

ALCOHOL TOLL REDUCTION BILL 2007

THE INQUIRY

1.1 The Alcohol Toll Reduction Bill 2007 (the Bill) was introduced into the Senate on 19 September 2007 by Senator Steve Fielding. On 14 February 2008 the Senate, on the recommendation of the Selection of Bills Committee, referred the Bill to the Community Affairs Committee (the Committee) for inquiry and report by 18 June 2008.

1.2 The Committee received 96 submissions relating to the Bill and these are listed at Appendix 1. The Committee considered the Bill at public hearings in Melbourne on 6 May 2008 and Canberra on 15 May 2008. Details of the public hearings are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca.

THE BILL

1.3 The purpose of the Bill is to create a culture of responsible drinking, and to facilitate a reduction in the alcohol toll resulting from excessive alcohol consumption.

1.4 The objects of the Bill are to:

- (a) limit the times at which alcohol products are advertised on radio and television for the protection of young people;
- (b) provide for compulsory health information labels for alcohol products; and
- (c) provide for alcohol advertisements to be pre-approved by an Australian Communications Media Authority Division containing experts from the health industry, drug and alcohol support services and motor accident trauma support services.

1.5 The Alcohol Toll Reduction Bill 2007 proposes a number of changes to the way alcohol advertising is regulated in Australia, which are set out in Schedule 1 of the Bill. The Bill provides that a broadcaster must not broadcast, or authorise to be broadcast an alcohol advertisement otherwise than as permitted by Schedule 1 of the Bill. The penalty for infringement is 1000 penalty units.

1.6 The Bill amends the *Australian Communications and Media Authority Act 2005* to establish a Responsible Advertising of Alcohol Division within the Australian Communication and Media Authority (ACMA) to approve the content of alcohol advertisements broadcast and advise broadcasters on the standards and control of alcohol advertising. Under the Bill the associate members chosen by ACMA for the membership of the Division should represent the following groups: the medical

profession; the alcohol and drug support sector; motorist associations and motor accident trauma support groups; and the alcohol retail industry.

1.7 The Bill also amends the *Broadcasting Services Act 1992* to require ACMA to determine standards that are to be observed by commercial television broadcasting licensees in relation to alcohol advertising. These standards limit the times when advertisements for alcohol products can be broadcast to 9pm to 5am each day of the week. The standards also provide for the content of advertisements for alcohol products. Specifically they provide that such advertisements not have strong or evident appeal to children and not suggest that alcohol contributes to personal, business, social, sporting, sexual or other success in life. The Bill voids a commercial television code of practice which is not in accordance with the standards.

1.8 Finally the Bill amends the *Food Standards Australia New Zealand Act 1991* to provide that a standard be made for the labelling of alcohol products and food containing alcohol. The standard would provide for: the consumption guidelines of the National Health and Medical Research Council; the unsafe use of alcohol; the impact of drinking on populations vulnerable to alcohol; health advice about the medical side effects of alcohol; and the manner in which the information may be provided (including provision in text or pictorial form).

BACKGROUND

1.9 The issue of alcohol in Australia (including the advertising and labelling of alcohol products) has been extensively considered in a number of different forums in recent years. These include:

The New South Wales Summit on Alcohol Abuse (2003);

The House of Representatives, Standing Committee on Family and Community Affairs, *Road to recovery: Report on the inquiry into substance abuse in Australian communities* (2003);

The National Committee for the Review of Alcohol Advertising (NCRAA), *Review of the Self-Regulatory System for Alcohol Advertising: Report to the Ministerial Council on Drug Strategy* (2004); and

The Victorian Parliamentary Drug and Crime Prevention Committee, *Inquiry into Strategies to Reduce Harmful Alcohol Consumption* (2006).

1.10 In May 2006 the Ministerial Council on Drug Strategy endorsed the National Alcohol Strategy 2006 – 2009 with the goal to prevent and minimise alcohol-related harm to individuals, families and communities in the context of developing safer and healthy drinking cultures in Australia. To achieve this goal, the Strategy has four aims:

- Reduce the incidence of intoxication among drinkers.
- Enhance public safety and amenity at times and in places where alcohol is consumed.

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- Improve health outcomes among all individuals and communities affected by alcohol consumption.
 - Facilitate safer and healthier drinking cultures by developing community understanding about the special properties of alcohol and through regulation of its availability.

1.11 The Ministerial Council on Drug Strategy also established a Monitoring of Alcohol Advertising Committee (MAAC) with the role of undertaking continued monitoring of alcohol advertising and the current regulatory system. The terms of reference for the Committee include monitoring of the implementation and impact of the current arrangements and regular reports to the Ministerial Council. These reports are not publicly released. The members of MAAC are Commonwealth and State public servants.

1.12 On 12 March 2008 the Senate, on the motion of Senator Andrew Murray, supported a comprehensive inquiry into the need to significantly reduce alcohol abuse in Australia and what the Commonwealth, States and Territories should separately or jointly do with respect to a range of issues including pricing and taxation, marketing, and regulating the distribution, availability and consumption of alcohol. The comprehensive inquiry should be undertaken by a parliamentary committee, an appropriate body or a specially established taskforce.¹

1.13 The policy approach to alcohol products in Australia has been recently highlighted by government initiatives in relation to binge-drinking and the health costs associated with alcohol. In March 2008, the Council of Australian Governments (COAG) agreed to ask the Ministerial Council on Drug Strategy to report to COAG in December 2008 on options to reduce binge drinking including in relation to closing hours, responsible service of alcohol, reckless secondary supply and the alcohol content in ready to drink beverages.²

1.14 COAG also asked the Australia New Zealand Food Regulation Ministerial Council to request Food Standards Australia New Zealand (FSANZ) to consider mandatory health warnings on packaged alcohol. On 2 May 2008 the Ministerial Council requested FSANZ to 'consider mandatory health warnings on packaged alcohol taking into account the work of the Ministerial Council on Drug Strategy and any other relevant ministerial councils, any relevant guidelines in New Zealand, the relevant recommendations from the soon to be released National Health and Medical Research Council alcohol guidelines for low risk drinking; and to consider the broader community and population-wide context of the misuse of alcohol'.³

1 Journals of the Senate, 12 March 2008, p.209. See also Senator Murray, Media Release: Unanimous support for full alcohol inquiry, 12.3.08.

2 Council of Australian Governments, Communique, 26 March 2008, p.8.

3 Australian and New Zealand Food Regulation Ministerial Council, 'Food Ministers agree to strategic vision for Australian and New Zealand Food Regulation System', Joint Communique, 2 May 2008, p.1.

1.15 The Commonwealth Government's National Strategy on Binge Drinking, also announced in March 2008 includes:

- \$14.4 million to invest in sporting and community level initiatives to confront the culture of binge drinking;
- \$19.1 million to intervene earlier to assist young people and ensure that they assume personal responsibility for their binge drinking;
- \$20 million to fund advertising that confronts young people with the costs and consequences of binge drinking;
- The establishment of a nationally consistent code of conduct on alcohol use for peak sporting bodies and community sports organisations.⁴

1.16 In May 2008 the Ministerial Council on Drug Strategy agreed to fast-track the development of the National Binge Drinking Strategy. Ministers will lead the development of an interim report to the July meeting of COAG which will focus on:

- a national policy framework for Responsible Service of alcohol;
- a preferred regulatory model to address secondary supply of alcohol to minors;
- options for reducing alcohol content in products including those aimed at young people;
- possible standards and controls for alcohol advertising targeting young people; and
- advice regarding the impact of health warnings on drinking behaviours.⁵

1.17 The Ministerial Council on Drug Strategy also agreed to assess late night lock-outs for licensed premises based on analysis across the nation of existing and trial lockouts to recommend a preferred framework. This framework will be used to effectively target police resources to binge drinking hot spots.⁶

1.18 In April 2008 the Commonwealth Government announced the establishment of a new National Preventative Health Taskforce to develop strategies to tackle the health challenges caused by tobacco, alcohol and obesity and develop a National Preventative Health Strategy by June 2009.⁷

1.19 Prior to the Budget, the Commonwealth Government also announced it would increase the excise and the excise-equivalent customs duty rate applying to 'other excisable beverages not exceeding 10 per cent by volume of alcohol' from \$39.36 per

4 Prime Minister, 'National Binge Drinking Strategy', Media Release, 10 March 2008, p.1.

5 Ministerial Council on Drug Strategy, Joint Communique, 23 May 2008, p.1.

6 Ministerial Council on Drug Strategy, Joint Communique, 23 May 2008, p.1

7 Hon Nicola Roxon, Minister for Health and Ageing, 'New health taskforce on prevention – tobacco, alcohol and obesity priorities', Media Release, 9 April 2008, p.1.

litre of alcohol content to the full strength spirits rate of \$66.67 per litre of alcohol content on and from 27 April 2008.⁸ This measure was prompted by concerns about binge-drinking (particularly by younger people) of 'ready-to-drink' (RTD) beverages, also known as alcopops. On 15 May 2008 the Senate referred an inquiry dealing with ready-to-drink alcohol beverages and the effect of the excise increase to the Community Affairs Committee for report by 24 June 2008. Many of the issues and background to the RTD inquiry overlap with this inquiry into the Alcohol Toll Reduction Bill.

