The key difference is the impact of the restriction on business and economic performance, because it limits promotional and marketing practices that may encourage brand growth and revenue.

63. Revising clause 220(1)(d) to narrow its application to advertising and promotions external to licensed premises only will align the application of this offence with two other similar components of the irresponsible promotions offence: promoting or advertising free alcohol and promoting or advertising discounts of 25% or more. It will also have a lesser impact on business.

64. On the other hand, retaining the application of this offence to advertising and promotions that are both internal and external to licensed premises recognises their appeal to young people and impact on purchase volume.

65. A key consideration for Ministers is what type of balance they wish to strike for the different aspects of the irresponsible promotions offence. As part of the alcohol law reform package, Ministers have also agreed to establish an expert forum to consider further restrictions on alcohol advertising and sponsorship, so this offence may be given further consideration as part of that review.

PART 5: PERMANENT CLUB CHARTERS

Status quo and problem definition

66. A permanent club charter (PCC) is a club that, because of historic reasons, is able to sell and supply alcohol without a licence. The Bill maintains this right and applies the following matters to a PCC as if it were a club licence (which were carried over from the Sale of Liquor Act 1989):
- the appointment of managers and the management of licensed premises
 - the keeping of records and the filing of returns
 - the payment of annual or other fees, and
 - offences.
67. While the Bill will apply to PCCs for the matters set out above, Police do not have the ability to enter PCC premises to determine whether these matters are being complied with. This creates the following problems:
- lack of ability to effectively enforce the offence provisions in the Bill
 - reduced Police presence may inhibit prevention against offending, and
 - unable to inform any further consideration about performance of PCCs, due to lack of monitoring and information.
68. Police data shows that some people are leaving PCCs heavily intoxicated, and drink-driving offences have been linked to PCCs by information from the Police Alco-link database about a person's place of last drink.³³
69. There are 30 PCCs in existence. Membership numbers vary widely, from 55 members (Napier Club) to 8,826 members (Blenheim Workingmen's Club).³⁴

Options

70. Alongside the status quo, two options have been identified address the concerns identified by Police:
- amend the Bill to enable Police to use their powers of entry to gain access to PCC premises and monitor and enforce their compliance with the Act, or
 - require PCCs to apply for a club licence (remove their exemption from the licensing regime) (most restrictive option).
71. Table 7 outlines these options and provides an analysis of impacts.

Table 7: Analysis of impacts

Option	Reduces harmful consumption by heavy drinkers	Effect on moderate drinkers	Effect on business & economic performance	Reduces cost of harm borne by government sectors
1 Retain the current drafting of the Bill so that Police are unable to enter PCC premises to check compliance (status quo)	NO	NO IMPACT	NO IMPACT	NO
2 Amend the Bill to enable Police to use their entry powers to enter PCC premises and monitor and enforce compliance with the Act	POSSIBLY	MODERATE IMPACT	LOW IMPACT	POSSIBLY (similar to option 3 because allowing Police to enter PCCs to enforce the Act is likely to result in a similar reduction in alcohol-related harm)
3 Require PCCs to apply for a club licence (remove their exemption from the licensing regime) (most restrictive option)	POSSIBLY	MODERATE IMPACT (but less impact than on heavy drinkers)	MODERATE IMPACT These premises will have to apply for a club licence and will be subject to a range of new requirements, which will increase compliance costs	POSSIBLY (although possibly greater impact than option 2)

Consultation

72. The analysis has been informed by information provided by Police.

73. No consultation has been undertaken with PCCs except for consultation through the select committee process. This means that the impacts of the options on PCCs cannot be fully analysed, as information and feedback from PCCs is needed to assess the effect of the options on the business and economic performance of PCCs. Assumptions have been made for the purposes of this analysis, to provide an approximate sense of the impact.

Conclusions

74. The Government has already agreed not to remove the licence exemption for PCCs (Option 3) because there are only 30 PCCs remaining and there is no provision to grant new PCCs.

75. Option 2 would allow Police entry to PCC premises to ensure that PCCs are complying with the requirements of the Bill. Option 2 may result in a decrease in alcohol-related harm because the Police’s ability to enter licensed premises would act as a deterrent against non-compliance.

