

Portfolio Committee No. 1 – Premier and Finance

Alcoholic Beverages Advertising Prohibition Bill 2015

Ordered to be printed 29 March 2018 according to Standing
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Portfolio Committee No. 1 – Premier and Finance.

Alcoholic Beverages Advertising Prohibition Bill 2015 / Portfolio Committee No. 1 – Premier and Finance [Sydney, N.S.W.] : the Committee, 2018. [x, 143] pages ; 30 cm. (Report no. 46 / Portfolio Committee No. 1 – Premier and Finance)

“March 2018”

Chair: Rev. the Hon. Fred Nile, MLC.

ISBN 9781922258472

1. New South Wales. Parliament. Legislative Council—Alcoholic Beverages Advertising Prohibition Bill 2015
2. Alcoholic beverages—Law and legislation—New South Wales
3. Advertising—Alcoholic beverages—New South Wales.
4. Advertising laws—New South Wales.
 - I. Nile, Fred.
 - II. Title.
 - III. Series: New South Wales. Parliament. Legislative Council. Portfolio Committee No. 1 – Premier and Finance. Report ; no. 46

659.1964121 (DDC22)

Table of contents

	Terms of reference	vi
	Committee details	vii
	Chairman’s foreword	viii
	Finding and recommendations	ix
	Conduct of inquiry	x
Chapter 1	The purpose and impact of alcohol advertising	1
	The purpose of alcohol advertising	1
	The industry position: securing market share	1
	The health and advocacy position: initiating and increasing alcohol consumption	5
	Alcohol consumption trends	10
	The industry position: a ‘good news’ story	12
	The health and advocacy position: an incomplete picture	14
	The impact of alcohol advertising	16
	The correlation between alcohol advertising and alcohol consumption	16
	The normalisation of alcohol	21
	Other jurisdictions	23
	Health impacts and social costs of alcohol consumption	24
	Measuring the costs of alcohol consumption	24
	The health benefits of alcohol	27
	Alcohol and cancer	29
	Comparisons between alcohol and tobacco	31
	Committee comment	32
Chapter 2	Stakeholder views on the Bill	35
	Overview of the Bill	35
	The prohibition of alcohol advertising and other promotional activities	36
	The declaration of local option areas	36
	Opposition to the Bill	37
	Impact on the alcohol industry	40
	Impact on the advertising industry	43
	Other impacts	45
	Support for the Bill	46

	Potential amendments to the Bill	49
	Digital media	49
	Exposure of children and young people	50
	Industry representation on the Alcohol Advertising Prohibition Committee	52
	Local option areas	52
	A multipronged approach	54
	Committee comment	55
Chapter 3	Alcohol advertising regulation	57
	The regulation of alcohol advertising	57
	The regulation of alcohol advertising at the national level	57
	The regulation of liquor promotions in New South Wales	59
	Is the current regulatory system effective?	60
	The Alcohol Beverages Advertising Code (ABAC) Scheme	65
	The Code	67
	The Alcohol Advertising Pre-vetting Service	68
	The ABAC Adjudication Panel and complaints handling	69
	DrinkWise Australia	71
	Key stakeholder concerns	73
	Liquor Promotion Guidelines	73
	Social media	75
	Health warning labels	77
	Safeguards for protecting children and young people	82
	Committee comment	84
Chapter 4	Alcohol advertising in sport and on government property	87
	Alcohol advertising in sport	87
	Is there a place for alcohol advertising in sport?	87
	The value of alcohol advertising and sponsorship in sport	93
	Alcohol advertising during televised sporting programs	97
	Alcohol advertising on government infrastructure and property	99
	Committee comment	101
Appendix 1	Alcoholic Beverages Advertising Prohibition Bill 2015	103
Appendix 2	Submissions	122

Appendix 3	Witnesses at hearings	124
Appendix 4	Minutes	126
Appendix 5	Dissenting statement	142

Terms of reference

1. That Portfolio Committee No. 1 – Premier and Finance inquire into and report on the Alcoholic Beverages Advertising Prohibition Bill 2015.

The terms of reference were referred to the committee by the Legislative Council on 21 September 2017.¹

¹ *Minutes*, NSW Legislative Council, 21 September 2017, p 1928.

Committee details

Committee members

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chairman</i>
The Hon Ben Franklin MLC	The Nationals	<i>Deputy Chair</i>
The Hon Scott Farlow MLC	Liberal Party	
Mr Justin Field MLC	The Greens	
The Hon Taylor Martin MLC	Liberal Party	
The Hon Peter Primrose MLC	Australian Labor Party	
The Hon Adam Searle MLC	Australian Labor Party	

Contact details

Website	www.parliament.nsw.gov.au/alcoholicbeverages
Email	portfoliocommittee1@parliament.nsw.gov.au
Telephone	02 9230 3067

Chairman's foreword

We are facing increasing levels of alcohol-related harm that is coming at too a high a cost – to individuals, their families and the wider community. Yet alcohol advertising is prolific in Australia, with millions of dollars spent to promote alcohol products through a multitude of mediums. This is particularly apparent in sport, where everything from televised broadcasts to merchandise is branded with some form of alcohol advertising. There is no doubt that all of this significantly contributes to the normalisation of alcohol consumption in our society, particularly among children and young people.

The Alcoholic Beverages Advertising Prohibition Bill 2015 was therefore proposed to curb the proliferation of alcohol advertising and to remove messages promoting positive associations with alcohol, thereby encouraging a healthier lifestyle for all Australians. More broadly, it was introduced as one means of combatting the growing problem of alcohol-related harm.

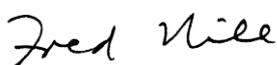
Ultimately, however, the majority of committee members did not support the legislative solutions proposed in the Bill in its current form.

Nevertheless, the committee has found that the strict regulation of alcohol advertising has an integral role to play in addressing the significant health and social costs that alcohol-related harm causes in our society, and in supporting the health and well-being of Australians. The committee has recommended that NSW Health closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is, so the community is properly informed. This research should in turn inform policy makers about whether alcohol advertising in New South Wales should have further restrictions placed upon it.

The committee also reached consensus that much more can be done to strengthen the current regulation of alcohol advertising. To this end, the committee recommends the finalisation of the NSW Liquor Promotion Guidelines by the end of the year, the consideration of discounting promotions on shopper dockets, and the development of comprehensive labelling standards on all alcoholic beverages. In addition, the committee recommends that the NSW Government consider a strategy to phase out alcohol sponsorship in sport over time, and lobby the Australian Government to remove time control exemptions for sports broadcasts. Finally, the committee recommends that the NSW Government consider appropriate restrictions on alcohol advertising on all government infrastructure and property.

Ultimately, a mix of strategies, including legislation and education, will be necessary to effect any change in this area, as was seen with tobacco control some three decades ago. Indeed, since tobacco advertising restrictions were introduced, there has been a dramatic fall in smoking rates. I believe this precedent should guide decision-making moving forward.

I thank my fellow committee members for their participation and engagement throughout the inquiry. I also thank the committee secretariat for their guidance, hard work and professional support.



Revd the Hon Fred Nile MLC
Committee Chairman

Finding and recommendations

- Finding 1** 34
That the strict regulation of alcohol advertising has an integral role to play in addressing the significant health and social costs that alcohol-related harm causes in our society, and in encouraging a healthier lifestyle among all Australians.
- Recommendation 1** 34
That NSW Health closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is.
- Recommendation 2** 34
That the NSW Government use the research conducted by NSW Health into whether there is any safe level of alcohol consumption and, if so, what level, to determine whether alcohol advertising should have further restrictions applied to it.
- Recommendation 3** 34
That the NSW Government consider providing more funding and support toward health promotion and education campaigns regarding alcohol consumption.
- Recommendation 4** 56
That the Alcoholic Beverages Advertising Prohibition Bill 2015 not be passed.
- Recommendation 5** 85
That Liquor & Gaming NSW complete the review and finalisation of the updated NSW Liquor Promotion Guidelines by the end of 2018.
- Recommendation 6** 85
That the NSW Government consider the issue of discounting promotions for alcoholic beverages on shopper dockets.
- Recommendation 7** 86
That the NSW Government advocate, through the Australia New Zealand Ministerial Forum on Food Regulation, for the development of comprehensive labelling standards on all alcoholic beverages, including pregnancy warning labels.
- Recommendation 8** 101
That the NSW Government consider a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged.
- Recommendation 9** 101
That the NSW Government lobby the Australian Government to remove time control exemptions for sports broadcasts under the Commercial Television Industry Code of Practice.
- Recommendation 10** 102
That the NSW Government consider appropriate restrictions and/or exclusions on alcohol advertising on all government infrastructure and property, particularly advertising to which children and young people are exposed.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 21 September 2017.

The committee received 42 submissions and one supplementary submission.

The committee held three public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 **The purpose and impact of alcohol advertising**

The Alcoholic Beverages Advertising Prohibition Bill 2015 (the Bill) proposes to prohibit alcohol advertising and other promotional activities across a range of media platforms in order to reduce the incentive for people to consume alcohol.

Before this report examines the Bill, this chapter will consider alcohol advertising more broadly to provide context to the various issues raised during the inquiry. In particular, this chapter explores the competing perspectives of inquiry participants on the purpose and impact of alcohol advertising, in light of recent trends in alcohol consumption across the state and country. It also outlines the health impacts and social costs of alcohol, as part of the wider discussion around reducing consumption levels, particularly among young people.

The purpose of alcohol advertising

- 1.1** During the inquiry, the committee received conflicting evidence about the aims of alcohol advertising. On the one hand, the alcohol industry contended that the purpose of advertising alcoholic beverages is primarily to secure market share. On the other hand, the health and advocacy sectors argued that the chief objective of alcohol advertising is to initiate and increase alcohol consumption. The following section considers these claims in turn.

The industry position: securing market share

- 1.2** Representatives from the alcohol industry strongly maintained that the purpose of advertising its products is to secure market share in what Alcohol Beverages Australia described as a ‘fiercely competitive marketplace’.² Mr Fergus Taylor, Executive Director of Alcohol Beverages Australia, explained that New South Wales – and Australia as a whole – has a ‘mature alcohol market’ wherein demand and consumption is not increasing, and so competition between brands is extremely high.³ As a result, advertising seeks to alter the market share between different types of alcohol products and influence those consumers who already comprise the market to switch brands or beverages.⁴
- 1.3** This position was supported by a number of individual alcohol companies and peak bodies representing different alcohol categories, all of whom asserted that advertising is undertaken to provide product differentiation and ultimately to win the consumer’s choice of alcoholic beverage.⁵ For example, the Brewers Association of Australia stated:

² Submission 11, Alcohol Beverages Australia, p 11.

³ Evidence, Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, 1 December 2017, p 21.

⁴ Submission 11, Alcohol Beverages Australia, p 11.

⁵ For example, Evidence, Mr Alec Wagstaff, Chief Executive Officer, Distilled Spirits Industry Council of Australia, 1 December 2017, p 43; Evidence, Mr Julian Sheezel, Corporate Affairs Director, Carlton and United Brewers, 5 December 2017, pp 23-24; Evidence, Mr Dan Holland, External Relations Director, Lion Beer Australia, 5 December 2017, p 24; Submission 14, Diageo Australia, p 2.

The beer industry engages in advertising for the same reasons as any other product or service: to compete for consumers, and in the case of beer to promote its products against its competitors.⁶

1.4 As part of its argument, the alcohol industry referred to the declining levels of alcohol consumption to support the contention that advertising is about influencing consumer preferences, rather than growing the industry and encouraging people to drink more. For example, according to the Winemakers' Federation of Australia, 'advertising is targeted at competition between categories, largely competing for market share in the context of a downward trend of total consumption'.⁷

1.5 Likewise, Diageo Australia argued that alcohol advertising is 'a tool of competition between brands, not a means to increase total consumption of a product type' which aims to 'persuade consumers to buy one brand ... in preference to another'.⁸ The relationship between alcohol advertising and consumption levels is examined more closely later in the chapter.

1.6 Representatives from the alcohol industry also discussed the 'premiumisation' of the industry,⁹ a trend which refers to the consumption of better quality, higher priced alcohol products. They argued that inducing brand loyalty is critical as consumers are increasingly choosing quality over quantity, and experiences that are not necessarily centred around alcohol.

1.7 Mr Taylor described this evolution of the industry as follows:

It is becoming less of a 'stand and deliver and knock back as many beers as you can' or 'as many wines and spirits as you can' and has become a far more interesting and exciting experience-driven industry that is looking at mixing with foods, different venues, and ... coexisting with what is essentially a healthier Australia. As that process unfolds, the industry experience is what is essentially a premiumisation.¹⁰

1.8 Mr Alec Wagstaff, Chief Executive Officer of the Distilled Spirits Industry Council of Australia, also commented on the premiumisation across all categories of alcohol, observing the important role of advertising in this process:

... if you look at volumes [they] are pretty flat but values are showing some degree of growth, craft beer is a significant contributor to that, spirits, and one of the roles advertising plays is to upsell people within a brand because ultimately a brand is an intangible, it is a belief, and you can only do that through experience and promotion, and advertising is a critical part of that premiumisation process.¹¹

1.9 Mr Jules Norton Selzer, External Relations and Public Policy Manager, Diageo, reflected the industry's position, noting that '[the] point around value versus volume is important ... People

⁶ Submission 17, Brewers Association of Australia, p 6.

⁷ Submission 6, Winemakers' Federation of Australia, p 2.

⁸ Submission 14, Diageo Australia, p 2.

⁹ For example, Evidence, Mr Tony Battaglione, Chief Executive, Winemakers' Federation of Australia, 1 December 2017, p 51; Mr Holland, 5 December 2017, p 29.

¹⁰ Evidence, Mr Taylor, 1 December 2017, p 20.

¹¹ Evidence, Mr Wagstaff, 1 December 2017, p 51.

are drinking less but drinking better'.¹² He observed the 'very interesting cultural trend' where 'alcohol is becoming less the focal point of their social experience and it is more about the experiential type of opportunities'.¹³

Promoting responsible drinking by adults

1.10 While the alcohol industry argued that its commercial imperative is to secure market share, it also insisted that when engaging in advertising it does so with a strong commitment to promoting responsible drinking.¹⁴ As Alcohol Beverages Australia declared: 'The alcohol industry in Australia is committed to the responsible consumption of alcohol'.¹⁵

1.11 Mr Tony Battaglone, Chief Executive of the Winemakers' Federation of Australia, also expressed the industry's sense of responsibility towards meeting community expectations and ensuring that alcohol is consumed responsibly, stating:

... we are deeply committed to the responsible consumption of alcohol. We realise we have to meet community expectations and unless we can meet community expectations we do not deserve to operate. We believe we have a licence to operate and we provide a great deal of benefit to the country.¹⁶

1.12 For a number of industry representatives, the promotion of responsible drinking represents a corresponding call to reduce alcohol abuse. These inquiry participants maintained that alcohol-related harm is a concern shared by industry and community alike.

1.13 For example, Mr Taylor, Alcohol Beverages Australia, argued that the alcohol industry is very much a part of the greater public conversation about the risks associated with harmful alcohol consumption. Moreover, he advised that it is in fact in the industry's interest to reduce the misuse of alcohol:

The industry is also participating very vocally in the public debate about responsible consumption. It is in the industry's interests, if you want to look at it purely cynically, for the problem consumption and harm consumption to continue to decrease. I would say that there is no clash between the objectives of reducing alcohol consumption and the objectives of the alcohol industry.¹⁷

1.14 Mr Norton Selzer, Diageo Australia, shared these sentiments, explaining that not only is reducing alcohol-related harm 'the right thing to do' but that the misuse of alcohol reflects poorly on the industry:

There are two parts to [why it is in the industry's interest to reduce alcohol-related harm]. First, it is the right thing to do ... [W]e take the responsibility around our

¹² Evidence, Mr Jules Norton Selzer, External Relations and Public Policy Manager, Diageo Australia, 5 December 2017, p 29.

¹³ Evidence, Mr Norton Selzer, 5 December 2017, p 27.

¹⁴ For example, Evidence, Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, 1 December 2017, p 44; Evidence, Mr Sheezel, 5 December 2017, pp 23-24.

¹⁵ Submission 11, Alcohol Beverages Australia, p 4.

¹⁶ Evidence, Mr Battaglone, 1 December 2017, p 42.

¹⁷ Evidence, Mr Taylor, 1 December 2018, p 19.

marketing codes extremely seriously. Then there is also a point around the longevity and sustainability of our business model. From a brand perspective it does not help us if people misuse our products and it does not help us in the perception of the industry.¹⁸

- 1.15** Mr Taylor added that promoting the message of responsible consumption is not at odds with the industry's commercial interests:

There is plenty of room for the industry. The old adage is 'You can have seven drinks on a Friday night or you can have one each day'. The industry makes the same amount of money out of both. It is a better result for the industry if they have one each day ...

... from the perspective of responsible consumption it is overwhelmingly in the industry's interest to promote it.¹⁹

- 1.16** Representatives from the alcohol industry also emphasised the point that, as part of the commitment to responsible alcohol consumption, its advertising is strictly targeted at adult consumers who have already independently made the decision to drink, not children and young people. For example, Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, described what he termed as a 'two-limb test' to ensure that advertising facilitates choice for legal drinkers – not take up by those who do not already drink – within the context of the commercial imperative to secure market share:

... I am very happy to swear on oath that all that we do... is about targeting adult consumers who choose to drink. That is quite an important two-limb test. First of all, they have to be above the legal drinking age. Second of all, they have to have made an independent decision to drink. Nothing in what we do is targeted at persuading people to go from a state of preferring not to drink to a state of preferring to drink. It is entirely about targeting those who will make a purchase decision about our brands versus other brands.

That is the commercial imperative in our advertising: to say, in our case, do not take a Johnny Walker, take a Jack Daniels ... The commercial imperative in everything that we do with a commercial overlay is targeted at that.²⁰

- 1.17** Representatives from the advertising industry likewise maintained this view. For example, the Australian Association of National Advertisers stated: '... advertising influences the choices of confirmed drinkers and does not influence consumers to begin to drink before the legal age, or to drink irresponsibly'.²¹

- 1.18** Both the alcohol and advertising industries were particularly insistent that children and young people were not the target of alcohol advertising. Indeed, the committee was advised that a number of mechanisms are in place to ensure that children have limited exposure to alcohol advertising. For example, Mr Wallwork, Brown-Forman Australia, spoke of 'built-in safeguards in the current regulatory system': 'You might refer to it as a double lock in the

¹⁸ Evidence, Mr Norton Selzer, 5 December 2017, pp 30-31.

¹⁹ Evidence, Mr Taylor, 1 December 2017, p 19.

²⁰ Evidence, Mr Wallwork, 1 December 2017, p 44.

²¹ Submission 26, Australian Association of National Advertisers, p 4.

sense that there is a content appeal set of regulations, then a placement appeal set of regulations'.²² These safeguards are examined in greater detail in Chapter 3.

- 1.19** From an advertising perspective, Ms Charmain Moldrich, Chief Executive Officer of the Outdoor Media Association, explained that children are not targeted in alcohol campaigns because they do not have the 'discretionary spend':

... [children] are not targeted. Advertising is about targeting your audience. It is about the money coming down from your bottom line, so you need to justify it ... [C]hildren are not targeted in alcohol advertisements because they do not have the discretionary spend.²³

- 1.20** Alcohol companies thus seek to maximise the exposure of its advertising to legal drinkers, according to Mr Wagstaff, because to do otherwise would be 'inefficient advertising'. He argued that while up to 25 per cent of any audience exposed to alcohol advertising may be children and young people, it would be 'wasteful' not to close that gap:

... [exposing alcohol advertising to children as 25 per cent of any given audience] would probably be inefficient advertising, because you would be wasting a quarter of your budget spend, so you would be seeking to place your advertising somewhere where you had a much higher percentage of legal drinkers watching.²⁴

- 1.21** Likewise, Mr Wallwork, Brown-Forman, asserted that 'if we are advertising or allowing leakage of messages to people who cannot buy our products we are not doing our job correctly from a commercial perspective'.²⁵

- 1.22** Others from the advertising industry, such as Ms Simone Brandon, Director of Policy and Regulatory Affairs, Australian Association of National Advertisers, also maintained that it is not in the interests of alcohol advertisers to target those on the cusp of or who have just reached the legal drinking age:

There is not a focus on 'I cannot target 17-year-olds but can I target 18-year-olds'. That is not the mindset ... The focus is not on targeting 18-year-olds. They do not want to play in that grey space because of the negative consequences.²⁶

- 1.23** Regulatory mechanisms in place to ensure children are not exposed are discussed in Chapter 3.

The health and advocacy position: initiating and increasing alcohol consumption

- 1.24** In contrast, a number of inquiry participants from the health and advocacy sectors questioned the veracity of the alcohol industry's claims about the purpose of its advertising and its intentions to market responsibly. These stakeholders argued that the overwhelming objective

²² Evidence, Mr Wallwork, 1 December 2017, p 45.

²³ Evidence, Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association, 5 December 2017, p 20.

²⁴ Evidence, Mr Alc Wagstaff, 1 December 2017, p 48.

²⁵ Evidence, Mr Wallwork, 1 December 2017, p 44.

²⁶ Evidence, Ms Simone Brandon, Director of Policy and Regulatory Affairs, Australian Association of National Advertisers, 5 December 2017, p 20.

of alcohol advertising is to encourage drinking – whether it be to initiate consumption among non-drinkers, including among underage youth, or to increase consumption by those already drinking.

1.25 For example, Mr Paul Klarenaar, member of the NSW ACT Alcohol Policy Alliance, called the alcohol industry’s market share argument ‘a very dubious claim’²⁷ given the industry’s commercial interest in promoting its products:

I think the industry is asking us to trust them that they are not interested in growing the industry overall. There is very obvious vested interest that the alcohol industry has with advertising, and the bottom line is it is very hard to believe that sort of a claim.²⁸

1.26 Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, told the committee that the industry’s entire position is flawed, stating: ‘... it does not pass the laugh test, it does not pass the pub test and it certainly does not pass the academic test’.²⁹

1.27 According to the NSW ACT Alcohol Policy Alliance, ‘the primary purpose of alcohol advertising is to increase sales, thereby increasing the amount of alcohol consumed either by more people or in greater amounts among drinkers’.³⁰

1.28 The Royal Australasian College of Physicians agreed, arguing that the alcohol industry would not invest significant amounts of money into marketing its beverages otherwise.³¹ Mr Moore shared this sentiment with regard to alcohol advertising in sport, asking: ‘... why would they be spending that level of money on sponsorship really just for market share? I just do not know anybody who would accept that that would be the case’.³² The value of alcohol advertising and sponsorship in sport is discussed further in Chapter 4.

1.29 The Royal Australasian College of Physicians advised that the total expenditure on alcohol advertising in 2011 was approximately \$222 million, across a range of media platforms, including print media, broadcast, outdoor media, and online.³³ The College asserted that the significant expenditure on alcohol advertising in Australia ‘demonstrates that alcohol companies clearly recognise its influence in driving sales’.³⁴ As Professor Elizabeth Elliott AM, Fellow, Royal Australasian College of Physicians, stated: ‘If we go back to the basis of advertising, it is to persuade people to adopt a certain behaviour, whatever that behaviour might be. We know it works’.³⁵

²⁷ Evidence, Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, 1 December 2017, p 33.

²⁸ Evidence, Mr Klarenaar, 1 December 2017, p 33.

²⁹ Evidence, Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, 5 December 2017, pp 38.

³⁰ Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

³¹ Evidence, Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 56.

³² Evidence, Mr Moore, 5 December 2017, pp 38.

³³ The Royal Australasian College of Physicians advised 2011 is ‘the most recent year for which a comprehensive estimate is available’, Submission 21, Royal Australasian College of Physicians, p 3.

³⁴ Submission 21, Royal Australasian College of Physicians, p 4.

³⁵ Evidence, Professor Elizabeth Elliott AM, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 56.

Targeting children and young people

1.30 Advocacy groups also remained unconvinced by the alcohol industry's claims of promoting responsible alcohol consumption by legal age drinkers. As the NSW ACT Alcohol Policy Alliance put it, 'the entire premise of alcohol advertising is contrary to community health standards'.³⁶ In particular, these inquiry participants insisted that the industry knowingly and actively targets children and adolescents in its promotions.³⁷

1.31 For example, Ms Anita Dessaix, Director, Cancer Prevention and Advocacy Division, Cancer Council NSW, argued that alcohol advertising is aimed at young people who 'look to adults to role-model behaviour'³⁸ and, more significantly, are the 'future market' for the alcohol industry:

Alcohol advertising and sponsorship targets young people who are a vulnerable and susceptible audience and who in essence are the future market and future customers for the alcohol industry.³⁹

1.32 Similarly, NSW ACT Alcohol Policy Alliance maintained that alcohol companies intentionally direct their marketing strategies to promote alcohol at 'vulnerable groups, including children'.⁴⁰ They asserted that, contrary to the industry's stated intentions, alcohol companies use market research on underage youth to inform their advertising strategies:

The alcohol industry claims that their advertising is intended to encourage existing drinkers of legal drinking age to switch products, rather than encourage excessive drinking or non-drinkers to drink. Yet industry documents reveal a different story, where brands have used market research data on 15 and 16 year olds to guide campaign development, target their products and advertising to attract new drinkers and encourage people to drink early and drink often.⁴¹

1.33 The Australian Council on Children and the Media supported this view, reporting that the research they reviewed reveals that alcohol brands most popular with underage young people 'have ads with elements that appeal to that age group'.⁴²

1.34 Indeed, stakeholders expressed concern over the use of content that would appeal specifically to children and young people, arguing that positive messages about social benefit are particularly attractive to this demographic. For example, Cancer Council of NSW stated: 'As Australian alcohol advertisements typically link alcohol consumption with positive messages

³⁶ Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

³⁷ For example, Evidence, Dr Megan Lim, Deputy Program Director, Behaviour and Health Risks, Head of Sexual Health and Young People's Health Research, Burnet Institute, 5 December 2017, p 6; Submission 18, Mr Tony Brown, pp 5-6.

³⁸ Evidence, Ms Anita Dessaix, Director, Cancer Prevention and Advocacy Division, Cancer Council NSW, 5 December 2017, p 38.

³⁹ Evidence, Ms Dessaix, 5 December 2017, p 35.

⁴⁰ Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

⁴¹ Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

⁴² Submission 29, Australian Council on Children and the Media, p 1.

of fun, friendship and social situations, their appeal to children and adolescents is of concern'.⁴³

- 1.35** This concern was shared by the McCusker Centre for Action on Alcohol and Youth, who argued that children and young people are regularly exposed to alcohol marketing that they perceive to be inherently positive and appealing:

There are concerns that many alcohol promotions to which young people are exposed contain features that would be expected to appeal to young people. Children and young people are regularly exposed to advertisements depicting alcohol consumption as fun, social and inexpensive. Research has found that young people perceive messages in alcohol advertisements regarding social benefits of consuming alcohol, including that the advertised products would make them more sociable and outgoing, help them have a good time and fit in, and be more confident.⁴⁴

- 1.36** For instance, Burnet Institute provided the following example of an alcohol promotion designed to appeal to young people.

Figure 1 Example of screenshot taken from Facebook on 14 December 2017



Source: *Answers to questions on notice, Burnet Institute, 20 December 2017, p 1.*

- 1.37** The Australian Council on Children and the Media also advised that alcohol advertising is so pervasive and varied, the industry is now using 'advergaming' to engage youth:

Ways of attracting underage youth to alcohol are expanding in the online environment and of concern are advergaming that engage attention more than TV ads. (Advergaming is used by companies to advertise (usually to children) their products by

⁴³ Submission 3, Cancer Council of NSW, p 7.

⁴⁴ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 2.

engaging them in an online game that involves characters/ images associated with the product.) Surveys have shown that children who had played advergames report significantly more positive brand attitudes compared to children who had watched TV ads.⁴⁵

- 1.38** Mr Tony Brown likewise acknowledged the appeal of alcohol advertising to children and teenagers as part of the wider practice of ‘alcohol grooming’.⁴⁶ Mr Brown explained that alcohol grooming is when children under 18 years of age become attracted to drinking alcohol and come to accept it as a normal part of life through saturated marketing and products that resemble soft drinks.⁴⁷ By way of example, Mr Brown provided the following image of an alcoholic beverage designed to appeal to children.

Figure 2 Little Fat Lamb alcohol pop



Source: Submission 18, Mr Tony Brown, p 6.

- 1.39** The normalisation of alcohol is discussed later in the chapter.
- 1.40** McCusker Centre pointed out that, while alcohol companies maintained they only target legal drinkers, it would be hard not to also appeal to older youth almost at legal drinking age:

... at the same time alcohol advertisers claim to target their campaigns at the 18 years and older demographic, it is impossible for alcohol advertising to target 18 year olds (the legal alcohol purchase age) without also appealing to 17 year olds and younger teenagers. The World Health Organization noted in the *Global Strategy to Reduce the Harmful Use of Alcohol*, ‘It is very difficult to target young adult consumers without exposing cohorts of adolescents under the legal age to the same marketing’.⁴⁸

- 1.41** The exposure of children and young people to alcohol advertising is discussed further in Chapter 3.

⁴⁵ Submission 29, Australian Council on Children and the Media, p 2.

⁴⁶ Submission 18, Mr Tony Brown, p 5.

⁴⁷ Submission 18, Mr Tony Brown, p 6.

⁴⁸ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 2.

Alcohol consumption trends

- 1.42** During the inquiry, several stakeholders discussed data relating to the drinking patterns, attitudes and behaviours of Australians, including experiences of alcohol-related incidents and harm. These trends in alcohol consumption were used to frame certain arguments about the impact of alcohol advertising on the way Australians consume alcohol. The following section outlines these trends. The relationship between alcohol advertising and consumption levels is examined later in the chapter.
- 1.43** On a broader level, inquiry participants spoke of a general decrease in alcohol consumption per capita over the last 40 years.⁴⁹
- 1.44** To inform the committee about specific alcohol consumption trends, the findings of the National Drug Strategy Household Survey (NDSHS) undertaken by the Australian Institute of Health and Welfare (AIHW) were consistently reported by inquiry participants. The NDSHS is a large population survey conducted every three years to determine the use of and attitudes towards alcohol and other drugs. The most recent survey was conducted in 2016 and collected information from almost 24,000 individuals across Australia.⁵⁰
- 1.45** Alcohol Beverages Australia, for example, highlighted the following findings of the 2016 NDSHS as they relate to the general population:
- 83 per cent of Australians are either drinking in moderation or abstaining from alcohol altogether
 - the proportion of Australians exceeding the lifetime risk guidelines released by the National Health and Medical Research Council (NHMRC) declined from 18.2 per cent in 2013 to 17.1 per cent in 2016
 - the proportion of Australians consuming alcohol daily has steadily declined over a 15 year period, from 8.3 per cent in 2001 to 5.9 per cent in 2016.⁵¹
- 1.46** Diageo Australia added that, according to the 2016 NDSHS:
- the proportion of Australians exceeding the single occasion risk guidelines of the NHMRC at least once a month declined from 29 per cent in 2010 to 17.1 per cent in 2016.⁵²
- 1.47** With regard to the particular consumption trends of young people and young adults, the committee received evidence directly from the AIHW which advised the following findings from the 2016 NDSHS:
- fewer young people aged 12-17 years old are drinking, with the proportion of people abstaining from alcohol increasing from 72 per cent in 2013 to 82 per cent in 2016

⁴⁹ For example, Evidence, Mr Brett Heffernan, Chief Executive Officer, Brewers Association of Australia, 5 December 2017, p 21; Evidence, Mr Sheezel, 5 December 2017, p 24; Submission 10, Lion Beer, p 20; Submission 14, Diageo Australia, p 2.

⁵⁰ Submission 2, Australian Institute of Health and Welfare, p 2.

⁵¹ Submission 11, Alcohol Beverages Australia, p 2.

⁵² Submission 14, Diageo Australia, p 3.

- the proportion of young adults aged 18-24 years old that abstained from alcohol in New South Wales has remained stable between 2013 and 2016 at approximately 20 per cent (however, this proportion has fluctuated between 15.6 per cent to 20 per cent since 2007)
- young people aged 14-24 years old are delaying their first drink, with the average age of their first drink being 16.1 years old in 2016 compared with 15.7 years old in 2013
- the proportion of young people aged 12-17 years old exceeding the NHRC lifetime risk guidelines declined from 5.4 per cent in 2007 to 1.3 per cent in 2016, while the proportion of young adults aged 18-24 years old was stable at 18.6 per cent in 2016 compared to 18.9 per cent in 2013 (but has declined from 26 per cent in 2007)
- there was a decrease in the proportion of young people aged 12-17 years old exceeding the single occasion risk guidelines of the NHMRC at least once a month from 7.1 per cent in 2013 to 4.8 per cent in 2016 (down from 16.6 per cent in 2007); similarly, the proportion of young adults aged 18-24 years old decreased from 47 per cent in 2013 to 42 per cent in 2016 (down from 54 per cent in 2007).⁵³

1.48 Alcohol Beverages Australia stated that the 2016 NDSHS indicated that ‘young adults are also drinking less, with a substantially lower proportion of that age group engaging in harmful drinking behaviours’.⁵⁴

1.49 In New South Wales more specifically, Mr Paul Newson, Deputy Secretary, Liquor and Gaming NSW, also reported to the committee the findings of the 2016 Report of the Chief Health Officer, *Trends in alcohol use and health-related harms in NSW*. He stated that, according to the report, ‘one in three adults are non-drinkers’.⁵⁵ In addition, he advised of findings consistent with the results of the NDSHS:

Young people are initiating drinking later and are engaging in less hazardous drinking behaviours. There is a decreasing number of adults drinking at levels that increase the long-term risk of harm. New South Wales has the lowest proportion of persons drinking at levels that present an immediate risk ... [and] the second lowest population drinking at long-term risky levels.⁵⁶

1.50 The Cancer Council NSW told the committee that the NSW Population Health Survey 2016 made the following findings:

- 40 per cent of males and 20 per cent of females aged 16 years and over consume alcohol at levels posing long-term risk to health (considered to be two standard drinks on a day when they consume alcohol)
- this rate has been declining since 2002, however, an increase was reported in 2016 with further years of data required to determine if this is in fact a change in trend

⁵³ Submission 2, Australian Institute of Health and Welfare, pp 2-3.

⁵⁴ Submission 11, Alcohol Beverages Australia, p 3.

⁵⁵ Evidence, Mr Paul Newson, Deputy Secretary, Liquor & Gaming NSW, 1 December 2017, p 2.

⁵⁶ Evidence, Mr Newson, 1 December 2017, p 2.

- although young people are more likely to exceed alcohol recommendations, between 2013 and 2016, there was a significant increase in people in their 50s and 60s consuming 11 or more standard drinks on a single drinking occasion.⁵⁷

1.51 Commenting on Australia’s alcohol consumption patterns, inquiry participants expressed marked differences in their perspective of the evidence. For the alcohol industry, current consumption trends indicate a significant improvement in Australia’s drinking culture and an effective response to problem drinking, while health and advocacy groups argued that these trends represent but a single variable amongst others – one that does not appropriately acknowledge or wholly inform the full-scope of alcohol-related harm in Australia. These views are considered in turn below.