1.20 The National Health and Medical Research Council (NHMRC) is currently reviewing the *Australian Alcohol Guidelines: health risks and benefits* in collaboration with the Department of Health and Ageing. The draft revised guidelines, now called the *Australian alcohol guidelines for low-risk drinking*, were made available for public consultation in October 2007. These draft guidelines are intended to give Australians guidelines on how to avoid, or minimise, the harmful consequences of drinking alcohol including the immediate effects of each drinking occasion and the longer-term effects of regular drinking.⁹

1.21 The consumption advice in the draft guidelines differs from the previous NHMRC guidelines from 2001. There is a simplified single guideline level for alcohol intake for all adults which recommends two standard drinks a day or less to minimise immediate and long-term risks of harm. There are also two guidelines with special precautions for children and adolescents, and for women who are pregnant, hoping to become pregnant, or breastfeeding.¹⁰

ALCOHOL IN AUSTRALIA

1.22 While the provisions of the Bill relate to advertising and labelling issues, it is difficult to consider the merits of the Bill without also considering the position of alcohol products in the community more generally. Alcohol is the most widely used psychoactive, or mood-changing, recreational drug in Australia. According to the 2007 National Drug Strategy Household Survey 82.9% of the population aged 14 years and over had consumed at least one full serve of alcohol in the last 12 months, while 9% of Australians drank alcohol on a daily basis.¹¹

1.1 The *National Alcohol Strategy* document notes that per capita alcohol consumption in Australia is relatively high in comparison to many other developed countries, ranked 34th out of 185 countries assessed by the World Health Organisation. While there are difficulties in the availability of reliable data on alcohol

8 Hon Wayne Swan, Treasurer, 'Increased Tax on 'Ready to Drink' Alcoholic Beverages', Joint Media release with Hon Nicola Roxon, Minister for Health and Ageing, No. 41, 13.5.08, p.1

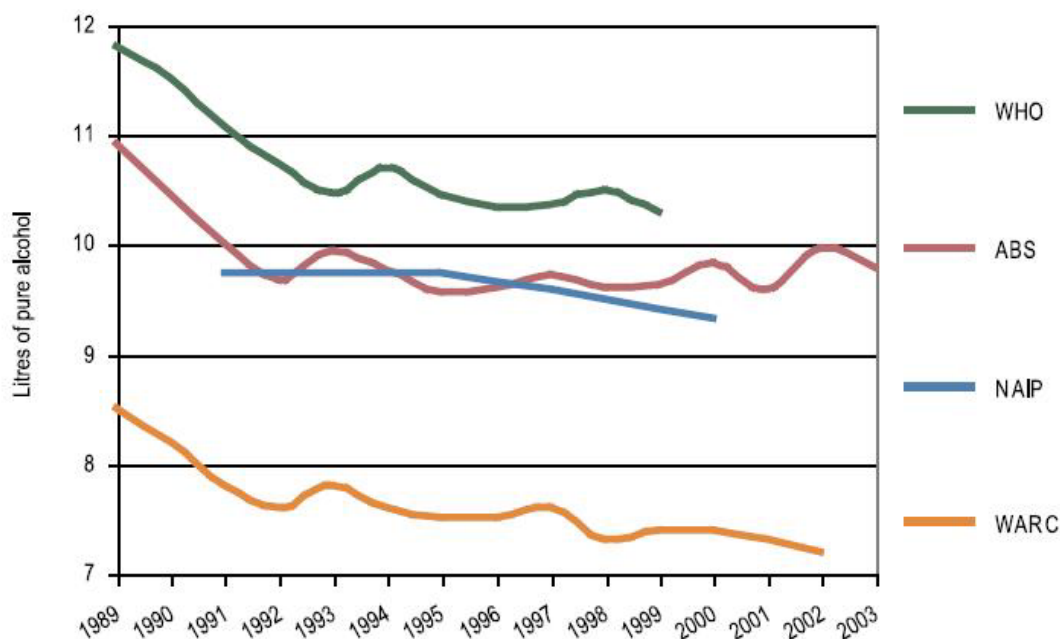
9 National Health and Medical Research Centre, *Submission 58*, p.1.

10 National Health and Medical Research Centre, *Submission 58*, Attachment 2.

11 Australian Institute of Health and Welfare, *2007 National Drug Strategy Household Survey – first results*, April 2008, p.xi.

consumption in Australia, the available data indicates that per capita alcohol consumption in Australia steadily declined from the late 1980s until early 1990s when the consumption began to fluctuate.¹²

Figure 1: Per capita alcohol consumption in Australia, various sources, 1989 to 2003.



Sources: World Health Organisation (WHO) 2005; Australian Bureau of Statistics (ABS), 2005; National Alcohol Indicators Project (NAIP) 2003; World Advertising Research Centre (WARC) 2005.¹³

1.23 In Australia, alcohol is significant for many economic, social, health and cultural reasons. Alcoholic products are enjoyed (largely responsibly) by many millions of Australian adults. Alcohol producing companies create employment for many thousands of people directly, as well as many more indirectly in the areas of agriculture, distribution, retail, hospitality and tourism. Alcohol industry sponsorship and sales contribute to numerous social, cultural and sporting events and institutions. Taxes and excises on alcohol products provide significant revenue to governments to reinvest in the community. While there is scientific dispute, there is evidence to suggest moderate consumption of alcohol may have positive health effects for some people by, for example, contributing to the reduction of cardiovascular disease risk.

1.24 However alcohol is also responsible for or associated with many negative outcomes for society. These negative outcomes include: long term serious health problems for heavy drinkers; fetal alcohol syndrome; sexual and domestic violence;

¹² National Alcohol Strategy 2006- 2009 –Towards Safer Drinking Cultures, p.9.

¹³ Extracted from National Alcohol Strategy 2006- 2009 –Towards Safer Drinking Cultures, p.9.

road accidents; and community disintegration (particularly in remote and indigenous communities).

1.25 Recently released publicly-funded research by Professor David Collins and Professor Helen Lapsley has estimated that the total social cost of alcohol in Australia was \$15.3 billion in 2004-05. This includes \$1.6 billion in crime, \$3.6 billion in lost workplace production, \$2.2 billion in road accidents and \$2.0 billion in health care costs.¹⁴ This made alcohol the second most costly abused drug in Australia after tobacco (\$31.5 billion). Between 1992 and 2001 it is estimated that over 31,000 Australians died from alcohol caused disease and injury including liver cirrhosis, road crash injury and suicide.¹⁵ In 2005-06 alcohol was the most common principal drug of concern reported in closed treatment episodes (39%) tracked by the AIHW, and over half of all treatment episodes included alcohol as a drug of concern.¹⁶

ALCOHOL ADVERTISING

The Current System

1.26 Under the current system for advertising alcohol products, advertisements are subject to a number of different codes of practice. Of particular importance are the Australian Association of National Advertisers (AANA) Advertiser Code of Ethics which sets out general standards for all advertisers and the Alcohol Beverages Advertising Code (ABAC) which sets out additional standards for alcohol advertisers. Other applicable laws and codes include: the Trade Practices Act; jurisdictional fair trading legislation; the Commercial Television Industry Code of Practice; the Commercial Radio Code of Practice; and the Outdoor Advertising Code of Ethics.

The Alcohol Beverages Advertising Code (ABAC) Scheme

1.27 Australia has a quasi-regulatory system for alcohol advertising as guidelines for advertising have been negotiated with government and consumer complaints are handled separately but costs are borne by industry. The key components of the Scheme are the Management Committee, the Alcohol Advertising Pre-vetting System (AAPS) and the Alcohol Beverages Advertising Adjudication Panel.

1.28 The ABAC Scheme Management Committee has five members. One from each of the major industry associations: the Australasian Brewers Association; the Distilled Spirits Industry Council of Australia; and the Winemakers Federation of Australia. The other two members represent the Advertising Federation of Australia and the Department of Health and Ageing.

14 David Collins & Helen Lapsley, *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*, 2008, p.65.

15 Department of Health and Ageing, *Committee Hansard* 15.5.08, p.29.

16 Australian Institute of Health and Welfare, *Alcohol and Other Drug Treatment Services in Australia 2005-06*, 2007, p.14.

1.29 The ABAC Scheme Management Committee appoints the 'pre-vetters' for the Alcohol Advertising Pre-vetting System (AAPS). Alcohol beverage advertisers can use the AAPS pre-vetting service to assess whether proposed advertisements conform to the Australian Association of National Advertisers Code of Ethics (AANA) or the Alcohol Beverages Advertising Code (ABAC) before they are released publicly. The AAPS is funded on a user-pays basis by those industry members seeking pre-vetting of advertisements.

