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**SUBMISSION  
TO THE  
COMMUNITY AFFAIRS COMMITTEE  
ON THE  
ALCOHOL TOLL REDUCTION BILL  
BY THE  
FOUNDATION FOR ADVERTISING RESEARCH**

1. The Foundation for Advertising Research (FAR) provides research, information, advice and expertise in Australia, New Zealand and elsewhere in the world on advertising issues and advertising regulation, with the objective that policymakers can make evidence based decisions and policies. The Director is Glen Wiggs. He is also an Adjunct Professor of Advertising Regulation at the University of the Sunshine Coast, Queensland.
2. FAR requests that it be heard by the Committee. Glen Wiggs can be contacted at [gwiggs@ffar.org](mailto:gwiggs@ffar.org) or 042 4939017
3. This submission focuses on whether the Bill as currently worded is likely to achieve its objectives of creating a culture of responsible drinking and reducing the harm that results from excessive alcohol consumption. We also comment on whether it meets current world's best practice of regulating advertising.

**Best Practice**

4. In July 2006 the European Union produced a report (the "Madelin Report") on best practice standards for the self-regulation of advertising after an extensive review involving a large number of stakeholders. The review was conducted under the Chair of Robert Madelin (Director-General, European Commission; Health and Consumer Protection DG). In May 2007 in a White Paper on Obesity the Madelin Report was adopted as policy by the European

Union. The best practice standards are applicable to self-regulatory and co-regulatory regimes and in areas other than advertising. It is important that for sensitive products such as alcohol the advertising regime is in accordance with best practice.

5. The Social Marketing and Advertising Research Team (SMART) at the University of the Sunshine Coast headed by Associate Professors Michael Harker and Debra Harker have developed a quality audit system for advertising regimes. It has already been used to audit the Advertising Standards Authority regime in New Zealand. The SMART quality audit incorporates the requirements of the Madelin Report.

6. A successful advertising regulatory regime depends on a large number of factors. The SMART Quality Audit examines over 100 factors under the following heads -

- (i) Leadership, Organisation and Planning
- (ii) Codes
- (iii) Complaints and Results of Activities
- (iv) Enforcement
- (v) Audit
- (vi) Education
- (vii) Awareness

7. Such matters as pre-clearance, radio and television advertising and advertising content rules are a very small sub-set of best practice requirements and would achieve little on their own. A better approach is to adopt best practice principles for all aspects of alcohol advertising.

8. For example independent monitoring and audit of an advertising regulatory regime is an essential requirement of best practice. There should be independent audit of the performance standards and in particular the timeliness standards. Other areas of audit are the ease of complaint, whether the Codes meet the expectations of stakeholders and the quality of the decisions of the adjudication panel. There should be independent surveys of stakeholder satisfaction, customer satisfaction and consumer awareness of the organisation and right to complain. All audits and surveys should be carried out on a regular basis and undertaken by an independent organisation with reporting to key stakeholders.

### **The Bill**

9. The Bill deals only with broadcast advertising on radio and television. This is not in accordance with best practice as rules should apply to all media so that there is a level playing field. If undue restrictions are placed on one media the advertising will migrate to other media with no reduction in the total amount of advertising.

The Bill consequently sets two different standards, which are artificially categorised by media rather than by any rational basis.

### **Pre-approval**

10. Pre-approval of advertisements, particularly of sensitive products such as alcohol, is in accordance with best practice. However, it is important that all advertisements in all media be pre-approved and not just the radio and television media.

11. Schedule 1 Clause 1 proposes that ACMA establish a Division that will pre-approve alcohol advertisements. Furthermore the Division will include associate members chosen from various groups. This proposal is unworkable and would consequently be contrary to best practice principles. Pre-clearance of advertisements is a very specialised activity that requires an intimate knowledge of advertising concepts, advertising regulation, code interpretation and precedents. The listed groups would not have that expertise. There is also the additional requirement of timeliness. The timelines are usually very tight and involving additional people would add to the complexity. Best practice pre-clearance encourages the advertiser to contact the pre-clearance officer at the concept stage and then work cooperatively through to the post-production phase. At every stage there are tight deadlines requiring immediate answers.

12. 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. A better model is for the pre-clearance to be performed by an independent person. There can be independent quality audits from time to time with reporting to ACMA along with other key stakeholders.