The industry position: a ‘good news’ story

1.52 Reflecting the alcohol industry’s perspective on consumption levels, Alcohol Beverages Australia stated: ‘Australia’s drinking behaviour is improving dramatically’.⁵⁸ Moreover, according to Mr Fergus Taylor, Alcohol Beverages Australia, ‘many of the key government statistics are heading in the right direction, and have been for many years’.⁵⁹

1.53 This view was shared by Diageo Australia who also maintained that the drinking habits of Australians are ‘changing dramatically’,⁶⁰ all the while acknowledging that there continue to be issues with excessive alcohol consumption:

We acknowledge there are issues with alcohol abuse in our society ... However, the picture in Australia is changing and our drinking behaviour is improving. The results from the most recent government survey show that Australians are drinking less often. When we do drink, we are increasingly doing so in moderation.⁶¹

1.54 Mr Brett Heffernan, Brewers Association of Australia, similarly argued that the improvement in drinking behaviour clearly extends to young people, referring to the ‘dramatic improvement’ in rates of abstinence:

The experience in Australia is one of constant improvement ... The AIHW notes a dramatic improvement with 82 per cent of teens abstaining, which is up from 54 per cent in 2004. While we naturally focus on the 18 per cent who have tried alcohol, there can be no doubt that the improvement is stark.⁶²

1.55 Indeed, according to Mr Taylor, based on the NDSHS ‘[y]oung people are leading the change’⁶³ in demonstrating better drinking habits:

⁵⁷ Submission 3, Cancer Council NSW, p 5.

⁵⁸ Submission 11, Alcohol Beverages Australia, p 2.

⁵⁹ Evidence, Mr Taylor, 1 December 2017, p 16.

⁶⁰ Submission 14, Diageo Australia, p 2.

⁶¹ Submission 14, Diageo Australia, p 2.

⁶² Evidence, Mr Heffernan, 5 December 2017, p 21.

⁶³ Evidence, Mr Taylor, 1 December 2018, p 16.

NDSHS also provides a comprehensive insight into young people and alcohol and the news is very good. For over a decade the NDSHS has demonstrated consistent improvements in key indicators when it comes to young people and alcohol consumption in Australia. The evidence shows that Australia has established a significant shift in attitudes when it comes to young people and alcohol.⁶⁴

- 1.56** Alcohol Beverages Australia attributed this improvement in Australia’s drinking culture to an increasing awareness of the risks associated with the misuse of alcohol, and a corresponding change in behaviour:

The NDSHS data showing both a decline in the frequency of alcohol consumption coupled with a decrease in the number of people who exceed the lifetime risk guidelines indicates that Australians are aware the issues associated with excessive alcohol consumption. They are actively changing their behaviour resulting in the clear majority of Australians consuming alcohol in moderation. This is supported by the fact that according to the 2016 NDSHS, one in two recent drinkers has undertaken moderating behaviour such as reducing the number of days they drank.⁶⁵

- 1.57** Likewise, Mr Heffernan added that drinkers today are ‘more discerning, better informed and better equipped socially about responsible alcohol consumption than ever before’.⁶⁶ He asserted that ‘[t]he message of moderation has sunk in overwhelmingly and beer is the drink of moderation’, stating that the beer industry is seeing significant investment in low-strength and mid-strength products as a result.⁶⁷

- 1.58** Mr Norton Selzer, Diageo Australia, expressed a similar view, linking consumption trends with the choice to drink in moderation as well as seeking healthier options:

... there are two key things that we see come through in terms of our own research: one is around moderation, particularly amongst that young age cohort; and healthier lifestyles. That then influences their decision to drink or not to drink; and not only that, but when they do choose to drink they are often choosing lower alcohol, lower sugar content—a healthier option.⁶⁸

- 1.59** Along similar lines, for Mr Julian Sheezel, Corporate Affairs Director, Carlton and United Brewers, told the committee it is this desire to live a healthy, more balanced lifestyle that is informing consumption choices in Australia:

... Australians have a much better idea and sense on how to live a healthy lifestyle than perhaps they did 40 years ago... people lead a more balanced lifestyle ... I think one of the most telling statistics is that only 6 per cent of Australians now drink daily – down very significantly from 10 per cent in 1991. That is a significant fall over that period of time, with Australians heeding the messages with respect to how they can consume the product moderately and sensibly.⁶⁹

⁶⁴ Submission 11, Alcohol Beverages Australia, p 3.

⁶⁵ Submission 11, Alcohol Beverages Australia, p 3.

⁶⁶ Evidence, Mr Heffernan, 5 December 2017, p 21.

⁶⁷ Evidence, Mr Heffernan, 5 December 2017, p 21.

⁶⁸ Evidence, Mr Norton Selzer, 5 December 2017, p 27.

⁶⁹ Evidence, Mr Sheezel, 5 December 2017, p 27.

- 1.60** Mr John Scott, Chief Executive Officer, DrinkWise Australia (a not-for-profit organisation funded by the alcohol industry to promote a healthier and safer drinking culture in Australia, as discussed in Chapter 3), shared this sentiment, commenting: ‘Australians are maturing in terms of how they understand and deal with alcohol and how as a country, to some degree, we have grown up and matured when it comes to how we drink’.⁷⁰

The health and advocacy position: an incomplete picture

- 1.61** While acknowledging the positive trend towards decreased alcohol consumption across the population, including underage drinking, health and advocacy groups argued that this ‘good news’ story is far from complete, suggesting that the data has been misinterpreted, taken out of context and disregards other indicators that reflect what continues to be a significant problem with alcohol and alcohol-related harm in Australia.

- 1.62** For example, some inquiry participants argued that, even with a decline in overall consumption, the level of drinking within certain groups is still high and cause for significant concern. Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, recognised the need to differentiate between population groups for this reason. He stated that, while the trends ‘do not present a bad news story’, the data only indicates overall consumption levels and does not consider certain areas, contexts or groups.⁷¹

- 1.63** Indeed, the AIHW observed that significant proportions of the population continue to engage in risky drinking:

While most Australians drink alcohol at levels that cause few harmful effects, a large number drink at levels that increase their risk of harm – affecting not only themselves but families, bystanders and the broader community (NHMRC 2009).⁷²

- 1.64** Professor Katherine Conigrave, Fellow of the Royal Australasian College of Physicians, made the same observations, stating:

I think there have been some gains. We are seeing some reductions in the number of young people who are drinking, or the proportion. However, those who are drinking seem to be potentially drinking in a more risky way. Even though the number of abstainers has gone up, the amount of harm has also gone up.⁷³

- 1.65** Ms Clare Hughes, Nutrition Program Manager, Cancer Council NSW, expressed particular concerns about the drinking levels of young adults, commenting that such levels are no reason for celebration:

... our concern would be around the fact that alcohol consumption levels are still high amongst some populations, particularly the 16 to 24 age group. If you look at the NSW Health statistics for males it is up near 50 per cent drinking at a level that is

⁷⁰ Evidence, Mr John Scott, Chief Executive Officer, DrinkWise Australia, 1 December 2017, p 27.

⁷¹ Evidence, Mr Klarenaar, 1 December 2017, p 34.

⁷² Submission 2, Australian Institute of Health and Welfare, p 2.

⁷³ Evidence, Professor Conigrave, 1 December 2017, p 58.

associated with a long-term risk to health. That level is still quite high and not something that we should be congratulating ourselves on.⁷⁴

- 1.66** Meanwhile, Mr Moore, Public Health Association of Australia, gave evidence about dangerous consumption levels among older age groups:

... we know the highest level of dangerous drinking is in our 18-year-olds to 25-year-olds, although a very recent piece of research, as I recall, is now talking about the 50-year-old to 60-year-old group as drinking at more dangerous levels as well.⁷⁵

- 1.67** Mr Moore likened the decreasing consumption trends to scaling down a mountain, asserting that ‘it is good news’ there is a decline but that more is needed if the ‘extraordinary levels’⁷⁶ of alcohol-related harm are to be addressed:

... even if we have seen such a significant fall, it is as though we have come down from Mount Kosciuszko; we are now in the alps and we have not yet reached the plains. It is good news; it is going in the right direction and that should encourage us all the more to take the next step-by-step actions to reduce the harmful use of alcohol.⁷⁷

- 1.68** Likewise, Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, commented on the harms associated with the misuse of alcohol and challenged the weight given to decreasing consumption levels by the alcohol industry:

... [the industry] made quite a big deal about the consumption stats of alcohol going in what they call the right direction, but alcohol is still by far the leading cause of why people seek treatment for alcohol and other drug issues, and the queues at those centres are not exactly declining. So the problem is absolutely still there.⁷⁸

- 1.69** Mr Klarenaar expressed a similar view, arguing that the alcohol industry has cast a ‘complete misrepresentation of the data’.⁷⁹ He contended that consumption levels are just one metric and that other measures, such as the number of alcohol-related hospitalisations, in fact reveal there is a real problem with the way Australians use alcohol:

Those metrics in terms of consumption and consumption among young people, that is good news that there is an apparent slight decrease in recent years. But that is one metric, and if we look at other metrics that reflect harm in terms of hospitalisations in New South Wales over the last 15 years, they have increased by a rate of about 25 per cent and overall by about 50 per cent. Despite this apparent reduction in consumption, we have about 150 hospitalisations related to alcohol every day in New South Wales. That is an incredible amount of harm that is happening when the

⁷⁴ Evidence, Ms Clare Hughes, Nutrition Program Manager, Cancer Council NSW, 5 December 2017, p 41.

⁷⁵ Evidence, Mr Moore, 5 December 2017, pp 41-42.

⁷⁶ Evidence, Mr Moore, 5 December 2017, p 42.

⁷⁷ Evidence, Mr Moore, 5 December 2017, p 42.

⁷⁸ Evidence, Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, 5 December 2017, p 38.

⁷⁹ Evidence, Mr Klarenaar, 1 December 2017, p 34.

industry is trying to paint a picture that there is no problem, that consumption is going down, therefore it is not a problem.⁸⁰

- 1.70** Associate Professor Nadine Ezard, Member, NSW ACT Alcohol Policy Alliance, added that looking at consumption rates in isolation is a very ‘crude measure’ and ‘does not tease out the actual contribution to harm in the community’.⁸¹ For this reason, Mr Klarenaar cautioned against basing public policy simply on declining levels of alcohol consumption.⁸²
- 1.71** The health impacts and social costs of alcohol are discussed later in the chapter.

The impact of alcohol advertising

- 1.72** This section considers the impact of alcohol advertising, particularly on the drinking patterns and behaviours of Australians, and looks at whether there is a correlation between alcohol advertising and alcohol consumption. It also examines the argument that advertising contributes to and facilitates the ‘normalisation’ of alcohol in our society. The impact of alcohol advertising – and moves to restrict it – in other jurisdictions is also discussed.

The correlation between alcohol advertising and alcohol consumption

- 1.73** The key question around alcohol advertising and ultimately behind stakeholder perceptions of the Bill is whether or not there is a real and significant correlation between alcohol advertising and alcohol consumption. The alcohol and advertising industries maintained that there is no causal link between advertising and consumption, highlighting its purpose to simply secure market share. Conversely, the health and advocacy sectors insist that there is in fact a strong correlation, if not a causal relationship, between advertising and consumption, particularly with regard to children and young people.

The industry position: no causal link

- 1.74** Representatives from the alcohol and advertising industries maintained that alcohol advertising does not impact on drinking levels, and therefore a causal relationship between the two cannot be drawn.⁸³ These inquiry participants pointed to the consumption trends discussed earlier to demonstrate their point.
- 1.75** For example, Mr Taylor, Alcohol Beverages Australia, stated: ‘There has never been more alcohol advertising than there is right now and yet consumption continues to fall and alcohol harms continue to fall’.⁸⁴ Alcohol Beverages Australia’s submission expanded on this point:

⁸⁰ Evidence, Mr Klarenaar, 1 December 2017, p 34.

⁸¹ Evidence, Associate Professor Nadine Ezard, Member, NSW ACT Alcohol Policy Alliance, 1 December 2017, p35.

⁸² Evidence, Mr Klarenaar, 1 December 2017, pp 34-35.

⁸³ For example, Submission 1, Brown Forman Australia, p 6; Submission 10, Lion Beer, p 8; Submission 14, Diageo Australia, p 3.

⁸⁴ Evidence, Mr Taylor, 1 December 2017, p19.

These consistent long term positive trends during a period where alcohol beverages advertising has increased and expanded onto new platforms, like online, prove conclusively that advertising is neither causing nor driving the commencement of underage drinking or the binge drinking in NSW that the Bill seeks to redress.⁸⁵

1.76 Likewise, Mr Scott, DrinkWise Australia, observed:

There is that association that we are seeing now where possibly advertising has never been more prominent, yet we are seeing underage drinking rates decrease and alcohol consumption per capita decreasing as well. The general trend is that people are drinking less.⁸⁶

1.77 Similarly, Mr Heffernan, Brewers Association of Australia, argued that these consumption trends would have aligned with the recent growth in advertising, if there were indeed a causal link. Moreover, he made reference to the absence in research in support of the causation argument:

These substantial gains have occurred over a period when alcohol advertising has increased in volume and expanded its reach through digital and online media. If there were a correlation between advertising and uptake, the findings from Australia's most authoritative national alcohol surveys would be tracking in a different direction ... [I]t is clear that no research has been undertaken that establishes a causal link between alcohol advertising and alcohol uptake.⁸⁷

1.78 Mr Taylor, Mr Wallwork and Mr Battaglione expressed a similar view.⁸⁸

1.79 While the alcohol industry maintained there is a distinct lack of evidence establishing a causal link between advertising and consumption, they argued there is 'substantial evidence to demonstrate that alcohol advertising does not lead to an increase in either total or underage alcohol consumption'.⁸⁹ Lion Beer, for example, stated: 'Virtually all econometric, cross-sectional, and case studies have found that marketing has no or very modest effects on alcohol consumption'.⁹⁰

1.80 Likewise, Alcohol Beverages Australia presented peer-reviewed research, drawing attention to two papers in particular, that suggested there is no relationship and that bans on advertising are ineffective.⁹¹

1.81 A number of alcohol representatives also questioned the legitimacy of research focusing on adolescents and young people, with Lion Beer for example, criticising the methodology of this research:

⁸⁵ Submission 11, Alcohol Beverages Australia, p 3.

⁸⁶ Evidence, Mr Scott, 1 December 2017, p 26.

⁸⁷ Evidence, Mr Heffernan, 5 December 2017, p 21.

⁸⁸ Evidence, Mr Taylor, 1 December 2017, p 17; Evidence, Mr Wallwork, 1 December 2017, p 52; Evidence, Mr Battaglione, 1 December 2017, p 52.

⁸⁹ Submission 11, Alcohol Beverages Australia, p 9.

⁹⁰ Submission 10, Lion Beer, p 8.

⁹¹ Submission 11, Alcohol Beverages Australia, p 9.

A number of recent studies have sought to find a connection between advertising and adolescent uptake. Many of these studies are flawed in methodology and also conflate exposure to advertising with influence on behaviour.⁹²

- 1.82** Similarly, Alcohol Beverages Australia highlighted the lack of ‘compelling evidence’ linking advertising to the drinking patterns of young people:

Research shows that there is no compelling evidence of an unequivocal correlation between advertising and drinking patterns amongst young people.

When it comes to the research in this area, different methodological approaches have resulted in varying results when considering the effect of alcohol advertising on young people’s drinking behaviours.⁹³

- 1.83** Instead, the alcohol and advertising industries strongly maintained that drivers other than advertising significantly influence the decision to drink alcohol and the level at which this occurs. As Lion Beer asserted: ‘Intuitively, advertising could never play a particularly powerful role in the context of this powerful socio-cultural complex’.⁹⁴

- 1.84** Diageo Australia also argued that ‘the picture is more nuanced’ in that there are many variables at play within Australia’s drinking culture, including:

...the size of the market, consumers’ tastes and preferences, income distribution and price for alcoholic beverages, economic and social climate, quality of alcoholic beverages, technology, infrastructure and cultural attitudes, amongst others.⁹⁵

- 1.85** Mr Wagstaff, Brewers Association of Australia, told the committee that the causes of problem drinking in particular are ‘incredibly complex’:

From my experience – it is only from my experience – the causes of problem drinking are incredibly complex. They can involve social disadvantage, they can involve health and they can involve psychological profiles. So I think to link an advertising correlation to alcohol problems would be incredibly simplistic; it is a complex problem.⁹⁶

- 1.86** When it comes to underage drinking behaviour, however, the industry was certain: parental influence and peer group norms are the key drivers of alcohol consumption among young people.⁹⁷ For example, Diageo Australia argued:

Research shows that there is no compelling evidence of a strong correlation between advertising and drinking patterns amongst young people ... As far as under 18s are

⁹² Submission 10, Lion Beer p 11.

⁹³ Submission 11, Alcohol Beverages Australia, p 11.

⁹⁴ Submission 10, Lion Beer p 12.

⁹⁵ Submission 14, Diageo Australia, p 3.

⁹⁶ Evidence, Mr Wagstaff, 1 December 2017, p 52.

⁹⁷ For example, Evidence, Mr Wagstaff, 1 December 2017, p 48; Evidence, Mr Heffernan, 5 December 2017, p 21; Evidence, Mr Holland, 5 December 2017, p 22; Submission 17, Brewers Association of Australia, p 12.

concerned, studies have consistently shown that the principal influences on drinking behaviour are their parents and peers.⁹⁸

1.87 In its submission, Lion Beer highlighted these influences:

Young people are exposed from birth to a range of powerful immediate influences, most importantly their parent and family role modelling behaviours. They attend all aged social and community events. They are exposed to non-paid media and the arts. As they approach the legal drinking age, they are influenced by elder siblings, their siblings' peers and of course their own peers.⁹⁹

1.88 Lion Beer cited a number of studies, including international research, to support their contention.¹⁰⁰

1.89 The advertising industry also asserted that the behaviour and attitudes of parents and friends are the key influencers of underage drinking patterns, rather than alcohol advertising.¹⁰¹

The health and advocacy position: an undeniable relationship

1.90 Contrary to the assertions of the alcohol and advertising industries, numerous health and advocacy groups insisted that there is a strong relationship between alcohol advertising and consumption levels, if not a causal link between the two.¹⁰² In particular, they challenged industry arguments that advertising plays an insignificant role – if any at all – on the drinking behaviours of children and young people.

1.91 For example, according to Professor Elliott, Royal Australasian College of Physicians:

... people exposed to advertising [are] more likely than those who [are] not exposed to initiate drinking. We also know that those people, particularly the earlier the age of onset, are then more likely to be continuous drinkers and to develop alcohol misuse disorders.¹⁰³

1.92 Likewise, St Vincent's Health reported: '... exposure to repeat high-level alcohol promotion inculcates pro-drinking attitudes and increases the likelihood of heavier drinking',¹⁰⁴ while Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, argued: 'The volume of alcohol advertising young people are exposed to has been demonstrated to impact their alcohol consumption behaviour'.¹⁰⁵ Professor Conigrave, Royal

⁹⁸ Submission 14, Diageo Australia, p 4; see also Evidence, Mr Holland, 5 December 2017, p 22; Submission 1, Brown-Foreman, p 6.

⁹⁹ Submission 10, Lion Beer p 11.

¹⁰⁰ Submission 10, Lion Beer p 11.

¹⁰¹ Submission 26, Australian Association of National Advertisers, p 4; see also Submission 34, Outdoor Media Association, pp 5-6.

¹⁰² For example, Evidence, Professor Elliott, 1 December 2015, p 55; Evidence, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 1 December 2017, p 30; Submission 31, St Vincent Hospital Australia, p 3.

¹⁰³ Evidence, Professor Elliott, 1 December 2017, p 56.

¹⁰⁴ Submission 31, St Vincent's Health Australia, p 2.

¹⁰⁵ Evidence, Ms Ferguson, 1 December 2017, p 30.

Australasian College of Physicians, echoed these views, stating simply: ‘When people are exposed to advertising, their drinking is higher’.¹⁰⁶

1.93 For the Royal Australasian College of Physicians, not only does alcohol advertising ‘clearly make a difference in increasing alcohol consumption’, but this impact is ‘more significant and well established for young people’.¹⁰⁷ Indeed, the health and advocacy sectors presented what they believed to be considerable and convincing evidence of a strong association between alcohol advertising and consumption levels amongst young people in particular.¹⁰⁸

1.94 Ms Julia Stafford, Executive Officer of the McCusker Centre for Action on Alcohol and Youth, asserted that this ‘strong evidence base’ can be compared favourably to that of the industry’s, which she contended to be out of date and inappropriate:

I believe that quite a lot of the evidence that the industry has relied on in some of their submissions is often older studies, perhaps with inappropriate research designs, to inaccurately reflect the connection between advertising and influence on young people. We have quite significant concerns about some of the evidence they are relying on in which they are suggesting there is no connection.¹⁰⁹

1.95 The McCusker Centre for Action on Alcohol and Youth maintained that evidence of the impact of alcohol advertising on young people is ‘consistent and comprehensive’,¹¹⁰ and demonstrates not only a strong association between advertising and drinking behaviours, but that advertising has an impact on the age at which a young person will begin drinking and the level of consumption:

Exposure to alcohol advertising influences young people’s beliefs and attitudes about drinking, and increases the likelihood that adolescents will start to use alcohol and will drink more if they are already using alcohol. Research shows strong associations between exposure to alcohol advertising and young people’s early initiation to alcohol use and/or increased alcohol consumption.¹¹¹

1.96 Ms Stafford informed the committee that the McCusker Centre’s position was based on systematic reviews of longitudinal studies which are both ‘very compelling and substantial ... [and] are one of the ultimate forms of academic research’.¹¹² She explained:

[Systematic reviews] summarise not just what happens in one study but we need to look over time to see what consistencies there are from researchers using different methods. Longitudinal studies particularly are one of the strongest forms of research.¹¹³

¹⁰⁶ Evidence, Professor Conigrave, 1 December 2017, p 56.

¹⁰⁷ Submission 21, Royal Australasian College of Physicians, p 4.

¹⁰⁸ For example, Evidence, Mr Moore, 5 December 2017, pp 35-36; Submission 21, Royal Australasian College of Physicians, p 2.

¹⁰⁹ Evidence, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, 1 December 2017, p 33.

¹¹⁰ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 2.

¹¹¹ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 2.

¹¹² Evidence, Ms Stafford, 1 December 2017, p 33.

¹¹³ Evidence, Ms Stafford, 1 December 2017, p 33.

1.97 Both the NSW ACT Alcohol Policy Alliance and the Cancer Council NSW also cited one of the reviews used by the McCusker Centre which examined twelve longitudinal studies of more than 38,000 young people to determine the link between advertising and the initiation and increase of consumption of this population group. The NSW ACT Alcohol Policy Alliance and Cancer Council NSW reported that the review found a ‘dose response relationship between the volume of exposure to alcohol advertising and alcohol consumption in young people’,¹¹⁴ stating: ‘This means that the more alcohol advertising young people are exposed to, the earlier they will begin to drink, and the more they will consume if they already drink’.¹¹⁵

1.98 The drinking behaviours and attitudes of young people was particularly emphasised by the Royal Australasian College of Physicians, including Professor Conigrave. While accepting that association does not always equate to causation, Professor Conigrave argued that when it comes to young people, it is highly likely there is a causal link:

As a researcher I have to point out you cannot always assume association is causation but when young people are at stake, and they are pretty precious, it is likely that when alcohol is being advertised and often held up as something that goes along with being successful, being popular, being sexually attractive, there is every reason to suspect that it is influencing young people's drinking.¹¹⁶

1.99 Inquiry participants expressed deep concerns about the implications of this causal link on the health and wellbeing of children and young people who consume alcohol. For example, the Australian Medical Association (NSW) discussed the impact of alcohol on the developing brains of young people under the age of 25:

Childhood and adolescence are critical times for brain development, and the brain is more susceptible to alcohol-induced damage during these times, while being less sensitive to cues that moderate alcohol intake.

Prior to the mid-20s, the human brain is still developing. At this early age, alcohol consumption can lead to structural changes in the hippocampus, a part of the brain involved in learning processes.

High levels of alcohol consumption can permanently impair brain development. The consequences of alcohol misuse among children or young people can therefore be profound in both the short and long term.¹¹⁷

1.100 The health impacts of alcohol consumption, including on children and young people, will be discussed in further detail later in the chapter and in Chapter 2.

The normalisation of alcohol

1.101 Given the proliferation of alcohol advertising in Australia, a number of stakeholders from the health and advocacy sectors highlighted what they termed the ‘normalisation’ of alcohol as a direct result of alcohol advertising.

¹¹⁴ Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

¹¹⁵ Submission 9, NSW ACT Alcohol Policy Alliance, p 3; Submission 3, Cancer Council NSW, p 8.

¹¹⁶ Evidence, Professor Conigrave, 1 December 2017, p 56.

¹¹⁷ Submission 27, Australian Medical Association (NSW), p 2.

1.102 For these inquiry participants, ‘alcohol is one of the most heavily promoted products in the world’,¹¹⁸ with Ms Ferguson, Foundation for Alcohol Research and Education explaining:

Alcohol marketing in Australia is more prolific than ever, with an unprecedented number of platforms for advertising, including through social media, television, supermarkets, bus stops and sponsorships of sport and cultural events.¹¹⁹

1.103 This view was supported by the Royal Australasian College of Physicians who informed the committee: ‘There is clear evidence that young people in Australia are exposed to large amounts of alcohol advertising across a range of media’.¹²⁰

1.104 With this exposure, Ms Ferguson argued that the notion of drinking alcohol has become a widely accepted, almost unquestioned, aspect of Australian life: ‘Alcohol advertising contributes to the normalisation of alcohol use and reinforces the harmful drinking culture we have in Australia’.¹²¹

1.105 This was echoed by the NSW ACT Alcohol Policy Alliance, who stated: ‘Advertising and promotion of alcohol results in the normalisation of alcohol and an increase in consumption, thereby increasing the risk of alcohol harm’.¹²²

1.106 According to stakeholders, this normalisation is facilitated in a number of ways. For example, Ms Dessaix, Director, Cancer Council NSW, argued that the normalisation of alcohol is very much dictated by the media, who she contended is overwhelmingly drowning out the public health message about the dangers of alcohol consumption:

... fundamentally the media does play an important role in influencing what the community perceives as normal. Currently what they are being exposed to is significant alcohol advertising and there is not the balance of public health voice in the media around alcohol and the harms associated with alcohol consumption.¹²³

1.107 Mr Tony Brown also acknowledged the ‘normalisation and acculturation’¹²⁴ of alcohol, referring to the practice of alcohol grooming where children and young people under the legal drinking age are being attracted to alcohol and saturated with multi-media promotions and products that resemble soft drink. Mr Brown cited research which identified the ‘pernicious’ influence of advertising on behaviour and culture, and its promotion of the ‘good times’ mindset among youth.¹²⁵

1.108 Ms Dessaix referred to the experience of tobacco control in recent times to demonstrate the power of the media to influence public health, if given the opportunity:

¹¹⁸ Evidence, Ms Ferguson, 1 December 2017, p 30; see also Submission 9, NSW ACT Alcohol Policy Alliance, p 1; Submission 23, McCusker Centre for Action on Alcohol and Youth, p 1.

¹¹⁹ Evidence, Ms Ferguson, 1 December 2017, p 30.

¹²⁰ Submission 21, Royal Australasian College of Physicians, p 2.

¹²¹ Evidence, Ms Ferguson, 1 December 2017, p 30; see also Submission 31, St Vincent’s Health Australia, p 2.

¹²² Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

¹²³ Evidence, Ms Dessaix, 5 December 2017, p 40.

¹²⁴ Submission 18, Mr Tony Brown, p 6.

¹²⁵ Submission 18, Mr Tony Brown, p 6.

We know from our efforts in tobacco control over many decades that the media plays a fundamentally important role in influencing public health both in its success as well as in hindering it. This happens in a number of ways, including what the community perceives to be normal through public education as well as advancing policy.¹²⁶

Other jurisdictions

1.109 During the inquiry, stakeholders looked to other jurisdictions to demonstrate the impact – or lack thereof – of alcohol advertising. In particular, representatives of the alcohol industry cited examples of countries where there have been changes to alcohol advertising regulation, whether they be a relaxation or tightening of restrictions, and discussed how these changes have affected drinking behaviours.

1.110 For example, Brown-Forman stated: ‘... numerous examples internationally, in particular from mature alcohol markets in Europe which mirror to some degree Australia’s drinking culture and market dynamics, ... emphasise the disconnect between where a country sits on the spectrum of alcohol regulation, and its consumption trends’.¹²⁷

1.111 In particular, Lion Beer argued that international examples of advertising bans have been ineffective in controlling consumption:

Where outright bans have been employed overseas, scientific evidence demonstrates them to have been ineffective. Restrictions tend not to correlate with per capita consumption or are associated with an increase.¹²⁸

1.112 A number of stakeholders from the alcohol and advertising industries, including the Brewers Association of Australia, the Australian Association of National Advertisers and Lion Beer, all cited the same international study to support their view that restricting advertising has little bearing on drinking patterns.¹²⁹ The study considered the experience of 17 OECD countries between 1977 and 1995, many of whom had instituted longstanding bans on alcohol advertising. According to these inquiry participants, the study found that the bans ‘did not result in either a reduction in the number of new drinkers, a reduction in alcohol consumption overall, or a reduction in the rates of alcohol misuse’.¹³⁰

1.113 The Alcohol Beverages Association highlighted particular countries, such as Germany and Sweden, as ‘real life examples’ to demonstrate the disconnect between alcohol advertising restrictions and alcohol consumption:

Many international examples support the case that restrictions on alcohol advertising do not lead to decreases in alcohol related harm outcomes. In Germany, where the majority of alcohol advertising is covered by self-regulation, there has been a decline in total alcohol consumption. In Sweden, a downward trend in youth alcohol

¹²⁶ Evidence, Ms Dessaix, 5 December 2017, p 35.

¹²⁷ Submission 1, Brown-Forman, p 6.

¹²⁸ Submission 10, Lion Beer p 14.

¹²⁹ Submission 10, Lion Beer, p 14; Submission 17, Brewers Association of Australia, p 6; Submission 26, Australian Association of National Advertisers, p 4.

¹³⁰ Submission 17, Brewers Association of Australia, p 6.

consumption has been observed despite relaxation of regulation or alcohol advertisement.¹³¹

1.114 Similarly, Lion Beer gave the example of France which, according to a 1999 French parliamentary report, implemented an alcohol advertising ban known as ‘Loi Evin’ which showed ‘no effect on alcohol consumption’.¹³² Lion Beer did acknowledge that there was ‘a slow decline in alcohol consumption’ but that this was ‘deemed not to be correlated with the Loi Evin and attributed to other factors’.¹³³ Lion Beer also reported that, despite the ban, ‘more powerful social and cultural changes’ are driving a recent increase in excessive consumption and alcohol-related harm.¹³⁴

1.115 The Royal Australasian College of Physicians, however, presented international evidence contrary to that cited by the alcohol industry. They referred to a 2014 study on the relationship between alcohol advertising restriction and the prevalence of hazardous drinking in European countries. The RACP reported that the study found a positive relationship for older adults, aged 50-64, whose rate of hazardous drinking was higher in countries with no alcohol advertising restriction and progressively dropped the greater the restriction:

European countries in this study were divided into three groups – those with ‘no restrictions’ on alcohol advertising, those with some restrictions and those with the greatest restrictions. The study found that the rate of hazardous drinking was 30.6% in countries with no restrictions, 20.3% in countries with some restrictions and 14.4% in those with greatest restrictions. Even after adjusting for confounding factors the study found a positive association between alcohol advertising and hazardous drinking rates among this older age group.¹³⁵

Health impacts and social costs of alcohol consumption

1.116 As part of the discussion about alcohol advertising, inquiry participants spoke of the health impacts and social costs of alcohol consumption in Australia. This section will consider these issues, particularly the harms associated with excessive consumption and alcohol abuse. It will also examine whether there is a health benefit to be gained by drinking alcohol, and look at evidence suggesting a link between alcohol and cancer. The comparison between alcohol and tobacco, as drawn by inquiry participants, is also briefly discussed.

Measuring the costs of alcohol consumption

1.117 According to Ms Dessaix, Cancer Council NSW, ‘New South Wales has a problem with alcohol’, with one-third of New South Wales adults consuming alcohol at levels that increase risks to their long-term health.¹³⁶ Moreover, the Royal Australasian College of Physicians

¹³¹ Submission 11, Alcohol Beverages Australia, p 1.

¹³² Submission 10, Lion Beer, p 14.

¹³³ Submission 10, Lion Beer, p 14.

¹³⁴ Submission 10, Lion Beer, p 14.

¹³⁵ Submission 21, Royal Australian College of Physicians, p 5.

¹³⁶ Evidence, Ms Dessaix, 5 December 2017, p 35.

advised that this view is shared within the wider community with 78 per cent of people believing the problem with alcohol goes beyond the state and is shared across Australia.¹³⁷

1.118 For a number of inquiry participants, these perceptions are justified, with alcohol-related harm and disease continuing to be ‘an issue of significant concern for Australia’.¹³⁸ According to Cancer Council NSW: ‘The NSW Ministry of Health cites alcohol use as one of the leading causes of preventable disease in NSW. They have a priority goal to reduce alcohol-related harm in NSW’.¹³⁹

1.119 Indeed, Mr Moore, Public Health Association of Australia argued that Australia’s drinking culture has come at a considerable health and social cost:

Alcohol is responsible for a substantial burden of death, disease and injury in Australia. Worse, alcohol-related harm affects not only the drinkers themselves but also their children, families and the broader community.¹⁴⁰

1.120 Similarly, the Royal Australasian College of Physicians argued: ‘The many harms of alcohol and their costs to individuals and society are both undisputed and substantial, with alcohol consumption being a causal factor in more than 200 disease and injury conditions’.¹⁴¹ Professor Elliott, Royal Australasian College of Physicians, added:

Physicians working in addiction clinics, emergency departments, paediatric hospitals, orthopaedic wards, rehabilitation centres, liver clinics and cancer wards know firsthand the harms that alcohol can cause, including the harms to others, including children, but of course by alcohol related violence, motor vehicle accidents and alcohol use in pregnancy.¹⁴²

1.121 Professor Elliott maintained that the prevalence of alcohol-related harm is not unique to Australia, with alcohol use being the ‘leading risk factor worldwide for death and disease burden in young people aged 14 to 49 years’.¹⁴³ She also remarked that ‘[T]hese harms are, of course, potentially preventable’.¹⁴⁴

1.122 While some stakeholders discussed the potential health benefits of alcohol consumption, to be considered in the following section, inquiry participants within the health and advocacy sectors drew particular attention to the alcohol-related harm caused by excessive consumption or alcohol abuse, including both short-term and long-term harm.

1.123 For example, Associate Professor Ezard commented on the breadth of harm presenting to health professionals, advising: ‘Certainly we see alcohol-related injuries and violence presenting to the hospital and to the emergency department but we are also seeing increasing

¹³⁷ Submission 21, Royal Australasian College of Physicians, p 3.

¹³⁸ Evidence, Mr Moore, 5 December 2017, pp 35-36.

¹³⁹ Submission 3, Cancer Council NSW, p 4.

¹⁴⁰ Evidence, Mr Moore, 5 December 2017, pp 35-36.

¹⁴¹ Submission 21, Royal Australasian College of Physicians, p 3.

¹⁴² Evidence, Professor Elliott, 1 December 2017, p 55.

¹⁴³ Evidence, Professor Elliott, 1 December 2017, p 55.