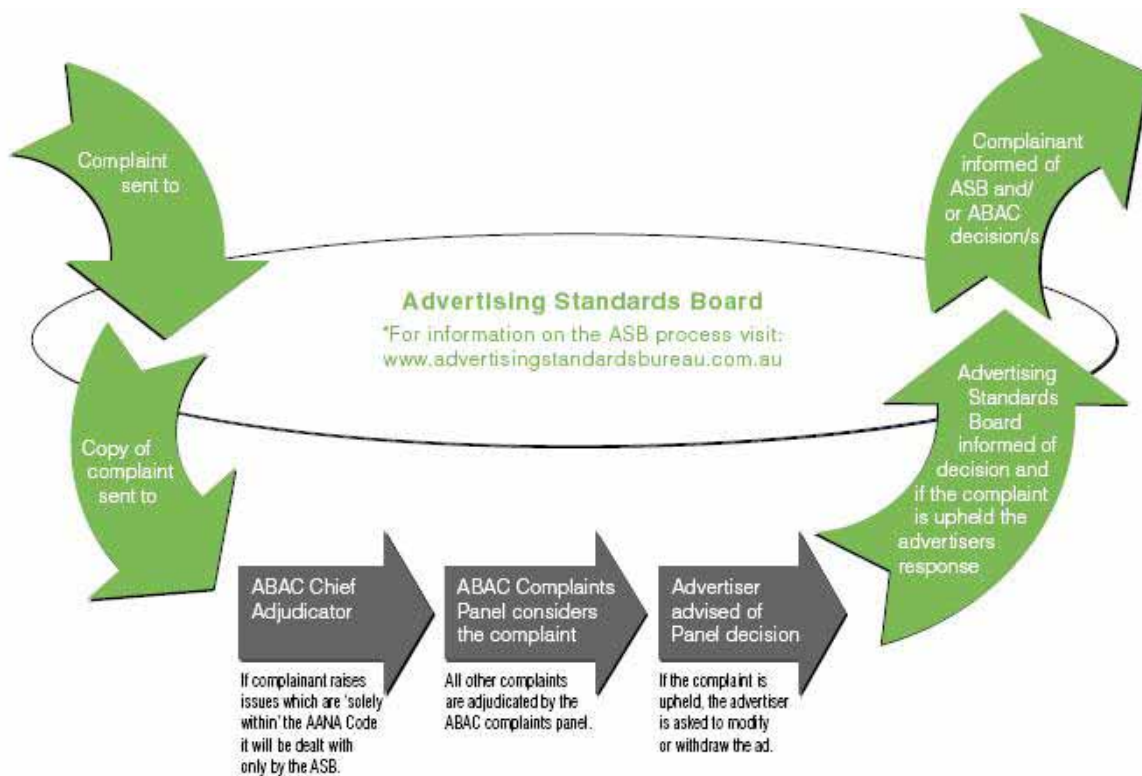
1.30 The ABAC Scheme Management Committee also appoints the members the Alcohol Beverages Advertising Adjudication Panel. The Adjudication Panel adjudicates complaints made concerning advertisements for alcohol beverages which are made to the Advertising Standards Board established by the AANA and referred to the Adjudication Panel for adjudication. The Management Committee must appoint a health sector representative as one of the three regular members of the Panel. This person is chosen from a shortlist of three candidates provided by the Minister for Health and Ageing. Signatories to the ABAC Scheme are required to abide by the provision of the Code, the associated rules and procedures and decisions made by the Adjudication Panel. The costs of the Adjudication Panel are met by the three industry associations.

1.31 No person appointed to the Adjudication Panel or the AAPS pre-vetters may be a current employee or member of the alcohol beverages industry or have been in the five years prior to their appointment.

1.32 The Alcohol Beverages Advertising Code is set out at Appendix 3. In summary, the Code requires that alcohol advertisements:

- must not encourage excessive alcohol consumption or abuse of alcohol;
- must not encourage under-age drinking;
- must not have a strong or evident appeal to children (there are specific rules relating to the inclusion of children in advertisements);
- must not suggest that alcohol can contribute to personal, business, social, sporting, sexual or other success;
- must not depict alcohol consumption in relation to the operation of machinery or vehicles;
- must not challenge or dare people to consume alcohol;
- must not promote a beverage on the basis of its higher alcohol content; and
- must not encourage consumption that is in excess of the NHMRC Australian Alcohol Guidelines.

Figure 2: The ABAC Complaints Management System¹⁷



Commercial Television Industry Code of Practice and the Commercial Radio Code of Practice

1.33 The content of free-to-air commercial television is regulated by the Commercial Television Industry Code of Practice (CTICP) which has been developed by FreeTV Australia and registered with the Australian Communications and Media Authority (ACMA). The Code covers the matters prescribed in section 123 of the *Broadcasting Services Act* and other matters relating to program content that are of concern to the community including: program classifications; accuracy, fairness and respect for privacy in news and current affairs; advertising time on television; and placement of commercials and program promotions and complaints handling.

1.34 Under the CTICP a commercial which is a 'direct advertisement for alcoholic drinks' may be broadcast only in M, MA or AV classification periods; or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays; or where the event is simulcast to a number of licence areas and a direct advertisement for alcohol is permitted in the area where the event is held. The CTICP also provides that advertisements to children must not be for, or relate in any way to, alcoholic drinks or draw any association with companies that supply alcoholic drinks (Clause 2.9).

¹⁷ Management Committee of the ABAC Scheme, *The ABAC Scheme Annual report 2006*, p.2.

1.35 M classification periods are from 8.30 pm to 5.00 am, plus 12.00 noon to 3.00pm on weekdays (excluding school holidays). The MA classification zone covers every day between 9.00pm and 5.00am. In MA zones, any material which qualifies for a television classification may be broadcast, except material classified AV which may only be broadcast after 9.30pm. The exemption for live sport, for weekends and public holidays allows alcohol advertising as an accompaniment to a 'live' sporting broadcast, shown at any time of day.

1.36 The Commercial Radio Code of Practice does not set out restrictions as to the timing of alcohol advertisements but 1.3 (c) of the Code provides that a commercial radio licensee must not broadcast a program which presents as desirable the misuse of alcoholic liquor.

1.37 Under the co-regulatory arrangements set out by the *Broadcasting Services Act 1992* audience complaints regarding the CTICP or the Commercial Radio Code of Practice can be made directly to the broadcaster who must reply within 30 days and inform the complainant of their right to refer their complaint to ACMA for investigation. ACMA can apply penalties to broadcasters for breaches of industry codes of practice.

Specific to children

1.38 Specific protections also exist in relation to children and alcohol advertising. The Children's Television Standard made by ACMA under the *Broadcasting Services Act 1992* also restricts the times when alcohol advertising can be broadcast on television. Complaints about advertising perceived to conflict with the Children's Television Standard can also be made directly to the ACMA who can then investigate. The AANA also recently released a Code for Advertising to Children which provides that:

2.9.1 Advertisements to Children must not be for, or relate in any way to, alcoholic drinks or draw any association with companies that supply alcoholic drinks.

Responsible Advertising of Alcohol Division

1.39 As outlined earlier, the Bill establishes a Responsible Advertising of Alcohol Division within ACMA to pre-approve alcohol advertisements and provides for its membership.

1.40 A number of submissions which supported the creation of the Division suggested alternatives or additions to the membership of the Division. For example the Public Health Association of Australia suggested the Bill be amended to include 'one associate member representing the public health sector'.¹⁸ Dr Susan Dann suggested that the proposed Division needed 'expertise from the marketing and

18 Public Health Association of Australia, *Submission 18*, pp.5-6.

advertising professions' with 'expert knowledge in terms of how different communications strategies and marketing approaches are likely to impact on the consumer behaviour of different target markets'.¹⁹ The Anglicare Victoria and Melbourne Anglican Social Responsibilities Committee suggested that representatives of the alcohol suppliers industry and their advertisers also be included in the Division's membership.²⁰ Professor Sandra Jones recommended the pre-approval body 'include a communications expert and a youth studies expert, or other appropriate representative of young Australians' and also that the process include a mechanism to take into account community perceptions which are likely to change over time.²¹

1.41 The Australian Christian Lobby supported the Bill but noted that the Australian Communications and Media Authority 'causes concerns to many family organisations... [as] the policing of television standards has been too lax, its complaint processes are slow, and its judgements fail to constrain the behaviour of broadcasters'. This concern regarding the role of ACMA was shared by the Festival of Light which noted that 'ACMA is notoriously slow in dealing with complaints'. They also suggested there should be 'an efficient complaints mechanism for members of the public to complain that despite ACMA approval a particular advertisement breaches the standard'.²²

1.42 The alcohol industry raised concerns about the proposed Division. The Distilled Spirits Industry Council of Australia was concerned about the lack of balance in the Division's membership and the lack of clarity as to how the Division would reach decisions. It suggested 'representation of the alcohol industry would be more appropriate by an alcohol manufacturer, rather than a retailer' and also expressed concern the Division will not have a representative to balance out practice concerns of the advertising industry.²³

Dual systems

1.43 A number of submitters were concerned the Bill was replacing the current ABAC Scheme with a less comprehensive system of regulation. However Senator Fielding, who introduced the Bill, noted that the intention of the legislation was that the measures introduced by the Bill would add to and not replace the existing self-regulation measures set up under the ABAC Scheme.²⁴

19 Dr Susan Dann, *Submission 20*, p.1.

20 Anglicare Victoria and Melbourne Anglican Social Responsibilities Committee, *Submission 45*, p.2.

21 Professor Sandra Jones, *Submission 47*, p.2.

22 Festival of Light, *Submission 60*, p.7.

23 Distilled Spirits Industry Council of Australia, *Submission 93*, p.54.

24 Senator Steve Fielding, *Committee Hansard 6.5.08*, p.53.

1.44 Some submissions did not see benefit in a dual system of regulation for alcohol advertising. The Advertising Federation of Australia characterised the proposed Division as creating 'an unwieldy duplication of regulatory function.'²⁵ Similarly the Foundation for Advertising Research stated:

An added complication is that a Government agency would become involved in a highly competitive industry where confidentiality is paramount. This is not an appropriate role for ACMA, as a key stakeholder to be involved in administrative functions.²⁶

1.45 The Distilled Spirits Industry Council argued that the pre-approval role would impose 'severe practical difficulties on the both advertising and alcohol industry'. It suggested that timeframes for advertisement development and production would be lengthened adding to costs; confidentiality would be weakened; the lack of a timely pre-vetting system would restrict creativity; and the government regulation would politicise alcohol advertising.²⁷ FreeTV Australia also noted that regulating alcohol advertisements through ACMA could be a much more inefficient process and ACMA would need to be extensively funded and resourced to fulfil the new role.²⁸

Discussion of the ABAC Scheme

1.46 Many of the assessments regarding the merits of establishing the proposed Responsible Advertising of Alcohol Division concerned the effectiveness of the existing ABAC Scheme.