76. Option 1 does not address the concerns identified above.

CONSULTATION WITH GOVERNMENT AGENCIES

77. We have consulted on this RIS with the following agencies: Ministry of Foreign Affairs and Trade, ACC, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, New Zealand Police, the Treasury, Department of Internal Affairs, Ministry of Health, Ministry of Social Development, New Zealand Customs, Ministry of Transport, Ministry of Women's Affairs and Te Puni Kōkiri.

IMPLEMENTATION AND REVIEW

Restricting RTDs

78. The Bill will require a change to implement any RTD restrictions, via a Supplementary Order Paper (SOP) at the Committee of the Whole House stage of the Bill. We suggest that this change be made by introducing a regulation-making power to restrict RTDs. The detail of the restrictions, such as the limitations on alcohol content and number of standard drinks per container, can be decided through the regulation development process at a later stage.

79. A detailed process of regulation development should be undertaken with RTD producers and other key stakeholders, and in line with the Government's regulatory expectations. Any decision to introduce RTD restrictions through regulations will include consideration of transitional timeframes for industry to sell-through existing products and to adapt products to any new restrictions by reformulating composition and altering containers and labelling.

80. If Cabinet chooses to retain the status quo or only pursue a voluntary approach to restricting RTDs, no changes to the Bill are required. However, if Cabinet places a regulatory backstop measure in the Bill to restrict RTDs this could be used if a voluntary approach is unsuccessful. RTD restrictions can then be introduced at a future date, in consultation with industry and affected stakeholders.

Monitoring and evaluation

81. The Government's regulatory impact requirements require departments to put systems in place for ongoing scanning of the regulation for which they are responsible. A review of RTD restrictions (if introduced), together with other alcohol regulations, will be undertaken through this process.

82. Any RTD restrictions should also be closely monitored to track their effect on:

- drinking behaviours among young people and alcohol available for consumption (particularly the impact on availability of spirits)
- the industry response, in terms of new products and marketing and promotion of beverages that have the potential to fill the RTD gap.

Other matters

83. The Bill will require changes to introduce any amendments to winery off-licences, private supply to minors, irresponsible promotion of alcohol and PCCs. These changes will be made as part of the Government SOP. Implementation of options relevant to winery off-licences and PCCs may require further consultation with affected licensees and PCC owners.

84. Each of the other matters covered in this RIS will have different monitoring and evaluation needs. For example, the impact of changes to Police entry into PCCs could be monitored via Police last drink surveys and enforcement information. Changes to the supply to minors offence could also be monitored by enforcement action taken.