¹⁴⁴ Evidence, Professor Elliott, 1 December 2017, p 55.

numbers in the hospital of the other longer-term harms related to the consumption of alcohol'.¹⁴⁵

- 1.124** This was also acknowledged by the Foundation for Alcohol Research and Education, who informed the committee that alcohol is a major contribute to chronic disease, despite the lack of public knowledge of this association:

Alcohol consumption results in both short and long-term harm and is a major contributor to many chronic diseases including diabetes, heart disease, mental health and cancer. Awareness of the association of alcohol and chronic disease is significantly low yet incidence rates are significantly high.¹⁴⁶

- 1.125** Associate Professor Ezard stated that '[w]e need to tease out both the shorter-term and the longer-term harms from excessive use of alcohol',¹⁴⁷ explaining:

Accidents and injuries can happen with a single use whereas liver disease and some of those other long-term harms happen over a longer period. We are seeing those harms going up. We are still seeing the rates of alcohol-related harm going up in the 20 per cent of high-end consumers, excessive consumers, and we must collectively address that for the wellbeing of the whole society because that is affecting us as a community, not only those individuals and their families.¹⁴⁸

- 1.126** Associate Professor Ezard commented that these impacts represent a 'high cost to our health system'.¹⁴⁹ Indeed, both the Foundation for Alcohol Research and Education and the NSW ACT Alcohol Policy Alliance advised that, according to NSW Health data, 'alcohol is responsible for 13,624 emergency department presentations, 53,924 hospitalisations and 1,300 deaths every year' in New South Wales.¹⁵⁰

- 1.127** The committee also received evidence that, nationally, an estimated 5,692 Australians aged over 15 years died of alcohol-attributable disease and injury in 2015, and that hospitalisations attributable to alcohol exceeded 144,000 in 2012-2013.¹⁵¹

- 1.128** NSW ACT Alcohol Policy Alliance advised that 'alcohol is also the major contributor to the three leading causes of death among adolescents; unintentional injuries, homicide and suicide' and asserted that '[t]he social and economic costs to the community as a result of alcohol are insurmountable'.¹⁵²

¹⁴⁵ Evidence, Associate Professor Ezard, 1 December 2017, p35

¹⁴⁶ Answers to questions on notice, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 8 January 2018, p 3.

¹⁴⁷ Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

¹⁴⁸ Evidence, Associate Professor Ezard, 1 December 2017, p 35.

¹⁴⁹ Evidence, Associate Professor Ezard, 1 December 2017, p 35.

¹⁵⁰ Submission 9, NSW ACT Alcohol Policy Alliance, p 3; Answers to questions on notice, Ms Ferguson, 8 January 2018, p 3.

¹⁵¹ Answers to questions on notice, Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, 8 January 2018, Attachment – National Alcohol Indicators, Bulletin 16, *Estimate alcohol attributable deaths and hospitalisations in Australia, 2004-2015*, p 1.

¹⁵² Submission 9, NSW ACT Alcohol Policy Alliance, p 3.

- 1.129** As for the financial impact of alcohol abuse, the Royal Australian College of Physicians advised that the NSW Auditor General estimated a total cost of \$3.87 billion per year in New South Wales alone, and between \$15 billion and \$36 billion per year across Australia:

In NSW alone, the NSW Auditor General has estimated the cost of alcohol abuse at \$3.87 billion per year, or \$1,565 per household. Of this amount, \$1.029 billion a year or \$416 per household is incurred in the form of spending on additional government services to redress the negative ‘spillover effects’ of alcohol consumption such as increased crime and morbidity. In Australia, the total social costs of alcohol have been estimated to be as high as between \$15 billion and \$36 billion per year.¹⁵³

- 1.130** Cancer Council NSW also reported the estimated social costs of alcohol in Australia, citing the estimate of \$15.3 billion per year by the National Preventative Health Taskforce. They explained the basis for this estimate, noting that it is considered to be an underestimation:

The financial cost of disease, injury and crime caused by alcohol in Australia has been estimated to be about \$15.3 billion. Lost productivity in the workplace, health, road accidents and crime make up the majority of these costs. This figure is considered to be an underestimate as it was calculated before research confirmed that alcohol also contributes to bowel cancer, the second most common cancer in Australia.¹⁵⁴

- 1.131** The link between alcohol and cancer is discussed further below.

The health benefits of alcohol

- 1.132** A number of inquiry participants discussed whether alcohol can be consumed at a safe level, such that it could potentially be of benefit to a person’s health.

- 1.133** For example, Lion Beer argued that ‘there is a safe and potentially beneficial level of alcohol consumption’.¹⁵⁵ They cited studies on the benefits of moderate alcohol consumption which ‘conservatively estimate that 2,437 deaths and 114,726 hospital bed days are prevented each year’.¹⁵⁶

- 1.134** Moreover, Lion Beer suggested that, based on these studies, a significant number of lives are saved from the safe consumption of alcohol:

... net figures of 5,100 Australian lives are saved each year as a consequence of low risk drinking versus abstinence. While risky and high risk drinking cause more deaths than they save (2,737), the overall effect of all drinking versus abstinence is to save 2,363 lives each year.¹⁵⁷

- 1.135** In response, both Cancer Council NSW and the Public Health Association of Australia questioned Lion Beer’s representation of the data, asserting that certain elements are

¹⁵³ Submission 21, Royal Australasian College of Physicians, p 3.

¹⁵⁴ Submission 3, Cancer Council NSW, p 6.

¹⁵⁵ Submission10, Lion Beer, p 8.

¹⁵⁶ Submission10, Lion Beer, p 8.

¹⁵⁷ Submission 10, Lion Beer, p 9.

‘conspicuously absent’.¹⁵⁸ For example, Cancer Council NSW advised that Lion Beer ‘does not specifically quote the total deaths and hospital bed days caused by alcohol, which is 3,494 deaths and 1,031,660 hospital bed days’.¹⁵⁹ The Public Health Association of Australia pointed out that this means that in that year overall, ‘alcohol caused 1,057 more deaths than it prevented and caused 916,934 more hospital bed days than it prevented’.¹⁶⁰

1.136 Cancer Council NSW also drew attention to the fact that the authors of one of the studies ‘specifically caution against using the theoretical death and hospital bed days prevented to inform alcohol policy, compared to the total deaths and hospital bed days caused by alcohol which is more reliably linked to individual patients’.¹⁶¹

1.137 Similarly, the Public Health Association of Australia reported that the authors deemed the figure on the net savings of lives per year ‘a simplistic and potentially misleading picture of alcohol as a net benefit to public health and safety’. The Public Health Association of Australia argued that ‘this is the exact usage of the data ... in the Lion Beer Australia submission’.¹⁶²

1.138 The Public Health Association of Australia also noted the studies cited are ‘relatively outdated, and that newer data are available’ which question the evidence surrounding the benefits of moderate alcohol consumption for protecting against cardiovascular disease in particular.¹⁶³

1.139 Indeed, Cancer Council NSW asserted that ‘the protective effect of alcohol on heart disease is now disputed’.¹⁶⁴ They advised that, following separate reviews of the evidence relating to alcohol consumption and cardiovascular disease risk, both the World Health Organisation and Australia’s National Heart Foundation state ‘unequivocally that they do not recommend alcohol consumption to prevent heart disease’.¹⁶⁵

1.140 In fact, according to Cancer Council NSW, the National Heart Foundation ‘explicitly advises against the consumption of red wine and other types of alcoholic drinks for the prevention or treatment of heart disease’.¹⁶⁶

1.141 For Mr Moore, Public Health Association of Australia, the potential benefit of alcohol – if any – cannot be matched by the wealth of evidence indicating a relationship between alcohol and a host of negative outcomes:

... even if you were to accept that there were some benefits – and I am putting ‘even if’ – to what extent is that outweighed by those studies that overwhelmingly show a

¹⁵⁸ Answers to questions on notice, Dr Johnston, 8 January 2018, p 3; See also Answers to questions on notice, Ms Jane Dibbs, Senior Nutrition Project Officer, Cancer Council NSW, 21 December 2017, pp 2-4.

¹⁵⁹ Answers to questions on notice, Ms Dibbs, 21 December 2017, p 1.

¹⁶⁰ Answers to questions on notice, Dr Johnston, 8 January 2018, p 3.

¹⁶¹ Answers to questions on notice, Ms Dibbs, 21 December 2017, p 1.

¹⁶² Answers to questions on notice, Dr Johnston, 8 January 2018, p 3.

¹⁶³ Answers to questions on notice, Dr Johnston, 8 January 2018, p 3.

¹⁶⁴ Answers to questions on notice, Ms Dibbs, 21 December 2017, p 2.

¹⁶⁵ Answers to questions on notice, Ms Dibbs, 21 December 2017, p 1.

¹⁶⁶ Answers to questions on notice, Cancer Council NSW, 21 December 2017, p 3.

relationship to cancer and an increase in domestic violence, an increase in street violence and impact on families.¹⁶⁷

- 1.142** This view was supported by the Foundation for Alcohol Research and Education, which provided numerous references to academic research indicating that ‘alcohol harm outweighs any potential benefit’, including recent research from 2015 and 2016.¹⁶⁸
- 1.143** Associate Professor Ezard, NSW ACT Alcohol Policy Alliance, added: ‘The overall statement that moderate consumption of alcohol is beneficial for the community is patently untrue’.¹⁶⁹
- 1.144** Turning to the question of whether there is any safe level of alcohol consumption, Mr Moore, Public Health Association, reported that the findings of the National Health and Medical Research Council showed that ‘no level of drinking was without risk’.¹⁷⁰ Cancer Council NSW similarly asserted that ‘there is no safe level of alcohol consumption in relation to cancer risk’.¹⁷¹
- 1.145** As discussed earlier and again in Chapter 2, according to a number of inquiry participants this is particularly true for children and young people, who are especially vulnerable to significant impairments to brain development as a result of alcohol consumption.

Alcohol and cancer

- 1.146** The committee received evidence from representatives of the health and advocacy sectors linking alcohol with cancer. These inquiry participants contended that cancer can be attributed to alcohol and so to reduce cancer risk, alcohol consumption should be limited or avoided altogether.
- 1.147** According to Cancer Council NSW, ‘alcohol causes cancer’, with the International Agency for Research on Cancer classifying alcohol as a known human carcinogen.¹⁷² In particular, Cancer Council NSW stated that alcohol causes cancers of the mouth, pharynx, larynx, oesophagus, stomach, bowel (including colon and rectum), liver and breast.¹⁷³ Similarly, the Royal Australasian College of Physicians told the committee that: ‘... alcohol does have very well-established carcinogenic properties. It is a risk factor for cancers of the breast, mouth, throat, colon, rectum’.¹⁷⁴
- 1.148** Moreover, Cancer Council NSW advised that in 2010, 3,208 cancers were estimated to be attributable to alcohol consumption in Australia, and that of these the largest numbers of cancers attributable to alcohol were colon and breast.¹⁷⁵

¹⁶⁷ Evidence, Mr Moore, 5 December 2017, p 39.

¹⁶⁸ Answers to questions on notice, Ms Ferguson, 8 January 2018, p 2.

¹⁶⁹ Evidence, Associate Professor Ezard, 1 December 2017, p 33.

¹⁷⁰ Evidence, Mr Moore, 5 December 2017, p 37.

¹⁷¹ Submission 3, Cancer Council NSW, p 3.

¹⁷² Submission 3, Cancer Council NSW, p 1.

¹⁷³ Submission 3, Cancer Council NSW, p 3.

¹⁷⁴ Evidence, Professor Conigrave, 1 December 2017, p 59.

¹⁷⁵ Evidence, Ms Dessaix, 5 December 2017, p 35.

- 1.149** Ms Hughes, Cancer Council NSW, explained how alcohol contributes to cancer, stating that depending on the type of cancer, the mechanism for increasing risk differs:

Because it is associated with a range of different cancers, there are different mechanisms and different ways that it contributes to cancer risk. Part of it is around the metabolism of alcohol and the by-product of metabolism. Acetaldehyde is produced which has cancer-causing properties. It also has an impact on hormones, such as oestrogen. Hence the association with breast cancer in that higher levels of oestrogen are associated with increased breast cancer risk. It is associated with cirrhosis of the liver and having cirrhosis of the liver is linked with an increased cancer risk. Once again, it depends on the type of cancer and the mechanism is different.¹⁷⁶

- 1.150** Ms Dessaix, Cancer Council NSW, advised that the association between alcohol and cancer has been determined as a causal link based on the conclusive findings of emerging evidence:

It is important to note that the International Agency for Research on Cancer and the World Cancer Research Fund are continuously reviewing emerging evidence – it is not just one study that they are picking up – and they have made a conclusive finding that it is a causal link, not a possible or weak link.¹⁷⁷

- 1.151** In addition, Ms Dessaix asserted that the link between alcohol and the eight cancers identified previously is internationally recognised,¹⁷⁸ with the Foundation for Alcohol Research and Education also citing numerous references to research linking alcohol and cancer, much of which was conducted in the last four years.¹⁷⁹

- 1.152** The committee also received evidence from the Public Health Association of Australia to the effect that cancers were responsible for the largest proportion of alcohol-attributable deaths in 2015.¹⁸⁰

- 1.153** Some inquiry participants perceived the risk of cancer to be higher only when engaging in excessive consumption. For example, Mr Heffernan, Brewers Association, stated:

In terms of being a carcinogen, my understanding is that the risk factors associated with some cancers come into play at the higher end use or misuse of alcohol but at moderate consumption levels, alcohol is a normal part of a healthy lifestyle.¹⁸¹

- 1.154** However, Cancer Council NSW disputed this assertion, arguing that risk ‘increases linearly with the amount of alcohol consumed’, thereby concluding that there is no safe level of alcohol consumption when it comes to the risk of cancer.¹⁸² Consequently, Cancer Council NSW recommended that to reduce cancer risk, people must ‘limit their consumption of alcohol, or better still, avoid alcohol altogether’.¹⁸³

¹⁷⁶ Evidence, Ms Hughes, 5 December 2017, p 43.

¹⁷⁷ Evidence, Ms Dessaix, 5 December 2017, p 37.

¹⁷⁸ Evidence, Ms Dessaix, 5 December 2017, p 37.

¹⁷⁹ Answers to questions on notice, Ms Ferguson, 8 January 2018, p 2.

¹⁸⁰ Answers to questions on notice, Dr Johnston, 8 January 2018, Attachment – National Alcohol Indicators, Bulletin 16, *Estimate alcohol attributable deaths and hospitalisations in Australia, 2004-2015*, p 1.

¹⁸¹ Evidence, Mr Heffernan, 5 December 2017, p 32.

¹⁸² Submission 3, Cancer Council NSW, p 3.

¹⁸³ Answers to questions on notice, Ms Dibbs, 21 December 2017, p 3.

- 1.155** Ms Dessaix, Cancer Council NSW, also pointed to the low levels of awareness about the carcinogenic properties of alcohol: ‘Among our community that awareness is at about 46 per cent, whereas when it comes to tobacco and the link with cancer there is almost a universal awareness’.¹⁸⁴

Comparisons between alcohol and tobacco

- 1.156** During the inquiry, stakeholders often drew comparisons between the alcohol and tobacco industries. Some argued that the two are completely different with regard to their impacts on health and their role in Australian culture and should be treated as such. Others maintained that there are strong parallels between alcohol and tobacco, and therefore the same public policy approach, including advertising restrictions, should apply.
- 1.157** On the one hand, according to the alcohol and advertising industries, alcohol and tobacco cannot and must not be treated equally. As Mr Heffernan, Brewers Association, stated: ‘... the desire to conflate alcohol and tobacco is a dangerous area’.¹⁸⁵
- 1.158** Indeed a number of these industry representatives argued that the clear and defining difference between alcohol and cigarette smoking is that one substance can be consumed safely, while the other cannot.¹⁸⁶ Ms Tess Phillips, General Manager, Outdoor Media Association, expressed this view: ‘... [the] difference between alcohol and cigarettes is that every cigarette is doing you damage whereas you can safely consume alcohol in moderation. That is a big difference’.¹⁸⁷
- 1.159** Mr Newson, Liquor and Gaming NSW, added that tobacco is the leading cause of and contributor to morbidity, illness and death in Australia and highlighted the deep cultural difference between alcohol use and tobacco consumption, arguing that alcohol plays a fundamentally different role to cigarettes in Australian society. He stated:

... the majority of people enjoy alcohol as a part of their social connection and as a part of their community activities ...¹⁸⁸

...

... I think alcohol plays a very different role in Australian society and globally to what tobacco does. I am sure the roles will continue to evolve over time but, as the Chief Health Officer observed, most people, most Australians and most New South Wales adults enjoy alcohol for recreation and to relax and have limited, if any, health impacts. I think there are very different public policy positions between tobacco and alcohol, and I think they play very different roles in society.¹⁸⁹

¹⁸⁴ Evidence, Ms Dessaix, 5 December 2017, p 35.

¹⁸⁵ Evidence, Mr Heffernan, 5 December 2017, p 32.

¹⁸⁶ Evidence, Mr Taylor, 1 December 2017; Evidence, Mr Wagstaff, 1 December 2017, p 51; Evidence, Mr Heffernan, 5 December 2017, p 32; Evidence, Mr Jaymes Boland-Rudder, Head of Government and Community Relations, National Rugby League, 14 February 2018, p 2.

¹⁸⁷ Evidence, Ms Tess Phillips, General Manager, Outdoor Media Association, 5 December 2017, p 10.

¹⁸⁸ Evidence, Mr Newson, 1 December 2017, p 3.

¹⁸⁹ Evidence, Mr Newson, 1 December 2017, p 7.

- 1.160** Other stakeholders strongly disagreed with industry’s position, arguing that the precedent of tobacco advertising restrictions should guide current decision-making on alcohol.
- 1.161** For example, Mr Klarenaar, NSW ACT Alcohol Policy Alliance, argued that to treat alcohol advertising in the same way as tobacco advertising would be a ‘logical comparison and a pragmatic way to treat things’.¹⁹⁰ He emphasised that there is a precedent in the tobacco experience, and that ‘the rates of tobacco smoking have come down dramatically in the past 10, 20, 30 years’.¹⁹¹
- 1.162** Likewise, Professor Elliott acknowledged tobacco’s example, also arguing: ‘... we have a precedent in Australia in the banning of tobacco advertising and promotion. We have seen the huge impact and benefits that that has had on tobacco use and harms’.¹⁹²
- 1.163** A number of inquiry participants observed parallels between the arguments presented by the alcohol industry and the tobacco industry when faced with impending advertising restrictions. For example, Mr Moore commented that the alcohol industry responded in much the same way the tobacco industry did when claims of a link between smoking and cancer were once made:
- ... the tobacco companies continued to push again and again for 30, 40 years after the evidence was really overwhelming, ‘No, there is no relationship between smoking and cancer’, and we heard a similar response here with regard to alcohol, it is just that straight denial ...¹⁹³
- 1.164** Similarly, Associate Professor Ezard asserted that, like the alcohol industry currently, ‘the tobacco industry used the market segmentation argument also for their advertising’.¹⁹⁴
- 1.165** Ms Dessaix, Cancer Council NSW, remarked that the targeting of younger audiences with advertising to secure the future market was also a past experience with the tobacco industry:
- ... [The industry] comment around ‘We don’t target young people’ – at the end of the day, young people are their future customers ... that is a similar learning from what we have experienced with tobacco control ... I think some of the comments in the previous session [from industry] were of particular concern because they do echo what we have heard in the past.¹⁹⁵

Committee comment

- 1.166** Alcohol is deeply engrained in Australian culture. Drinking is so widely accepted that it has become an almost unquestioned part of life in this country. Yet, while it is enjoyed by many, the fallout from alcohol consumption, particularly excessive consumption, is one that we continue to grapple with today.

¹⁹⁰ Evidence, Mr Klarenaar, 1 December 2017, p 34.

¹⁹¹ Evidence, Mr Klarenaar, 1 December 2017, p 34.

¹⁹² Evidence, Professor Elliott, 1 December 2017, p 55.

¹⁹³ Evidence, Mr Moore, 5 December 2017, pp 38.

¹⁹⁴ Evidence, Associate Professor Ezard, 1 December 2017, p 34.

¹⁹⁵ Evidence, Ms Dessaix, 5 December 2017, p 38.

- 1.167** The committee notes evidence that overall consumption levels are decreasing, with most Australians either drinking in moderation or abstaining, and young people initiating drinking later. The committee notes that the alcohol industry considers that these trends tell a ‘good news story’.
- 1.168** However, the committee does not accept that these trends tell the *full* story. We remain extremely troubled by reports that many Australians drink at levels that significantly increase their risk of alcohol-related harm. Indeed, despite the overall decline, the committee notes that consumption levels among particularly vulnerable population groups, such as young people and older Australians, is still too high. Evidence also suggests that those who are drinking appear to be drinking in more hazardous ways.
- 1.169** Moreover, the committee recognises that these drinking patterns are one among many indicators of the extraordinary levels of alcohol-related harm that families, our health system, and the wider community are suffering. Indeed, the committee is alarmed by the significant health impacts and social costs that alcohol currently has on our society. These costs will only continue to grow in the future.
- 1.170** The committee notes the alcohol industry’s position that there is a safe and even potentially beneficial level of alcohol consumption. However, this ignores compelling evidence that alcohol in fact poses no real health benefits, with the World Health Organisation and Australia’s National Heart Foundation recommending *against* alcohol consumption as a way to prevent heart disease. There is clear evidence that alcohol is a carcinogen and causes cancer. Just as we know that ‘every cigarette is doing you damage’, it may also be that no level of alcohol consumption is without risk.
- 1.171** It is important that public policy be made on the basis of firm evidence. The committee believes that NSW Health should closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is so the community is properly informed. This should also inform policy makers about whether alcohol advertising in New South Wales should have further restrictions placed upon it.
- 1.172** Alcohol advertising is undeniably pervasive in Australia, with millions of dollars spent to promote alcohol products through a multitude of mediums. While the committee recognises that the alcohol industry operates in a highly competitive market, the committee questions the industry’s argument that the sole purpose of alcohol advertising is to secure market share among those who have already made the independent decision to drink. We believe the alcohol industry has a vested interest in growing the industry by initiating, encouraging and increasing consumption among non-drinkers and drinkers alike.
- 1.173** The committee considers that the key question around alcohol advertising, and ultimately behind stakeholder perceptions of the proposed Bill, is whether or not there is a real and significant correlation between alcohol advertising and alcohol consumption. The committee acknowledges that the alcohol and advertising industries have put forward sophisticated arguments as to why there is no causal link between advertising and consumption. However, the committee strongly rejects this view: the research clearly demonstrates that there are strong associations between exposure to alcohol advertising and young people’s early initiation to alcohol use and/or increased alcohol consumption. To put it simply, those exposed to alcohol advertising are more likely to drink, and to drink more. There can also be no doubt

that advertising significantly contributes to the normalisation of alcohol consumption in our society, no more so that among children and young people.

- 1.174** In addition, the committee acknowledges the comparisons drawn between tobacco and alcohol. Given the dramatic fall in smoking rates over the last 30 years, we consider that the precedent of tobacco advertising restrictions should guide current decision-making around alcohol advertising restrictions.
- 1.175** Overall, the committee therefore finds that the strict regulation of alcohol advertising has an integral role to play in addressing the significant health and social costs that alcohol-related harm causes in our society, and in encouraging a healthier lifestyle among all Australians.
- 1.176** Given the matters canvassed at paragraphs 1.129-1.130 and 1.132-1.145, the committee recommends that NSW Health should closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is. The outcome of this research should determine whether alcohol advertising should have further restrictions applied to it.
-

Finding 1

That the strict regulation of alcohol advertising has an integral role to play in addressing the significant health and social costs that alcohol-related harm causes in our society, and in encouraging a healthier lifestyle among all Australians.

Recommendation 1

That NSW Health closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is.

Recommendation 2

That the NSW Government use the research conducted by NSW Health into whether there is any safe level of alcohol consumption and, if so, what level, to determine whether alcohol advertising should have further restrictions applied to it.

- 1.177** The committee also believes that the NSW Government should consider providing more funding and support toward health promotion and education campaigns regarding alcohol consumption.
-

Recommendation 3

That the NSW Government consider providing more funding and support toward health promotion and education campaigns regarding alcohol consumption.

Chapter 2 Stakeholder views on the Bill

This chapter considers the views of inquiry participants on the Alcoholic Beverages Advertising Prohibition Bill 2015 (the Bill). In addition to outlining the arguments in support of the Bill and those in opposition to it, this chapter considers a number of potential amendments to the Bill as suggested by inquiry participants.

Overview of the Bill

2.1 The Alcoholic Beverages Advertising Prohibition Bill 2015 (the Bill) was introduced into the Legislative Council by Revd the Hon Fred Nile MLC on 5 May 2015. A full copy of the Bill is provided at Appendix X.

2.2 The Bill aims to ‘encourage a healthier lifestyle’¹⁹⁶ by:

- prohibiting advertising and other promotional activities assisting in the sale of alcohol and thereby reducing the incentive for people to consume alcohol
- providing for the declaration of local option areas within which the purchase, sale, delivery or consumption of alcohol would be an offence.¹⁹⁷

2.3 Revd Nile stated in his second reading speech for the Bill:

It is counterintuitive that we invest in actions to promote our wellbeing and healthy lifestyles to reduce the burden of disease but continue to allow the perpetrating alcohol industry to flourish through a massive advertising campaign.

...

Alcohol abuse harms the community. Alcohol advertising and sponsorships go against general principles of fairness, equity, decency and lawfulness in society.

...

We are not asking for the criminalisation of alcohol; we are asking for a prohibition on advertising of alcoholic beverages. Let us emancipate ourselves from the tyranny of alcohol. If adopted, implemented and enforced, this intervention can protect health and save lives.

...

Banning advertising and promotions has worked in relation to cigarettes and tobacco, and I believe it will work in relation to alcohol.¹⁹⁸

2.4 The following section briefly outlines the two key elements of the Bill.

¹⁹⁶ Alcohol Beverages Advertising Prohibition Bill 2015, Explanatory note, Overview of Bill.

¹⁹⁷ Alcohol Beverages Advertising Prohibition Bill 2015, Explanatory note, Overview of Bill.

¹⁹⁸ *Hansard*, Legislative Council, 10 September 2015, pp 3405-3410.

The prohibition of alcohol advertising and other promotional activities

- 2.5** The Bill defines an alcohol advertisement as any ‘writing, still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them’ that promotes an alcoholic beverage or the purchase of an alcoholic beverage.¹⁹⁹
- 2.6** The Bill prohibits the display of alcohol advertisements that can be ‘seen or heard from a public place’, as well as the broadcast or transmission of alcohol advertisements through any telecommunication medium.²⁰⁰ In addition, the Bill prohibits the purchase of alcohol as part of a competition, or the offer or distribution of free samples of alcohol for the purposes of promoting the product. Finally, the Bill prohibits sponsorship by alcohol manufacturers or distributors.²⁰¹
- 2.7** The Bill provides for a five-year transition period before removal of alcohol advertisements and the termination of relevant sponsorships comes into effect.²⁰²
- 2.8** The Bill also establishes the Alcohol Advertising Prohibition Committee which would oversee the progressive removal of alcohol advertisements and the termination of relevant sponsorships.²⁰³

The declaration of local option areas

- 2.9** The Bill also allows for the appropriate Minister to declare a specified area to be a local option area, wherein it would be an offence to buy, sell, or deliver alcohol, or consume alcohol in a public place.²⁰⁴
- 2.10** The proposed local option area may be one where there are widespread problems relating to the public consumption of alcohol, or where there is widespread alcohol-related crime, illness, accidents or death, or alcohol abuse.²⁰⁵
- 2.11** Any person can request for an area to be declared a local option area, but must have a petition signed by at least 10 per cent of residents in that area supporting the declaration. The Minister must then declare that area to be a local option area if he or she agrees with the local council that there exists a particular alcohol-related problem in that area. The declaration may be of general application or limited to specific hours or other periods of time.²⁰⁶

¹⁹⁹ Alcohol Beverages Advertising Prohibition Bill 2015, clause 5 (1).

²⁰⁰ Alcohol Beverages Advertising Prohibition Bill 2015, clause 6.

²⁰¹ Alcohol Beverages Advertising Prohibition Bill 2015, clauses 7, 8 and 9.

²⁰² Alcohol Beverages Advertising Prohibition Bill 2015, clauses 6(4) and 9(4)(a).

²⁰³ Alcohol Beverages Advertising Prohibition Bill 2015, clauses 17 and 18.

²⁰⁴ Alcohol Beverages Advertising Prohibition Bill 2015, clause 16.

²⁰⁵ Alcohol Beverages Advertising Prohibition Bill 2015, clause 12.

²⁰⁶ Alcohol Beverages Advertising Prohibition Bill 2015, clauses 11 and 12.

Opposition to the Bill

2.12 A number of stakeholders from the alcohol and advertising industries expressed their opposition to the Bill.²⁰⁷ These inquiry participants argued that the Bill was unnecessary, overly restrictive, and inappropriate for meeting the stated objectives of the Bill. They asserted that passage of the Bill would not only result in a host of unintended consequences, but would have a particularly detrimental impact on the alcohol and advertising industries.

2.13 As outlined in Chapter 1, during the inquiry, the committee received evidence from the alcohol and advertising industries of their commitment to promoting safe and responsible drinking whilst seeking to combat alcohol-related harm. According to Mr Alec Wagstaff, Chief Executive Officer, Distilled Spirits Industry Council of Australia, this commitment aligns with the Bill's intentions:

It will be surprising, possibly, to hear me say that we actually share the intent of this piece of legislation. We might well disagree on the process to get there but the alcohol industry absolutely is committed to reducing the level of alcohol harm ... Australia has done a pretty good job and in fact we should be celebrating some of the work we have done in reducing harmful drinking by young people. That is not to say that the job is finished. We need to continue to do that ...²⁰⁸

2.14 Industry representatives argued that the proposed legislation is not the tool with which to address the concerns around excessive alcohol consumption and problems of alcohol-related harm. For example, Mr Brett Heffernan, Chief Executive Officer, Brewers Association of Australia, asserted that in prohibiting alcohol advertising and, in some areas, prohibiting alcohol altogether under the local option area provision, the Bill represents an 'unjustified overreaction':

We respectfully submit that either of these measures would irreparably damage the reputation of New South Wales and impinge on the liberty of adults who drink responsibly and that it would constitute an unjustified overreaction at a time when Australians are demonstrably moderating their drinking behaviour.²⁰⁹

2.15 As discussed in the previous chapter, alcohol and advertising stakeholders maintained that there is no causal link between alcohol advertising and alcohol consumption. As such, these inquiry participants argued that the Bill is seeking to address problems that advertising is not responsible for. As Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, stated:

²⁰⁷ For example, Evidence, Mr Dan Holland, External Relations Director, Lion Beer Australia, 5 December 2017, p 23; Evidence, Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association, 5 December 2017, pp 8 and 13; Evidence, Mr Julian Sheezel, Corporate Affairs Director, Carlton and United Brewers, 5 December 2017, p 23; Submission 13, Australian Hotels Association NSW, pp 1-2.

²⁰⁸ Evidence, Mr Alec Wagstaff, Chief Executive Officer, Distilled Spirits Industry Council of Australia, 1 December 2017, p 42

²⁰⁹ Evidence, Mr Brett Heffernan, Chief Executive Officer, Brewers Association of Australia, 5 December 2017, p 22.

... these relationships and links and associations that you hear about do not represent a causal relationship. Once you appreciate that the advertising you are seeking to ban is not causing the problem you are trying to solve, it becomes a moot point.²¹⁰

- 2.16** Likewise, Mr Brett Heffernan, Chief Executive Officer, Brewers Association of Australia, asserted that the Bill misdiagnoses the issues and is an ineffective and inappropriate response to the social harms caused by alcohol. Moreover, he argued that banning advertising sends ‘the wrong message’ about Australia’s improving drinking culture, discounts the positive contributions of the industry, and risks ‘masking’ the root causes of problem drinking:

... banning alcohol advertising is not effective in addressing the issues raised by the inquiry. Worse, it sends the wrong messages – namely, that government considers that alcohol is fundamentally bad and does not recognise significant improvements in Australian drinking trends. It would be wrong for the Government not to recognise the positive contribution that alcohol and hospitality make in creating jobs and a vibrant State. By misdiagnosing the issues, the bill risks perpetuating societal problems by masking the real drivers of harmful drinking and antisocial behaviour.²¹¹

- 2.17** Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association, expressed a similar view, arguing that ‘the measures proposed will not deliver the objectives, namely, to encourage a healthier lifestyle and to reduce alcohol consumption’.²¹²

- 2.18** Representatives from the alcohol and advertising industries also criticised the Bill for representing a blanket, population-wide measure to combat a specific problem that they argued requires targeted action and education.²¹³ For example, Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, argued:

The [Bill] would impose on New South Wales communities one of the most restrictive approaches to alcohol advertising in the world, including prohibition, despite research and international examples that show the population-wide measures proposed in the bill do not provide the targeted and evidence-based approach required to reduce alcohol-related harm.²¹⁴

- 2.19** Likewise, the Brewers Association of Australia stated that ‘evidence shows bans have only a negligible, if any, effect on alcohol abuse and youth consumption’,²¹⁵ and therefore expressed concerns about population-wide policy approaches. They asserted that not only do they not target those who misuse alcohol or engage in alcohol-related violence, but they ‘[fail] to recognise that the vast majority of people do not misuse alcohol or engage in anti-social or violent behaviour’.²¹⁶

²¹⁰ Evidence, Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, 1 December 2017, p 17.

²¹¹ Evidence, Mr Heffernan, 5 December 2017, p 21.

²¹² Evidence, Ms Moldrich, 5 December 2017, p 8.

²¹³ For example, Evidence, Mr Tony Battaglione, Chief Executive, Winemakers’ Federation of Australia, 1 December 2017, p 42; Evidence, Mr Wagstaff, 1 December 2017, pp 43; Submission 10, Lion Beer Australia, p 8 and 15.

²¹⁴ Evidence, Mr Taylor, 1 December 2017, p 16; see also Submission 11, Alcohol Beverages Australia, p 14.

²¹⁵ Submission 17, Brewers Association of Australia, p 6.

²¹⁶ Submission 17, Brewers Association of Australia, p 14.

- 2.20** The Brewers Association argued that targeted approaches focusing on reducing alcohol misuse within particular groups or populations are needed instead, stating: ‘Policy makers should, in our view, understand which groups experience harm or misuse alcohol and be able to focus interventions specifically on those groups’.²¹⁷
- 2.21** This view was shared by others,²¹⁸ including Mr John Scott, Chief Executive Officer, DrinkWise Australia, who described the ban on alcohol advertising a ‘fairly blunt instrument in trying to change people’s behaviour’.²¹⁹ Mr Scott argued that education and targeting at-risk groups would be more effective in addressing the objectives of the Bill: ‘... [E]ducating people about the dangers of drinking to excess, targeted at those people who are drinking poorly, is a much more successful route to follow’.²²⁰ Ms Moldrich, Outdoor Media Association, agreed, stating that ‘education works better than bans’.²²¹
- 2.22** Alcohol and advertising stakeholders also opposed the Bill because they argued that the existing legislative and policy framework is sufficient, fair and effective.²²² As Mr Tony Battaglione, Chief Executive, Winemakers’ Federation of Australia, stated: ‘... we do not need legislation for this. We have very good, effective policies in place. The ABAC Scheme works very effectively’.²²³
- 2.23** Likewise, Foxtel maintained that the current regulatory system ‘is more than sufficient’, arguing that the proposed legislation would be ‘oppressive and an unnecessary burden on Government resources’.²²⁴ Moreover, Foxtel considered the Bill to be ‘completely out of step with levels of community concern and ignores the ongoing efficacy of existing safeguards’.²²⁵ Alcohol advertising regulation is examined in Chapter 3.
- 2.24** Mr Paul Newson, Deputy Secretary, Liquor and Gaming NSW, argued that declining levels of alcohol consumption and alcohol-related violence indicate that current liquor laws are effective in addressing hazardous drinking behaviours. Mr Newson suggested that additional legislative interventions are therefore not necessary:

We have extensive powers under the existing New South Wales liquor laws. We apply those on a risk-based and intelligence-led basis, and we are quite confident in how we target, and the efficacy of that targeting. I think the results are demonstrated in some of the data I just stepped through.