Self regulation

1.47 A number of criticisms of the ABAC Scheme were raised regarding a perceived inherent conflict of interest in the alcohol industry regulating advertising for alcohol products. Dr Alex Wodak described self-regulated alcohol promotion and advertising as a 'farce', noting that the alcohol beverage industry 'decides the rules, appoints the judge and jury and then runs the system'.²⁹ The Australian Christian Lobby characterised self regulation of alcohol advertising as a 'demonstrable failure' and likened it to leaving 'Dracula in charge of the blood bank'.³⁰ Mr Paul Mason the Tasmanian Commissioner of Children stated there was 'an inherent conflict in an industry which seeks to portray itself as reducing the consumption of alcohol while depending for its sales on the increased consumption of alcohol'.³¹

25 Advertising Federation of Australia, *Submission 35*, p.4.

26 Foundation for Advertising Research, *Submission 23*, p.3.

27 Distilled Spirits Industry Council of Australia, *Submission 93*, p.53.

28 Ms Julie Flynn, *Committee Hansard* 15.5.08, p.22 (FreeTV Australia).

29 Dr Alex Wodak, *Submission 31*, p.3.

30 Australian Christian Lobby, *Submission 33*, p.7.

31 Mr Paul Mason, *Committee Hansard* 6.5.08, p. 81 (Commissioner for Children, Tasmania).

1.48 Professor Sandra Jones described her research of alcohol advertising regulation, from 1998-99 to her most recently published study in January 2008. Her research examined the extent that decisions made by the Advertising Standards Board and Adjudication Panel were consistent with young people's perceptions of the messages in alcohol advertisements and also expert academic judgements on whether alcohol advertisements breached industry codes. Professor Jones characterised these results as consistent despite reforms to the ABAC Scheme over the years stating '[e]ach time there is review of the system, we do another study and find that the system does not work'.³²

1.49 The Salvation Army argued that 'the current self-regulatory approach is not meeting the challenge of protecting the public, particularly young people, from the inappropriate and misleading messages and associations between alcohol and lifestyle and life outcomes'.³³ Similarly the Alcohol Education and Rehabilitation Foundation stated that studies in Australia and overseas have shown that voluntary codes of advertising are an ineffective method of regulating advertising content. They believed that re-regulation of alcohol advertising would enable more effective enforcement of an advertising code.³⁴

1.50 However the ABAC Scheme was defended by advertisers, broadcasters and the alcohol industry associations. For example, the Australasian Associated Brewers (AAB) rejected arguments that the ABAC Scheme was a form of industry self-regulation of alcohol advertising, arguing it was a quasi-regulatory system ie, one that was a result of government influence on business. They noted that the ABAC Scheme had been negotiated with the government and that a government representative was on the ABAC Scheme Management Committee. The AAB highlighted that the members of the Management Committee were not advertisers and did not play a role in assessing any advertisement against the standards set out in the Code.³⁵

1.51 In particular the alcohol industry association stressed the independence of the AAPS pre-vetters and the Adjudication Panel in applying the provisions of the Code. The Distilled Spirits Industry Council of Australia noted that following negotiations, two of the five members of the panel are nominated by the Commonwealth through the Ministerial Council on Drug Strategy. Furthermore each complaint must be dealt with by three panel members and one must have a public health background and be nominated through the Ministerial Council.³⁶

1.52 The independence of the ABAC Adjudication Panel and the AAPS from the Management Committee was supported by Professor Michael Lavarch, the Chief

32 Professor Sandra Jones, *Committee Hansard* 15.5.08, p.3.

33 Salvation Army – Australian Southern Territory, *Submission* 48, p.11.

34 Alcohol Education and Rehabilitation Foundation, *Submission* 27, p.2.

35 Australasian Associated Brewers, *Submission* 36, pp.9-11.

36 Distilled Spirits Industry Council of Australia, *Submission* 93, p.42.

ABAC Adjudicator and Ms Victoria Rubensohn, the Pre-vetting Adjudicator. Professor Lavarch stated:

I can also say from my experience that there has never been an occasion, not once, when I have had any direction, influence or suggestion from the management committee on the decision-making process in relation to looking at a particular complaint in a particular ad. That has never happened. Speaking from the complaint side, I believe that it is an independent process from the industry.³⁷

1.53 Australian Association of National Advertisers highlighted that the separate adjudication under ABAC and AANA Codes meant that alcoholic products advertising in Australia is subject to 'double jeopardy' in needing to meet two sets of standards designed to protect the broadest community interests.³⁸

1.54 FreeTV Australia highlighted the consistently low level of audience complaints in relation to alcohol advertising, stating there was 'very little evidence of community dissatisfaction' with alcohol advertising.³⁹ The Advertising Standards Bureau also noted that the number of complaints submitted to the ASB regarding alcohol advertising is at a five year low and have trended down over recent years.

The most recent statistics of complaints relating to alcohol show that in 2007 alcohol advertising attracted 2.44% of complaints, while the percentage of complaints in the previous four years were respectively 3.14%, 7.07%, 21.38%, and 11.6%.⁴⁰

1.55 The ASB contended the current system met the 'gold standard' of regulation as set out by the World Federation of Advertisers. These criteria were:

- Universality (covering all advertising and backed by advertisers/agencies and media)
- Sustained and effective funding
- Efficient and resourced administration
- Universal and effective codes
- Advice and information
- Prompt and efficient complaint handling
- Independent and impartial adjudication
- Effective sanctions
- Efficient compliance and monitoring

37 Professor Michael Lavarch, *Committee Hansard* 6.5.08, p.43 (ABAC Adjudication Panel).

38 Australian Association of National Advertisers, *Submission* 51, p.3.

39 Mr Wayne Goss, *Committee Hansard* 15.5.08, p.17 (FreeTV Australia).

40 Advertising Standards Bureau, *Submission* 50, p.5.

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- Effective industry and consumer awareness.⁴¹

1.56 The Foundation for Advertising Research acknowledged the ABAC Scheme possibly needed improvement in the areas of independent monitoring and audit but argued the 'the best way forward is to ensure it meets best practice principles rather than throwing the baby out with the bath water'.⁴²

Compliance

1.57 Another area of criticism of the ABAC Scheme was in relation to compliance. Professor Sandra Jones highlighted the lack of consequences for advertisers when they are found to have breached the Code. She argued that where the ABAC finds a breach, 'all that happens is that they ask the advertiser to withdraw it' and that there should be a penalty for advertiser or manufacturers who breach the Code.⁴³ VicHealth also highlighted that Adjudication Panel decisions are not enforceable and described this as a significant weakness in compliance under the ABAC Scheme.⁴⁴

1.58 Professor Michael Lavarch acknowledged that the ABAC Adjudication panel did not have any power to sanction advertisers which breached the Code. However he noted:

Any self regulatory system has, at its heart, the commitment of the participants of the system to comply with it. That is the nature of a self-regulatory system.⁴⁵

1.59 Mr Dominic Nolan, the Winemakers Federation of Australia member of the ABAC Management Committee, argued that the consequences of having an advertisement withdrawn encouraged compliance by advertisers. He stated:

...it is in the interests of the members of the alcohol industry to run their ads through the pre-vetting system, because if they run an advertising campaign, there is a complaint, it is upheld and they have to withdraw the campaign, then there are major financial repercussions; it does cost those people a significant amount of money. There are examples where ads were approved under the pre-vetting system, there was a complaint made and upheld, and the ad was subsequently immediately withdrawn, and it did cost the companies involved a very large amount of money, which demonstrates the efficacy of the scheme in place.⁴⁶

41 Advertising Standards Bureau, *Submission 50*, pp.1-2.

42 Foundation for Advertising Research, *Submission 23*, p.5.

43 Professor Sandra Jones, *Committee Hansard 15.5.08*, p.3.

44 VicHealth, *Submission 37*, p.12.

45 Professor Michael Lavarch, *Committee Hansard 6.5.08*, p. 42 (ABAC Adjudication Panel)

46 Mr Dominic Nolan, *Committee Hansard 6.5.08*, p. 45 (ABAC Management Committee)

Audience awareness

1.60 VicHealth highlighted recent research which indicated 'very limited public awareness and confidence in the ABAC scheme'. The research estimated that only 3 per cent of the total adult population are aware of the existing ABAC scheme and know what it relates to. Most people surveyed did not know how to make an effective complaint and the few people who had complained were not satisfied with the result.⁴⁷

1.61 The alcohol industry did not consider that high public awareness was critical to the success of the ABAC Scheme. Mr Dominic Nolan stated:

I think the important thing is that, if someone has a concern and wishes to raise a complaint about anything to do with an alcohol advertisement that they see, they should be able to easily find out how they can do that. The number of avenues available for that to occur through the internet, through the ASB and through the relevant television stations clearly demonstrates that anyone who was searching for a way to make a complaint could very easily find one. Whether or not they are specifically aware of the ABAC scheme or otherwise I do not think is particularly relevant, given that that complaint can always be made and that people can always find out information if they are so motivated.⁴⁸

Limiting Alcohol Advertising Times

Advertising and Sport

1.62 The Bill aims to limit the broadcasting of television and radio alcohol advertisements to the period 9pm and 5am each day. Professor Sandra Jones noted that the primary impact of this would be to 'remove the current anomaly which allows alcohol advertising during live sporting telecasts, which is a big problem in this country'. She stated:

Our research and the research of others clearly shows that children have a very high awareness of and liking for alcohol brands, particularly due to their exposure to them during sporting telecasts and the links that those children make between those products, their sporting heroes and the codes.⁴⁹