### **Standards for Alcohol Advertising**

13. Clause 2 in Schedule 1 proposes that ACMA determines standards for alcohol advertising for commercial television. This is most unusual as there will be one set of standards for television and another set for all other media. Consistency of rules is essential and to have a different set for television is not in accordance with best practice.

14. Subsection (2) sets out three requirements for the alcohol advertising standards. The first is the definition of direct advertisements for alcohol products. We have little comment except to say that there should also be rules for sponsorship advertisements.

15. The second relates to the watershed times of 9PM and 5AM. It is not unusual to have watershed times for television alcohol advertising and having watershed times is in accordance with best practice. However before

changing from the current permitted times of broadcast to the new rules the effectiveness should be measured.

16. The vast majority of intervention strategies fail. Consequently SMART developed eight principles that need to be followed for intervention strategies to be successful. Associate Professors Michael and Debra Harker have further developed the principles and written several academic articles. There is a chapter on the subject written by the Harkers in the latest book of Gerard Hastings on "Social Marketing - Why Should the Devil Have All the Best Tunes". Hastings is a world leading researcher and academic on health issues and has visited Australia several times.

The eight principles now known as the "REACH FAR Essential Criteria" can measure the likely effectiveness of the proposed watershed.

**We therefore submit that the proposed watershed of 9PM and 5AM be tested against the REACH FAR Essential Criteria to measure their likely effectiveness.**

17. The third requirement relates to the content of the advertisement. An alcohol advertisement must not have strong or evident appeal to children and should not suggest that alcohol contributes to success in a variety of areas. We support these particular standards but in terms of total standards they are woefully inadequate and do not meet best practice requirements. The standards should also require the following:

- Not to conflict with or detract from the need for responsibility and moderation
- Not to emphasise a products alcoholic strength except lower than usual strength products
- Not to glamorise alcohol or association with it
- Observe a high standard of social responsibility
- Not to depict or encourage offensive, aggressive or irresponsible behaviour
- Not to suggest alcohol will lead to a change of mood
- Not to depict or imply the consumption of alcohol in potentially hazardous situations
- Not to mislead or suggest alcohol has some special quality that cannot be sustained

18. The proposed standard is a substantial liberalisation of the AANA Alcohol Beverages Advertising Code. This would lead to a high standard of

advertising required in all media except television where a much more liberal code administered by ACMA would operate.

### **Food Standards Australia New Zealand (FSANZ)**

19. Clause 9 of Schedule 1 amends the Food Standards Australia New Zealand Act 1991 (the Act) and requires a new standard to be promulgated with regard to the labelling of alcohol products. There are several problems with this proposal.

20. 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.

21. The list of the five requirements in sub-clause (1) is extensive. It is doubtful whether it is practical to include all the provisions on a label.

More importantly the effectiveness of the five requirements is unknown.

**It is submitted that the effectiveness of the proposed label requirements be tested against the REACH FAR criteria. Once the results are known an application be made to FSANZ in accordance with its procedures for a new standard.**

### **General Comment**

22. The proposals in the Bill are flawed in a number of respects. In particular the provisions do not meet the requirements of best practice and are therefore will fail to achieve the objectives of the Bill. Advertising regulation is a complex and difficult field due to the nature of the media and advertising markets. The proposals will create two standards of regulation with the television standard being substantially more liberal than standards for all other media.

23. Australia has a co-regulatory system for alcohol advertising regulation which in general terms works well. It is acknowledged that the regime may need improvement (mainly in the area of independent monitoring and audit) but the best way forward is to ensure it meets best practice principles rather than throwing the baby out with the bath water.

24. It is important for the various parties to be clear on their positions. Currently the peak regulator is the Advertising Standards Bureau (ASB) and other organisations and agencies are stakeholders. ACMA and the Government are key stakeholders. Indeed the Government were partners with the ASB and AANA in developing the current alcohol advertising code.

Therefore a much more effective route for change is for Government to reopen negotiations.

25. An essential part of a best practice advertising regime is for the regulator to involve key stakeholders. Independent monitoring and audit of all aspects of the regime with reporting to the stakeholders is an important feature. Stakeholders can exercise more influence by playing their role in a constructive and participative manner. It is not uncommon for stakeholders to try to become regulators but do not want the bother of best practice. This approach is self-defeating, as the objectives will not be achieved.

**26 . We therefore submit that all parties be encouraged to play their respective roles in the current regulatory structure in a positive and constructive manner in accordance with best practice principles.**

Glen Wiggs

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