...

²¹⁷ Submission 17, Brewers Association of Australia, p 14.

²¹⁸ For example, Submission 10, Lion Beer Australia, p 15; Submission 11, Alcohol Beverages Australia, p 2; Evidence, Mr Jules Norton Selzer, External Relations and Public Policy Manager, Diageo Australia, 5 December 2017, p 28.

²¹⁹ Evidence, Mr John Scott, Chief Executive Officer, DrinkWise Australia, 1 December 2017, p 25.

²²⁰ Evidence, Mr Scott, 1 December 2017, p 25.

²²¹ Evidence, Ms Moldrich, 5 December 2017, p 10.

²²² For example, Evidence, Mr Wagstaff, 1 December 2017, pp 42; Evidence, Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, 1 December 2017, p 43; Submission 14, Diageo Australia, p 5.

²²³ Evidence, Mr Battaglione, 1 December 2017, p 43.

²²⁴ Submission 32, Foxtel, p 2.

²²⁵ Submission 32, Foxtel, p 1.

I think that is a concise and fair assessment that there are very powerful, extensive provisions available to the Independent Liquor and Gaming Authority and Liquor and Gaming NSW that exist under the Liquor Act 2007 now. We exercise those appropriately; we exercise those strenuously when required. It is a fair assessment that additional powers are neither appropriate nor necessary at this time in our view.²²⁶

Impact on the alcohol industry

- 2.25** Among the chief concerns raised by stakeholders opposing the Bill is the impact the proposed legislation will have on the alcohol industry. In particular, inquiry participants discussed the calcification of the market, the inability of new players and products to enter the market, and the effect on small operators and businesses as well as employment and supply chains. Stakeholders also held serious concerns over the introduction of local option areas and its impact on businesses and communities alike.
- 2.26** The committee was not able to obtain a total value figure for the amount of money spent on alcohol advertising per year by members of the industry peak body, Alcohol Beverages Australia. However, Mr Taylor, Alcohol Beverages Australia, advised that:
- ... the monetary value of the industry's advertising [is] no longer ... the appropriate reckoner for assessing the amount of advertising done by the industry, due to the vastly reduced costs associated with online advertising, which has been and continues to be, an area of expansion for the industry.²²⁷
- 2.27** Nevertheless, alcohol representatives acknowledged that significant investment is made in advertising as it is fundamental to securing market share in a highly competitive environment, as outlined in Chapter 1. These inquiry participants therefore argued that the Bill's provisions banning alcohol advertising would impede competition and stagnate the market.²²⁸ As Mr Taylor put it: '... if you take away choice it is a difficulty for the industry in that it is not able to compete'.²²⁹
- 2.28** While Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, recognised that a ban on advertising might in fact be beneficial for established players within the industry, he argued that it would not be in the long-term interests of the industry: '... in the short term it might very well favour an entrenched player such as ourselves, but that is not in the broader industry's or society's interest, in our opinion'.²³⁰
- 2.29** Mr Wallwork asserted that to remove advertising would be to remove innovation and change within the market:
- ... it has the effect of calcifying the market in the sense that there is very little dynamism, new entrants – it discourages innovation. Just as entrepreneurs out there in

²²⁶ Evidence, Mr Newson, 1 December 2017, p 3.

²²⁷ Answers to questions on notice, Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, 8 January 2018, p 2.

²²⁸ For example, Submission 14, Diageo Australia, p 2; Submission 1, Brown-Forman, p 7.

²²⁹ Evidence, Mr Taylor, 1 December 2017, p 18.

²³⁰ Evidence, Mr Wallwork, 1 December 2017, p 50.

the 130 craft distilleries in Australia would want to get into the market, so we would also like to innovate and change the market for the better.²³¹

- 2.30** Mr Wagstaff, Distilled Spirits Industry Council of Australia, expressed a similar view, drawing attention to the French advertising ban, and highlighted the potential impact on new market entrants seeking to establish and grow their brands:

One of the benefits of advertising is that it allows new entrants into the marketplace ... I think bans on alcohol advertising would have the unintended consequence of making it more difficult for those new entrants to attract attention to their brands ... [I]n France the marketplace has stayed pretty much the same since they brought in alcohol-banning restrictions because it is very difficult to get brand-switching without brand marketing, so it actually favours the incumbent players, the people who have the brand recognition already'.²³²

- 2.31** Others also spoke of the likely effects not only on new market entrants but on established brands to introduce new products as part of the premiumisation trend,²³³ which would in turn result in a 'narrowing of consumer choice'.²³⁴

- 2.32** Mr Battaglione, Winemakers' Federation of Australia, advised the committee that the Bill would be especially damaging to smaller businesses in the wine sector, explaining that advertising 'gets people to the cellar door':

We have a lot of small businesses in the wine sector. You have probably all been to the Hunter Valley; 40 per cent of the Hunter Valley's production is sold at the cellar door. Advertising gets people to the cellar door but there is a lot of competition out there.²³⁵

...

... [The proposed restrictions in the Bill] potentially means that you could not advertise anything to do with your brand, so you could not bring it to your cellar door or anywhere to the region based on wine. I think it would have serious effects.²³⁶

- 2.33** Likewise, the Outdoor Media Association argued that the prohibition of advertising would threaten existing and emerging small businesses who rely on advertising to establish their market:

There is an increasing number of small boutique businesses selling craft beers, wine and liquor that rely on brand advertising to create their market. These businesses often generate local tourism. Advertising is required for emerging businesses to reach

²³¹ Evidence, Mr Wallwork, 1 December 2017, p 50.

²³² Evidence, Mr Wagstaff, 1 December 2017, pp 47.

²³³ For example, Submission 1, Brown-Forma Australia, p 7; Evidence, Mr Holland, 5 December 2017, pp 29-30; Evidence, Mr Sheezel, 5 December 2017, p 30.

²³⁴ Submission 1, Brown-Forma Australia, p 7.

²³⁵ Evidence, Mr Battaglione, 1 December 2017, p 43.

²³⁶ Evidence, Mr Battaglione, 1 December 2017, p 52; see also Submission 5, New South Wales Wine Industry Association, p 1.

potential customers and build awareness. Advertising bans make it incredibly difficult for small businesses to compete with existing well-known brands.²³⁷

- 2.34** Mr Taylor, Alcohol Beverages Australia, supported this view and maintained that the ‘smaller end of the industry’ would be ‘destroyed’ under the Bill:

We have a wealth of really exciting and interesting craft distillers and brewers and, of course, thousands of small vineyards operating right across the country—hundreds of them in New South Wales. If you take away the ability to advertise, those businesses wither up and die overnight because there is no way that they can establish themselves in the marketplace and gain a foothold ... So you would actually be consolidating the power of the business at the very high end with the established brands.²³⁸

- 2.35** Some such as Mr Jules Norton Selzer, External Relations and Public Policy Manager, Diageo Australia, highlighted the impact on employment and the supply chain, particularly in regional communities:

Reiterating the points around the direct economic employment at those distilleries and the supply chain in rural communities, Bundaberg Rum is one of our brands and we are a significant employer in that local community.²³⁹

...

It comes into the supply chain of the individual business ... and if, for example, a consumer through advertising chooses to drink a Johnnie Walker whiskey over a beer, that correspondingly may affect our businesses directly but also the supply chain where we source from ... I can only speak from a Diageo perspective, but the advertising is to encourage that switch and that has a knock-on effect in our business and our supply chain.²⁴⁰

- 2.36** The alcohol industry also expressed deep concerns over the provisions within the Bill allowing for the declaration of local option areas. According to Mr Fergus Taylor, Alcohol Beverages Australia, this aspect of the Bill would ‘decimate’ businesses and come at an immense cost to the community:

... if you are talking about local options, that would decimate thousands of businesses and it would cost thousands of jobs. If you were to suddenly say in my local government area of Marrickville that you are not allowed to sell, deliver or publicly consume alcohol, you would instantly put hundreds of restaurants, craft breweries, pubs, clubs and sporting clubs out of business. They would not be able to survive. The cost to the community would be immense. But most importantly, for the industry this represents a vilification of the industry that is at odds with the industry's objective and is at odds with the way the majority of people enjoy our products.²⁴¹

- 2.37** Alcohol Beverages Australia questioned the provisions for local option areas given the ‘considerable consequences for communities, small businesses and industry’, stating: ‘It is

²³⁷ Submission 34, Outdoor Media Association, p 7.

²³⁸ Evidence, Mr Taylor, 1 December 2017, p 18.

²³⁹ Evidence, Mr Norton Selzer, 5 December 2017, p 30.

²⁴⁰ Evidence, Mr Norton Selzer, 5 December 2017, p 24.

²⁴¹ Evidence, Mr Taylor, 1 December 2017, p 22.

unclear the exact nature of the issues that Local Options is aiming to tackle'.²⁴² Alcohol Beverages Australia argued that if this provision seeks to reduce alcohol-related harm or address local alcohol-related issues, other targeted solutions would be more appropriate.²⁴³

- 2.38** The Brewers Association of Australia also disapproved of local option areas, asserting that a range of other measures directed at 'creating safer entertainment precincts', such as effective venue design to remove 'frustration factors', would be a 'far more progressive, positive and effective approach than ... the extreme measure of prohibiting alcohol across entire suburbs'.²⁴⁴ The Association, among others,²⁴⁵ maintained that '[p]rohibition has never been an effective policy response and ignores the real drivers underpinning alcohol misuse'.²⁴⁶

Impact on the advertising industry

- 2.39** Concerns were also raised during the inquiry about the impact of the Bill on the advertising industry. These concerns include the loss of revenue to the industry and the implications for national campaigns. Other negative consequences, such as the impact on government revenue and the additional burden on public resources to regulate alcohol advertising, were also discussed.
- 2.40** According to the Australian Association of National Advertisers, the advertising, marketing and media industry plays a 'fundamental economic role in society' – it drives consumer choice and, by promoting competition, 'helps consumers get better value for money'.²⁴⁷ The committee was told that the industry contributes \$40 billion to the Australian economy annually.²⁴⁸
- 2.41** The committee received evidence that the industry landscape is a 'rapidly changing space', with advertising on traditional media, such as television, being 'flat and going backwards' in recent times, while advertising on digital and online media has experienced 'significant growth'.²⁴⁹ The Outdoor Media Association (OMA) explained the advertising 'pie' and, in particular, the exception of out-of-home or outdoor advertising when it comes to traditional media trends:

What we are seeing is the pie growing marginally, at between 2 per cent and 5 per cent in the past five years. The pie is growing, but where the bigger slice of that is changing is online. Online is nearly 50 per cent of that pie. If you looked at that pie six years ago it would have been television and newspapers. It is rapid movement into a new area of advertising that is far more specific and targeted. In terms of out-of-home, we are getting our fair share of that growth – 1 per cent of it. But we are not going backwards.²⁵⁰

²⁴² Submission 11, Alcohol Beverages Australia, p 18.

²⁴³ Submission 11, Alcohol Beverages Australia, p 18.

²⁴⁴ Submission 17, Brewers Association of Australia, pp 13-14.

²⁴⁵ For example, Submission 13, Australian Hotels Association NSW, p 2.

²⁴⁶ Submission 17, Brewers Association of Australia, p 14.

²⁴⁷ Submission 26, Australian Association of National Advertisers, p 2.

²⁴⁸ Submission 26, Australian Association of National Advertisers, p 4.

²⁴⁹ Evidence, Mr Bruce Meagher, Group Director – Corporate Affairs, Foxtel, 5 December 2017, p 17.

²⁵⁰ Evidence, Ms Moldrich, 5 December 2017, p 17.

- 2.42** The OMA advised that 3.4 per cent of its revenue is derived from alcohol advertising across Australia. They argued that this represented a ‘significant amount in an \$800 million industry’,²⁵¹ and one that is not easily replaced. Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association, stated that the ban would therefore have significant flow-on effects on a range of stakeholders.²⁵² For example, Ms Moldrich argued that passage of the Bill, which currently only captures traditional media, would mean that ‘digital media companies such as Google and Facebook stand to benefit as the bans shift advertising dollars from traditional channels to new media’.²⁵³
- 2.43** Ms Moldrich also asserted that there is not an immediate recovery when advertising is withdrawn, citing the prohibition of tobacco advertising as an example: ‘...when cigarette advertising bans happened the industry went down and it took three to five years for that vacuum to be filled’.²⁵⁴
- 2.44** Others highlighted the impact of the Bill on advertising services and campaigns run nationally, and its place as state legislation in an essentially federally regulated industry.
- 2.45** For example, Mr Bruce Meagher, Group Director – Corporate Affairs, Foxtel, stated that restrictions on alcohol advertising in New South of Wales would effectively constitute restrictions on a national level. He argued that subscription services such as Foxtel would be ‘disproportionately affected’ by the proposed legislation:
- ... given the nature of our service, most of our subscribers are on a national satellite platform. The effect of New South Wales legislating to prevent this form of advertising would create a national ban for us. We are not able to insert local advertisements, unlike other media. Therefore, we would be disproportionately affected by this bill.²⁵⁵
- 2.46** Mr Meagher explained that, at a practical level, Foxtel does not broadcast different feeds for different states as, on the satellite platform in particular, it simply cannot. Therefore Mr Meagher reiterated that ‘[i]f there is regulation in a particular State it is de facto national regulation as far as we are concerned’.²⁵⁶
- 2.47** Ms Moldrich, Outdoor Media Association, described this effect on national advertising campaigns, stating:
- ... if you are looking at a ban in New South Wales ... we sell campaigns nationally. This will have a knock-on effect to national campaigning because people are not going to say, ‘We aren't going to buy New South Wales.’ They are going to say, ‘We're not going to buy Australia.’²⁵⁷

²⁵¹ Evidence, Ms Moldrich, 5 December 2017, p 11.

²⁵² Evidence, Ms Moldrich, 5 December 2017, p 17.

²⁵³ Evidence, Ms Moldrich, 5 December 2017, p 8.

²⁵⁴ Evidence, Ms Moldrich, 5 December 2017, p 11.

²⁵⁵ Evidence, Mr Meagher, 5 December 2017, p 10.

²⁵⁶ Evidence, Mr Meagher, 5 December 2017, p 16.

²⁵⁷ Evidence, Ms Moldrich, 5 December 2017, p 11.

- 2.48** In addition, the Australian Association of National Advertisers commented on state-based, product-specific regulation and the difficulty of having a fragmented regulatory approach to an industry that crosses platforms and state boundaries:

When dealing with an industry that operates across a range of media, and particularly where consumers can access the same or similar material across a range of platforms, it is an expensive burden on industry to impose different regulatory requirements depending on the media used, the product category or the geographical location of the material. The national, platform neutral coverage the self-regulatory system delivers is far preferable to delivering protections and benefits for consumers than a fragmented regulatory approach.²⁵⁸

- 2.49** As such, Mr Meagher suggested that legislation of this kind be considered at the Commonwealth level given that advertising is a federally regulated industry.

Our interaction at a regulatory level has been with the Commonwealth because it has always regulated media. If there are to be changes along these lines, it would be more appropriate it be done in that forum, with all due respect to the New South Wales Parliament.²⁵⁹

- 2.50** The regulation of the advertising industry is considered in greater detail in Chapter 3.

Other impacts

- 2.51** The Outdoor Media Association (OMA) highlighted other potential impacts of the proposed legislation.

- 2.52** For example, Ms Moldrich argued that the Bill will ‘adversely impact the New South Wales economy’, including significantly reducing government revenue.²⁶⁰ In their submission, the OMA stated that the NSW Government is earning ‘regular and considerable revenue through out-of-home [OOH] advertising’.²⁶¹ They reported that Roads and Maritime Services and Sydney Trains, for example, collectively reported \$47 million in advertising revenue for 2015-2016. The OMA advised: ‘That \$47 million was reinvested into road safety and public transport, and OOH signs were used to deliver road safety and driver awareness campaigns’.²⁶²

- 2.53** Ms Moldrich also informed that the Bill ‘could impact on the contracts that bill essential community infrastructure to the value of \$162.2 million’.²⁶³

- 2.54** In addition, the OMA asserted that the Bill poses an ‘additional administrative burden on the public service’,²⁶⁴ with significantly more resources being required for advertising determinations and the enforcement of local area laws.²⁶⁵

²⁵⁸ Submission 26, Australian Association of National Advertisers, pp 4-5.

²⁵⁹ Evidence, Mr Meagher, 5 December 2017, p 10.

²⁶⁰ Evidence, Ms Moldrich, 5 December 2017, p 8.

²⁶¹ Submission 34, Outdoor Media Association, p 6.

²⁶² Submission 34, Outdoor Media Association, p 6.

²⁶³ Evidence, Ms Moldrich, 5 December 2017, p 8.

²⁶⁴ Submission 34, Outdoor Media Association, p 7.

²⁶⁵ Submission 34, Outdoor Media Association, p 7.

- 2.55** Mr Wagstaff, Distilled Spirits Industry Council of Australia, spoke of other potential unintended consequences of the Bill, explaining that the service industries may also potentially be affected by the Bill, stating:

The other example could be that employment drops in service industries. There is a large number of small marketing firms who do creative material for the alcohol industry. Clearly if that was not available they would have to find other things to do – they may well be able to do that or they may not.²⁶⁶

Support for the Bill

- 2.56** In contrast to those stakeholders who voiced their opposition to the Bill during the inquiry, others expressed their support for the proposed legislation.²⁶⁷ These inquiry participants include representatives from the health and advocacy sectors who see the Bill as an opportunity for New South Wales to ‘lead the country in making reforms to improve the health of Australians’.²⁶⁸

- 2.57** Indeed, according to NSW ACT Alcohol Policy Alliance (NAAPA), while ‘alcohol is first and foremost a health issue ... business interests continue to be prioritised over the interest of public health and community wellbeing’.²⁶⁹ NAAPA expressed hope that the passage of the Bill into law would finally provide the opportunity to focus on harm minimisation and public health and wellbeing.²⁷⁰

- 2.58** In particular, inquiry participants who supported the Bill were overwhelmingly in favour of the Bill’s restrictions on alcohol advertising.²⁷¹ For example, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, supported the general principals of the Bill and expressed the view that the Bill’s strengths are in the provisions relating to advertising:

The general principles of the bill are absolutely fantastic and we support them. We just felt that the strength of the bill was in the intended controls on alcohol marketing. There is an enormous evidence base to support effective controls on alcohol marketing.²⁷²

- 2.59** As outlined in Chapter 1, stakeholders from the health and advocacy sectors highlighted significant concerns about the nature and prevalence of alcohol advertising and its impact on

²⁶⁶ Evidence, Mr Wagstaff, 1 December 2017, p 47.

²⁶⁷ For example, Evidence, Ms Anita Dessaix, Director, Cancer Prevention and Advocacy Division, Cancer Council NSW, 5 December 2017, p 36; Evidence, Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, 5 December 2017, p 36.

²⁶⁸ Evidence, Mr Moore, 5 December 2017, p 36.

²⁶⁹ Submission 9, NSW ACT Alcohol Policy Alliance, p 13.

²⁷⁰ Submission 9, NSW ACT Alcohol Policy Alliance, p 13.

²⁷¹ For example, Submission 3, Cancer Council NSW, p 2; Submission 9, NSW ACT Alcohol Policy Alliance, p 1; Submission 24, Public Health Association of Australia, p 5; Submission 7, Australasian College for Emergency Medicine, p 3.

²⁷² Evidence, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, 1 December 2017, p 32.

drinking behaviours, particularly among young people. They argued that alcohol marketing reinforces a drinking culture that has become acceptable and even celebrated while public health messages are being drowned out. Moreover, stakeholders argued that the health impacts and social costs of alcohol consumption are too great, such that any means by which alcohol is promoted should be removed.

- 2.60** This position was put forward by Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, who argued not for the prohibition of alcohol but for the prohibition of its promotion. She questioned the need to advertise a substance that causes so much harm:

We are not proposing alcohol prohibition in any shape or form because that would then turn alcohol into an illicit drug with all the harms that go along with the illegal status of drugs – the criminalisation and marginalisation of individuals. But it does not make sense to be promoting a substance that is known to have so many harms, particularly to young people who are a particularly vulnerable group.²⁷³

- 2.61** Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, shared this view, stating:

... though the research is showing the harm associated with alcohol, what we want to do is not go for a prohibitionist approach; what we want to do is try and tackle the harm associated with alcohol, and the restriction on advertising is one of the ways that we would do that.²⁷⁴

- 2.62** Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, also identified restrictions on alcohol advertising as but one necessary step towards reducing alcohol-related harm. He questioned how much of this harm our society is willing to accept before acting upon it:

I do not think it is debated that alcohol can cause harm. The question in our mind is how much harm is our society prepared to accept. In respect of hospitalisations, ask yourself and think of a number in your head how many hospitalisations per day or per hour is acceptable in New South Wales. Is five or six an acceptable number? There are 150 hospitalisations every day at this point in time. We can improve that situation a lot. From a public health point of view it will still be too high. Advertising is one piece of the puzzle. Supply and cultural factors and pricing are others, but it is definitely a key piece in the puzzle.²⁷⁵

- 2.63** In addition, Ms Stafford advised that restrictions on alcohol advertising are in fact an internationally supported response to the misuse of alcohol, stating ‘... alcohol marketing restrictions have been identified by the World Health Organisation (WHO) as one of three “best buys” to address harmful alcohol abuse’.²⁷⁶

- 2.64** Cancer Council NSW explained that the WHO ‘best buys’ are ‘cost effective and feasible interventions’ identified by the WHO to prevent and control the impact of alcohol

²⁷³ Evidence, Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 60.

²⁷⁴ Evidence, Mr Moore, 5 December 2017, p 39.

²⁷⁵ Evidence, Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, 1 December 2017, p 35.

²⁷⁶ Evidence, Ms Stafford, 1 December 2017, p 31.

consumption on mortality and morbidity. Cancer Council NSW advised that the WHO recommendation states:

Enact and enforce bans or comprehensive restrictions on exposure to alcohol advertising across multiple types of media. This requires the capacity for implementing and enforcing regulations and legislation.²⁷⁷

- 2.65** According to Cancer Council NSW, ‘it is within the remit of the NSW Government to enact and enforce bans or comprehensive restrictions on alcohol advertising’, with the organisation therefore welcoming the provisions in the Bill prohibiting alcohol advertising.²⁷⁸
- 2.66** During the inquiry, supporters of the Bill also argued that there is significant community support for action to address alcohol advertising.²⁷⁹ For example, Ms Ferguson, Foundation for Alcohol Research and Education, stated that ‘alcohol advertising is an issue that Australians care about’.²⁸⁰
- 2.67** Indeed, according to the Australian Institute of Health and Welfare, the National Drug Strategy Household Survey (NDSHS) found that, in New South Wales, limiting alcohol advertising on television until after 9.30 pm received fairly high support, with 72 per cent of people supporting this measure. In addition, the NDSHS found that 54 per cent supported banning alcohol sponsorship.²⁸¹
- 2.68** Similarly, Ms Ferguson reported that recent market research data revealed that 81 per cent of Australians believe that the alcohol industry should not be allowed to advertise alcoholic beverages during children’s television viewing times.²⁸² The data also showed that 64 per cent of Australians agree that Australia’s political leaders should be doing more to address the issue of alcohol sponsorship in sport.²⁸³
- 2.69** Given this support for greater restrictions on alcohol advertising, Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, argued that ‘there is every reason to be optimistic. We can have change’.²⁸⁴ She maintained that that there is a ‘general sense of concern’ among parents that exposure of their children to alcohol advertising is not appropriate. She advised: ‘... there is every reason that support should be growing and we should be optimistic about progress’.²⁸⁵

²⁷⁷ Submission 3, Cancer Council NSW, p 4, quoting World Health Organization, *Best Buys and Other Recommended Interventions for the Prevention and Control of Non Communicable Diseases*, The updated Appendix 3 of the WHO Global NCD Action Plan 2013-2020.

²⁷⁸ Submission 3, Cancer Council NSW, p 5.

²⁷⁹ For example, Submission 31, St Vincent’s Health, p 3; Submission 7, Australasian College for Emergency Medicine, p 2.

²⁸⁰ Evidence, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 1 December 2017, p 30.

²⁸¹ Submission 2, Australian Institute of Health and Welfare, p 7.

²⁸² Evidence, Ms Ferguson, 1 December 2017, p 30.

²⁸³ Evidence, Ms Ferguson, 1 December 2017, p 30.

²⁸⁴ Evidence, Professor Conigrave, 1 December 2017, p 59.

²⁸⁵ Evidence, Professor Conigrave, 1 December 2017, p 59.

Potential amendments to the Bill

2.70 Within the context of debate about the Bill during the inquiry, a number of stakeholders commented on particular elements of the proposed legislation and made recommendations as to how the Bill could be amended. This section considers these recommendations, which relate to digital media (including social media), restricting exposure to children and young people, the proposed Alcohol Advertising Prohibition Committee, and local option areas.

Digital media

2.71 A number of stakeholders commented on the omission of digital media (including social media) in the Bill's definition of 'telecommunication medium', which effectively limits the application of the Bill's prohibition on alcohol advertising to certain media platforms only, such as radio, print and television.

2.72 For example, while opposing the Bill as a whole, advertising representatives pointed out that the Bill does not extend to digital media and argued that if the proposed legislation were to be passed, all media platforms should be treated equally. As Ms Moldrich, Outdoor Media Association, asserted: '... if you are going to put up a bill then you need to use natural justice that covers all media ...'.²⁸⁶

2.73 Foxtel expressed concern about the inconsistency with which different media platforms are treated under the Bill, arguing that this would lead to unintended consequences:

Foxtel considers that it is inconsistent for online marketing to be treated in such stark contrast to all other marketing formats and that it is clear that this approach would lead to unintended consequences including undermining the purpose of the Bill and creating a regulatory bypass for advertisers.²⁸⁷

2.74 This criticism was also voiced by the Outdoor Media Association, which stated:

... while the Bill refers to traditional advertising channels, it ignores online advertising as part of its definition of a 'telecommunication medium'. In this way, the Bill demonstrates an inability or unwillingness to regulate online platforms while targeting ASX listed businesses that pay tax in Australia.²⁸⁸

2.75 Moreover, Ms Moldrich asserted that the Bill is 'out of step with the times' as it 'overlooks what is probably the most influential channel for today's youth'.²⁸⁹ She explained that, as a consequence, 'digital media companies such as Google and Facebook stand to benefit as the bans shift advertising dollars from traditional channels to new media'.²⁹⁰

2.76 Mr Bruce Meagher, Group Director – Corporate Affairs, Foxtel, shared this view, stating:

²⁸⁶ Evidence, Ms Moldrich, 5 December 2017, p 13.

²⁸⁷ Submission 32, Foxtel, p 4.

²⁸⁸ Submission 34, Outdoor Media Association, p 7.

²⁸⁹ Evidence, Ms Moldrich, 5 December 2017, p 8.

²⁹⁰ Evidence, Ms Moldrich, 5 December 2017, p 8.

We believe the necessary consequence of this sort of legislation is simply that the money would go elsewhere and those advertisements would continue to be placed in the online domain and not a platform such as ours.²⁹¹

- 2.77** Other inquiry participants also expressed support for the concept of tighter restrictions on alcohol advertising in digital media.
- 2.78** For example, the Burnet Institute discussed the rise of social media as a ‘powerful channel for alcohol brands to reach and engage with young people’, but argued that ‘current regulations are insufficient to address this’.²⁹² They asserted any changes to alcohol advertising regulation must include consideration of social media.²⁹³
- 2.79** Cancer Council NSW drew particular attention to online promotions, and argued that such advertising is pervasive. In particular, they identified a number of promotions on alcohol company websites that they argued are ‘easily accessible to children’, despite age gating mechanisms used to prevent minors from accessing the site.²⁹⁴ Cancer Council NSW therefore recommended that alcohol promotions be controlled ‘in all settings’.²⁹⁵
- 2.80** As previously mentioned, Cancer Council NSW also endorsed the recommendation of the World Health Organisation calling for restrictions on alcohol advertising across multiple types of media.²⁹⁶

Exposure of children and young people

- 2.81** As outlined in Chapter 1, inquiry participants discussed the exposure of children and young people to alcohol advertising. The alcohol industry, in particular, argued that there are already safeguards in place within the current regulatory framework to limit this exposure, which is considered in greater detail in Chapter 3.
- 2.82** However, a number of inquiry participants argued that the Bill would benefit from narrowing its focus to specifically restricting alcohol advertising directed at children and young people.
- 2.83** For example, the Royal Australasian College of Physicians argued that, given the impact on children and young people, a ban on alcohol advertising to which children and young people are exposed would be more effective and feasible than a complete prohibition on all alcohol advertising:

... there is ... a compelling case for statutory restrictions on alcohol advertising when or where this is directed at young people or where the exposure of young people to such advertising cannot be feasibly minimised or avoided.

²⁹¹ Evidence, Mr Meagher, 5 December 2017, p 10.

²⁹² Submission 16, Burnet Institute, p 1.

²⁹³ Submission 16, Burnet Institute, p 1.

²⁹⁴ Submission 3, Cancer Council NSW, p 10.

²⁹⁵ Submission 3, Cancer Council NSW, p 10.

²⁹⁶ Submission 3, Cancer Council NSW, pp 4-5.

... we believe that a Bill focusing on reducing the harms to young people would be highly effective, welcomed by the community, and more achievable than a proposal to ban all alcohol advertising.²⁹⁷

2.84 To this end, the College suggested that the ban could encompass restrictions on outdoor advertising of alcohol, including at sporting events and on public transport, together with a ban on alcohol industry sponsorship of sporting events, competitions and teams. These issues are discussed further in Chapter 4.

2.85 In explaining the College's support for narrowing the Bill's focus in this way, Professor Conigrave, Royal Australasian College of Physicians, commented that 'the low hanging fruit is to stop advertising to young people'.²⁹⁸ Professor Elizabeth Elliott, Royal Australasian College of Physicians, argued that this age group is particularly vulnerable to greater risk of harmful alcohol consumption at a time when their brains are still developing: '... alcohol affects the development and function of the brain, which continues to form and mature during adolescence'.²⁹⁹ Professor Conigrave added that it is also a critical time for forming habits, when the brain is still developing and a time when, for women, their bodies are particularly vulnerable to alcohol.³⁰⁰

2.86 While expressing its support for the Bill's objectives, McCusker Centre for Action on Alcohol and Youth also recommended limiting the scope of the Bill and directing its purpose to children and young people:

The Purposes of the Act ... are comprehensive. It is very important for governments to implement policies that will reduce risky alcohol consumption and alcohol-related harm in the community. However, we believe the Purpose of the Act would have more of an impact if it were narrowed to limiting exposure to young people and children to alcohol promotion. This is what the legislation addressing alcohol marketing should be aiming to achieve, and it is important for the Purpose of the Act to reflect that.³⁰¹

2.87 Mr Klarenaar, NSW ACT Alcohol Policy Alliance, shared this view, arguing that a narrower focus would facilitate more effective implementation of the Bill:

... I do agree with that logic, that the purposes of the bill, as stated, are valid purposes. But in terms of operationalising the bill and having it mean something in terms of implementation, breaking it down to one strong purpose or a focused remit is a more pragmatic way to implement it.³⁰²

2.88 Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, added: 'Restrictions on alcohol marketing during times and in places which have high

²⁹⁷ Submission 21, Royal Australasian College of Physicians, p 2.

²⁹⁸ Evidence, Professor Conigrave, 1 December 2017, p 57.

²⁹⁹ Evidence, Professor Elizabeth Elliott AM, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 56; see also Submission 27, Australian Medical Association (NSW), p 2.

³⁰⁰ Evidence, Professor Conigrave, 1 December 2017, p 57.

³⁰¹ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 11.

³⁰² Evidence, Mr Klarenaar, 1 December 2017, p 32.

exposure to children and young people are an important part of the comprehensive approach needed to reduce alcohol-related harms.³⁰³

Industry representation on the Alcohol Advertising Prohibition Committee

- 2.89** As noted earlier, the Bill would establish an Alcohol Advertising Prohibition Committee (AAPC) to oversee the progressive removal of alcohol advertisements and the termination of relevant sponsorships. The committee is to comprise of five members, including one person nominated by the Outdoor Media Association.
- 2.90** A number of inquiry participants argued against the inclusion of industry representation on the AAPC, including the Royal Australasian College of Physicians which insisted: ‘... no one with any commercial interest in alcohol advertising should be represented in the Committee’.³⁰⁴
- 2.91** This view was also expressed by Ms Ferguson, Foundation for Alcohol Research and Education, who shared the World Health Organisation’s stance that ‘the alcohol industry is not in a position to develop policy due to its vested interests’.³⁰⁵ Ms Ferguson questioned whether industry representatives would have ‘the right intention, which is to reduce harm from alcohol’.³⁰⁶
- 2.92** Mr Klarenaar, NSW ACT Alcohol Policy Alliance, agreed, commenting that a position on the AAPC might represent a conflict of interest for the industry representative.³⁰⁷

Local option areas

- 2.93** During the inquiry, a number of stakeholders discussed the provisions within the Bill that allow for local option areas to be established. These inquiry participants, whether in support of the Bill or not, recommended that local option areas be considered separately to the issue of alcohol advertising.
- 2.94** For example, Mr Paul Newson, Deputy Secretary, Liquor and Gaming NSW, drew attention to the fact that the local option area provisions within the Bill intersect with existing powers under the *Liquor Act 2007*.³⁰⁸
- 2.95** Mr Newson explained that the Act provides extensive powers for regulations to be made around restricted alcohol areas by the Minister for Racing, based on the advice of the Independent Liquor and Gaming Authority (ILGA) who must determine whether that

³⁰³ Evidence, Ms Stafford, 1 December 2017, p 31.

³⁰⁴ Submission 21, Royal Australasian College of Physicians, p 7.

³⁰⁵ Evidence, Ms Ferguson, 1 December 2017, p 32.

³⁰⁶ Evidence, Ms Ferguson, 1 December 2017, p 36.

³⁰⁷ Evidence, Mr Klarenaar, 1 December 2017, p 36.