1.63 Mr Todd Harper of VicHealth also described current regulations allowing alcohol advertising during sports as an 'anomaly' inconsistent with the broader goals of harm reduction and the spirit of the frameworks which seek to limit alcohol advertising exposure to children.⁵⁰ Similarly Mr Geoffrey Munro of the Australian Drug Foundation told the Committee:

47 VicHealth, *Submission 37*, p.11.

48 Mr Dominic Nolan, *Committee Hansard 6.5.08*, p.47 (ABAC Management Committee).

49 Professor Sandra Jones, *Committee Hansard 15.5.08*, p.1.

50 Mr Todd Harper, *Committee Hansard 6.5.08*, p. 2 (VicHealth).

No-one is challenging the need for alcohol advertising not to be shown during children's viewing hours. That restriction is placed there deliberately to protect children from alcohol advertising. It makes no sense at all to allow that advertising restriction to be undermined when alcohol brands sponsor sport, which is televised and which means that promotions and advertising of alcohol brands can be shown from 9 am or earlier right through the day. It makes no sense at all. We do not understand why that loophole exists.⁵¹

1.64 The Bendigo Community Health Services highlighted a number of benefits in restricting television advertising between 9 pm and 5 am. These included: reducing the impact of visual reinforcement; reducing the number of young people viewing alcohol advertisements; reducing the sensationalising of alcohol to young people and reducing the message that alcohol is a form of entertainment.⁵²

1.65 The Australian Christian Lobby argued that despite ABAC provisions to the contrary, alcohol is often linked with sporting success. It noted:

Alcohol manufacturers are prominent sponsors of sporting contests, which are usually screened throughout the day, meaning that such advertisements are inevitably seen by children and the use of celebrities, humour and mascots often appeals to them. This is all the more disturbing as the people featured in such ads are often sports stars, who children may seek to emulate.⁵³

1.66 Sporting organisations raised concerns about limiting alcohol advertising during sports coverage. The Australian Sports Commission indicated that many sports, particularly professional codes receive a large proportion of their income from alcoholic beverage sponsorship agreements or associated income. It estimated that sponsorship of sporting events in Australia is worth approximately \$1.25 billion per year and alcohol companies are represented among the top 40 sport sponsors. The Commission suggested that if the Bill was passed there would 'need to be a phasing in period that would allow sports the opportunity to attempt to seek alternative revenue streams'.⁵⁴

1.67 The Coalition of Major Professional Sports stated:

The hours of the proposed restriction on alcohol advertising have a strong overlap with the television and radio broadcasting coverage of all of the major professional sports – as much as 100% overlap of airtime in some instances. The professional sports business model in Australia is heavily underpinned by investment in the media rights of sports by free-to-air and pay television broadcasters. The business model of free-to-air broadcasters

51 Mr Geoffrey Munro, *Committee Hansard* 6.5.08, pp.9-10.

52 Bendigo Community Health Service, *Submission* 42, p.2.

53 Australian Christian Lobby, *Submission* 33, p. 6; also Festival of Light, *Submission* 60, p.6.

54 Australian Sports Commission, *Submission* 68, p.6.

is almost exclusively reliant on advertising and restrictions such as those proposed in this Bill have the potential to significantly reduce advertising income derived from alcohol producers. This has the potential to lead to a reduction in the rights fees payable by broadcasters to some sporting organisations, thus there is a possibility of compromising the primary commercial driver in modern professional sporting business models.⁵⁵

1.68 The Confederation of Australian Sports argued that sport has the potential to provide strong leadership in the area of responsible alcohol management and public education. It highlighted the involvement of many sporting clubs with the 'Good Sports' program organised with the Australian Drug Foundation. It argued that the measures in the Bill could result in significant financial cost to sporting clubs and associations and this may be 'counter productive as the financial cost to sport may affect its capacity to effectively implement programs that work to change the culture of drinking across the country'.⁵⁶

1.69 However it was noted in a number of submissions that tobacco had successfully been phased out of sports advertising and sponsorship. Professor Sandra Jones commented:

If you watch the tennis, for example, you almost never see an alcohol advertisement because they are sponsored by things like shampoo companies, razor companies. There will be other sponsors out there. It would need to be carefully managed to make sure it did not have a major impact on sporting codes and some sort of funding would need to be provided while that transition is occurring.⁵⁷

Advertising and consumption

1.70 The Committee received conflicting evidence regarding the link between the advertising of alcohol products and harmful consumption of alcohol, particularly by children and young people. This was seen as an important issue in consideration of the Bill as the measures to reduce the harms associated with alcohol consumption by restricting advertising assumes a link exists.

1.71 Submissions from alcohol industry groups, advertisers and broadcasters argued that there should be clear evidence that alcohol advertising is contributing to the misuse of alcohol before the current regulatory scheme is changed. The Distilled Spirits Industry Council of Australia argued that alcohol companies advertise in order to increase market share and influence consumer choice towards products with higher margins rather than to increase overall consumption of alcoholic products. They provided information indicating that despite a large increase in the amount of

55 Coalition of Major Professional Sports, *Submission 53*, p.3.

56 Confederation of Australian Sports, *Submission 46*, p.4.

57 Professor Sandra Jones, *Committee Hansard 15.6.08*, p.8.

advertising expenditure in Australia, the overall levels of alcohol consumption have remained relatively stable over the past decade.⁵⁸

1.72 Ms Flynn of FreeTV Australia also noted that a range of advertisements may attract the attention of children but that 'exposure' does not mean the advertisement is targeted to children or that, even if a child remembers an advertisement he or she is necessarily interested in the product being sold.⁵⁹ Similarly Ms Joan Warner of Commercial Radio Australia believed 'there is no evidence of a causal effect linking responsible radio advertising with irresponsible drinking patterns among the young'.⁶⁰

1.73 Australian Association of National Advertisers referenced research by Frontier Economics which suggested 'in a wide range of studies ...notably on alcohol ads ... (advertising bans) are ineffective in reducing harmful consumption and may even have perverse effects.' This research cited studies that suggest little evidence of a significant link between advertising and total sales of alcoholic drinks, or consumption per head or 'where a positive link has been found, it tended to be very slight'. The AANA also indicated that bans or restrictions on advertising alcohol had the potential for unintended or even perverse consequences such as driving advertising into less regulated media.⁶¹

1.74 However Professor Sandra Jones told the Committee there is 'clear evidence from both experimental studies and longitudinal research, exposure to alcohol advertising is clearly associated with drinking intentions and drinking behaviours among young people'.⁶² She described recent longitudinal studies from the United States which 'conclusively show that there is a very, very strong link with exposure to advertising and drinking' and have found a strong association between the amount of alcohol advertising and marketing children are exposed to and the age they commence drinking and how much alcohol they consume.⁶³

1.75 Similarly the Festival of Light emphasised a recent review of seven international research studies which concluded:

The data from these studies suggest that exposure to alcohol advertising in young people influences their subsequent drinking behaviour. The effect was consistent across studies, a temporal relationship between exposure and drinking initiation was shown, and a dose response between amount of exposure and frequency of drinking was demonstrated.⁶⁴

58 Distilled Spirits Industry Council of Australia, *Submission 93*, p.47.

59 Ms Julie Flynn, *Committee Hansard 15.5.08*, p.22 (FreeTV Australia).

60 Ms Joan Warner, *Committee Hansard 15.5.08*, p.25 (Commercial Radio Australia).

61 Australian Association of National Advertisers, *Submission 51*, pp.3-4.

62 Professor Sandra Jones, *Committee Hansard 15.5.08*, p.1.

63 Professor Sandra Jones, *Committee Hansard 15.5.08*, p.2.

64 Festival of Light, *Submission 60*, p.4.

1.76 The Committee notes that the Victorian Parliamentary Drugs and Crime Prevention Committee examined this issue in detail during the *Inquiry into Strategies to Reduce Harmful Alcohol Consumption* in 2006. It concluded:

The Committee acknowledges that the issues and debates pertaining to alcohol advertising and its regulation are complex ones. Notwithstanding the highly persuasive sources and arguments in favour of stricter (statutory) interventions, the Committee believes any firm links between alcohol advertising and increased or harmful alcohol consumption (particularly among young people) remain inconclusive.⁶⁵

Advertising Standards

1.77 The Bill requires ACMA to determine standards to be observed by commercial television broadcast licensees which provide that the content of any advertisement for an alcohol product must not have strong or evident appeal to children and not suggest that alcohol contributes to personal, business, social, sporting sexual or other success in life. These terms appear to have been modelled on part of the ABAC Code. A number of submissions supported these provisions of the Bill as they believed the AAPS and the Adjudication Panel had not applied these standards effectively.

1.78 The Australian Christian Lobby noted that advertisements 'aimed at children or which link drinking or personal, business, social, sporting, sexual or other success are supposedly already banned by the Alcohol Beverage Advertising Code'. They argued that since the ABAC Scheme had not been successful in preventing infringing advertisements 'it is time for a legislative ban as proposed in this bill'.⁶⁶

1.79 Mr Brian Vandenberg outlined VicHealth's concerns that it had been very difficult for the ABAC Adjudications to adhere to the Code as terms such as 'promoting sexual or social success' were ambiguous and not defined.⁶⁷ The South Australian Government also noted that 'the interpretive nature of the Code has meant that in some cases advertisements that passed the pre-vetting process were later the subject of a complaint upheld through the complaints process'.⁶⁸

1.80 The Australian Drug Foundation argued that crucial concepts of the Code are not defined (eg. sexual success or offensive behaviour) so there is not a clear guide for the Adjudication Panel to determine whether an advertisement does breach the code. They argued the Panel had used a black letter approach to the Code and 'has interpreted advertisements most literally although advertising evokes and conveys

65 Victorian Parliamentary Drugs and Crime Prevention Committee, *Inquiry into Strategies to Reduce Harmful Alcohol Consumption*, Final report, Volume 1, March 2006, p.425.