ENDNOTES

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- ¹ Nielsen Liquor Markets (Total Foodstuffs, Progressive, Henrys, Liquorland, Duffy & Fin, Liquor King & Super Liquor (MAT to 17 July 2011).
- ² Statistics New Zealand (2012). *Alcohol available for consumption* (Year ended March).
- ³ Correspondence to the Ministry of Justice from Mark Campbell, General Manager Corporate Affairs, DB Breweries (24 May 2012), email.
- ⁴ Correspondence to the Minister of Justice from Thomas Chin, Chief Executive Distilled Spirits Association (8 May 2012), letter.
- ⁵ Data provided to the Ministry of Justice by the New Zealand Customs (May 2012), email.
- ⁶ Law Commission (2011). *Alcohol in our lives: Curbing the harm*. (p 404).
- ⁷ Alcohol Advisory Council of New Zealand (2008). *ALAC's Policy on Ready-to-Drinks (RTDs)*. Available at <http://www.alac.org.nz/sites/default/files/useruploads/Policy%20on%20Ready-To-Drinks%20%28RTDs%29.pdf>.
- ⁸ National Drug Research Institute (2007). *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*. Perth: National Drug Research Institute, Curtin University of Technology. (p xiii).
- ⁹ Metzner C, Kraus L, (2008) *The impact of alcopops on adolescent drinking: a literature review*. Alcohol. Mar-Apr; 43(2): 230-9.
- ¹⁰ Palmer S and Kalafatelis E (2009). *ALAC Alcohol Monitor – Adults & Youth 2008/09 Drinking Behaviours Report*. Wellington: ALAC (p 24).
- ¹¹ Palmer, S, Fryer, K, and Kalafatelis, E (2009) *ALAC Alcohol Monitor – Adults & Youth 2008-09 Drinking Behaviours Report*. Wellington: ALAC (p 26).
- ¹² Adolescent Health Research Group, (2008) *Youth '07: The Health and Wellbeing of Secondary School Students in New Zealand Technical Report*. Auckland: University of Auckland (p 112).
- ¹³ Ministry of Health (2009) *Alcohol Use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey*. Wellington: Ministry of Health.
- ¹⁴ Ministry of Health (2009) *Alcohol Use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey*. Wellington: Ministry of Health.
- ¹⁵ Palmer, S, Fryer, K, and Kalafatelis, E (2009) *ALAC Alcohol Monitor – Adults & Youth 2008-09 Drinking Behaviours Report*. Wellington: ALAC.
- ¹⁶ Huckle, T, Sweetsur, P, Moyes, S, and Casswell, S (2008) *Ready to drinks are associated with heavier drinking patterns among young females*. Drug and Alcohol Review 27:398.
- ¹⁷ Palmer, S, Fryer, K, and Kalafatelis, E (2009) *ALAC Alcohol Monitor – Adults & Youth 2008-09 Drinking Behaviours Report*. Wellington: ALAC.
- ¹⁸ Alcohol Reform Bill – Members of the RTD Producers Group Supp 1. Available at http://www.parliament.nz/NR/rdonlyres/EEC5CBD8-D277-40F0-87B8-EA90D04BD4F4/201158/49SCJE_EVI_00DBHOH_BILL10439_1_A177777_Membersofth.pdf
- ¹⁹ Cowlshaw, S (2012). *Less booze to buy but we're drinking more* (25 February 2012). Accessed on 29 February 2012 from <http://www.stuff.co.nz/life-style/wellbeing/6478472/Less-booze-to-buy-but-we-re-drinking-more>.
- ²⁰ National Drug Research Institute (2007). *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*. Perth: National Drug Research Institute, Curtin University of Technology. (p 29).
- ²¹ Flavoured Beverages Group Holdings Ltd (2011). *Submission regarding the impact of Alcohol Reform Bill on competition in New Zealand liquor and retail markets* (18 February 2011) (p 7).
- ²² Flavoured Beverages Group Holdings Ltd (2011). *Submission regarding the impact of Alcohol Reform Bill on competition in New Zealand liquor and retail markets* (18 February 2011) (p 2).
- ²³ Flavoured Beverages Group Holdings Ltd (2011). *Submission regarding the impact of Alcohol Reform Bill on competition in New Zealand liquor and retail markets* (18 February 2011) (p 7).

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- ²⁴ Correspondence to the Ministry of Justice from Liz Read, External Relations Director Lion (10 May 2012), email.
- ²⁵ Correspondence to the Ministry of Justice from Cyrus Richardson, Chief Executive VnC Cocktails (11 May 2012), email.
- ²⁶ Correspondence to the Ministry of Justice from the Liquor Licensing Authority (21 June 2012), phone.
- ²⁷ Cited in Law Commission (2009). *Alcohol in Our Lives*. Wellington: Law Commission: 17 (p 19).
- ²⁸ New Zealand Winegrowers (2011). *New Zealand Winegrowers submission to the Justice and Electoral Committee on the Alcohol Reform Bill* (17 February 2011).
- ²⁹ Palmer S and Kalafatelis E (2009). *ALAC Alcohol Monitor – Adults & Youth 2008/09 Drinking Behaviours Report*. Wellington: ALAC (p 23).
- ³⁰ Palmer S and Kalafatelis E (2009). *ALAC Alcohol Monitor – Adults & Youth 2008/09 Drinking Behaviours Report*. Wellington: ALAC (p 27).
- ³¹ Howard, K.M., Flora, J.A., Schleicher, N.C., Gonzalez, M., 2004. *Alcohol point-of purchase advertising promotions*. *Contemporary Drug Problems* 31(3), 561-583.
- ³² Jones, S. C. & Barrie, L. R. (2010). *Point-of-sale alcohol promotions in the Perth and Sydney metropolitan areas*. In P. Ballantine & J. Finsterwalder (Eds.), *ANZMAC 2010: Australian and New Zealand Marketing Academy Conference: 'Doing More With Less'* (pp.1-9). Christchurch, New Zealand: Department of Management, College of Business and Economics, University of Canterbury.
- ³³ Correspondence to the Ministry of Justice from the New Zealand Police (14 May 2012), email.
- ³⁴ Clubs New Zealand (2011). *Submission on Alcohol Reform Bill* (16 February 2011).