³⁰⁸ Evidence, Mr Newson, 1 December 2017, p 7.

intervention is appropriate.³⁰⁹ Mr Newson stated that ILGA must consult with a number of parties and be ‘satisfied that any such regulation would be in the public interest’.³¹⁰

2.96 Mr Newson argued that the key difference between the Bill’s local option area provisions and the existing powers in the *Liquor Act 2007* is their ‘disproportionate nature’, explaining:

Under the bill ... if there was 10 per cent of the community they could achieve that level of intervention in an area. There is absolutely an intersection with the current Liquor Act, but the Liquor Act has, I think, more appropriate controls around the exercise of those powers. ILGA, the independent body, needs to form a view that it is in the community interest. But they also need to be satisfied that the group that is advocating for this represents the majority, or the community, interest in the areas so a smaller voice, as strident as that voice is, cannot cause a disproportionate outcome on the balance of the community ... I would ask the Committee to have regard to looking at the intersection between what is proposed in the bill and existing powers which have appropriate safeguards and appropriate threshold tests before they are exercised.³¹¹

2.97 Other inquiry participants, while supportive of the intentions of the provision, also proposed that it be reconsidered, and examined separately to the alcohol advertising restrictions within the Bill. For example, the McCusker Centre for Action on Alcohol and Youth, argued that local option areas be examined in light of the existing provisions in the *Liquor Act 2007* and as distinct from the issue of alcohol advertising:

We strongly support the principle that the views of communities should be well-represented when it comes to the availability of alcohol in their local area. However, it may be more appropriate for the ‘local option areas’ to be considered separately to the issue of alcohol advertising regulation. We understand that section 115 of the *Liquor Act 2007 (NSW)* allows for the declaration of restricted alcohol areas and it is unclear to us how the proposal for ‘local option areas’ would fit with the broader liquor licensing laws and regulations. While we understand the importance of appropriate controls on the availability of alcohol, we encourage the ‘local option areas’ to be considered separately from the alcohol advertising issues.³¹²

2.98 Likewise, the Public Health Association of Australia viewed the issue of local option areas as ‘separate from alcohol promotion through advertising and sponsorship’.³¹³ Like the McCusker Centre, they also supported recognising community views on the availability of alcohol in local areas, but recommended that ‘this issue be dealt with in separate legislation to minimise confusion of the issue, and maximise the changes of success for each initiative’.³¹⁴

2.99 The NSW ACT Alcohol Policy Alliance (NAAPA) also shared this sentiment, highlighting the importance of ‘empowering and engaging local communities in licensing matters’.³¹⁵ However, NAAPA argued that ‘this goes beyond the Bill and should be addressed more broadly in the

³⁰⁹ Evidence, Mr Newson, 1 December 2017, p 7.

³¹⁰ Evidence, Mr Newson, 1 December 2017, p 7.

³¹¹ Evidence, Mr Newson, 1 December 2017, p 7.

³¹² Submission 23, McCusker Centre for Action on Alcohol and Youth, p 11.

³¹³ Submission 24, Public Health Association of Australia, p 5.

³¹⁴ Submission 24, Public Health Association of Australia, p 5.

³¹⁵ Submission 9, NSW ACT Alcohol Policy Alliance, p 15.

Liquor Act 2007, and in conjunction with the establishment of a Community Defender's Office to help individuals and communities 'navigate and interact with the liquor licensing system'.³¹⁶

A multipronged approach

2.100 In discussing the proposed legislation, stakeholders emphasised the need for a multipronged approach to addressing the misuse of alcohol and reducing alcohol-related harm, as part of the broader objective of promoting health and wellbeing. As the McCusker Centre for Action on Alcohol and Youth commented: 'A comprehensive approach is needed to have the greatest impact on alcohol-related harm'.³¹⁷ Some inquiry participants highlighted pricing as an issue as well as increased education and awareness about alcohol devoid of industry messaging.

2.101 For example, Mr Klarenaar, NSW ACT Alcohol Policy Alliance, asserted that 'education and information alone do not achieve anything – it needs to be combined with regulation, legislation, environmental changes and a holistic approach'.³¹⁸

2.102 Ms Ferguson, Foundation for Alcohol Research and Education, agreed, drawing attention to the success of tobacco control coming not just from a prohibition on advertising but a mix of strategies:

... I think it is also important to remind ourselves that the success of tobacco was not just with regard to advertising. The success of tobacco was also contributed to by the price signals, the availability and the strong health promotion campaigns that existed and currently exist with regard to tobacco control.³¹⁹

2.103 Similarly, Professor Elliott, Royal Australasian College of Physicians, commented on the complexity of the issues around alcohol-related harm and the need to consider a range of factors:

... we know prevention of harm is a complex issue and advertising is one component of that. But we also have to look, as we have with the tobacco industry, at pricing and taxation and availability through opening hours and the number of liquor outlets. This is one very important peg in the prevention campaign.³²⁰

2.104 For example, alcohol pricing was identified as a significant part of the mix. As Ms Ferguson succinctly put it: '... cheap alcohol is a problem'.³²¹

2.105 Professor Elliott argued that pricing significantly influences alcohol consumption such that '[w]ith a minimal increase in price you get a decrease in consumption ...'.³²² Professor

³¹⁶ Submission 9, NSW ACT Alcohol Policy Alliance, pp 15-16.

³¹⁷ Answers to questions on notice, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, 15 December 2017, p 1.

³¹⁸ Evidence, Mr Klarenaar, 1 December 2017, p 36.

³¹⁹ Evidence, Ms Ferguson, 1 December 2017, p 36.

³²⁰ Evidence, Professor Elliott, 1 December 2017, p 59.

³²¹ Evidence, Ms Ferguson, 1 December 2017, p 37.

³²² Evidence, Professor Elliott, 1 December 2017, p 61.

Conigrave concurred, advising that there is evidence to suggest that pricing would reduce alcohol-related harm, particularly among young people:

I believe there is good evidence it reduces alcohol-related harms, particularly in vulnerable populations like young people who typically have slightly less disposable income. I think the evidence is there.³²³

- 2.106** Accordingly, Ms Ferguson argued for the introduction of minimum unit floor pricing on alcohol, which is currently being considered in the Northern Territory and Western Australia. She explained that while the measure would not increase pricing on all alcohol, it would at least address the cheapest products in the retail market:

Where you would see the increase in price would be in the cheapest products. This is really targeted at the retail end—bottle shops where people are purchasing from packaged liquor off-licence as opposed to on-licence premises... So it really is that retail end of the market, which then goes towards the cask wine issue and the cheap alcohol products that exist.³²⁴

- 2.107** Ms Ferguson also raised concerns about heavily discounted alcohol – promotions of 50 per cent off or more – arguing that ‘hazardous drinkers will seek out the cheaper alcohol, and that is a concern’.³²⁵ Ms Ferguson pointed out that in other jurisdictions, pricing discounts are capped at 50 per cent.³²⁶

- 2.108** Further education and awareness, particularly around the health impacts of alcohol, was also raised as an important issue. For example, Ms Stafford, McCusker Centre for Action on Alcohol and Youth, asserted: ‘Education, legislation and regulation have significant roles in trying to reduce harmful alcohol use and changing the drinking culture’.³²⁷

- 2.109** Moreover, Ms Stafford argued that education campaigns should be designed and promoted by the health sector and government and not by industry:

Health experts and government agencies with expertise in and responsibility for health should be the ones who develop and run well-designed, research-based, well-funded health education campaigns – absolutely not the alcohol industry, which has a huge conflict of interest in this area.³²⁸

Committee comment

- 2.110** The committee acknowledges the wide range of arguments presented during the inquiry both in opposition to and in support of the proposed Bill, which aims to encourage a healthier lifestyle for all Australians.

³²³ Evidence, Professor Conigrave, 1 December 2017, p 61.

³²⁴ Evidence, Ms Ferguson, 1 December 2017, pp 38-39.

³²⁵ Evidence, Ms Ferguson, 1 December 2017, p 37.

³²⁶ Evidence, Ms Ferguson, 1 December 2017, p 37.

³²⁷ Evidence, Ms Stafford, 1 December 2017, p 36.

³²⁸ Evidence, Ms Stafford, 1 December 2017, p 36.

- 2.111** The committee notes the arguments of those stakeholders who believe that the Bill is unnecessary, overly restrictive, and inappropriate for meeting its stated objectives. In particular, the committee acknowledges concerns that the Bill will have a detrimental impact on the alcohol and advertising industries, and will lead to a range of unintended consequences.
- 2.112** We also note the evidence that there is significant community support for restrictions on alcohol advertising, especially when it comes to the exposure of children and young people to such advertising.
- 2.113** The committee is also appreciative of the views of stakeholders who suggested amendments to the Bill. We agree that any new form of regulation should encompass all media platforms, including digital media, particularly as technology and the means by which people are communicating continue to evolve. In addition, the committee agrees that local option areas should be considered separately to alcohol advertising, given its potential intersection with the *Liquor Act 2007*.
- 2.114** However, the committee is unpersuaded that the Bill, at least in its current form, is the appropriate way to meet the challenges posed to the community by alcohol and its advertising.
- 2.115** Therefore, the committee recommends that the Bill not be passed.
-

Recommendation 4

That the Alcoholic Beverages Advertising Prohibition Bill 2015 not be passed.

- 2.116** The committee acknowledges the arguments for narrowing the focus of the Bill to restrictions on alcohol advertising to which children and young people are particularly exposed.
- 2.117** In particular, the committee agrees with specific suggestions around reducing the exposure of children and young people to alcohol advertising by restricting alcohol advertising in sport and on government infrastructure and property. These issues are the subject of recommendations in Chapter 4.
- 2.118** Finally, the committee acknowledges the strong arguments in favour of a multipronged approach to addressing the misuse of alcohol and reducing alcohol-related harm, as part of the broader objective of promoting health and wellbeing among Australians. Addressing alcohol-related harm in our society is a highly complex issue, and the committee agrees that a mix of strategies, including legislation and education, will have the greatest impact, as was seen with tobacco control some three decades ago.

Chapter 3 Alcohol advertising regulation

This chapter considers the regulatory framework within which alcohol advertising operates in Australia. Central to this framework is the Alcohol Beverages Advertising Code (ABAC) Scheme, which will be examined both in its operation and effectiveness. DrinkWise Australia and its initiatives to promote responsible drinking will also be discussed. Finally, the chapter will consider key concerns raised by stakeholders relevant to how alcohol advertising is currently regulated. These concerns centre on the New South Wales Liquor Promotion Guidelines, the increasing use of social media, health warning labels, and safeguards for protecting children and young people.

The regulation of alcohol advertising

3.1 In Australia, alcohol advertising operates within what is described as a quasi-regulatory system.³²⁹ An amalgam of laws and codes of practice across government and industry regulate and guide the content and placement of alcohol advertising across a range of media platforms.³³⁰ A fundamental feature of this system is the Alcohol Beverages Advertising Code (ABAC) Scheme, which will be examined in greater detail later in the chapter.

The regulation of alcohol advertising at the national level

3.2 According to The ABAC Scheme Limited, the key elements of the regulatory framework that apply to alcohol advertising can be found in:

- Commonwealth and state legislation, including:
 - Australian Consumer Law, which applies to the marketing of all products and services, and establishes baseline requirements
 - legislation administered by the Australian Communications and Media Authority (ACMA), which endorses industry codes that place restrictions on alcohol advertising on free to air television
 - state liquor licensing laws, which regulate the retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing
- Industry codes of practice:
 - Alcohol Beverages Advertising Code (ABAC), which is an alcohol specific code of good marketing practice
 - Australian Association of National Advertisers (AANA) Code of Ethics, which provide a generic code of good marketing practice for most products and services, including alcohol
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice, which restricts when advertisements for alcohol beverages may be broadcast

³²⁹ Submission 20, The ABAC Scheme Limited, p 2; Answers to questions on notice, Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, 8 January 2018, Attachment 1 – ABAC Adjudication Panel Determination No. 122/17, pp 1-2.

³³⁰ Answers to questions on notice, Mr Taylor, 8 January 2018, Attachment 1 – ABAC Adjudication Panel Determination No. 122/17, pp 1-2.

- Outdoor Media Association (OMA) Code of Ethics, which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.³³¹

3.3 These codes address either the placement of alcohol advertising (that is, where the advertising is located or the medium by which it is accessed) or the content of alcohol advertising (regardless of where the advertising is placed), or deal with both.³³²

3.4 The ABAC, the AANA Code of Ethics, and the OMA Code of Ethics are voluntary.³³³

3.5 Ms Simone Brandon, Director of Policy and Regulatory Affairs, Australian Association of National Advertisers (AANA), described this regulatory framework as it applies to advertising in general and the role of industry within it:

The self-regulatory regime is a national system of restrictions which apply across State borders and to all media, including television, outdoor, company websites and the internet more broadly. This includes all social media and user-generated content over which the advertiser has reasonable control. Simply put, the codes apply to any medium, including new and emerging technologies.

...

The AANA, together with the Advertising Standards Bureau [ASB], represent two halves of Australia's system of advertising self-regulation ... The self-regulatory system operates at no cost to government or the consumer. The AANA is funded by its members and the ASB is funded by a levy on industry.³³⁴

3.6 With regard to complaints, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol advertising complaints to facilitate public access. Upon a complaint being received by the ASB, a copy of the complaint is given to the Chief Adjudicator of the ABAC. The complaint is independently assessed by both the ABAC Chief Adjudicator and the ASB, depending on the nature of the issues raised in the complaint. This means that a complaint may be considered by the ASB (under the AANA Code of Ethics) or the ABAC Panel (under the ABAC). On some occasions, a single complaint may lead to decisions by both the ASB and the ABAC Panel, if issues under both Codes are raised.³³⁵ As Ms Brandon explained:

... [T]he AANA Code of Ethics applies to all advertising, including alcohol advertising, and complaints are received by the ASB to ensure a simple complaint process for consumers. If the issue is specific to the Alcohol Beverages Advertising Code [ABAC], then the ABAC will make the determination and if it is a broader issue

³³¹ Answers to questions on notice, Mr Taylor, 8 January 2018, Attachment 1 – ABAC Adjudication Panel Determination N. 122/17, p 2.

³³² Answers to questions on notice, Mr Taylor, 8 January 2018, Attachment 1 – ABAC Adjudication Panel Determination N. 122/17, p 2.

³³³ Submission 20, The ABAC Scheme, p 5; Submission 26, Australian Association of National Advertisers, p 2; Outdoor Media Association, *Outdoor Media Association Code of Ethics* (2016), http://oma.org.au/__data/assets/pdf_file/0019/10855/Code_of_Ethics_2016.pdf.

³³⁴ Evidence, Ms Simon Brandon, Director of Policy and Regulatory Affairs, Australian Association of National Advertisers, 5 December 2017, p 9.

³³⁵ Answers to questions on notice, Mr Taylor, 8 January 2018, Attachment 1 – ABAC Adjudication Panel Determination N. 122/17, p 2.

relating to health and safety, violence, or the use of sexual appeal, the Advertising Standards Board can also make a determination.³³⁶

- 3.7** Given the mix of government and industry elements within this regulatory regime, Professor The Hon Michael Lavarch, Chief Adjudicator of the ABAC Adjudication Panel, The ABAC Scheme Limited, commented on the complexity of the current regime and suggested that the Alcoholic Beverages Advertising Prohibition Bill 2015 (the Bill) be carefully considered within this context:

It is quite complex and any piece of proposed State legislation or indeed Commonwealth legislation needs to be seen in the prism of that amalgam and whether it would add to the overall public policy outcomes of being sought or add complexities to it ...³³⁷

The regulation of liquor promotions in New South Wales

- 3.8** In addition to the requirements and obligations to which alcohol advertisement are subject at the national level, the *Liquor Act 2007* also restricts or prohibits certain types of liquor promotion in New South Wales. These restrictions apply to all licensed premises, as defined in the Act, that run liquor promotions.

- 3.9** Mr Paul Newson, Deputy Secretary, Liquor & Gaming NSW, explained the role of Liquor & Gaming NSW in this context:

The regulation of advertising is largely a Commonwealth matter. Our role, we fix on the conduct, activity and behaviour of liquor licensees in New South Wales... Our main focus is ... undesirable liquor products and undesirable liquor promotions and activity [on licensed premises].³³⁸

- 3.10** Mr Newson advised that the 'key mechanism' by which Liquor & Gaming NSW guides the market is the Liquor Promotion Guidelines, which indicate the types of liquor promotion activity that are considered undesirable and are therefore restricted or prohibited. As Mr Newson stated: '[The Guidelines] provide instruction for the industry and the community, citizens, as to the type, nature and tone of liquor promotions that we, as the regulator, deem as acceptable within the regulatory framework'.³³⁹

- 3.11** Last updated in 2013, the Guidelines include the following principles:

1. The promotion must not have a special appeal to minors because of the design, names, motifs or characters in the promotion that are, or are likely to be, attractive to minors or for any other reason.
2. The promotion must not be indecent or offensive.

³³⁶ Evidence, Ms Brandon, 5 December 2017, p 9.

³³⁷ Evidence, Professor The Hon Michael Lavarch, Chief Adjudicator of the ABAC Adjudication Panel, The ABAC Scheme Limited, 1 December 2017, p 9.

³³⁸ Evidence, Mr Paul Newson, Deputy Secretary, Liquor & Gaming NSW, 1 December 2017, p 6.

³³⁹ Evidence, Mr Newson, 1 December 2017, p 4.

3. The promotion must not involve the use of non-standard measures that encourage irresponsible drinking and is likely to result in intoxication.
4. The promotion should not involve the provision of free drinks or extreme discounts or discounts for a limited duration that creates an incentive for patrons to consume liquor more rapidly than they otherwise might.
5. The promotion should not otherwise encourage irresponsible, rapid or excessive consumption of liquor.
6. The promotion should not be otherwise considered to not be in the public interest.³⁴⁰

3.12 While the proposed Bill does not apply to alcohol advertising on licensed premises,³⁴¹ the Liquor Promotion Guidelines were raised by some stakeholders during the inquiry who argued that Guidelines should be strengthened and their scope broadened to reflect the proposed restrictions in the Bill. This issue will be considered later in the chapter.

Is the current regulatory system effective?

3.13 A number of inquiry participants discussed the adequacy and effectiveness of the current alcohol advertising regulatory system. Representatives of the alcohol and advertising industries, for example, argued that the existing framework is flexible, responsive, robust and effective. Others, however, asserted that the regulatory system is compromised, weak and ineffective, with little demand for accountability. These viewpoints are addressed in turn below.

The industry position: an effective regulatory system

3.14 As discussed in Chapter 2, alcohol and advertising stakeholders strongly opposed the Bill, arguing it is unnecessary given the current regulatory system. These inquiry participants expressed deep support for and confidence in the existing regime, based on self-regulation. For example, Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association, stated:

The OMA is a strong supporter of Australia's system of self-regulation. It is a mature and robust framework that ensures that the content of all advertising across all media ... meets prevailing community standards and evolves to meet today's environment.³⁴²

3.15 Similarly, Diageo Australia advised: 'Diageo supports and advocates the principles of self-regulation of alcohol marketing as the most effective approach to maintaining high standards of responsible marketing'.³⁴³

3.16 While insisting that policy decisions around the most appropriate regulatory system for the Australian context is one for government, Professor Lavarch, The ABAC Scheme Limited, acknowledged the advantages of self-regulation, including its 'flexibility, responsiveness and a

³⁴⁰ Department of Industry, Liquor & Gaming NSW, *Liquor Promotion Guidelines*, July 2013.

³⁴¹ Alcoholic Beverages Advertising Prohibition Bill 2015, Part 2, Clause 6 (5)(c).

³⁴² Evidence, Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association, 5 December 2017, p 8.

³⁴³ Submission 14, Diageo Australia, p 5.

sense of ownership of the regulated community'.³⁴⁴ Others agreed and identified these as strengths of the current regulatory framework.

3.17 For example, the Australian Association of National Advertisers (AANA) argued that self-regulation of the advertising industry provides a 'flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations'.³⁴⁵

3.18 Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, shared this view and emphasised the importance of a regulatory regime that can keep pace with new media:

... [W]e see this as a clear advantage with a co-regulatory system that we can keep up to date with those advancements. My global chief executive, together with 11 of his peers, recently joined an announcement back in September to underline at a global level the industry will undertake a commitment to update all digital codes on a worldwide basis to reflect that changing media environment. We think that is something that is an opportunity afforded by a co-regulatory system that is not there relative to legislation.³⁴⁶

3.19 Some industry stakeholders highlighted the responsiveness of the system to meet changing community expectations. For example, the AANA explained that the current system was established because advertisers recognised 'that they have a responsibility to deliver marketing that is aligned to community standards and expectations'.³⁴⁷ The AANA advised that since then their codes have continued to evolve and adapt so as to reflect standards set by the community.³⁴⁸ This view was supported by others who argued that, ultimately, industry is acutely aware of and responds to community expectations because that is what is demanded of them.³⁴⁹

3.20 The sense of shared ownership within a self-regulated industry was also identified as a positive feature of the system. As the AANA explained: '... [S]elf-regulation is not the exclusive domain of any one particular body but the collective concern of many players, large and small'.³⁵⁰

3.21 Indeed, a number of representatives from the alcohol and advertising industries expressed their commitment to the standards set within the current regulatory framework as a reflection of their shared responsibility to market responsibly.³⁵¹ Of the ABAC Scheme in particular, Mr

³⁴⁴ Evidence, Professor Lavarch, 1 December 2017, p 10.

³⁴⁵ Submission 26, Australian Association of National Advertisers, p 2; see also Submission 14, Diageo Australia, p 5.

³⁴⁶ Evidence, Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, 1 December 2017, p 52.

³⁴⁷ Submission 26, Australian Association of National Advertisers, p 2.

³⁴⁸ Submission 26, Australian Association of National Advertisers, p 2.

³⁴⁹ For example, Evidence, Ms Moldrich, 5 December 2017, p 8; Evidence, Mr Bruce Meagher, Group Director – Corporate Affairs, Foxtel, 5 December 2017, p 17.

³⁵⁰ Submission 26, Australian Association of National Advertisers, p 2.

³⁵¹ For example, Evidence, Mr Wallwork, 1 December 2017, p 53; Submission 8, Distilled Spirits Industry Council Of Australia, p 1; Submission 34, Outdoor Media Association, p 3.

Fergus Taylor, Executive Director, Alcohol Beverages Australia, stated: ‘... the major players in the market, and the smaller players, have an obligation to honour it so that it will succeed’.³⁵² As Mr Alec Wagstaff, Chief Executive Officer, Distilled Spirits Industry Council of Australia, put it: ‘We have a system that is voluntary in name but is just as effective as a mandatory scheme’.³⁵³

3.22 These industry stakeholders argued that not only do their internal codes and guidelines incorporate or align with industry codes³⁵⁴ but that compliance rates with complaint determinations are 100 per cent.³⁵⁵ Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, commented on industry’s commitment by stating: ‘Frankly, we have very little difficulty complying with these codes because they only describe the standards that we would hold ourselves to in any event’.³⁵⁶

3.23 Inquiry participants also supported the current regulatory framework for its universality and platform-neutral approach. Ms Brandon, AANA, asserted:

The key to the self-regulatory system is universality. It applies to all advertisers across traditional and new media, ensuring that consumers can expect the same standards in advertising regardless of the product, the medium or the location.³⁵⁷

3.24 It is this quality that industry stakeholders insisted makes national self-regulation ‘far preferable to delivering protections and benefits for consumers than a fragmented regulatory approach’.³⁵⁸

3.25 Along similar lines, Mr Paul Newson, Deputy Secretary, Liquor & Gaming NSW, acknowledged the Commonwealth’s jurisdiction over advertising and argued that a national approach to such policy matters is preferable:

It really is a Commonwealth space ... Really, to get effective outcomes you need a coherent nationally coordinated approach. In any regime, whether it is liquor and gaming regulation or consumer protection, having disjointed State approaches causes more difficulty than it does assist. In our view, the best mechanism is to look at the national approach and look at the current model ...³⁵⁹

³⁵² Evidence, Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia, 1 December 2017, p 21.

³⁵³ Evidence, Mr Alec Wagstaff, Chief Executive Officer, Distilled Spirits Industry Council of Australia, 1 December 2017, p 46.

³⁵⁴ For example, Evidence, Mr Wagstaff, 1 December 2017, p 51; Evidence, Mr Wallwork, 1 December 2017, p 53; Evidence, Mr Meagher, 5 December 2017, p 12; Evidence, Mr Jules Norton Selzer, External Relations and Public Policy Manager, Diageo Australia, 5 December 2017, p 23.

³⁵⁵ For example, Evidence, Mr Brett Heffernan, Chief Executive Officer, Brewers Association of Australia, 5 December 2017, p 33; Evidence, Mr Dan Holland, External Relations Director, Lion Beer Australia, 5 December 2017, p 27; Evidence, Ms Moldrich, 5 December 2017, p 8. .

³⁵⁶ Evidence, Mr Wallwork, 1 December 2017, p 53.

³⁵⁷ Evidence, Ms Brandon, 5 December 2017, p 9.

³⁵⁸ Submission 26, Australian Association of National Advertisers, p 5.

³⁵⁹ Evidence, Mr Newson, 1 December 2017, pp 6-7.

The health and advocacy position: an inadequate regulatory system

3.26 While industry participants advocated for the self-regulation of alcohol advertising, non-industry participants maintained that the current self-regulatory system does not work and is failing the community at large. According to Ms Anita Dessaix, Director, Cancer Prevention and Advocacy Division, Cancer Council NSW, '[t]he regulation of alcohol advertising in New South Wales is weak and could be strengthened'.³⁶⁰

3.27 For example, St Vincent's Health Australia argued that the proliferation of alcohol advertising indicates that the existing self-regulatory regime is not stringent enough:

Alcohol marketing in Australia is more prolific than ever, with an unprecedented number of platforms for advertising including through social media and the sponsorship of sporting and cultural events. This pervasive nature of alcohol marketing is evidence of the ineffective regulation ... Features that appeal to minors, sexualised advertising and heavy discounting remain problems in NSW.³⁶¹

3.28 Similarly, the Royal College of Australasian Physicians asserted that '[t]here is a clear failure by both industry and parliaments in Australia to regulate alcohol advertising to the extent that would be regarded as satisfactory by the general public'.³⁶²

3.29 Indeed, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, drew attention to existing loopholes in the current system that provide for significant exposure to alcohol advertising, particularly among young people. She expressed disappointment that the recent Commercial Television Industry Code of Practice has maintained the ability for alcohol advertisements to be broadcast during sporting programs at any time:

It is quite unbelievable that the Commercial Television Industry Code of Practice was reviewed in the last couple of years and that that loophole has remained and actually expanded. The loophole was originally just that live sport could advertise alcohol. Now it is a much broader range of sporting programs. It is quite unbelievable that the code is now even more lenient for alcohol marketing.³⁶³

3.30 Alcohol advertising and sport will be examined in Chapter 4.

3.31 For a number of non-industry stakeholders, the weaknesses of the existing regime are rooted in its voluntary nature, where the operators are also effectively the regulators, and there is an absence of enforceable statutory standards. As the McCusker Centre for Action on Alcohol and Youth, explained:

³⁶⁰ Evidence, Ms Anita Dessaix, Director, Cancer Prevention and Advocacy Division, Cancer Council NSW, 5 December 2017, p 35.

³⁶¹ Submission 31, St Vincent's Health Australia, p 3.

³⁶² Submission 21, Royal Australasian College of Physicians, p 7.

³⁶³ Evidence, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, 1 December 2017, p 41.

The system is voluntary (non-signatories go unregulated), there appear to be no sanctions for advertisers breaching codes, decisions by the ABAC Scheme and the ASB are not directly enforceable and there is no monitoring function³⁶⁴.

3.32 This point was also made by Cancer Council NSW, who argued that ‘there is no onus on industry members to adhere to the Code, limiting its strength responding to complaints about alcohol advertising’.³⁶⁵ Moreover, they asserted that ‘the adjudication or management committees of the ABAC Scheme have no jurisdiction to enforce penalties for upheld complaints’.³⁶⁶

3.33 The Royal Australasian College of Physicians shared this view, asserting that because the system is not underpinned by legislation, sanctions cannot be enforced if there are breaches:

Current Australian regulations at the national level on alcohol advertising rely heavily on self-regulation in respect of both content and placement of advertising, and there is a lack of legally enforceable sanctions for instances when regulation breaches occur.

³⁶⁷

3.34 The College also questioned the credibility and effectiveness of the sanctions embedded in industry codes, reporting international evidence that self-regulated complaint processes are ‘ineffective at removing potentially harmful content’.³⁶⁸

3.35 Indeed, the College of Physicians noted that the ‘inadequacy of industry self-regulation of alcohol advertising is not a shortcoming peculiar to Australia’,³⁶⁹ citing evidence from other international jurisdictions which reveal that violations of content guidelines within industry codes were highly prevalent.³⁷⁰

3.36 Further evidence of the ineffectiveness of self-regulation was also provided by Dr Megan Lim, Deputy Program Director, Behaviour and Health Risks, Head of Sexual Health and Young People’s Health Research, Burnet Institute. She advised that a systematic review of literature provided strong evidence of how self-regulatory codes for alcohol advertisements are grossly inadequate:

All 44 studies reviewed identified alcohol marketing content that could be considered harmful to young people. Studies from 18 countries found high exposure to and awareness of alcohol advertising among youth despite the presence of self-regulatory codes. Youth exposure was observed to be increasing over time, as was the frequency of youth-oriented content. A second systematic review found very few complaints to industry-regulated codes were upheld.³⁷¹

³⁶⁴ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 3.

³⁶⁵ Submission 3, Cancer Council NSW, p 13.

³⁶⁶ Submission 3, Cancer Council NSW, p 13.

³⁶⁷ Submission 21, Royal Australasian College of Physicians, p 5.

³⁶⁸ Submission 21, Royal Australasian College of Physicians, pp 6-7.

³⁶⁹ Submission 21, Royal Australasian College of Physicians, p 6.

³⁷⁰ Submission 21, Royal Australasian College of Physicians, pp 6-7.

³⁷¹ Answers to questions on notice, Dr Megan Lim, Deputy Program Director, Behaviour and Health Risks, Head of Sexual Health and Young People’s Health Research, Burnet Institute, 20 December 2017, p 5.

The Alcohol Beverages Advertising Code (ABAC) Scheme

3.37 As noted earlier, a key feature of the quasi-regulatory system is the Alcohol Beverage Advertising Code (ABAC) Scheme. The Scheme is comprised of and responsible for three key components:

- The ABAC Scheme Code
- The Alcohol Advertising Pre-vetting Service (AAPS)
- The ABAC Adjudication Panel.³⁷²

3.38 The ABAC Management Committee manages and reviews the operation of the ABAC Scheme. It is comprised of the Chief Executive Officers of the Brewers Association of Australia, the Distilled Spirits Industry Council of Australia, the Winemakers' Federation of Australia, the Communications Council Limited, and a representative of the Australian Government (Assistant Secretary of the Commonwealth Department of Health).³⁷³

3.39 Professor The Hon Michael Lavarch, Chief Adjudicator of the ABAC Adjudication Panel, The ABAC Scheme Limited, explained the operation of the Scheme:

The scheme as a whole can be understood as having three parts. There is the actual code of practice. The responsibility of the code of practice flows from a management committee made up of representatives of the sponsoring alcohol peak bodies, the Communications Council of Australia and a representative of the Federal Department of Health ...

The second part of the scheme is the pre-vetting scheme, and this is the process where alcohol marketers can seek an independent verification of their proposed marketing against the standards contained in the code prior to the marketing being distributed ...

The third part is the public complaints process and that is the part which I am involved with. I receive, assess and lead a panel to determine whether a public complaint about a piece of alcohol marketing is or is not consistent against the standards laid down in the code.³⁷⁴

3.40 Membership of and compliance with the Scheme is voluntary. The ABAC Scheme Limited explained, however, that the individual members of the Brewers Association of Australia, Distilled Spirits Industry Council of Australia, and Winemakers' Federation of Australia have agreed to be bound by the Scheme. The ABAC Scheme Limited thus advised that 'the majority of alcohol advertising in Australia is regulated by the Scheme'.³⁷⁵

3.41 This was supported by Ms Jayne Taylor, Executive Officer, The ABAC Scheme Limited, who informed the committee that 90 per cent of advertising media spend in Australia and 60 per

³⁷² Submission 20, The ABAC Scheme Limited, pp 2-4.

³⁷³ Submission 20, The ABAC Scheme Limited, pp 4-5.

³⁷⁴ Evidence, Professor Lavarch, 1 December 2017, p 9.

³⁷⁵ Submission 20, The ABAC Scheme Limited, p 5.

cent of retailer advertising media spend are signatories to the Code.³⁷⁶ She also explained that while the Scheme is voluntary, key media peak bodies such as Free TV Australia and the Outdoor Media Association require its members to gain approval from the pre-vetting service before placing their alcohol advertisements.³⁷⁷

3.42 In terms of stakeholder views on the ABAC Scheme as a whole, a number of industry participants lauded the ABAC Scheme as the centerpiece of the existing regulatory framework. For example, Mr Wallwork, Brown-Forman Australia, regarded the Scheme as a ‘world-leading example of regulation of alcohol advertising’,³⁷⁸ while Mr Norton Selzer, External Relations and Public Policy Manager, Diageo Australia, similarly described the Scheme as a ‘robust, world-leading, independent framework’.³⁷⁹

3.43 Mr Taylor, Alcohol Beverages Australia, drew particular attention to social research conducted into ABAC’s performance to demonstrate its effectiveness and rigour. He advised that the research found ABAC’s rulings to be more conservative than the expectations and attitudes of the community. He concluded that ‘...if we are policing ourselves to the extent that the community thinks, we are going a bit hard on ourselves.’³⁸⁰

3.44 Other inquiry participants disagreed with the industry’s perception of the ABAC Scheme, criticising its lack of independence from the alcohol industry and inability to objectively determine what is acceptable alcohol advertising. For example, Ms Stafford, McCusker Centre for Action on Alcohol and Youth, highlighted the composition of the ABAC Management Committee and argued that it is almost wholly industry run:

All of the ABAC directors represent the alcohol industry and of the management committee three of the five management committee representatives are alcohol industry executives. It is almost solely developed and run by the alcohol industry. We can see that they have developed some provisions that suit how they want to market.³⁸¹

3.45 Similarly, the Royal Australasian College of Physicians commented on the absence of medical or health representation in the membership of the Management Committee.³⁸²

3.46 Meanwhile, Dr Lim, Burnet Institute, pointed to the funding of the Scheme by industry, arguing that there is an inherent conflict of interest as a result: ‘... it is all funded by the alcohol industry and I think that if someone is being funded by the alcohol industry you would have to question their conflicts of interest and their bias’.³⁸³

³⁷⁶ Evidence, Ms Jayne Taylor, Executive Officer, The ABAC Scheme Limited, 1 December 2017, p 14.

³⁷⁷ Evidence, Ms Taylor, 1 December 2017, p 14.

³⁷⁸ Evidence, Mr Wallwork, 1 December 2017, p 42.

³⁷⁹ Evidence, Mr Norton Selzer, 5 December 2017, p 23; see also Submission 17, Brewers’ Association of Australia, p 6.

³⁸⁰ Evidence, Mr Taylor, 1 December 2017, p 21.

³⁸¹ Evidence, Ms Stafford, 1 December 2017, p 40.

³⁸² Submission 21, Royal Australasian College of Physicians, pp 5-6.

³⁸³ Evidence, Dr Megan Lim, Deputy Program Director, Behaviour and Health Risks, Head of Sexual Health and Young People’s Health Research, Burnet Institute, 5 December 2017, p 5.