66 Australian Christian Lobby, *Submission 33*, pp.9-10.

67 Mr Brian Vandenberg, *Committee Hansard 6.5.08*, p.7 (VicHealth).

68 South Australian Government, *Submission 92*, p.11.

meaning through allusion and inference rather than linear logic'.⁶⁹ They suggested that 'practice guidelines' be provided to guide the ABAC pre-vetters and the Adjudication Panel as to the interpretation of the Code.⁷⁰

1.81 The ABAC Management Committee have developed Guidance Notes to assist advertisers, agencies and decision makers under the ABAC Scheme including the AAPS pre-vetters and the Panel Adjudicators in interpreting the essential meaning and intent of the ABAC by providing clarifications through definition, explanations, or examples.⁷¹

1.82 Professor Lavarch, the Chief Adjudicator, gave evidence to the Committee that advertisements which come to the Adjudication Panel via a complaint are generally ones which two reasonable people 'looking at the ad—who are trying to apply it against the code, against the backdrop of community standards, and who have an understanding of the public policy considerations of why we are concerned about alcohol regulation and advertising—might come to different conclusions about'.⁷²

Scope of the legislation

1.83 A concern repeatedly raised in submissions was that the scope of the Bill should be expanded from television and radio advertising, and should form part of a comprehensive approach to address the harms caused by alcohol. Many submissions noted that alcohol advertising occurs via a number of media rather than just through television and radio such as posters, magazines, newspapers, internet, mobile phone SMS social marketing and promotional offers and events. The National Centre for Education and Training on Addiction commented that 'the largest part of a company's marketing budget is often invested into other promotional activities...'⁷³

1.84 FreeTV Australia stated that when beverage and retail advertising of alcohol products is considered, television advertising accounts for less than 25% of all annual advertising expenditure.⁷⁴ Commercial Radio Australia estimated only 5% of all annual advertising expenditure is via radio and highlighted that it did not broadcast children's programming.

1.85 FreeTV Australia argued for a media neutral approach to alcohol advertising:

Any proposed regulatory action to address alcohol advertising must take a consistent approach across media platforms, and not unduly focus on free-to-air television. Experience shows that if advertising is restricted on one

69 Australian Drug Foundation, *Submission 52*, p.11.

70 Mr Geoffrey Munro, *Committee Hansard* 6.5.08, p.20 (Australian Drug Foundation).

71 ABAC Scheme Management Committee, *Submission 70*, Attachment 2.

72 Professor Michael Lavarch, *Committee Hansard* 6.5.08, pp.41-42 (ABAC Adjudication Panel).

73 National Centre for Education and Training on Addiction, *Submission 26*, p.3.

74 FreeTV Australia, *Submission 56*, p.3.

platform, the advertising expenditure redistributes to other, competing media. There would therefore be no overall reduction in alcohol advertising.⁷⁵

1.86 The Foundation for Advertising Research also argued that the best practice approach was for advertising restrictions to apply to all media to ensure 'a level playing field'. Otherwise 'advertising will migrate to other media with no reduction in the total amount of advertising'.⁷⁶ Similarly the Advertising Federation of Australia argued the Bill 'will do nothing more than swill advertising spend necessarily away from those media into other channels that are not restricted in the same way' and that 'marketing spend on alcohol would remain the same, but radio and television spend would form a smaller percentage of the overall investment in alcohol advertising'.⁷⁷

1.87 Dr Alex Wodak questioned the priority given to regulating alcohol advertisements in the Bill compared to other strategies to address the harms caused by risky alcohol consumption. He highlighted the effectiveness of other policy approaches such as raising the price of alcohol products via taxation and restricting availability. He noted:

At best, restricting alcohol advertising and ending self regulation should be regarded as supportive but not primary strategies.⁷⁸

Labelling

The current system

1.88 Part 2.7 of the Australia New Zealand Food Standards Code (the Food Standards Code) provides specific labelling requirements for alcoholic beverages and food containing alcohol. Part 2.7 also sets out definitions of beer, fruit and vegetable wine, wine and wine products and spirits. Part 2.7 requires a declaration of alcohol by volume and 'standard drink' labelling and sets out labelling rules for representations of 'low alcohol' and 'non-intoxicating' and provides that food containing alcohol not to be represented as non-alcoholic.

1.89 In general, under the Food Standards Code the label on a package of food or a beverage must include a nutrition information panel in the following format (unless otherwise prescribed under the Code).

75 FreeTV Australia, *Submission 56*, p.3.

76 Foundation for Advertising Research, *Submission 23*, p.2.

77 Advertising Federation of Australia, *Submission 35*, p.4.

78 Dr Alex Wodak, *Submission 31*, p.2.

Figure 3: Nutrition information panel

NUTRITION INFORMATION		
Servings per package: (insert number of servings)		
Serving size: g (or mL or other units as appropriate)		
	Quantity per Serving	Quantity per 100g (or 100mL)
Energy	kJ (Cal)	kJ (Cal)
Protein	g	g
Fat, total	g	g
– saturated	g	g
Carbohydrate	g	g
sugars	g	g
Sodium	mg (mmol)	mg (mmol)
(insert any other nutrient or biologically active substance to be declared)	g, mg, µg (or other units as appropriate)	g, mg, µg (or other units as appropriate)

1.90 However the Standard 1.2.8 of the Code makes an exemption for alcoholic beverages standardised in Standard 2.7 from being required to display a nutrition information panel. A number of other foods and beverages are also exempted from the nutrition label requirements, often where they are standardised in other parts of the Code, including vinegar, tea, coffee, prepared filled rolls, where items they are sold at fund-raising events, or where they are in small packages.

1.91 In 2000, the then Australian New Zealand Food Authority (ANZFA) rejected an application from the Society Without Alcohol Trauma to amend the Food Standards Code to include a requirement that all alcoholic beverages be labelled with the statement: *This product contains alcohol. Alcohol is a dangerous drug.*

1.92 In the statement of reasons for the rejection of the application the ANZFA noted that the costs associated with alcohol were high, but stated:

Scientific evidence for the effectiveness of warning statements on alcoholic beverages shows that while warning labels may increase awareness, the increased awareness does not necessarily lead to the desired behavioural changes in ‘at-risk’ groups. In fact, there is considerable scientific evidence that warnings statements may result in an increase in the undesirable behaviour in ‘at risk’ groups.

In the case of alcoholic beverages, simple, accurate warning statements, which would effectively inform consumers about alcohol-related harm, would be difficult to devise given the complexity of issues surrounding

alcohol use and misuse, and the known benefits of moderate alcohol consumption.⁷⁹

1.93 ANZFA also noted that while the costs to industry of labelling alcoholic beverages with warning statements was not expected to be high, the scientific evidence did not show that warning statements were effective in modifying at risk behaviour in relation to consuming excessive amounts of alcohol. It noted the other public health and education initiatives already in place and the trend of decreasing alcohol consumption and decreasing alcohol-related costs and harm in Australia and New Zealand. In terms of regulatory impact, ANZFA concluded that requiring labelling of alcoholic beverages with warning statements 'would offer no clear benefits to government, industry and consumers but would introduce costs to government, industry and consumers'.⁸⁰

Label content

1.94 While a number of countries mandate warning labels on alcohol products, there is no international consensus or specific Codex standards on the use of warning labels on alcoholic beverages nor consistency of format and/or wording.⁸¹ Since 1989, all alcoholic beverage containers sold or distributed in the United States have been required to bear the following statement:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.

(2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

1.95 The Bill requires FSANZ to make a standard for labelling alcohol products which would include the NHMRC guidelines on the unsafe use of alcohol; the impact of drinking on populations vulnerable to alcohol; health advice about the medical side effects of alcohol; and the manner in which the information may be provided (including provision in text or pictorial form).

1.96 The labelling provisions received significant support in a number of submissions. For example the Alcohol Tobacco and Other Drugs Council of Tasmania Inc stated 'appropriate labelling can only improve consumers' awareness of safe drinking limits, the risks of excessive use, and help vulnerable people to avoid harm'.⁸²

79 Australia New Zealand Food Authority, *Statement of Reasons – Rejection of Application A359– Requiring Labelling of Alcoholic Beverages With a Warning Statement*, 01/01, 5 July 2000, p.1.

80 Australia New Zealand Food Authority, *Statement of Reasons – Rejection of Application A359– Requiring Labelling of Alcoholic Beverages With a Warning Statement*, 01/01, 5 July 2000, p.3.

81 Department of Health and Ageing, *Submission 96*, p.12.

82 Alcohol Tobacco and Other Drugs Council of Tasmania, *Submission 55*, p.2.

Other submissions supported the addition of labels to alcohol products but made suggestions as to the best method of implementation.

1.97 VicHealth recommended that the revised NHMRC guidelines for low-risk drinking should be the basis for the messages in the health information labels; that the labels should be both textual and graphic for ease of comprehension; and there should be strict guidelines on the wording, format and legibility standards relating to health information labels.⁸³

1.98 While Professor Sandra Jones supported the components of the Bill related to health information labels, she also noted the need for research into what the content and format of those labels should be. She argued that labels should be tailored to target relevant audiences and gave the example of 'labelling alcopop beverages with warnings about issues associated with the harms of binge-drinking' rather than other long-term health effects of consumption.⁸⁴

1.99 Industry groups objected to the proposed changes to labelling. The Distilled Spirits Industry Council of Australia described the measure as 'difficult to implement and in some cases unfeasible'. They argued that the size and complexity of the current NHMRC guidelines precluded their use on alcohol product labels and that the labelling requirements would impose a 'significant and recurring cost' on the industry.⁸⁵ Similarly the Winemakers Federation of Australia argued:

To include all of the above information is impractical or impossible and would require a label of considerable size and detail, making it unworkable for most packaging and ineffective in delivering a simple and accurate message for consumers.⁸⁶

1.100 The Northern Territory Government considered it debatable whether labels on alcohol products should be based on the NHMRC safe drinking guidelines. They commented:

This arises from factors such as the changing nature of the guidelines, the complexities associated with individual differences, the balancing of benefits and risks, the distinctions between long-term and short-term harms, and the relevance to different sub-groups of drinkers. It would be better to have more targeted approaches to the information generated by the NH&MRC so it can be delivered in more meaningful and engaging ways.⁸⁷

1.101 The Anglicare Victoria and Melbourne Anglican Social Responsibilities Committee raised their concern that the proposal for health warning labels on alcohol

83 VicHealth, *Submission 37*, pp.12-13.

84 Professor Sandra Jones, *Committee Hansard 15.5.08*, p.1.

85 Distilled Industry Council of Australia, *Submission 93*, pp.30-33.

86 Winemakers' Federation of Australia, *Submission 28*, p.6.

87 Northern Territory Government, *Submission 89*, p.4.

products contain information regarding 'the impact of drinking on populations vulnerable to alcohol' could inappropriately stigmatise or disproportionately target Australia's Indigenous communities.⁸⁸

1.102 A number of submissions argued that adding additional information or warning labels to alcohol products would assist consumers to make informed choices. For example the Network of Alcohol and Drug Agencies argued that labels provided a way for consumers to be informed at the 'point-of-drinking' that the product they are consuming can have a serious impact on their health and well-being.⁸⁹

1.103 The Australian Drug Foundation noted that adding labels to alcohol products does not interfere with a person's right to drink. They stated:

We see it as a basic consumer right to health information. We also see labels as being very important in reinforcing messages delivered through other mediums such as the media, schools, community education et cetera. We see labels as a very important way to educate the consumer, and the best time to do that is as they are consuming the product.⁹⁰

1.104 Several submissions also noted that Australian alcohol prepared for export often already includes a health warning label. Mr Scott Wilson of the Alcohol Education and Rehabilitation Foundation stated:

In 2008 I cannot understand why Australian consumers do not have the same rights as consumers of Australian alcoholic products that are exported right around the world. For example, if you are in the US, Canada, the UK or Europe and you pick up a bottle of Jacob's Creek or other Australian products, they have warning labels about consumption whilst pregnant, drinking and driving and using heavy machinery, but the same product here, which is produced in Australia, does not have a warning label.⁹¹

Consumer and nutritional information

1.105 The Alcohol and Other Drugs Council of Australia suggested that alcoholic products should also include nutritional information as part of the health information requirements noting that presently 'many young women who drink highly sweetened RTDs are unaware of how many calories they consume'.⁹² With young women being especially sensitive to their calorie intake, the ADCA emphasised the point by using an analogy of a young woman at a party who may have consumed six glasses of champagne being told that she had eaten six doughnuts:

88 Anglicare Victoria and Melbourne Anglican Social Responsibilities Committee, *Submission 45*, p.2.

89 Network of Alcohol and Drug Agencies, *Submission 43*, p.2.

90 Mr John Rogerson, *Committee Hansard 6.5.08*, p.9 (Australian Drug Foundation).

91 Mr Scott Wilson, *Committee Hansard 15.5.08*, p.10 (Alcohol Education and Rehabilitation Foundation).

92 Alcohol and Other Drugs Council of Australia, *Submission 9*, p.7.

'if you really looked at exactly what the calorific content is of what you've consumed, you'd know that it was the equivalent of six doughnuts and I don't think you'd have been eating six doughnuts.' So it is that sort of message that can also help people to get a better appreciation of some of the other associated harms of alcohol.⁹³

1.106 Similarly the Public Health Association of Australia suggested that the labelling requirements for alcohol products also outline information regarding food content as required by other food products sold in Australia. They commented:

The PHAA is keen to ensure that alcohol falls under the same banner as other foods with regard to identifying content. Foods and beverages other than alcohol are required to have this information so that consumers have the ability to assess the health impact that foods and additives might have on their own health and well-being. There is simply no good reason why alcohol should be exempt.⁹⁴

Efficacy of labelling alcohol products

1.107 Several submissions questioned the effectiveness of health warning labels on alcohol products. The Winemakers Federation of Australia described mandatory health warning labels as a 'simplistic and ineffective approach to public policy' and stated there was 'no evidence that shows that warning labels on alcohol products lead to behavioural changes amongst those groups that are at risk'.⁹⁵

1.108 Lion Nathan doubted the effectiveness of warning labels on alcohol products describing research from the United States conducted since the introduction of US federal labelling legislation in 1989 which found no strong evidence that labels have modified drinking behaviour. They noted that:

Disturbingly, there is also evidence that warning labels may have unintended consequences, with a survey of young American college students suggesting warning labels actually increased the attractiveness of alcohol.⁹⁶

1.109 The National Centre for Education and Training on Addiction noted that a number of other countries have introduced mandatory health warnings on the labels of alcoholic beverages. However while there was 'some evidence of consumer awareness of the messages conveyed by the warning labels, there is very little research evidence to suggest that a change in alcohol consumption has occurred as a result of these warnings'.⁹⁷ VicHealth argued that while evidence regarding the effectiveness of health information labels in altering drinking behaviour is inconclusive, there is

93 Mr David Templeman, *Committee Hansard* 6.5.08, p.48 (ADCA).

94 Public Health Association of Australia, *Submission* 18, p.6.

95 Winemakers' Federation of Australia, *Submission* 29, p.5.

96 Lion Nathan, *Submission* 53, pp.3-4.

97 National Centre for Education and Training on Addiction, *Submission* 26, p.1.

evidence to suggest a degree of increased awareness of alcohol related harms due to advisory labels, combined with the effects of other public health measures, may translate into a change in drinking behaviour.⁹⁸

Health information

1.110 The health benefits of moderate consumption were seen by some as making the case for health warnings on alcohol products more complex. Lion Nathan argued that 'alcohol, unlike many other drugs, can be consumed safely in moderate quantities and that moderate drinking can provide protection against a range of health problems'. It listed these as including cardiovascular disease, adult onset diabetes (type 2), cognitive function and dementia, and osteoporosis. Lion Nathan recommended a full review of the health benefits of moderate alcohol consumption be conducted before further consideration is given to health information labels.⁹⁹

1.111 However several submissions argued the harms caused by risky alcohol consumption significantly outweighed any health benefits of moderate consumption. For example the Salvation Army stated:

A popular argument against the introduction of warning labels is the believed health benefits of moderate consumption of alcohol. But in fact it is well established that the health benefits of alcohol consumption are limited to specific circumstances and sub-populations which do not include women of child-bearing age. According to various studies show... the protective factors apply only to men over 45 and women over 49, and protect only against atherosclerosis and thrombosis in these groups. Even in these groups the protective benefits are not likely to outweigh the risks.¹⁰⁰

Alcohol and Pregnancy

1.112 The health advisory labelling of alcohol products was supported by the National Organisation for Fetal Alcohol Syndrome and Related Disorders (NOFASARD). It noted that there is no research that has established a safe lower limit of alcohol exposure to a developing foetus but there is a significant body of accepted research that links excessive alcohol consumption by pregnant women with permanent physical and neurological birth defects, known as Fetal Alcohol Syndrome (FAS).¹⁰¹

1.113 NOFASARD also highlighted there was a very low level of awareness of FASD in Australia and that the lack of a warning label on alcohol products relating to the harm their use may cause, is a contributing factor to this low level of awareness. They stated that:

98 VicHealth, *Submission 37*, pp.12-13.

99 Lion Nathan, *Submission 53*, p.5.

100 Salvation Army – Australia Southern Territory, *Submission 48*, p. 8.

101 National Organisation for Fetal Alcohol Syndrome and Related Disorders, *Submission 24*, p.2.

We acknowledge that labelling alone may not be sufficient to help prevent all cases of FASD, however we believe a health advisory label on all alcohol products will raise awareness about alcohol's potential harm to the unborn baby and this is the critical first step in any programme designed to inform, influence and effect behaviour change.¹⁰²

1.114 The Committee notes that FSANZ is currently considering an application from the Alcohol Advisory Council of New Zealand to require health advisory labels on alcohol products advising women concerning the risks of consuming alcohol when planning to become pregnant or during pregnancy.¹⁰³ FSANZ is assessing the impact of low maternal alcohol consumption on the developing foetus and evaluating information on the incidence of FASD, the drinking patterns of women of childbearing age and pregnant women in Australia and New Zealand, and their knowledge of the risks to the foetus associated with consuming alcohol during pregnancy.¹⁰⁴

Food Standards Australia New Zealand (FSANZ)

1.115 FSANZ noted that it had been requested to consider mandatory health warning on packaged alcohol by the Australian New Zealand Food Regulation Ministerial Council and would need to undertake consumer and economic research to progress this report. In relation to developing a broader alcohol labelling system for consumers, FSANZ stated that work beyond what had been requested by the Ministerial Council would need to be in response to an application to amend the relevant alcohol labelling standard or via a proposal to do the same at the request of the Ministerial Council. It commented:

The Ministerial Council is responsible for the formulation of policy guidelines which FSANZ must have regard to in developing food regulatory measures. At present no policy formulation exists on the subject of alcohol labelling. In the absence of such policy it would be very difficult for FSANZ to develop a comprehensive alcohol labelling system.