3.47 The three components of the Scheme, including stakeholder views specific to these components, are considered below.

The Code

3.48 The Code regulates the content and placement of alcohol advertising and packaging in Australia.³⁸⁴ According to The ABAC Scheme Limited, the Code aims to reflect community expectations and changes in the media and advertising industries.³⁸⁵ It applies to traditional forms of advertising (televisions, radio, print and outdoor) as well emerging digital and social media, including user-generated content by alcohol companies, point of sale advertisements and surrogate marketing over which an alcohol company has control.³⁸⁶

3.49 The key features of the Code providing specific restrictions on the content of alcohol advertising include:

- only portraying responsible and moderate use of alcohol beverages
- responsibility towards minors, including that advertisements must not have strong or evident appeal to minors or use actors that may appear to be underage (actors are required to be 25 year or older)
- responsible depiction of the effects of alcohol by not portraying alcohol as a means to sexual or social success, or change in mood
- not depicting the use of alcohol where it may reduce safety.³⁸⁷

3.50 From 1 November 2017, the Code was updated to include a set of placement rules to restrict exposure to minors, including:

- compliance with existing media-specific codes, including no outdoor advertisements within 150 meters of a school and limits on when advertisements can be placed on free-to-air television broadcasts (not between 5.00 am and 8.30 pm, with the exception of certain sports broadcasts)
- the use of age restriction controls available on a media platform to exclude minors from the audience
- the audience being at least 75 per cent adults
- no alcohol advertisements during programs or content primarily aimed at minors
- no email or mobile marketing to be sent to minors.³⁸⁸

3.51 Professor Lavarch, The ABAC Scheme Limited, explained the development of and updates to the Code:

³⁸⁴ Submission 20, The ABAC Scheme Limited, p 2.

³⁸⁵ Submission 20, The ABAC Scheme Limited, p 2.

³⁸⁶ Submission 20, The ABAC Scheme Limited, p 2.

³⁸⁷ Submission 20, The ABAC Scheme Limited, Annexure A, ABAC Responsible Alcohol Marketing Code, p 8.

³⁸⁸ Submission 20, The ABAC Scheme Limited, p 6.

The scheme came into being in 1988. In 2004 it was extended to the internet for the first time. In 2009 it was extended to packaging and brand names ... In 2014 there were giveaways and other competitions and promotions. There was also a redrafting to simplify some of the provisions and to give greater detail around what ‘strong and evident appeal to children’ meant. And 2017 is the most recent evolution which is to take the scheme from being purely content of what is in the marketing to content and placement, at least as far as it concerns appeal to children; that is, what is the potential audience of the advertising irrespective of its content.³⁸⁹

- 3.52** According to a number of alcohol and advertising industry stakeholders, the Code is stringent, thorough and effectively controlled.³⁹⁰ Alcohol Beverages Australia asserted that with the latest iteration of the Code, ‘the community can be confident that alcohol advertising and marketing in Australia will continue to be vigorously and successfully regulated by the strict, independent ABAC system’.³⁹¹
- 3.53** However, a number of other inquiry participants strongly disagreed, arguing that key elements of the Code that seek to reduce the appeal of alcohol advertising to children and young people and their exposure to it lack substance and are grossly insufficient. These arguments will be considered in greater detail later in the chapter as part of a broader discussion about the regulatory safeguards in place for protecting children and young people from alcohol advertising.

The Alcohol Advertising Pre-vetting Service

- 3.54** According to The ABAC Scheme Limited, the Alcohol Advertising Pre-vetting Service aims to identify inappropriate alcohol marketing before it reaches the market.³⁹² It does so by providing ‘independent, confidential advice to advertisers on whether proposed alcohol marketing complies with the Code’.³⁹³ In practice, pre-vettors approve, reject or suggest modification to material submitted to them for pre-vetting.³⁹⁴
- 3.55** The pre-vetting service is independent of the alcohol industry.³⁹⁵ It is offered on a ‘user pays’ basis to anyone seeking to advertise alcohol, including marketers who are not signatories to the Scheme.³⁹⁶
- 3.56** Signatories to the Scheme must pre-vet advertising in specific media categories, namely television, outdoor, cinema and radio, while other categories are optional, including print and digital.³⁹⁷

³⁸⁹ Evidence, Professor Lavarch, 1 December 2017, pp 13-14.

³⁹⁰ For example, Evidence, Mr Heffernan, 1 December 2017, p 31; Evidence, Mr Wagstaff, 1 December 2017, p 44; Evidence, Ms Moldrich, 5 December 2017, p 14.

³⁹¹ Submission 11, Alcohol Beverages Australia, p 7.

³⁹² Submission 20, The ABAC Scheme Limited, p 3.

³⁹³ Submission 20, The ABAC Scheme Limited, p 3.

³⁹⁴ Submission 20, The ABAC Scheme Limited, p 3.

³⁹⁵ Submission 20, The ABAC Scheme Limited, p 3.

³⁹⁶ Submission 20, The ABAC Scheme Limited, p 3.

³⁹⁷ Tabled document, The ABAC Scheme Limited, *The ABAC Scheme Limited Annual Report, 2016*, p 30.

- 3.57** Professor Lavarch, The ABAC Scheme Limited, advised that the majority of advertising spend goes through the pre-vetting process. He noted that while smaller operators using localised promotions may be the exception, ‘the things you see on your television screen or up on a billboard or in a magazine or major things through digital platforms, they certainly largely do go through pre-vetting’.³⁹⁸ Professor Lavarch informed the committee:

In 2016, for instance, there were over 1,400 examples of alcohol marketers running their material through the pre-vetting process prior to it becoming public ... I think something in the order of 10 per cent or 15 per cent of the matters that come through pre-vetting are either not approved or the marketer is told that modifications are required for the marketing to meet the ABAC standards.³⁹⁹

- 3.58** Professor Lavarch also highlighted the relationship between engaging in the pre-vetting service and the outcome of complaint determinations, stating:

... our experience ... has been that if something has gone through pre-vetting there is a much higher prospect that the complaint will be dismissed ... Where we make determinations about something breaching a piece of marketing, it tends more often to be something that has not gone through pre-vetting.⁴⁰⁰

The ABAC Adjudication Panel and complaints handling

- 3.59** The ABAC Adjudication Panel considers complaints made about alcohol advertising that fall within the jurisdiction of the Code.
- 3.60** As outlined earlier, the Advertising Standards Bureau (ASB) provides a single entry point for complaints in relation to all types of advertising. All alcohol-related complaints received by the ASB are then provided to the ABAC Adjudication Panel and considered by the Panel if they raise issues under the Code.⁴⁰¹
- 3.61** The ABAC Scheme Limited advised that the Adjudication Panel is ‘independent of the ABAC Management Committee and the broader alcohol and advertising industry’.⁴⁰² The Panel comprises the Chief Adjudicator, Professor Lavarch, a health sector panellist and a panellist with market research, media or advertising expertise.⁴⁰³
- 3.62** Professor Lavarch, The ABAC Scheme Limited, commented on the integrity of the determinations process and the Panel administering it, highlighting its independence from the alcohol industry:

From our perspective and from my perspective at the adjudication end of it, I am given and my panel members are given a code to apply. We do that in the best way that we can. We are independent of the alcohol industry. No member of the panel,

³⁹⁸ Evidence, Professor Lavarch, 1 December 2017, p 11.

³⁹⁹ Evidence, Professor Lavarch, 1 December 2017, p 10.

⁴⁰⁰ Evidence, Professor Lavarch, 1 December 2017, p 13; see also Evidence, Ms Tess Phillips, General Manager, Outdoor Media Association, 5 December 2017, p 14.

⁴⁰¹ Submission 20, The ABAC Scheme Limited, p 3.

⁴⁰² Submission 20, The ABAC Scheme Limited, p 3.

⁴⁰³ Submission 20, The ABAC Scheme Limited, pp 3-4.

including myself, has any commercial background, any relationship, any employment background whatsoever with the alcohol industry.

I can say that in my experience there has never been any suggestion of interference or resistance from alcohol industry participants in terms of the working of this scheme in our adjudication processes. I have never felt pressured at all in the operation of the complaints process.⁴⁰⁴

- 3.63** All complaint determinations made by the Adjudication Panel are reported to the ASB, the ABAC Management Committee, the advertiser and the complainant. They are also publicly available on the ABAC website.⁴⁰⁵
- 3.64** In 2016, 139 complaints were received by the ABAC Scheme.⁴⁰⁶
- 3.65** Professor Lavarch informed the committee that the Adjudication Panel and the complaints handling process is fully supported by industry, noting that in the 19 years of the Scheme's operation, there has only been one occasion when an advertiser has not acted on an adverse determination.⁴⁰⁷ As indicated earlier, other inquiry participants advised of a 100 per cent compliance rate with ABAC's complaints determinations. Professor Lavarch argued that the level of cooperation and compliance with determinations demonstrates the Scheme's success.⁴⁰⁸
- 3.66** However, a number of inquiry participants questioned the strength of a complaints handling process that operates within a self-regulated industry such as alcohol advertising. As Dr Lim, Burnet Institute, stated: 'I think the concept of having the industry regulating their own content is very flawed and problematic'.⁴⁰⁹
- 3.67** These stakeholders expressed concerns about the Panel's decision-making, highlighting the number of complaints that are upheld. For example, the Cancer Council NSW advised that, of the 139 complaints received by ABAC in 2016, the Panel 'undertook determinations on 34 complaints and 10 were upheld. This means only 7% of complaints were upheld. In 2015 there were 133 complaints of which 29 were acted on and seven upheld (5%)'.⁴¹⁰ Dr Lim asserted that the Adjudication Panel 'do very rarely reject advertisements that are reported to them'.⁴¹¹
- 3.68** The Cancer Council NSW argued that this indicates 'an inconsistency between alignment of community concerns with the limited coverage of the ABAC Scheme',⁴¹² and contrasts this with the outcomes of the Alcohol Advertising Review Board (AARB). This is an initiative coordinated in partnership between the McCusker Centre for Action on Alcohol and Youth

⁴⁰⁴ Evidence, Professor Lavarch, 1 December 2017, p 10.

⁴⁰⁵ Submission 20, The ABAC Scheme Limited, p 3.

⁴⁰⁶ Tabled document, The ABAC Scheme Limited, *The ABAC Scheme Limited Annual Report, 2016*, p 37.

⁴⁰⁷ Evidence, Professor Lavarch, 1 December 2017, p 10.

⁴⁰⁸ Evidence, Professor Lavarch, 1 December 2017, p 10.

⁴⁰⁹ Evidence, Dr Lim, 5 December 2017, p 4.

⁴¹⁰ Submission 3, Cancer Council NSW, p 13.

⁴¹¹ Evidence, Dr Lim, 5 December 2017, p 4.

⁴¹² Submission 3, Cancer Council NSW, p 13.

and the Cancer Council Western Australia. According to Ms Stafford, McCusker Centre for Action on Alcohol and Youth, the AARB ‘accepts and reviews complaints from the Australian community free of industry influence’.⁴¹³ She advised that it is aimed at ‘highlighting the weaknesses of the self-regulatory system and encouraging governments to implement independent legislative controls on alcohol marketing’.⁴¹⁴

- 3.69** The Cancer Council NSW highlighted that of the 194 complaints received by the AARB in 2015-2016, 108 were fully or partially upheld.⁴¹⁵

DrinkWise Australia

- 3.70** During the inquiry, attention was drawn to the alcohol industry’s efforts to promote responsible alcohol consumption and actively reduce underage drinking and alcohol-related harm. In particular, the committee received evidence about DrinkWise Australia, described by Mr Taylor, Alcohol Beverages Australia, as the industry ‘practising what we preach’.⁴¹⁶
- 3.71** Established in 2005, DrinkWise is a social marketing organisation with a mission to ‘change the culture of drinking in Australia to one that is healthier and safer’⁴¹⁷ by promoting campaigns that ‘seek to influence attitudes and behaviours’.⁴¹⁸ Mr John Scott, Chief Executive Officer of DrinkWise Australia, explained that the initiative was borne out of a summit where the alcohol industry ‘came away ... with the perception that they were part of the problem and needed to be part of the solution’.⁴¹⁹
- 3.72** Mr Scott advised that, upon its establishment, DrinkWise was funded by both the Australian Government and the alcohol industry.⁴²⁰ Today, it is fully funded by industry.⁴²¹
- 3.73** DrinkWise’s governance structure includes a Board of Directors comprising six industry representatives from the beer, wine, spirits and retail sector, and seven community representatives from a range of disciplines, including policing, education and public health. Mr Scott advised that the Chair must always be a community member ‘with the weight of numbers in the community half relative to the industry contributors’.⁴²²
- 3.74** Despite being industry-funded, Mr Scott informed the committee that DrinkWise operates independently of the alcohol industry with a clear mandate to educate consumers. He explained the organisation relative to Alcohol Beverages Australia, the industry peak body:

⁴¹³ Evidence, Ms Stafford, 1 December 2017, p 31.

⁴¹⁴ Evidence, Ms Stafford, 1 December 2017, p 31.

⁴¹⁵ Submission 3, Cancer Council NSW, p 13; Alcohol Advertising Review Board, *Annual Report 2015-2016*, p 1.

⁴¹⁶ Evidence, Mr Taylor, 1 December 2017, p 22.

⁴¹⁷ Evidence, Mr John Scott, Chief Executive Officer, Drinkwise Australia, 1 December 2017, p 24.

⁴¹⁸ Evidence, Mr Scott, 1 December 2017, p 25.

⁴¹⁹ Evidence, Mr Scott, 1 December 2017, p 28.

⁴²⁰ Evidence, Mr Scott, p 29.

⁴²¹ Evidence, Mr Scott, p 27.

⁴²² Evidence, Mr Scott, p 28.

DrinkWise was keen to concentrate its efforts on social marketing, changing attitudes and behaviours and not getting caught up in industry-specific issues. Alcohol Beverages Australia was established to look at those industry issues as an industry body so that DrinkWise could be independent to work on those education programs separate from industry-specific issues.⁴²³

- 3.75** Among DrinkWise's campaigns is 'Kids Absorb Your Drinking', which addressed the impact of parents' drinking behaviours on the attitudes of children,⁴²⁴ and 'Kids and Alcohol Don't Mix', which addressed the influence of alcohol on the developing brains of children. 'How to Drink Properly' is the latest campaign, driven by social media to relay messages about moderating alcohol consumption.⁴²⁵
- 3.76** Mr Scott explained that such campaigns work towards harm reduction through education. He argued that DrinkWise is 'far more interested in that educative issue of how you can influence a culture [so that]... underage people are drinking less and delaying the age at which they have their first drink'.⁴²⁶
- 3.77** While Mr Scott argued that DrinkWise seeks to ensure that 'we are actually making a difference',⁴²⁷ some inquiry participants questioned the legitimacy of DrinkWise's efforts and its capacity to promote public health messages. For example, the McCusker Centre for Action on Alcohol and Youth stated: 'Public health experts have strongly criticised the alcohol industry's use of DrinkWise to create an impression of social responsibility while opposing effective policy measures'.⁴²⁸
- 3.78** Indeed, Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, acknowledged the appeal of DrinkWise's campaigns but argued that their advertisements are 'usually very carefully stated so as to not discourage people from drinking'.⁴²⁹ Mr Klarenaar asserted that its close ties with the alcohol industry has compromised DrinkWise's messages, stating: 'Because of that conflict of interest it is doubtful whether or not there is a true intent to actually reduce harm'.⁴³⁰
- 3.79** Moreover, Mr Klarenaar argued that, as already discussed in Chapter 2, a multipronged approach is needed to address alcohol abuse and alcohol-related harm: 'We know in public health that education and information alone do not achieve anything—it needs to be combined with regulation, legislation, environmental changes and a holistic approach'.⁴³¹

⁴²³ Evidence, Mr Scott, 1 December 2017, p 24.

⁴²⁴ Evidence, Mr Scott, 1 December 2017, p 28.

⁴²⁵ Evidence, Mr Scott, 1 December 2017, p 28.

⁴²⁶ Evidence, Mr Scott, 1 December 2017, p 26.

⁴²⁷ Evidence, Mr Scott, 1 December 2017, p 28.

⁴²⁸ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

⁴²⁹ Evidence, Mr Klarenaar, 1 December 2017, p 36.

⁴³⁰ Evidence, Mr Klarenaar, 1 December 2017, p 36.

⁴³¹ Evidence, Mr Klarenaar, 1 December 2017, p 36.

Key stakeholder concerns

3.80 This section considers some specific areas of concern for stakeholders around the current regulatory system. These include the Liquor Promotion Guidelines, the increasing use of social media, the use of health warning labels on alcohol beverages, and the regulatory safeguards in place for protecting children and young people from being exposed to alcohol advertising.

Liquor Promotion Guidelines

3.81 During the inquiry, the committee heard concerns expressed about the Liquor Promotion Guidelines applicable to licenced premises published by Liquor & Gaming NSW. Some inquiry participants considered that the Guidelines require immediate strengthening and broadening to standardise the restrictions across on-license and off-license premises and establish consistency with the Bill.

3.82 For example, the NSW ACT Alcohol Policy Alliance (NAAPA) asserted that the development of the current Guidelines was significantly influenced by the alcohol industry,⁴³² stating that ‘the Guidelines were watered down and specific restrictions were removed’, including the ban on endorsements from celebrities and other role models that might appeal to minors.⁴³³ Mr Tony Brown shared this view, arguing that ‘the current liquor promotion guidelines are demonstrably tainted by undue alcohol industry influence’.⁴³⁴

3.83 NAAPA, along with other stakeholders,⁴³⁵ also argued that the Guidelines predominantly focus on promotions that may take place at on-license premises and thus ‘fail to appropriately regulate promotions within the contemporary advertising market’.⁴³⁶ They explained:

The Guidelines do not adequately address harm minimisation on the promotion of liquor as most Australians consume alcohol in a domestic setting and 80 per cent of all alcohol purchased is from off-licensed venues.⁴³⁷

3.84 NAAPA therefore contended that restrictions on advertising and promotions should apply consistently across premises:

... it is important that any provisions aimed at restricting or prohibiting promotional activity and undesirable liquor products apply to both on-and off-licence premises equally. Such provisions must also cover a range of promotional mediums such as signs, banners, flyers, posters and newspapers, as well as SMS text message and those undertaken online and via social media, such as Facebook and Instagram.⁴³⁸

⁴³² Submission 9, NSW ACT Alcohol Policy Alliance, p 4.

⁴³³ Submission 9, NSW ACT Alcohol Policy Alliance, p 4.

⁴³⁴ Submission 18, Mr Tony Brown, p 7.

⁴³⁵ For example, Submission 21, Royal College of Australasian Physicians, p 6.

⁴³⁶ Submission 9, NSW ACT Alcohol Policy Alliance, p 4.

⁴³⁷ Submission 9, NSW ACT Alcohol Policy Alliance, p 4.

⁴³⁸ Submission 9, NSW ACT Alcohol Policy Alliance, pp 6-7.

- 3.85** Others, such as St Vincent’s Health Australia, also drew attention to point-of-sale promotions currently available in alcohol outlets. St Vincent’s Health stated that ‘[i]n Sydney takeaway liquor stores alone there is an average of 30 point of sale promotions at each outlet’.⁴³⁹ They argued that these promotions ‘influence purchasing decisions and often result in individuals buying more alcohol than they planned to’.⁴⁴⁰
- 3.86** A related concern was raised in relation to liquor promotions found on shopper docketts, which some stakeholders argued not only increases consumption through heavy discounting but reinforces the normalisation of alcohol, as discussed in Chapter 1. For example, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, argued for the removal of ‘opportunities that allow for bulk purchase discounts that go to the cheap alcohol point – things like shopper docketts...’.⁴⁴¹ She explained:
- It goes to the normalisation of the product. I do not see why alcohol, which is a harmful product, should be advertised on a grocery receipt when you have just purchased your bread and milk, and then it goes towards the actual promotion that is on the bottom, which is potentially 50 per cent off whatever the product is. I guess it comes in two parts: it contributes to the normalisation of alcohol as just an everyday product that you purchase with your groceries, and it also captures the price element.⁴⁴²
- 3.87** NAAPA agreed, arguing that ‘shopper docketts and other linkages between liquor and everyday grocery items sends a message to consumers, particularly children and young people, that alcohol is a normal everyday product’.⁴⁴³ NAAPA advised that an investigation conducted by the former NSW Office of Liquor, Gaming and Racing (OLGR) into shopper docketts had concluded that shopper docketts are indeed ‘likely to encourage the misuse and abuse of liquor’.⁴⁴⁴ According to NAAPA, OLGR ‘consequently recommended that shopper docketts promoting discounted alcohol should be banned’ but noted that the recommendation was not acted upon.⁴⁴⁵
- 3.88** Looking ahead, stakeholders not only called for the immediate review of the Liquor Promotion Guidelines to address the concerns raised during the inquiry, but NAAPA recommended that the *Liquor Act 2007* be amended to ‘include provisions that limit harmful price discounting such as banning shopper docket liquor promotions and prohibiting the promotion and sale of alcohol at half or less than half of the usual price’.⁴⁴⁶ They suggested that point-of-sale promotions that encourage impulse purchases with the intention of ‘up-selling’ should also be restricted.⁴⁴⁷

⁴³⁹ Submission 31, St Vincent’s Health Australia, p 3.

⁴⁴⁰ Submission 31, St Vincent’s Health Australia, p 3.

⁴⁴¹ Evidence, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 1 December 2017, p 38.

⁴⁴² Evidence, Ms Ferguson, 1 December 2017, p 38.

⁴⁴³ Submission 9, NSW ACT Alcohol Policy Alliance, p 6.

⁴⁴⁴ Submission 9, NSW ACT Alcohol Policy Alliance, p 6.

⁴⁴⁵ Submission 9, NSW ACT Alcohol Policy Alliance, p 6.

⁴⁴⁶ Submission 9, NSW ACT Alcohol Policy Alliance, p 7.

⁴⁴⁷ Submission 9, NSW ACT Alcohol Policy Alliance, p 7.

3.89 Liquor & Gaming NSW advised that it would be conducting the next review of the Liquor Promotion Guidelines in 2018, ‘with planning currently underway’.⁴⁴⁸ The committee received evidence that a key aim of the review of the Liquor Promotion Guidelines ‘will be to ensure the guidelines reflect new and emerging industry practices and the use of marketing technology with consumers’.⁴⁴⁹ These issues are considered below.

Social media

3.90 As noted in Chapter 2, the proposed Bill does not extend to digital media, including social media. However, as discussed in that chapter, a number of inquiry participants expressed concern over the growing use of social media to advertise alcohol and the ability of the existing regulatory system to ensure that content restrictions apply to all forms of promotion.

3.91 A particularly current issue raised during this inquiry was the increasing engagement of social media influencers and the need for tighter regulation over this type of promotional activity.

3.92 A number of representatives from the alcohol industry, such as Brown-Forman Australia, Diageo Australia and Lion Beer Australia, advised that they use social media influencers across a range of social networks, including Facebook, Instagram and Twitter.⁴⁵⁰ These inquiry participants informed the committee that all social media posts are checked against internal codes and guidelines, however, not all are sent to the ABAC Scheme for pre-vetting.⁴⁵¹ Once posted online, hashtags are applied to indicate that the post is an advertisement or paid partnership. For example, Mr Dan Holland, External Relations Director, Lion Beer Australia, explained:

Every single post that comes from our company is vetted ... We have our own internal vetting processes that are identical to the pre-vetting process ... ABAC is the solid code by which we base our marketing practices, but in many cases we will go over and above.

... We also go so far as any influence program that we have we make sure that there is clear indication that this is a paid post or a paid advertisement, so there is no allure or a mistake; they understand it is a commercial relationship.⁴⁵²

3.93 Industry stakeholders insisted that the ABAC standards apply to digital material in the same way as any other promotional material. For example, Mr Brett Heffernan, Chief Executive Officer, Brewers Association of Australia, stated that the Code is ‘applicable across all those streams. Anywhere where there is a reasonable expectation that an alcohol company would have control over that product, the...Code applies’.⁴⁵³

⁴⁴⁸ Answers to supplementary questions, Mr Paul Newson, Deputy Secretary, Liquor & Gaming NSW, 8 January 2018, p 2.

⁴⁴⁹ Answers to supplementary questions, Mr Newson, 8 January 2018, p 2.

⁴⁵⁰ For example, Evidence, Mr Wallwork, 1 December 2017, p 47; Evidence, Mr Holland, 5 December 2017, p 26; Evidence, Mr Norton Selzer, 5 December 2017, p 26.

⁴⁵¹ For example, Evidence, Mr Wallwork, 1 December 2017, p 47; Evidence, Mr Holland, 5 December 2017, p 26; Evidence, Mr Norton Selzer, 5 December 2017, p 26.

⁴⁵² Evidence, Mr Holland, 5 December 2017, p 26.

⁴⁵³ Evidence, Mr Heffernan, 5 December 2017, p 31.

3.94 Indeed, Professor Lavarch, The ABAC Scheme Limited, assured that in the Adjudication Panel's recent determinations on social media posts, the ABAC was applied to this form of digital marketing. Professor Lavarch stated:

Even though you will not find the word 'influencer' in the code definitions, there is the spirit and intent of what we think the code should be reaching. We said yes, if you market through an influencer, that work of the influencer has to be consistent with the standards in the code.⁴⁵⁴

3.95 However, some inquiry participants questioned the rigour with which social media is being vetted, in light of the use of social media influencers. As Dr Lim, Burnet Institute, commented: 'We know that almost every young person is on social media of some form every day, so there are lots of avenues to reach them'.⁴⁵⁵

3.96 Indeed, according to the Burnet Institute, alcohol companies have recognised the advantages of direct and unlimited access to their audience through social media, and are pursuing these 'additional layers of interaction'⁴⁵⁶ between brands and individuals that are not possible through traditional media:

Alcohol companies have recognised these advantages and are encouraging interactions with their audiences to increase their exposure through user-generated content, incorporating their brands into the everyday lives of young people. As a result, users become actively involved in both promoting and producing branded content across their networks.⁴⁵⁷

3.97 Ms Ferguson, Foundation for Alcohol Research and Education, also expressed concerns about the user-generated content that targets and segments particular audiences once a social post is 'liked' or shared by a user. She noted the sophistication with which marketing is targeted and argued that greater work is needed in this area to address audience segmentation.⁴⁵⁸ The Foundation for Alcohol Research and Education added:

[ABAC] does not keep up with evolving technology but instead takes advantage of significant gaps in the self-regulatory system. Social media channels can be shared or forwarded to those underage, age gating can be easily falsified, as well as different media platforms having different guidelines.⁴⁵⁹

3.98 With regard to the content of alcohol advertisements on social media, Dr Lim shared research she has conducted on young people who were shown screenshots of different alcohol advertisement from Facebook and were asked what messages they thought the advertisements sought to convey. She advised that the research participants noted themes in direct conflict with ABAC's specific restrictions on content, such as not portraying alcohol as a means to sexual or social success, or change in mood. The research found that social success and mood enhancement were indeed key themes identified by participants, and concluded that 'this

⁴⁵⁴ Evidence, Professor Lavarch, 1 December 2017, pp 11-12.

⁴⁵⁵ Evidence, Dr Lim, 5 December 2017, p 4.

⁴⁵⁶ Evidence, Dr Lim, 5 December 2017, p 4

⁴⁵⁷ Submission 16, Burnet Institute, p 2.

⁴⁵⁸ Evidence, Ms Ferguson, 1 December 2017, p 37.

⁴⁵⁹ Answers to questions on notice, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 8 January 2018, p 8.

implies that alcohol advertising on social media is not conforming to current ABAC guidelines'.⁴⁶⁰

- 3.99** With her research, Dr Lim also highlighted the need to address the growing use of social media influencers who often blur the lines between social content and paid promotions. She argued that alcohol companies often use imagery and content in their posts that 'implies that a regular person is posting'.⁴⁶¹ She stated:

They will do selfies and pictures of people in their backyards drinking. They try to make it look like its organic content. It could be by your friends or your peers. A lot of young people did comment that sort of stood out to them—you could not tell if it was content from friends or from a brand.⁴⁶²

- 3.100** When asked how greater regulation of the social media space would work, Dr Lim acknowledged that it would be difficult 'because it is such a free-moving platform – it is international and it is constantly generating new content'.⁴⁶³ However, she recommended that regulatory codes such as ABAC could be updated 'to account for the complexity of social media'.⁴⁶⁴ Dr Lim contended: 'Clear direction is needed regarding different forms of advertising, including paid advertisements, posts to fans, use of social influencers, and user-generated content'.⁴⁶⁵
- 3.101** Dr Lim also advised that the complete prohibition on alcohol advertising within certain platforms is possible, and is done in a number of countries already. For example, she provided a reference to Facebook's advertising policy which stipulates that advertisements promoting or referencing alcohol must comply with applicable local laws or established industry codes, and identifies the countries where alcohol advertising is prohibited.⁴⁶⁶

Health warning labels

- 3.102** During the inquiry, stakeholders from both the alcohol industry and the health and advocacy sectors agreed that labels and other consumer messaging on alcohol beverages can be an effective and important tool to communicate with consumers. However, these same inquiry participants were strongly divided on what these messages should contain, how they should be presented and the effectiveness of labelling initiatives to date.
- 3.103** The committee received evidence that, in 2010, the then Australia New Zealand Food Regulation Ministerial Council undertook a comprehensive review of food labelling law and policy in Australia. The final report recommended that pregnancy warning labels be mandated on individual containers of alcohol beverages and at the point of sale for unpackaged alcohol

⁴⁶⁰ Submission 16, Burnet Institute, p 4.

⁴⁶¹ Evidence, Dr Lim, 5 December 2017, p 3.

⁴⁶² Evidence, Dr Lim, 5 December 2017, p 3.

⁴⁶³ Evidence, Dr Lim, 5 December 2017, p 4.

⁴⁶⁴ Answers to questions on notice, Dr Lim, 20 December 2017, p 6.

⁴⁶⁵ Answers to questions on notice, Dr Lim, 20 December 2017, p 6.

⁴⁶⁶ Answers to questions on notice, Dr Lim, 20 December 2017, p 6.

beverages. However, this recommendation was not implemented and the alcohol industry instead undertook a trial voluntary labelling initiative, which continues today.⁴⁶⁷

- 3.104** In November 2017, the Australia New Zealand Ministerial Forum on Food Regulation met to consider alcohol labelling, including pregnancy health warning on alcohol products. An evaluation of the voluntary labelling initiative was presented to the Ministers, upon which the Forum Ministers made the following request:

Forum Ministers asked the Food Regulation Standing Committee to expedite for earliest possible consideration development of a policy options consultations paper including: mandatory versus voluntary application, most appropriate pictogram, and most appropriate and most easy to understand message to discourage drinking during pregnancy.⁴⁶⁸

The content and delivery of health warning labels

- 3.105** A key issue raised by inquiry participants around health warning labels, and in particular, pregnancy warning labels, was what exact messages are being communicated to consumers through these labels.

- 3.106** As part of its ‘Get the Facts’ labelling initiative, DrinkWise Australia advised that ‘consumer information messages’ have been adopted in preference to ‘health warnings’ on product labels because they are consistent with DrinkWise’s approach to ‘effectively engage and support consumers to move towards a healthier drinking culture’.⁴⁶⁹ They explained that labelling in this way provides:

... an opportunity to prompt consumers to think about their drinking while encouraging them to ‘Get the Facts’ from the DrinkWise website ... where consumers will find practical tools and evidence-based information.⁴⁷⁰

- 3.107** DrinkWise stated that, accordingly – and in line with recommendations from the National Health and Medical Research Council (NHMRC) Alcohol Guidelines – their key pregnancy message found on alcohol beverages is ‘It’s safest not to drink while pregnant’.⁴⁷¹

- 3.108** With regard to its visibility, DrinkWise advised that its logo and consumer information messages for alcohol products and packaging had been modernised to provide ‘a clearer and more legible suite of messages’.⁴⁷²

- 3.109** However, inquiry participants from the health and advocacy sector expressed concerns over the consumer information messages promoted by DrinkWise, particularly their pregnancy messages.

⁴⁶⁷ Submission 9, NSW ACT Alcohol Policy Alliance, p 16.

⁴⁶⁸ Answers to questions on notice, Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia, 8 January 2018, p 1.

⁴⁶⁹ Answers to questions on notice, Mr John Scott, Chief Executive Officer, DrinkWise Australia, Attachment, 22 January 2018, p 6.

⁴⁷⁰ Answers to questions on notice, Mr Scott, Attachment, 22 January 2018, p 11.

⁴⁷¹ Answers to questions on notice, Mr Scott, Attachment, 22 January 2018, p 11.

⁴⁷² Answers to questions on notice, Mr Scott, Attachment, 22 January 2018, p 7.

- 3.110** For example, the Public Health Association of Australia advised that alcohol warning labels have the potential to be effective but that the DrinkWise consumer information messages are ‘not arresting enough and may be more effective if they were similar to tobacco warning labels’.⁴⁷³ The Public Health Association of Australia argued that ‘the involvement of the alcohol industry in DrinkWise is likely to have contributed to this outcome’.⁴⁷⁴
- 3.111** Deakin University Centre for Drug, Alcohol and Addiction Research expressed a similar view, advising of research it has conducted which found that DrinkWise’s consumer information messages ‘fail to effectively communicate health messages and do not reduce consumption and alcohol-related harms’.⁴⁷⁵ Moreover, the research found that consumers and researchers alike are critical of the DrinkWise’s labelling because it ‘fails to effectively convey the consequences of alcohol consumption or deter young adult drinkers from high-risk drinking’.⁴⁷⁶
- 3.112** Indeed, the NSW ACT Alcohol Policy Alliance argued that effective labelling standards are critical, and that content must be direct, relevant and contain clear health messages. They explained this within the context of pregnancy labels:
- A label that does not raise awareness about health harms is irrelevant to consumers and a mere promotion exercise for the alcohol industry ... [I]t is imperative that labels on products do not confuse consumers or encourage them to believe that alcohol consumption during pregnancy is acceptable. This is highly dangerous and harmful to future generations.⁴⁷⁷
- 3.113** With regard to visibility, the McCusker Centre for Action on Alcohol and Youth cited earlier research that found DrinkWise labels – including size, placement and message content – were not consistent with best practice.⁴⁷⁸
- 3.114** Professor Elizabeth Elliott, Fellow, Royal Australasian College of Physicians, shared this sentiment, arguing that current warning labels are difficult to read and ‘not easily visible, particularly in a dark pub’.⁴⁷⁹ She maintained that women have a right to know that alcohol may harm both them and their baby.⁴⁸⁰
- 3.115** Similarly, Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, emphasised the importance of clear and consistent labelling standards across different alcohol products:

I was handed a combination can of alcohol and soft drink about two years ago and somebody said, ‘There is a pregnancy warning label on that.’ It took me two minutes

⁴⁷³ Evidence, Dr Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia 5 December 2017, p 39.

⁴⁷⁴ Submission 24, Public Health Association of Australia, p 6.

⁴⁷⁵ Submission 15, Deakin University Centre for Drug, Alcohol and Addiction Research, p 1.

⁴⁷⁶ Submission 15, Deakin University Centre for Drug, Alcohol and Addiction Research, p 1.

⁴⁷⁷ Submission 9, NSW ACT Alcohol Policy Alliance, p 17.

⁴⁷⁸ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

⁴⁷⁹ Evidence, Professor Elizabeth Elliott AM, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 58.

⁴⁸⁰ Evidence, Professor Elliott, 1 December 2017, p 58.

to find it. They said that is why they hand it to people. There has to be a standard of what a health warning label is, just the same as with tobacco we had a standard ... That having been said, I saw a bottle of wine only two nights ago that had a clear alcohol pregnancy warning label on it.⁴⁸¹

3.116 McCusker Centre for Action on Alcohol and Youth also commented on the need for labelling standards, arguing that health warning labels should be developed not by industry but rather ‘governments with advice from relevant experts free of commercial interests, and should be designed to get through to the target group/s’.⁴⁸² They stated:

The alcohol industry, which spends hundreds of millions of dollars each year promoting its products, with much of this promotion having a clear appeal to young people and to women of child-bearing age, should not be responsible for developing health warning labels.⁴⁸³

3.117 Mr Moore, Public Health Association of Australia, expressed a similar view, arguing that the content of health warning labels should be decided by the Food Ministers Forum, following the research it has recently requested into the most appropriate messages and images.⁴⁸⁴

3.118 Another issue raised in the context of consumer messages or health warnings was how such warnings should be conveyed to consumers. Inquiry participants from the alcohol and advertising industries argued that:

- as technology evolves, how people seek to receive information will change, necessitating a flexible approach to labelling by keeping labelling initiatives voluntary⁴⁸⁵
- labels and broadcasts may not be the most appropriate means by which to engage certain people⁴⁸⁶
- on their own warning labels on bottles, warnings on the bottom of advertisements or even warning on billboards may not be as effective as a holistic education campaign⁴⁸⁷

3.119 Inquiry participants from the health and advocacy sectors insisted, however, that health warning labels are not only effective but convey messages in a way that other mediums cannot. These stakeholders argued that:

- there is international research which found that health warning labels are ‘effective both in raising awareness of health risks and changing health behaviours’, when applied in such a way that increases visibility and prominence⁴⁸⁸

⁴⁸¹ Evidence, Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, 5 December 2017, p 39.

⁴⁸² Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

⁴⁸³ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

⁴⁸⁴ Evidence, Mr Moore, 5 December 2017, p 42.

⁴⁸⁵ Evidence, Mr Norton Selzer, 5 December 2017, p 29.

⁴⁸⁶ Evidence, Ms Phillips, 5 December 2017, p 19.

⁴⁸⁷ Evidence, Ms Moldrich, 5 December 2017, p 13.

⁴⁸⁸ Submission 9, NSW ACT Alcohol Policy Alliance, p 16; see also Submission 24, Public Health Association of Australia, p 6.

- the provision of ‘strong, specific, government-regulated health warning labels on alcohol products is an important and necessary element of a comprehensive approach to prevent harm from alcohol’⁴⁸⁹
- labels provide an opportunity to promote health messages and nutritional information at the point of sale and the point of consumption in a way that other health promotion initiatives do not.⁴⁹⁰

The effectiveness of voluntary labelling initiatives

- 3.120** Another issue in the context of the debate about health warning labels was whether this initiative should be voluntary.
- 3.121** The alcohol industry maintained a strong commitment to voluntary labelling and argued for its effectiveness as a scheme, with representatives informing the committee that take-up of voluntary pregnancy labels is significantly high. In terms of take-up rates across the different alcohol types, the committee heard that the Distilled Spirits Industry Council of Australia is at 90 per cent, Brown-Forman Australia is at 95 per cent, and the Winemakers’ Federation of Australia is at 85 per cent.⁴⁹¹
- 3.122** However, a number of other inquiry participants raised concerns over the adequacy of these initiatives given that they are ultimately optional. For example, Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, asserted that ‘the frustration that health groups feel about the voluntary system for alcohol labelling is that it still has not reached a meaningful stage’.⁴⁹² Indeed, Professor Elliott, Royal Australasian College of Physicians, expressed this frustration, stating: ‘I think we have been messing around with this for several years now. I have seen surveys with much lower rates of uptake.’⁴⁹³
- 3.123** The McCusker Centre for Action on Alcohol and Youth went so far as to suggest that the DrinkWise Australia voluntary labelling initiative is a ‘tactic by the alcohol industry for delaying mandatory, independent labelling’.⁴⁹⁴
- 3.124** These inquiry participants thus recommended immediate action on health warning labels. For example, Professor Elliott, Royal Australasian College of Physicians argued that pregnancy warning labels should be ‘mandated by law’.⁴⁹⁵
- 3.125** Meanwhile, the McCusker Centre argued that ‘the NSW Government can play an important role in advocating for effective, research-based health warning labels to be implemented nationally’.⁴⁹⁶

⁴⁸⁹ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

⁴⁹⁰ Submission 9, NSW ACT Alcohol Policy Alliance, p 16.

⁴⁹¹ Evidence, Mr Battaglione, 1 December 2017, p 46; Evidence, Mr Wagstaff, 1 December 2017, p 46; Evidence, Mr Wallwork, 1 December 2017, p 45.

⁴⁹² Evidence, Mr Moore, 5 December 2017, p 39.

⁴⁹³ Evidence, Professor Elliott, 1 December 2017, p 58.

⁴⁹⁴ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

⁴⁹⁵ Evidence, Professor Elliott, 1 December 2017, p 59.

⁴⁹⁶ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 12.

- 3.126** The NSW ACT Alcohol Policy Alliance (NAAPA) agreed with this view, suggesting that representations be made to the Food Ministers Forum to ensure that pregnancy warning labels are mandated on all alcohol products and point of sale material. In addition, NAAPA recommended that Food Standards Australia and New Zealand develop effective labelling standards that address the wording, placement and size of the label.⁴⁹⁷

Safeguards for protecting children and young people

- 3.127** Throughout the inquiry, and as indicated in previous chapters, stakeholders from the alcohol industry insisted that not only are children and young people *not* the target of alcohol advertising, but that safeguards to limit the exposure of young people to alcohol advertising exist within the current regulatory framework. These safeguards were questioned, however, by a number of inquiry participants from the health and advocacy sectors who remained deeply concerned about the extent to which children and young people are exposed to alcohol advertising today. As outlined in Chapter 2, some stakeholders in fact suggested amending the Bill to narrow its focus on protecting children and young people.
- 3.128** On the one hand, Alcohol Beverages Australia argued that ‘the ABAC standards ensure the content of advertising does not have strong or evident appeal to minors or encourage irresponsible consumption of alcohol’.⁴⁹⁸ The Australian Association of National Advertisers likewise asserted that outside of the ABAC Scheme, the ‘comprehensive landscape of regulation of alcohol products ... ensures that alcohol advertising and messaging does not have strong appeal to children and is not directed primarily to them’.⁴⁹⁹
- 3.129** Mr Wallwork, Brown-Forman Australia, explained how this works in practice, describing the ‘built-in safeguards’ within the ABAC Scheme as a ‘double lock’ of content and placement restrictions. Of these restrictions, he stated:

We say we are doing two things, and within those two things quite a lot of other things, to make sure that the young people to whom advertisements and promotional material will be exposed will not necessarily be attracted to them in a way which society and policymakers deem unacceptable. I think it is also relevant... to say that that double lock also becomes a triple lock when you think about purchase behaviour, because advertising seeks to drive purchase amongst adults who choose to drink.⁵⁰⁰

- 3.130** However, numerous inquiry participants questioned the adequacy of the measures within the current regulatory framework to protect children and young people, as discussed in previous chapters. These stakeholders insisted that young people today are subjected to an overwhelming amount of alcohol advertising with the NSW ACT Alcohol Policy Alliance commenting that ‘a child will have seen over 1,300 alcohol ads by the age of 12’.⁵⁰¹

⁴⁹⁷ Submission 9, NSW ACT Alcohol Policy Alliance, p 17.

⁴⁹⁸ Submission 11, Alcohol Beverages Australia, p 6.

⁴⁹⁹ Submission 26, Australian Association of National Advertisers, p 3.

⁵⁰⁰ Evidence, Mr Wallwork, 1 December 2017, p 45.

⁵⁰¹ Submission 9, NSW ACT Alcohol Policy Alliance, p 1.

- 3.131** The Foundation for Alcohol Research and Education also argued that, despite recent updates to the ABAC, ‘the Code still fails to adequately protect children’.⁵⁰² In this regard, issues around alcohol advertising during sporting events and sports sponsorship by alcohol companies is examined in Chapter 4.
- 3.132** With regard to the recently introduced placement rule where any given audience must be at least 75 per cent adult, Mr Taylor, Alcohol Beverages Australia, advised that it is a measure that the industry has voluntarily introduced to ensure that it is targeting its advertising to the appropriate audience.⁵⁰³ He asserted that ‘it is a world-leading, globally accepted standard’.⁵⁰⁴
- 3.133** Mr Taylor clarified that the rule means that the industry will not place an alcohol advertisement where 25 per cent or more of the audience exposed are minors (as distinct from 25 per cent of all minors being exposed to an alcohol advertisement). Mr Taylor provided the following examples, arguing that ‘the proportion of young people that are watching those telecasts is well within the 25 per cent remit’⁵⁰⁵:
- ...National Rugby League [NRL] State of Origin, 89 per cent over 18; NRL season, 89 per cent over 18; Australian Football League [AFL], 87 per cent; Super Rugby, 92 per cent; and the cricket is 87 per cent.⁵⁰⁶
- 3.134** Industry participants also advised that their target adult audience percentage is above 75 per cent,⁵⁰⁷ reinforcing claims that industry goes ‘above and beyond’ what is expected of them.⁵⁰⁸
- 3.135** However, some inquiry participants, such as Ms Stafford, McCusker Centre for Action on Alcohol and Youth, argued that the new placements rules will not reduce the exposure of children and young people to alcohol advertisements ‘in any meaningful way’,⁵⁰⁹ commenting on the lack of the evidence base for these rules:
- We are not aware of the evidence base for the development of those particular placement rules. We believe that absolutely we need proper controls on the placement of alcohol but controls that genuinely protect young people from alcohol promotion would look different from the placement rules that ABAC has developed. It is unlikely that they are going to reduce young people's exposure in any meaningful way.⁵¹⁰
- 3.136** Ms Stafford drew particular attention to the 75-25 per cent audience rule, arguing that the 25 per cent ‘can still be hundreds of thousands of young people viewing a sport or another

⁵⁰² Answers to questions on notice, Ms Ferguson, 8 January 2018, p 8.

⁵⁰³ Evidence, Mr Taylor, 1 December 2017, p 19.

⁵⁰⁴ Evidence, Mr Taylor, 1 December 2017, p 20

⁵⁰⁵ Evidence, Mr Taylor, 1 December 2017, pp 19-20.

⁵⁰⁶ Evidence, Mr Taylor, 1 December 2017, p 19

⁵⁰⁷ For example, Evidence, Mr Holland, 5 December 2018, p 32; Evidence, Mr Sheezal, 5 December 2017, p 32.

⁵⁰⁸ Evidence, Mr Norton Selzer, 5 December 2017, p 23 and p 32.

⁵⁰⁹ Evidence, Ms Stafford, 1 December 2017, p 40.

⁵¹⁰ Evidence, Ms Stafford, 1 December 2017, p 40.

broadcast that includes alcohol advertising and it would be allowed under ABAC's new placement rules'.⁵¹¹

- 3.137** The McCusker Centre for Action on Alcohol and Youth added that international research has suggested this type of restriction – where audience parameters are set – is 'ineffective in minimising young people's exposure; it is too lenient, difficult and expensive to monitor, and breaches occur'.⁵¹²
- 3.138** According to McCusker, the World Health Organisation, the Australian Medical Association, the National Preventative Health Taskforce and other expert groups have recommended restricting alcohol advertising during times and in places which have high exposure to children and young people as part of a comprehensive approach to reducing alcohol related harms.⁵¹³

Committee comment

- 3.139** The committee acknowledges the complexity of the regulatory system within which alcohol advertising currently operates in Australia. It is a system characterised by a mix of laws and codes of practice across government and industry as well as across different jurisdictions, with the voluntary, self-regulated Alcohol Beverages Advertising Code (ABAC) Scheme as its centerpiece.
- 3.140** The committee notes the competing views of stakeholders on the adequacy and effectiveness of this system. The committee acknowledges, on the one hand, the arguments by the alcohol and advertising industries in support of the existing framework, which they maintain is flexible, responsive, robust and effective. These are important qualities. The committee also recognises the industry's efforts to meet community expectations through recent updates to the ABAC.
- 3.141** The committee is also encouraged by the work of DrinkWise Australia, which the committee feels has made a real impact in promoting messages of responsible alcohol consumption, and engaged with young people, in particular, in innovative ways.
- 3.142** On the other hand, the committee acknowledges the criticisms of the health and advocacy sectors who say the system overall is compromised, weak and ineffective, with little demand for accountability.
- 3.143** Given the proliferation of alcohol advertising, the committee cannot help but question the adequacy of the current regulatory regime. We also cannot help but share concerns about the self-regulation of this industry, where the operators are effectively the regulators. We believe the weaknesses of this system are rooted in its voluntary nature and in the absence of enforceable statutory standards.

⁵¹¹ Evidence, Ms Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, 1 December 2017, p 40.

⁵¹² Submission 23, McCusker Centre for Action on Alcohol and Youth, p 3.

⁵¹³ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 3.

- 3.144** The committee is therefore of the view that the current system could and should be strengthened immediately. However, we accept that the NSW Government has a limited role to play in changing what is an essentially national self-regulatory system.
- 3.145** Having said this, the committee is hopeful that it can address some of the key concerns raised around specific aspects of the current regulatory regime.
- 3.146** For example, the committee acknowledges concerns about the current Liquor Promotion Guidelines, including in relation to point of sale promotions and promotions found on shopper dockets for heavily discounted alcohol. The committee is deeply troubled by the heavy promotion of cheap alcohol in this way, which the committee believes contributes both to the normalisation of alcohol and the encouragement of excessive alcohol consumption. We recommend that Liquor & Gaming NSW complete the review and finalisation of the updated NSW Liquor Promotion Guidelines by the end of 2018.

Recommendation 5

That Liquor & Gaming NSW complete the review and finalisation of the updated NSW Liquor Promotion Guidelines by the end of 2018.

-
- 3.147** The committee heard evidence that the former NSW Office of Liquor, Gaming and Racing conducted a review into shopper dockets which recommended that shopper dockets promoting discounted alcohol be banned. As the committee was not able to source this report, we cannot pursue this further at this time. But this is a matter to which we draw the government's attention for further consideration.

Recommendation 6

That the NSW Government consider the issue of discounting promotions for alcoholic beverages on shopper dockets.

-
- 3.148** The committee notes growing concern over the use of social media, in particular social media influencers, to promote alcohol. The committee acknowledges that this is a rapidly evolving space that is already posing challenges for effective regulation. The committee hopes that relevant industry codes, including the ABAC Scheme, will keep pace and account for the complexities of social media and its use by alcohol companies to promote their product moving forward.
- 3.149** The committee also acknowledges stakeholder concerns over health warning labels, including pregnancy warning labels. The committee believes that pregnant women have the right to know that alcohol can harm both them and their baby. While we note the efforts of DrinkWise Australia to promote a voluntary labeling initiative and acknowledge that many in the alcohol industry have adopted pregnancy warning labels on their products as part of this initiative, we remain concerned that take up rates under this initiative are not at 100 per cent. The committee is also concerned that there are no clear standards that ensure visible and consistent messaging on all alcohol products.

- 3.150** The committee notes that the Australia New Zealand Ministerial Forum on Food Regulation recently met to discuss pregnancy health warning labels and have requested a policy options consultations paper to further inform their decision-making. The committee recommends that the NSW Government make representations to this Forum advocating for the development of comprehensive labelling standards on all alcoholic beverages, including pregnancy warning labels.

Recommendation 7

That the NSW Government advocate, through the Australia New Zealand Ministerial Forum on Food Regulation, for the development of comprehensive labelling standards on all alcoholic beverages, including pregnancy warning labels.

- 3.151** The committee notes the measures in place within the current regulatory system to protect children and young people from alcohol advertising, but shares the concerns of inquiry participants who believe that these measures are insufficient and failing this vulnerable demographic. As noted previously, these issues are addressed in Chapter 4.

Chapter 4 Alcohol advertising in sport and on government property

During the inquiry, stakeholders debated the merits of alcohol advertising in two particular contexts – in sport and on government infrastructure and property. Inquiry participants discussed the impact and value of alcohol advertising through these channels, particularly on children and young people, and whether alcohol advertising within these contexts should be limited. This chapter will consider these issues in turn.

Alcohol advertising in sport

4.1 The presence of alcohol advertising in sport was closely considered during the inquiry, as stakeholders examined proposed bans under the Alcoholic Beverages Advertising Prohibition Bill 2015. In particular, inquiry participants discussed the value of alcohol sponsorships in sport and alcohol advertising during televised sporting programs and broadcasts. Before expanding on these issues, this section frames the debate by considering whether there is a place for alcohol advertising in sport.

Is there a place for alcohol advertising in sport?

4.2 Stakeholders generally agreed that alcohol promotion is prominent in sport.⁵¹⁴ For example, with regard to the sponsorship of sport by companies promoting alcohol, the Cancer Council NSW advised that there were 43 instances of alcohol sponsorship in a recent study of national and state sporting organisations. These sponsorships were predominantly found in Cricket, Rugby League and Rugby Union.⁵¹⁵

4.3 The committee also received evidence that five out of the seven member organisations of The Coalition of Major Professional & Participation Sports (COMPPS) have alcohol sponsorship, with the Australian Football League, Rugby Australia, Cricket Australia, National Rugby League and Tennis Australia all having alcohol sponsors, while the Football Federation Australia and Netball Australia do not.⁵¹⁶

4.4 When asked why there is such an interest in advertising alcohol through sport, Mr Jaymes Boland-Rudder, Head of Government and Community Relations, National Rugby League, commented: ‘It is eyeballs – sport programs are watched extensively’.⁵¹⁷ He advised that, for example, the National Rugby League (NRL) is a sport with ‘a strong presence across the

⁵¹⁴ For example, Submission 23, McCusker Centre for Action on Alcohol and Youth, p 6; Submission 3, Cancer Council NSW, pp 8-9; Submission 28, The Coalition of Major Professional & Participation Sports, p 2; Evidence,

⁵¹⁵ Submission 3, Cancer Council NSW, pp 8-9.

⁵¹⁶ Evidence, Mr Malcolm Speed, AO, Executive Director, The Coalition of Major Professional & Participation Sports (COMPPS), 14 February 2018, p 6.

⁵¹⁷ Evidence, Mr Jaymes Boland-Rudder, Head of Government and Community Relations, National Rugby League, 14 February 2018, p 6.

broadcast network so there is quite good exposure',⁵¹⁸ and used the State of Origin to demonstrate this:

Look at our broadcast numbers for the State of Origin, for example. When you look at the programs on television with the highest total audiences each year, State of Origin usually takes three of the top five spots, and that is across all television, not just sports.⁵¹⁹

- 4.5** Acknowledging the popularity of sport as a medium for alcohol advertising, the alcohol industry stated that this was because that is where the target market is.⁵²⁰ For example, Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, explained: 'Sports promotion is a channel... [T]he way that we approach it as an industry is to ask whether an appropriate demographic is going to be reached through a particular channel'.⁵²¹
- 4.6** Mr Wallwork argued that in the case of sports, audiences for most large sporting events are 'very, very adult orientated'.⁵²² Mr Boland-Rudder stated that this was certainly the case for the NRL, where 'approximately 90 per cent of the viewers of our sport are aged over 18 years. Only 10 per cent are under 18 years of age'.⁵²³
- 4.7** In view of this evidence, stakeholders from the sporting and alcohol industries maintained that there is a legitimate place for alcohol advertising in sport, based on the premise that alcohol can be consumed responsibly by adults, and is promoted within sport as such.
- 4.8** For instance, COMPPS asserted that sporting bodies 'should be trusted to act in the best interests of their stakeholders', as they currently do through initiatives and agreements with commercial partners.⁵²⁴ They explained that these initiatives and agreements include 'restrictions on campaigns to protect minors from exposure; commitments to run responsible consumption messaging; and a contribution towards the delivery of Alcohol Management Strategies'.⁵²⁵
- 4.9** By way of example, Mr Boland-Rudder, National Rugby League, advised that conditions are built into the National Rugby League's agreements to ensure compliance with various industry codes – all of which have 'strong requirements around minimising exposure to minors'.⁵²⁶ These include codes from the Alcoholic Beverages Advertising Code (ABAC) Scheme,

⁵¹⁸ Evidence, Mr Boland-Rudder, 14 February 2018, p 6.

⁵¹⁹ Evidence, Mr Boland-Rudder, 14 February 2018, p 6.

⁵²⁰ For example, Evidence, Mr Julian Sheezel, Corporate Affairs Director, Carlton and United Brewers, 5 December 2017, p 24.

⁵²¹ Evidence, Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia, 1 December 2017, p 44.

⁵²² Evidence, Mr Wallwork, 1 December 2017, p 44.

⁵²³ Evidence, Mr Boland-Rudder, 14 February 2018, p 4.

⁵²⁴ Submission 28, The Coalition of Major Professional & Participation Sports, p 7.

⁵²⁵ Submission 28, The Coalition of Major Professional & Participation Sports, p 7.

⁵²⁶ Evidence, Mr Boland-Rudder, 14 February 2018, p 4.

Commercial Radio Australia, Australian Subscription Television and Radio Association (ASTRA) and Free TV Australia.⁵²⁷

4.10 Mr Boland-Rudder maintained that active compliance with the codes and the inclusion of strong controls within their agreements demonstrates a conscious effort on the part of the sports industry to balance commercial imperatives with community concerns. He argued that sporting bodies take their responsibility to the community seriously, such that, while alcohol sponsorship exists in sport, ‘consequent advertising is focused on promoting responsible drinking and doing so in moderation’.⁵²⁸

4.11 This was reinforced by COMPPS, which stated that sporting bodies actively negotiate with media outlets to promote messages of responsible consumption:

The COMPPS members acknowledge that misuse and abuse of alcohol causes problems. The COMPPS sports have sought and will continue to seek to be part of the solution.

With this at the forefront, several of the sports have negotiated with broadcasters to adopt responsible drinking programs as part of the advertising regimes. The consistent message has been to urge sports fans to be responsible for their actions.⁵²⁹

4.12 In this way, COMPPS argued that alcohol advertising in sport has an important part to play in modelling alcohol being consumed in moderation. COMPPS asserted:

... [alcohol advertising in sport] shows that alcohol can be consumed without drinkers becoming intoxicated and behaving poorly. To that extent it provides positive role models in a society that acknowledges that responsible consumption of alcohol is a choice that many Australians take.⁵³⁰

4.13 On the theme of responsible consumption of alcohol, representatives from the alcohol industry challenged the idea that alcohol is promoted in a way that connects it with performance and sporting success. For example, Mr Dan Holland, External Relations Director, Lion Beer Australia, insisted that the ABAC ensures there is a delineation, stating:

This is where the code is very clear and we are very focused on making sure that the delineation between the consumption of alcohol and any sort of sporting activity is very clear. You will never see in any of our advertisements the consumption of alcohol before or during performing any sport. The presence of the brand is merely there in terms of something people would consume while they are actually watching the sport.⁵³¹

4.14 When asked about a promotion showing the New South Wales Blues team winning the State of Origin and holding both the premiership trophy and a can of alcohol, Mr Holland argued

⁵²⁷ Evidence, Mr Boland-Rudder, 14 February 2018, p 4.

⁵²⁸ Evidence, Mr Boland-Rudder, 14 February 2018, p 2.

⁵²⁹ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 5.

⁵³⁰ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 5.

⁵³¹ Evidence, Mr Dan Holland, External Relations Director, Lion Beer Australia, 5 December 2017, p 25.

that the promotion is ‘well in line with the code and also well in line with community standards’, explaining:

In terms of the consumption – they are not playing sport; they have completed their sporting match and they are having a beer. We would argue that is quite common in terms of sporting teams through the country.⁵³²

4.15 In contrast, numerous inquiry participants from the health and advocacy sectors questioned the place of alcohol in the sporting industry. These stakeholders raised serious concerns about its prevalence and the messaging behind associations between alcohol and sport, highlighting the apparent contradiction of a healthy activity promoting an unhealthy product.

4.16 These inquiry participants also argued that the alcohol industry’s characterisation of sport as adult-oriented is misguided and limited. They argued that children and young people are overwhelmingly exposed to alcohol advertising in meaningful and detrimental ways, including during televised sporting events and programs, which will be discussed later in the chapter.

4.17 For example, the Foundation for Alcohol Research and Education contended that children are exposed to ‘countless advertisements and promotions of alcoholic beverages’ through sport, stating that ‘[k]ids not only see their sporting heroes dressed in alcohol company logos but they too are wearing jerseys branded with alcohol logos’.⁵³³

4.18 According to the McCusker Centre for Action on Alcohol and Youth, there is evidence to suggest that children absorb sports sponsorship messages. They cited Australian research which found that 76 per cent of children aged 5 to 12 years were able to correctly match at least one sport with its relevant sponsor.⁵³⁴

4.19 This view was supported by Ms Clare Hughes, Nutrition Program Manager, Cancer Council NSW, who reported research conducted by the Cancer Council NSW that demonstrated positive associations between alcohol sponsors and sporting teams:

[The research] clearly shows the impact of the sponsorships, whether it is the elite level or the community level and positive associations that children have through recognising who the sponsors are of their favourite sporting teams or the ones they watch on television, and who is sponsoring the local clubs and the positive association with those clubs ...⁵³⁵

4.20 Indeed, the McCusker Centre argued that sport sponsorship is ‘a powerful form of alcohol promotion’, explaining:

... it is a way of raising brand awareness, creating positive brand attitudes, and building emotional connections with consumers. It has been suggested that

⁵³² Evidence, Mr Holland, 5 December 2017, p 25.

⁵³³ Answers to questions on notice, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 8 January 2018, p 10.

⁵³⁴ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 6.

⁵³⁵ Evidence, Ms Clare Hughes, Nutrition Program Manager, Cancer Council NSW, 5 December 2017, p 39.

sponsorship has the potential to reach audiences through less regulated ways than traditional advertising.⁵³⁶

- 4.21** Professor Elizabeth Elliott, Fellow, Royal Australasian College of Physicians asserted that the alcohol and advertising industries are well aware of this power, playing to the fact that children find role models in their sporting heroes:

... kids growing up in Australia have role models. Many of those role models are prominent sportsmen and many of them are branded with alcohol labels. The advertising industry realises that is a prime way to access children and hence it spends many hours of advertising time and many millions of dollars on targeting young people through that sort of advertising.⁵³⁷

- 4.22** These inquiry participants expressed deep concerns over the messages being sent to young people by connecting alcohol with sport. For example, the Cancer Council NSW argued that ‘embedding alcohol brands in the entertainment or sporting culture communicates a legitimacy and status to alcohol, strengthening the association between alcohol and ... positive effects’.⁵³⁸

- 4.23** Likewise, the McCusker Centre for Action on Alcohol and Youth asserted that alcohol promotion in sports ‘sends conflicting messages to the community’, explaining: ‘The public, including young people, could reasonably assume that by accepting sponsorship from alcohol companies, sporting and other organisations are endorsing their products’.⁵³⁹

- 4.24** Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, expressed disappointment in this kind of messaging, stating:

... having these young, striking, fit heroes on the field having XXXX or whatever branded on their chest is a very powerful role model to young people to drink alcohol and it is very unfortunate to combine the healthy activities of exercise with promoting things that for young people ... are particularly risky.⁵⁴⁰

- 4.25** As the NSW ACT Alcohol Policy Alliance (NAAPA) put it: ‘Sport is a health promotion activity and its association with an unhealthy product such as alcohol is counter-intuitive at best and harmful at worst’.⁵⁴¹

- 4.26** Questioning the alcohol industry’s views about post-match celebrations including alcohol, Professor Conigrave argued for a separation of alcohol and sport, particularly to break associations with success and celebration: ‘I think trying to break the very strong link between

⁵³⁶ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 6.

⁵³⁷ Evidence, Professor Elizabeth Elliott, AM, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 58.

⁵³⁸ Submission 3, Cancer Council NSW, pp 8-9.

⁵³⁹ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 6.

⁵⁴⁰ Evidence, Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, 1 December 2017, p 56.

⁵⁴¹ Submission 9, NSW ACT Alcohol Policy Alliance, p 10; see also Evidence, Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia, 5 December 2017, p 39; Evidence, Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, 1 December 2017, p 32.

alcohol and sport so that fitness, success and celebration are not all revolving around alcohol would be really a useful thing'.⁵⁴²

- 4.27** Inquiry participants also advised that restricting alcohol advertising in sport – if not withdrawing it altogether – is strongly supported by the community. For example, Cancer Council NSW reported there is community support for less alcohol sponsorship of sport, citing findings from a Victorian survey which showed that 83 per cent of respondents would support the removal of alcohol sponsorship from clubs if help was given to replace lost revenue. Cancer Council NSW also cited results from a Foundation for Alcohol Research and Education poll showing 60 per cent of participants agreed with prohibiting alcohol sponsorship at sporting events. In 2017 this figure was similar, at 55 per cent.⁵⁴³
- 4.28** Similarly, the Australian Institute of Health and Welfare advised that the 2016 National Drug Strategy Household Survey found that banning alcohol sponsorship was supported by 54 per cent of people in New South Wales, which is consistent with national levels of support for this measure.⁵⁴⁴
- 4.29** Stakeholders advised that other jurisdictions in Australia are considering restrictions on alcohol advertising and sponsorship in sport. For example, according to these stakeholders:
- a recent report of the Alcohol Policies and Legislation Review, commissioned by the Northern Territory Government, recommended national advocacy for a comprehensive and enforceable code for alcohol advertising and promotion, restrictions on alcohol advertising during live sports telecasts and alternatives to alcohol sponsorship of sport⁵⁴⁵
 - in South Australia an independent review of the *Liquor Licensing Act 1997* (SA) found that a ban on alcohol advertising at sports arenas and during live sports telecasts should be considered⁵⁴⁶
 - several government committees and inquiries in Australia have previously recommended phasing out alcohol sponsorship.⁵⁴⁷
- 4.30** NAAPA and the McCusker Centre for Action on Alcohol and Young People also informed the committee that other countries, including France, Norway and Croatia, have already successfully removed alcohol sponsorship from sport ‘without any significant impact’.⁵⁴⁸ Moreover, the McCusker Centre advised that leading health organisations such as the World Health Organisation and the Australian Medical Association have recommended addressing alcohol sponsorship ‘as part of a comprehensive approach to reducing alcohol-related harm’.⁵⁴⁹

⁵⁴² Evidence, Professor Conigrave, 1 December 2017, p 60; see also Evidence, Mr Moore, 5 December 2017, p 39; Evidence, Professor Elliott, 1 December 2017, p 58.

⁵⁴³ Submission 3, Cancer Council NSW, pp 8-9.

⁵⁴⁴ Submission 2, Australian Institute of Health and Welfare, p 6.

⁵⁴⁵ Submission 24, Public Health Association of Australia, p 5.

⁵⁴⁶ Submission 24, Public Health Association of Australia, p 5.

⁵⁴⁷ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 7.

⁵⁴⁸ Submission 9, NSW ACT Alcohol Policy Alliance, p 10; Submission 23, McCusker Centre for Action on Alcohol and Youth, p 7.

⁵⁴⁹ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 7.

- 4.31** Inquiry participants from the health and advocacy sectors thus strongly argued for action on alcohol advertising in sport.⁵⁵⁰ As NAAPA stated:

The NSW Government can stop this problem by phasing out alcohol sponsorship from sporting and cultural events and advocating at the Federal level to end advertising during sports broadcasts. There is strong community support for the removal of alcohol advertising during sport ...⁵⁵¹

The value of alcohol advertising and sponsorship in sport

- 4.32** The committee received evidence from The Coalition of Major Professional & Participation Sports (COMPPS) that ‘there are currently no restrictions on the sponsorship of sport by alcohol companies in Australia’.⁵⁵² They contended that it is unnecessary to introduce regulation on sport sponsorship,⁵⁵³ and that there would be significant consequences not only for sports but for the wider community if any such restrictions were introduced.
- 4.33** By way of background, COMPPS advised that its member organisations are not-for-profit enterprises whose revenues consist of a mix of media rights, sponsorship and gate revenues.⁵⁵⁴
- 4.34** According to COMPPS, the major source of revenue for most sports is the sale of media rights. COMPPS explained that these media rights are sold to free-to-air television and subscription broadcasters, who then seek to recoup the payment and make a profit from the sale of advertising space during the broadcasts. COMPPS stated that most alcohol advertising thus occurs as a result of a contract between an alcohol provider and the media company who broadcasts the advertising. COMPPS advised that the sport ‘is almost always not a party to the contract’.⁵⁵⁵
- 4.35** COMPPS argued that the prohibition on alcohol advertising in the proposed Bill would mean that ‘a significant amount of advertising revenue would be denied to broadcasters’, which in turn would have a ‘corresponding negative impact on sports’ rights fees’.⁵⁵⁶ While they could not quantify the amount, COMPPS insisted that the financial impact would be significant across the sports. They stated:

The impact of the amendments would be significant for broadcasters and this in turn would impact sports and their ability to deliver their content. Broadcasters would lose the revenue from alcohol advertisers and would seek to replace that advertising from other advertisers in an already difficult market. Unfortunately there is not an unlimited supply of companies that are in the marketplace who wish to advertise on sport

⁵⁵⁰ For example, Evidence, Mr Moore, 5 December 2017, p 39; Submission 23, McCusker Centre for Action on Alcohol and Youth, p 9; Evidence, Ms Ferguson, 1 December 2017, p 32.

⁵⁵¹ Submission 9, NSW ACT Alcohol Policy Alliance, p 10.

⁵⁵² Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 7.

⁵⁵³ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 7.

⁵⁵⁴ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 3.

⁵⁵⁵ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 3.

⁵⁵⁶ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 3

broadcasts. It is not possible to quantify the amount by which the rights fees would diminish other than to say that it would be a significant amount for each sport.⁵⁵⁷

4.36 Both Mr Malcolm Speed, Executive Director, The Coalition of Major Professional & Participation Sports, and Mr Boland-Rudder, National Rugby League, reiterated this point in evidence to the committee, advising that ‘it is very hard to quantify in terms of the associated reduction in the value of the broadcast rights’.⁵⁵⁸

4.37 With regard to sport sponsorship, where there is a direct contractual arrangement between the sport and sponsor, COMPPS described the process by which these sponsorships are established:

Alcohol sponsorship arises where a sporting body or club enters into an agreement with a sponsor to empower the sponsor to use the intellectual property of the sport or club to promote its product. In many cases, the sporting body also benefits from the promotion of the sport as a result of the sponsors’ advertising and leverage campaigns.⁵⁵⁹

4.38 Given the nature of these arrangements, Mr Boland-Rudder stated that sports would see a substantial impact on their revenue base if the proposed Bill and its provisions prohibiting sponsorship by alcohol companies was passed. He advised that in the National Rugby League’s sponsorship agreements, ‘there is a trigger ... for there to be a renegotiation of the value of that sponsorship should there be a change in the legislative landscape’.⁵⁶⁰ He advised that the expectation would be a reduction in the value of the sponsorship, if indeed the sponsorship could exist at all.⁵⁶¹

4.39 Consequently, the National Rugby League contended that, as a not-for-profit enterprise, any reductions in revenue would have a negative impact on the administration and growth of the sport.⁵⁶²

4.40 Mr Boland-Rudder was particularly concerned about a clause in the Bill stipulating that ‘any sponsorships that are renewed since the Bill was tabled would in essence be rescinded should the Parliament pass that Bill’.⁵⁶³ He asserted that, given the life cycle of their sponsorship agreements, with their new cycle beginning this year, any recently negotiated deals would not be valid, thereby having a direct and immediate financial impact:

That would have a very sizeable impact on our revenue base. In the same way governments do, we project our revenue in forward cycles—ours are not four-year cycles but five-year cycles. We have banked our forward expenses into our revenue projections, so it would have a direct financial impact.⁵⁶⁴

⁵⁵⁷ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 3.