The development of an alcohol information labelling system would also need to be guided by an assessment of costs versus benefits through a regulatory impact statement (RIS).

This further work would be resource intensive and without additional funding FSANZ would need to reprioritise its current work plan.¹⁰⁵

102 National Organisation for Fetal Alcohol Syndrome and Related Disorders, *Submission 24*, p.3.

103 Food Standards Australia New Zealand, *Initial Assessment Report – Application A576 – Labelling of Alcohol Beverages with a pregnancy health advisory label*, December 2007.

104 Food Standards Australia New Zealand, 'Pregnancy health advisory labels on alcoholic beverages', Factsheet, December 2007, p.1.

105 Food Standards Australia New Zealand, additional information received 6.6.08, p.1.

Constitutional limitations

1.116 Possible constitutional limitations with the amendments the Bill proposed to the *Food Standards Australia New Zealand Act 1991* were highlighted in the Department of Health and Ageing submission.

Food standards are mandated in the Australia New Zealand Food Standards Code (the Code) and not in the legislation that establishes Food Standards Australia New Zealand (FSANZ), its functions and powers and the process by which the Code may be amended. Therefore, the amendment proposed in the Bill is not appropriate.

The FSANZ Act is enabling legislation designed to provide FSANZ with powers to develop food standards within the framework of an inter-governmental agreement and a Treaty between Australia and New Zealand. The FSANZ Act has no effect on State or Territory food law due to Commonwealth Constitutional restraints. As a consequence States and Territories are responsible for enforcement of the Code. Therefore there would be no capacity for the States or Territories to enforce the proposed section 87A if it were to be inserted into the Act as it would not be considered a food standard for the purposes of the Code.

Proposed section 87A goes well beyond the enabling legislative scheme by suggesting to [impose an] obligation on FSANZ to make a standard for the labelling of alcohol and effectively imposing a law on the States, Territories and New Zealand.¹⁰⁶

1.117 The Australia New Zealand Food Standards Code is a compilation of individual standards which acquire legal force through an intergovernmental agreement, the Food Regulation Agreement, between the Commonwealth, states and territories. Clause 23 of the Food Regulation Agreement sets out the adoption process for those standards which FSANZ develops and approves. In effect, jurisdictions will only adopt or incorporate into their domestic food law standards that have been developed and approved by FSANZ. The proposed amendment in the Bill to the FSANZ Act does not contemplate the development process by FSANZ, so the Food Regulation Agreement would not enforce it.¹⁰⁷

1.118 This issue was also raised by the Federation for Advertising Research:

The procedures for establishing a new FSANZ standard are in the Act. There is extensive consultation and final adoption of the standard requires the agreement of the Governments of the States and Territories as well as New Zealand. Thus no one Government can impose a standard unless all of the other Governments agree.¹⁰⁸

106 Department of Health and Ageing, *Submission 96*, p.11.

107 Mr John Fladun, *Committee Hansard 15.5.08*, pp.32 – 33.

108 Federation for Advertising Research, *Submission 23*, p.3.

Similarly the South Australian Government noted there was an existing process for changes to labelling through FSANZ. It suggested 'any changes to food labelling should be pursued through an application to FSANZ for consideration'.¹⁰⁹

OTHER ISSUES

1.119 There are some apparent drafting issues with the Bill in the additional provisions amending the *Food Standards Australia New Zealand Act 1991*. The Australasian Associated Brewers noted that 'proposed Section 122A(3) of the Bill is poorly drafted as its intention is to void the entire 'commercial television industry code of practice' including provisions not relating to alcohol at all, while the equivalent radio code is not similarly threatened'.¹¹⁰

1.120 Similarly the objects of the Bill include '(a) to limit the times at which alcohol products are advertised on *radio and television* for the protection of young people' (*italic added*). However, the proposed Section 122A only refers to 'commercial television broadcasting licensees' rather than including commercial radio broadcasting licensees.

CONCLUSION

1.121 While the Committee supports the broad aims and objectives of the Alcohol Toll Reduction Bill 2007, it does not agree that the provisions of the Bill represent the best approach to address the harms caused by alcohol in the community. The inquiry highlighted some deficiencies with the current ABAC Scheme for pre-vetting alcohol advertisements and adjudicating complaints. However the Committee also notes the relatively low number of public complaints recorded concerning alcohol advertising in recent years.

1.122 The Committee does not agree there is a compelling case for a dual system of industry quasi-regulation and government regulation of alcohol advertising on television and radio through a new Division in the Australian Communication and Media Authority. Additional restrictions placed on radio and television advertisements are likely to simply shift the advertising of alcohol products to other media markets.

1.123 A consistent argument in evidence and from witnesses was that the measures in the Bill (restricting radio and television advertising and the labelling of alcohol products) would be most effective if they were part of a comprehensive strategy to address the harms associated with alcohol consumption. In Australia a broad national policy approach currently exists in the Ministerial Council on Drug Strategy and the National Alcohol Strategy 2006-2009. The Committee notes that the Ministerial Council on Drugs Strategy is currently developing a report for the Council of Australian Governments which will include consideration of possible standards and

109 South Australian Government, *Submission 92*, p.9.

110 Australasian Associated Brewers, *Submission 36*, p.9.

controls for alcohol advertising targeting young people. The Committee considers this policy framework is the appropriate means to develop and implement changes to alcohol advertising.

1.124 One area of alcohol advertising which particularly concerned the Committee is the exception for advertising of alcohol products during coverage of live sport on commercial television. This exception clearly results in children being exposed to alcohol advertising. The Committee notes that the members of the ABAC Scheme Management Committee have generally been receptive to suggestions for reform and improvement in the past. The Committee also notes the on-going monitoring and reform of the ABAC Scheme through the Ministerial Council on Drugs Strategy and the Monitoring of Alcohol Advertising Committee (MAAC). The Department of Health and Ageing gave evidence to the Committee that the issue of alcohol advertising during sports coverage had not been discussed with the ABAC Scheme Management Committee or at MAAC.¹¹¹ The Committee recommends that this subject should be raised in those forums and an appropriate strategy agreed between the parties to ameliorate concerns regarding alcohol advertising to children during sport coverage on television.

1.125 The Committee notes the industry initiatives regarding labelling and packaging of alcohol products including the uniform 'standard drinks' logo and the inclusion of responsible consumption messages on wine labels. It is encouraging that these measures have been developed voluntarily by the industry and have been implemented across a wide range of products. However the Committee remains concerned about the lack of consistent regulation in relation to the labelling, packaging and naming of alcohol products. Therefore, the Committee is recommending that the Ministerial Council on Drugs Strategy, the MAAC and the ABAC Scheme Management Committee consider the development of uniform rules in relation to the labelling, packaging and naming of alcohol products to be incorporated into the Alcohol Beverages Advertising Code and ABAC Scheme. Consistent with the Code, these rules should be designed to ensure that the labelling, packaging and naming of alcohol products does not conflict with 'the need for responsibility and moderation in liquor merchandising and consumption' and does not 'encourage consumption by underage persons'.¹¹²

1.126 The Committee recognises the limits on the Commonwealth Government in relation to food law and the existing regulatory framework set up under the Food Standards Agreement. The appropriate pathway for any proposed change to the labelling of alcoholic products is through assessment by Food Standards Australia New Zealand (FSANZ). The Committee notes the Australia and New Zealand Food Regulation Ministerial Council has already asked FSANZ to consider mandatory health warnings on packaged alcohol and supports this action. The Committee also

111 Department of Health and Ageing, *Committee Hansard* 15.5.08, p.53.

112 ABAC Management Committee, *Alcohol Beverages Advertising Code*, 2007, p.1.

recognises that the framework allows an applicant to propose amendments to food standards which can then be assessed by FSANZ.

1.127 This being said, the Committee does not believe that there is any reasonable argument for alcohol products to be treated differently to other food and beverages in terms of being required to display a nutritional information label. Consumers should be able to make informed choices about a particular alcoholic product.

RECOMMENDATIONS

Recommendation 1

1.128 The Committee recommends that the Ministerial Council on Drugs Strategy, the Monitoring of Alcohol Advertising Committee and the ABAC Scheme Management Committee consider:

- **additional safeguards to ensure that alcohol advertising during sport coverage, if it continues, does not adversely influence children and young people; and**
- **developing uniform rules in relation to the labelling, packaging and naming of alcohol products and incorporating them into the Alcohol Beverages Advertising Code and the ABAC Scheme.**

Recommendation 2

1.129 The Committee recommends that the Commonwealth Government through the Australian and New Zealand Food Regulation Ministerial Council request Food Standards Australia New Zealand consider whether to develop standards in relation to nutritional information panels for alcohol products.

Recommendation 3

1.130 While the Committee supports the broad aims of the Alcohol Toll Reduction Bill 2007, it does not agree that the provisions in the Bill represent the best approach to addressing the serious harms caused by alcohol in the community. Since the introduction of the Bill, the Commonwealth Government has announced a National Binge Drinking Strategy and there have been specific initiatives from the Ministerial Council on Drug Strategy on alcohol advertising and from the Australian New Zealand Food Regulation Ministerial Council on alcohol product health warning labels. In the opinion of the Committee, these policy initiatives represent more comprehensive and effective means to tackle the problems associated with alcohol. Consequently, the Committee recommends the Bill not be passed.

Senator Claire Moore
Chair

18 June 2008