⁵⁵⁸ Evidence, Mr Boland-Rudder, 14 February 2018, p 3; Evidence, Mr Speed, 14 February 2018, p 3.

⁵⁵⁹ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 7.

⁵⁶⁰ Evidence, Mr Boland-Rudder, 14 February 2018, p 5.

⁵⁶¹ Evidence, Mr Boland-Rudder, 14 February 2018, p 5.

⁵⁶² Submission 30, National Rugby League Ltd, p 3.

⁵⁶³ Evidence, Mr Boland-Rudder 14 February 2018, p 5.

⁵⁶⁴ Evidence, Mr Boland-Rudder, 14 February 2018, p 5.

4.41 Mr Malcolm Speed, Executive Director, The Coalition of Major Professional & Participation Sports, also expressed concerns over the diminution of sponsorship value and the need to fill the significant void that would be left if alcohol sponsorship was to be prohibited. He reflected on the withdrawal of tobacco sponsorship from sport and anticipated a similar struggle if the proposed Bill was to be passed:

... when tobacco disappeared it was not possible to get another sponsor to pay at the same level as the tobacco sponsors. There was a diminution in sponsorship value at that time. There were other sponsors who were attracted, but they paid less than tobacco. It was a difficult time for sports but, yes, they survived. If alcohol as a category disappeared, yes, it would be replaced but it would be very difficult to get a new sponsor to pay the same or a similar amount to the amounts alcohol companies are paying.⁵⁶⁵

4.42 At a grassroots level, COMPPS advised that sponsorship fees paid by alcohol companies to sporting organisations ‘are critical to the ongoing viability of many sporting events and programs, including grassroots activities’.⁵⁶⁶ They argued that the loss of this sponsorship would therefore be damaging to all levels of the sport as well as the community, the value of which would be ‘impossible to quantify’ given the extent of its reach:

If this sponsorship were not available it would have a detrimental impact on grassroots sporting clubs and subsequently reduce participation in sport, thereby having a negative impact on the overall health and wellbeing of the community. It is important to highlight many rural and suburban sports clubs and leagues are often sponsored by the local pub or alcohol retailer and in numerous cases, they are the only significant sponsors. It is impossible to quantify the value of this type of sponsorship.⁵⁶⁷

4.43 COMPPS advised that it is this area of grassroots ‘discretionary spending’ that is under particular threat if alcohol sponsorship of sport were to be prohibited. As Mr Speed stated: ‘My experience over many years is that if money is short, that is one of the first areas that is cut’.⁵⁶⁸

4.44 Mr Boland-Rudder, National Rugby League, supported this view, advising that alcohol sponsorship counted for 3 per cent of their revenue base, equating to millions of dollars for the sporting organisation.⁵⁶⁹ He informed the committee that a loss of that revenue would mean cuts to various programs ‘that have positive outcomes for the community’ explaining:

The elements that are more discretionary are the very positive ones that have positive outcomes for community ... programs that promote positive mental wellbeing, focus on the reduction of domestic violence and use sport as a means to create greater social harmony and acceptance of new multicultural communities ... programs that help transition young Indigenous students from their high school into further education or

⁵⁶⁵ Evidence, Mr Speed, 14 February 2018, p 8.

⁵⁶⁶ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 7.

⁵⁶⁷ Submission 28, The Coalition of Major Professional & Participation Sports (COMPPS), p 7.

⁵⁶⁸ Evidence, Mr Speed, 14 February 2018, p 9.

⁵⁶⁹ Evidence, Mr Boland-Rudder, 14 February 2018, p 3.

employment. Unfortunately those are the types of programs that would probably have to be reduced.⁵⁷⁰

4.45 Mr Boland-Rudder also drew attention to the impact of sponsorship loss on local sporting clubs and associations, and highlighted the importance of these agreements for the long-term sustainability of local clubs.⁵⁷¹

4.46 In contrast, stakeholders from the health and advocacy sectors maintained that the value of alcohol advertising and sponsorship to sports does not outweigh the negative impacts that are associated with such promotions, as discussed earlier.

4.47 At the grassroots level, these inquiry participants questioned whether the loss of alcohol sponsorship would cause a significant impact on local sporting communities. As Professor Nadine Ezard, Member, NSW ACT Alcohol Policy Alliance, argued: ‘We do not have the evidence that community grassroots sporting is entirely reliant on alcohol industry sponsorship. I think it is not at all’.⁵⁷²

4.48 Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, expressed a similar view, querying the extent to which local clubs are benefiting from major alcohol sponsors at the professional level: ‘I would be surprised if the grassroots communities’ sporting clubs are seeing the dollars from these big corporation deals we see on television’.⁵⁷³

4.49 With regard to the loss of alcohol sponsorship at the broader level, inquiry participants were confident, based on experience with regard to the tobacco industry, that the gap left by alcohol sponsorship would be filled and that sports would not suffer to the extent the industry expects.⁵⁷⁴ For example, the McCusker Centre for Action on Alcohol and Youth argued:

We believe it is reasonable to expect that, over time, other advertisers would fill available sponsorship and advertising spots. The enormous public exposure and other benefits these sponsorships are associated with are likely to be relevant to a wide range of industries and brands.⁵⁷⁵

4.50 Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, shared this view, asserting that there are many industries who would be willing to support sports in the way that the alcohol industry currently does. Again drawing on comparisons with the tobacco industry, he stated: ‘Sport did not stop when tobacco advertising was phased out of sport ... I would be pretty sure sport can stand on its own two feet without alcohol’.⁵⁷⁶

⁵⁷⁰ Evidence, Mr Boland-Rudder, 14 February 2018, p 4.

⁵⁷¹ Evidence, Mr Boland-Rudder, 14 February 2018, p 9.

⁵⁷² Evidence, Associate Professor Nadine Ezard, Member, NSW ACT Alcohol Policy Alliance, p 1 December 2017, p 37.

⁵⁷³ Evidence, Ms Ferguson, 1 December 2017, p 37.

⁵⁷⁴ For example, Answers to questions on notice, Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, 15 December 2017, p 4.

⁵⁷⁵ Answers to questions on notice, Ms Stafford, 15 December 2017, p 4.

⁵⁷⁶ Evidence, Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, p 1 December 2017, p 37.

- 4.51** Professor Elliot, Royal Australasian College of Physicians, agreed, stating that ‘there is always an alternative source’.⁵⁷⁷ She cited the example of remote Aboriginal communities where they have sourced alternative sponsorship because of concerns around high levels of alcohol use and foetal alcohol spectrum disorders in those communities.⁵⁷⁸
- 4.52** That being said, and conscious of any financial disadvantage a prohibition might have on the sporting industry, the NSW ACT Alcohol Policy Alliance recommended a transitional approach to allow the industry ‘enough time and flexibility to amend current contractual arrangements and other business practices before the implementation of legislation’.⁵⁷⁹ Similarly, the McCusker Centre for Action on Alcohol and Youth supported a phased transition so as to ‘provide sports with reasonable timeframes in which to amend existing arrangements and seek socially responsible sponsors’.⁵⁸⁰

Alcohol advertising during televised sporting programs

- 4.53** In terms of alcohol advertising during televised sporting programs, the committee received evidence that free-to-air television is the only media platform with enforceable restrictions on alcohol advertising.⁵⁸¹ Commercial free-to air broadcasters are subject to the Commercial Television Industry Code of Practice, which prohibits alcohol advertisements from being displayed between 5.00 am and 8.30 pm. The Code permits alcohol advertising, however, at any time ‘as an accompaniment to a sports program on a weekend or a public holiday’ or ‘as an accompaniment to the broadcast of a live sporting event across more than one licence area’.⁵⁸²
- 4.54** According to Free TV, there is ‘no evidence of regulatory failure regarding free-to-air television’, citing low levels of viewer complaints about alcohol advertisements in particular. Echoing the evidence reflected earlier regarding the industry’s commitment to promote the message of responsible consumption, Free TV told the committee:
- ... there is an extensive range of restrictions and placement rules already in place for advertising of alcohol products on free-to-air television ... Commercial free-to-air broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, aligns with community expectations, particularly in relation to children and young audiences.⁵⁸³
- 4.55** However, many health and advocacy participants were deeply troubled by what they described as a ‘loophole’ in the restrictions intended to protect children from exposure to alcohol advertising.⁵⁸⁴ As Mr Klarenaar, NSW ACT Alcohol Policy Alliance, remarked: ‘... [T]here is

⁵⁷⁷ Evidence, Professor Elliott, 1 December 2017, p 58.

⁵⁷⁸ Evidence, Professor Elliott, 1 December 2017, p 58.

⁵⁷⁹ Submission 9, NSW ACT Alcohol Policy Alliance, p 10.

⁵⁸⁰ Answers to questions on notice, Ms Stafford, 15 December 2017, p 4.

⁵⁸¹ Submission 9, NSW ACT Alcohol Policy Alliance, p 10; Submission 42, Free TV Australia, p 3.

⁵⁸² Submission 42, Free TV Australia, pp 3-4; Commercial Television Industry Code of Practice, p 18.

⁵⁸³ Submission 42, Free TV Australia, p 5.

⁵⁸⁴ For example, Submission 3, Cancer Council NSW, p 8; Evidence, Ms Stafford, 1 December 2017, p 41; Answers to questions on notice, Ms Ferguson, 8 January 2018, p 13; Submission 21, Royal Australasian College of Physicians, p 6.

an absurd loophole where alcohol advertising is restricted during children's viewing hours except if it is a sporting event. That is inexplicable and against any public interest'.⁵⁸⁵

4.56 Indeed, the NSW ACT Alcohol Policy Alliance questioned why sport should be the exception to the rule, asserting that because of the timing control exemptions, 'millions of children are exposed to alcohol advertising during TV viewing hours when alcohol is not normally allowed to be advertised'.⁵⁸⁶

4.57 Professor Conigrave echoed this observation, stating: 'At present the advertising on sport is happening on weekend television in prime child awake hours. Many kids are sitting watching the sport with their parents'.⁵⁸⁷

4.58 In terms of the numbers, Professor Elliott reported research which quantified the exposure of children to alcohol advertising on television through the timing control exemptions for sport, asserting that not only is alcohol advertising widespread in sporting broadcasts, but that large numbers of children and young people are viewing such broadcasts. For example, she informed the committee that '[o]verall in one year the cumulative audience of 27 million children were exposed to 51 million incidents of alcohol advertising in live sport in the AFL, NRL and cricket broadcasts'.⁵⁸⁸

4.59 Professor Elliott also reported other research indicating the extent to which alcohol advertising is present on television through sport:

Research by Kerry O'Brien from Monash University showed that in one Australian Football League [AFL] season, alcohol advertising broadcasts totalled 16 hours, a large time considering that most advertisements are 30 to 60 seconds. During the 2012 National Rugby League [NRL] State of Origin season there were over 4,000 incidents of alcohol promotion, on and off field, a total of 199 minutes. We know that 300,000 children aged 5 to 17 watch these games. In 2015 in the AFL season there were 1,900 free-to-air alcohol advertisements and 47 per cent of these occurred in the time slots 6.00 p.m. to 8.30 p.m. which are watched by children and young people.⁵⁸⁹

4.60 Similarly, the Cancer Council NSW cited research showing that in 2012, alcohol advertising during the programs of just three major sporting codes – the Australian Football League, Cricket and National Rugby League – represented 60 per cent of all alcohol advertising in sport on television, and 15 per cent of all alcohol advertisements on Australian television.⁵⁹⁰

4.61 In addition to the evidence indicating public support for withdrawing alcohol sponsorship from sport, as discussed earlier, the Australian Institute of Health and Welfare advised that restricting alcohol advertising on television was also widely supported. Specifically, the National Drug Strategy Household Survey found that 72 per cent of people in New South Wales supported limiting alcohol advertising until after 9.30 pm.⁵⁹¹

⁵⁸⁵ Evidence, Mr Klarenaar, 1 December 2017, p 40.

⁵⁸⁶ Submission 9, NSW ACT Alcohol Policy Alliance, p 10.

⁵⁸⁷ Evidence, Professor Conigrave, 1 December 2017, p 60.

⁵⁸⁸ Evidence, Professor Elliott, 1 December 2017, p 55.

⁵⁸⁹ Evidence, Professor Elliott, 1 December 2017, p 55.

⁵⁹⁰ Submission 3, Cancer Council NSW, p 8.

⁵⁹¹ Submission 2, Australian Institute of Health and Welfare, p 6.

Alcohol advertising on government infrastructure and property

- 4.62** Stakeholders advised the committee that alcohol advertising is currently permitted on state-owned property, including buses, trains, bus shelters and train stations (transit advertising), as well as on billboards located on various buildings throughout the state.⁵⁹²
- 4.63** According to the NSW Department of Premier and Cabinet, New South Wales government agencies who own assets on which advertising is placed enter into commercial arrangements that, in most cases, are leased to third party media partners to manage the placement of advertising. They advised that these advertising assets and contracts are the responsibility of individual agencies.⁵⁹³ This was confirmed by evidence received from Transport for NSW, Sydney Olympic Park Authority and Venues NSW.⁵⁹⁴
- 4.64** A number of inquiry participants from the health and advocacy sectors raised the issue of alcohol advertising on government infrastructure and property, calling for its prohibition given its visibility and reach to audiences of all ages at all times. As the McCusker Centre for Action on Alcohol and Youth described it, their key concern about particularly outdoor advertising on government assets is that it cannot be ‘switched off, avoided or ignored, and it is impossible to control who views [them]’.⁵⁹⁵
- 4.65** Given this visibility, inquiry participants expressed concern about the exposure of children and young people to alcohol advertising, particularly on public transport and transport stops.⁵⁹⁶
- 4.66** In this regard, the committee heard that:
- Transport NSW’s 2014-2015 Household Travel Survey demonstrated that, on an average week day, 216,000 young people under the age of 20 used the train and 199,000 used a public bus to travel⁵⁹⁷

⁵⁹² For example, Submission 9, NSW ACT Alcohol Policy Alliance, pp 7-9; Submission 3, Cancer Council NSW, p 11; Submission 4, Australian Health Promotion Australia (NSW Branch), p 1.

⁵⁹³ NSW Department of Premier and Cabinet advised that the exception to this is where advertising falls within the definition of ‘government advertising’ under the *Government Advertising Act 2011*, which applies to advertising about government programs or policies, Correspondence from Mr Matthew Jones, Executive Director, Communications and Engagement, Government, Corporate and Regional Coordination, Department of Premier and Cabinet, to the Chairman, dated 22 January 2018, p 1.

⁵⁹⁴ Correspondence from Mr Todd Lister, Manager, Parliamentary Services, Customer Services, Transport for NSW, to secretariat, dated 12 December 2017, p 1; Correspondence from Mr Charles Moore, Chief Executive Officer, Sydney Olympic Park Authority, to the Chairman, dated 18 January 2018, p 2; Correspondence from Mr Paul Doorn, Chief Executive Officer, Venues NSW to the Chairman, dated 5 March 2018, p 1.

⁵⁹⁵ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 4; see also Submission 3, Cancer Council NSW, p 11.

⁵⁹⁶ For example, Submission 9, NSW ACT Alcohol Policy Alliance, pp 7-9; Submission 23, McCusker Centre for Action on Alcohol and Youth, p 4; Evidence, Mr Klarenaar 1 December 2017, p 32; Evidence, Ms Dessaix, 5 December 2017, p 41; Evidence, Professor Conigrave, 1 December 2017, p 60.

⁵⁹⁷ Submission 3, Cancer Council NSW, p 11.

- 27 per cent of train station advertising is for alcohol products, according to audits of alcohol marketing in Sydney reported by Australian Health Promotion Australia.⁵⁹⁸
- 4.67** According to the McCusker Centre for Action on Alcohol and Youth and the NSW ACT Alcohol Policy Alliance, community concern about exposure to alcohol advertising in these locations is widespread, with reports that:
- 65 per cent of New South Wales adults believe that alcohol advertising should be banned on public transport
 - 58 per cent believe that alcohol advertising should be banned at bus and train stops.⁵⁹⁹
- 4.68** As such, inquiry participants urged for alcohol advertising to be prohibited on all government infrastructure and property, including public transport.⁶⁰⁰ The Cancer Council NSW asserted that this is well within the remit of the NSW Government, while Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians, maintained that ‘it would be simple and easy for the Government to act [on]’.⁶⁰¹
- 4.69** To support such a change in New South Wales, these stakeholders pointed to the developments in other jurisdictions to address alcohol advertising on government infrastructure property.⁶⁰² For example, the McCusker Centre for Action on Alcohol and Youth advised ‘there is precedent for state and territory governments in Australia taking action on advertising on public transport’, and informed the committee that:
- the Australian Capital Territory Government removed alcohol advertising from public buses in 2015
 - the South Australian Government announced that it would remove alcohol advertising from public transport vehicles, following a review of the *Liquor Act 2016* (SA)
 - the Western Australian Government has committed to removing alcohol advertising from all public buses, bus stops and train stations.⁶⁰³
- 4.70** Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education, argued that New South Wales has the opportunity to follow the lead of these jurisdictions and remove alcohol advertising from public transport.⁶⁰⁴ The NSW ACT Alcohol Policy Alliance advocated that New South Wales go one step further and remove alcohol advertising from all government infrastructure and property.⁶⁰⁵

⁵⁹⁸ Submission 4, Australian Health Promotion Australia (NSW Branch), p 1.

⁵⁹⁹ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 4; Submission 9, NSW ACT Alcohol Policy Alliance, pp 7-9.

⁶⁰⁰ For example, Submission 9, NSW ACT Alcohol Policy Alliance, p 10; Submission 3, Cancer Council NSW, p 11; Submission 23, McCusker Centre for Action on Alcohol and Youth, p 6; Evidence, Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance, 1 December 2017, p 32

⁶⁰¹ Evidence, Professor Conigrave, 1 December 2017, p 59.

⁶⁰² For example, Submission 24, Public Health Association of Australia, p 5; Submission 9, NSW ACT Alcohol Policy Alliance, pp 7-9.

⁶⁰³ Submission 23, McCusker Centre for Action on Alcohol and Youth, p 6.

⁶⁰⁴ Evidence, Ms Ferguson, 1 December 2017, p 31.

⁶⁰⁵ Submission 9, NSW ACT Alcohol Policy Alliance, p 9.

- 4.71 However, Venues NSW noted that banning alcohol advertising on its venues ‘would have a detrimental effect on revenue streams that are required to achieve operational financial sustainability for the venues’.⁶⁰⁶

Committee comment

- 4.72 Australians love their sport. However, it is deeply troubling that when we watch or engage in sporting activities, we are inundated with alcohol advertising. Whether it be during televised broadcasts, at live games or on merchandise, alcohol advertising is so prominent and ubiquitous that it is often hard to identify a sport or a team without thinking of its alcohol sponsor. This situation is even more concerning given the large number of children and young people who play or watch sports regularly, and who idolise sports stars.
- 4.73 The committee shares the concerns of those inquiry participants who are concerned about the prevalence of alcohol advertising in sport. We also agree that children and young people are being exposed to alcohol advertising through sports with alarming regularity, especially during televised sporting events and programs, and that the association between alcohol and sport is sending a mixed and dangerous message.
- 4.74 In particular, the committee is deeply troubled by the loophole in the Commercial Television Industry Code of Practice that allows for alcohol advertising to be shown at any time of day if accompanied by a sports program or broadcast. The committee believes that millions of children are being unnecessarily exposed to alcohol advertising as a result. This is understandably of concern not only to us, but to the wider community.
- 4.75 At the same time, we recognise that alcohol advertising and sponsorship accounts for a significant proportion of revenue for sporting bodies, and that many sporting bodies rely upon this revenue to support important community activities and campaigns.
- 4.76 The committee therefore recommends that the NSW Government consider a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged, and lobby at the national level for the removal of time control exemptions under the Commercial Television Industry Code of Practice.

Recommendation 8

That the NSW Government consider a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged.

Recommendation 9

That the NSW Government lobby the Australian Government to remove time control exemptions for sports broadcasts under the Commercial Television Industry Code of Practice.

⁶⁰⁶ Correspondence from Mr Doorn to the Chairman, dated 5 March 2018, p 2.

- 4.77** The committee acknowledges the concerns of inquiry participants who drew attention to the prevalence of alcohol advertising on government infrastructure and property, including on buses, trains, bus shelters and at train stations. The committee considers that such outdoor advertising is troubling, given its visibility and reach to children and young people who use public transport. This is also a justified concern in the community, and we particularly note the developments in other Australian jurisdictions to address this problem.
- 4.78** The committee therefore recommends that alcohol advertising be appropriately restricted on all government infrastructure and property, particularly advertising to which children and young people are exposed.

Recommendation 10

That the NSW Government consider appropriate restrictions and/or exclusions on alcohol advertising on all government infrastructure and property, particularly advertising to which children and young people are exposed.

Appendix 1 Alcoholic Beverages Advertising Prohibition Bill 2015

Introduced by Revd the Hon F J Nile, MLC

First print



New South Wales

Alcoholic Beverages Advertising Prohibition Bill 2015

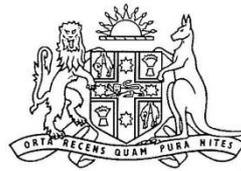
Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Act binds the Crown	2
4	Purposes of the Act	2
5	Definitions	2
Part 2	Offences relating to promotion of alcoholic beverages	
6	Certain advertising prohibited	4
7	Competitions	5
8	Free samples	5
9	Prohibition of sponsorships	6
10	Exemptions	6
Part 3	Reintroduction of local option	
11	Request to declare local option area	8
12	Declaration of local option area	8
13	Rescission of declaration	8
14	When declaration or rescission has effect	9
15	Duration of declaration	9
16	Prohibitions applicable to local option areas	9

b2015-027.d05

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Contents

	Page
Part 4 Alcohol Advertising Prohibition Committee	
17 Alcohol Advertising Prohibition Committee	11
18 Functions of Committee	11
19 Responsibility of Minister	11
20 Provision of assistance to Committee	11
Part 5 Enforcement	
21 Removal of certain advertisements	12
22 Power of entry	12
23 Intimidation or obstruction of authorised officer	12
24 Consent required for prosecutions	12
25 Penalties	13
26 Proceedings for offences	13
27 Offences by bodies corporate	13
Part 6 General	
28 Certain civil proceedings barred	15
29 Regulations	15
30 Warnings	15
31 Review of Act	15
Schedule 1 Provisions relating to Alcohol Advertising Prohibition Committee	17



New South Wales

Alcoholic Beverages Advertising Prohibition Bill 2015

No. , 2015

A Bill for

An Act to prohibit the advertising of alcoholic beverages and related trade marks, brand names and logos; and for other purposes.

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Part 1 Preliminary

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Alcoholic Beverages Advertising Prohibition Act 2015</i> .	4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Act binds the Crown	7
This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.	8 9
4 Purposes of the Act	10
The purposes of this Act are:	11
(a) to discourage alcohol consumption by:	12
(i) persuading young people not to drink and not to abuse alcoholic beverages, and	13 14
(ii) limiting exposure of young people and children to persuasion to drink alcoholic beverages, and	15 16
(iii) encouraging drinkers of other beverages not to start drinking alcoholic beverages, and	17 18
(iv) assisting those who wish to limit or give up alcohol consumption, and	19
(b) to reduce alcohol-related:	20
(i) domestic violence, and	21
(ii) deaths, and	22
(iii) road accidents, and	23
(iv) crime and violence, and	24
(c) to prevent alcohol-related illness (such as cirrhosis of the liver), and	25
(d) to reduce the harmful impact of alcohol in the workplace and in industry generally.	26 27
5 Definitions	28
(1) In this Act:	29
<i>alcohol advertisement</i> means any writing, still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of 2 or more of them, that gives publicity to or otherwise promotes or is intended to promote:	30 31 32
(a) the purchase or use of an alcoholic beverage, or	33
(b) the trademark or brand name, or part of a trademark or brand name, of an alcoholic beverage.	34 35
<i>alcoholic beverage</i> means spirit, wine or beer (or any other beverage) which contains alcohol and which is designed for human consumption.	36 37
<i>authorised officer</i> means:	38
(a) a health surveyor appointed by the council of a local government area, or	39
(b) a person authorised as an officer for the purposes of this Act by an order made by the Secretary of the Ministry of Health.	40 41
<i>book</i> includes any printed material in any language.	42

brand name includes any part of a brand name.	1
Committee means the Alcohol Advertising Prohibition Committee established under Part 4.	2 3
newspaper includes a copy of any magazine, journal or periodical or any other publication copies of which contain:	4 5
(a) news, information or reports of events, or	6
(b) remarks, observations or comments about any news, information or events or about any other matter of interest to the public or to any section of the public, which are printed in any language and published at regular or irregular intervals.	7 8 9
package , in relation to an alcoholic beverage, means a package:	10
(a) in which the alcoholic beverage is packed by a manufacturer, and	11
(b) which is in contact with the alcoholic beverage.	12
premises includes any place.	13
public place includes a place to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation.	14 15
racing includes horse racing and pacing, dog racing and motor car and motorcycle racing.	16 17
relevant day means the fifth anniversary of the day on which the Bill for this Act was introduced into the Legislative Council.	18 19
sell includes:	20
(a) barter or exchange, or	21
(b) offer or expose for sale, barter or exchange, or	22
(c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit, or	23 24
(d) supply or offer to supply gratuitously but with a view to gaining or maintaining custom or otherwise with a view to commercial gain.	25 26
sponsorship includes:	27
(a) scholarship, prize, gift or other benefit, or	28
(b) financial arrangement (other than a genuine contract of employment or a genuine contract for services) for the distribution, promotion or publicity of one or more of the matters referred to in section 9 (1) (a) or (b) through the medium of sporting, arts, youth, educational or other like activities.	29 30 31 32
sport includes recreational and other activities but does not include racing.	33
telecommunication medium includes radio and television.	34
(2) Notes included in this Act do not form part of this Act.	35

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Part 2 Offences relating to promotion of alcoholic beverages

Part 2	Offences relating to promotion of alcoholic beverages	1
6	Certain advertising prohibited	2
(1)	A person who in New South Wales for any direct or indirect benefit displays an alcohol advertisement, so that it can be seen or heard from a public place, commits an offence.	3 4 5
(2)	An individual who broadcasts or transmits an alcohol advertisement by the use of any telecommunication medium commits an offence if, as a consequence, there is a financial or other material benefit (either direct or indirect):	6 7 8
	(a) to the owner of the radio or television station concerned or any company that controls the use of the medium, or	9 10
	(b) to any employee of the owner or any such company, or	11
	(c) to any other individual associated with the owner, any such company or any such employee.	12 13
(3)	A person who, after 3 months from the commencement of this Act, in New South Wales:	14 15
	(a) distributes to the public any unsolicited article, or	16
	(b) sells, hires or supplies for any direct or indirect benefit any article to any person (other than a person, or the employee of a person, who is a manufacturer, distributor or retailer of an alcoholic beverage),	17 18 19
	that constitutes or contains an alcohol advertisement commits an offence.	20
(4)	This section does not apply in relation to anything done before the relevant day, or before such earlier day as may be prescribed by the regulations (either generally or in a particular case or class of cases), under a contract or arrangement entered into before the day on which the Bill for this Act was introduced into the Legislative Council.	21 22 23 24 25
(5)	This section does not apply in relation to:	26
	(a) an alcohol advertisement in or on a newspaper or book printed or published outside New South Wales, the sole or main purpose of which newspaper or book is not the promotion or publicising of the purchase or use of an alcoholic beverage or a trademark or brand name of an alcoholic beverage, or	27 28 29 30
	(b) an alcohol advertisement in or on a package or carton containing an alcoholic beverage, or	31 32
	(c) an alcohol advertisement that is displayed inside a shop or other retail outlet where alcoholic beverages are offered or exposed for sale, that is directly adjacent to a place where all or any of those alcoholic beverages are offered or exposed for sale and that complies with the regulations, or	33 34 35 36
	(d) an invoice, statement, order, letterhead, business card, cheque, manual or other document that is ordinarily used in the course of the business of a manufacturer or distributor of an alcoholic beverage, or	37 38 39
	(e) anything to which this section does not apply by virtue of an exemption granted under section 10.	40 41
(6)	When 18 months has expired after the commencement of this Act, subsection (5) (e) does not apply to an alcohol advertisement that is visible from a public place, regardless of when the advertisement was first displayed.	42 43 44

(7)	In any proceedings for an offence under subsection (1) it is presumed that, if there is present in the relevant alcohol advertisement:	1
	(a) the name of a person who manufactures or distributes any alcoholic beverage, or	2
	(b) a trademark of which a person who manufactures or distributes any alcoholic beverage is the registered proprietor or the registered user, within the meaning of the <i>Trade Marks Act 1995</i> of the Commonwealth, or	3
	(c) a brand name used by a person who manufactures or distributes any alcoholic beverage,	4
	the person displayed that alcohol advertisement for a direct or indirect benefit, unless the contrary is proved.	5
(8)	In any proceedings for an offence under this section, if the thing that is alleged to constitute an alcohol advertisement contains the trademark or brand name of an alcoholic beverage, it is presumed to be designed to promote or publicise the alcoholic beverage to which it relates unless the contrary is proved.	6
(9)	Any contract for the doing of anything prohibited by this section (being a contract that purports to have been entered into after the Bill for this Act was introduced into the Legislative Council) is void, whether or not doing that thing constituted an offence when the contract purports to have been entered into.	7
7	Competitions	8
(1)	A person who, after 3 months from the commencement of this Act, in connection with the sale of an alcoholic beverage or for the purpose of promoting the sale of an alcoholic beverage:	9
	(a) supplies (whether it is sent from inside or outside New South Wales) to the purchaser, or any other person (not being a purchaser or other person who is, or is the employee of, a manufacturer, distributor or retailer of an alcoholic beverage) in New South Wales:	10
	(i) a prize, gift or other benefit, or	11
	(ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether that entitlement or qualification is absolute or conditional), or	12
	(b) conducts (whether from inside or outside New South Wales) a scheme:	13
	(i) prescribed to be a scheme to promote the sale of an alcoholic beverage or to promote drinking alcoholic beverages generally, and	14
	(ii) the whole or any part of which is implemented in New South Wales, commits an offence.	15
(2)	It is a defence in proceedings for an offence under subsection (1) to prove that the benefit or thing supplied, or participation in the relevant scheme, was only incidentally connected with the purchase of an alcoholic beverage and that equal opportunity to receive that benefit or thing, or to participate in that scheme, and to buy beverages other than alcoholic beverages, was afforded generally to persons who purchased beverages, whether or not they were alcoholic beverages.	16
8	Free samples	17
(1)	A person who, for the purpose of inducing or promoting the sale of an alcoholic beverage, offers, gives or distributes to another person (not being a person who is, or is the employee of, a manufacturer, distributor or retailer of an alcoholic beverage) a free sample of an alcoholic beverage commits an offence.	18

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Part 2 Offences relating to promotion of alcoholic beverages

(2)	This section does not apply to alcoholic beverages which are free samples offered, given or distributed at the actual geographical location where the beverages were made, being the winery or the vineyard (in the case of wine) and the brewery (in the case of beer).	1 2 3 4
9	Prohibition of sponsorships	5
(1)	A person who promotes or publicises, or agrees to promote or publicise, in New South Wales:	6 7
(a)	an alcoholic beverage or a trademark or brand name, or part of a trademark or brand name, of an alcoholic beverage, or	8 9
(b)	the name or interests of a manufacturer or distributor of an alcoholic beverage (whether or not that manufacturer or distributor also manufactures or distributes a beverage other than the alcoholic beverage) in association directly or indirectly with the alcoholic beverage,	10 11 12 13
	under a contract, or an arrangement (whether or not legally binding) under which a sponsorship is provided or to be provided by another person, commits an offence.	14 15
(2)	A person who provides or agrees to provide a sponsorship under a contract or arrangement of a kind referred to in subsection (1) commits an offence.	16 17
(3)	For the purposes of subsection (1) (b), the name or interests of a manufacturer or distributor of an alcoholic beverage are taken to be in association directly or indirectly with the alcoholic beverage if that name or those interests are commonly associated by members of the public in New South Wales with the alcoholic beverage.	18 19 20 21 22
(4)	This section does not apply in relation to:	23
(a)	anything done before the relevant day or before such earlier day as may be prescribed by the regulations either generally or in a particular case or class of cases, under a contract entered into before the day on which the Bill for this Act was introduced into the Legislative Council, or	24 25 26 27
(b)	anything to which this section does not apply by virtue of an exemption granted under section 10.	28 29
(5)	Nothing in subsection (1) or (2) applies to the giving of, or an agreement to give, a scholarship by a manufacturer or distributor of an alcoholic beverage to an employee, or a member of the family of an employee, of the manufacturer or distributor.	30 31 32
(6)	Any contract for the doing of anything prohibited by this section (being a contract that purports to have been entered into after the Bill for this Act was introduced into the Legislative Council) is void, whether or not doing that thing constituted an offence when the contract purports to have been entered into.	33 34 35 36
10	Exemptions	37
(1)	The Minister may, by notice published in the Gazette before the relevant day:	38
(a)	exempt a person or class of persons either wholly or in part from the operation of section 6 or 9 subject to such conditions (if any) as are set out in that notice or prescribed for the purposes of this paragraph, or	39 40 41
(b)	amend or revoke an exemption granted under this section.	42
(2)	An exemption may be granted under this section only:	43
(a)	after consultation between the Minister and the appropriate Minister, and having regard to the nature and background of the event, function or series	44 45

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
 Part 2 Offences relating to promotion of alcoholic beverages

- | | |
|--|----|
| concerned (the <i>relevant event</i>) and to the purposes of this Act, to facilitate the promotion and conduct of: | 1 |
| | 2 |
| (i) a sporting, racing or arts event or function, or | 3 |
| (ii) a series of sporting, racing or arts events or functions, | 4 |
| of national or international significance, or | 5 |
| (b) in any case of significant hardship to persons other than manufacturers or wholesalers of alcohol. | 6 |
| | 7 |
| (3) The <i>appropriate Minister</i> , in relation to a relevant event, is the Minister administering the Act (if any) under which the event is regulated. | 8 |
| | 9 |
| (4) The Minister must, when deciding whether or not to grant an exemption under this section for the purpose referred to in subsection (2) (a), have regard to: | 10 |
| | 11 |
| (a) any substantial connection between the relevant event or function or series of events or functions and other significant events or functions outside the State, | 12 |
| and | 13 |
| | 14 |
| (b) any reasonable efforts that have been made to obtain sufficient financial or other support for the relevant event or function or series of events or functions from sources other than the advertising of alcoholic beverages to render the exemption unnecessary. | 15 |
| | 16 |
| | 17 |
| | 18 |
| (5) An exemption granted under this section has no effect after the relevant day. | 19 |

Part 3	Reintroduction of local option	1
11	Request to declare local option area	2
(1)	Any person can request the Minister to declare a specified area to be a local option area. Streets and other landmarks can be used to describe the boundaries of such an area.	3 4 5
(2)	The request is not effective unless it is accompanied by a petition supporting the declaration of the area that the Minister is satisfied:	6 7
(a)	clearly described the boundaries of the specified area, the grounds on which the request was made and the effect of declaring that area to be a local option area, and	8 9 10
(b)	was signed (within a period of not more than 6 successive months) by not less than 10% of such of the people who reside in that area as are each entitled to vote in an election of a member of the Legislative Assembly for the electorate that includes his or her place of residence, and	11 12 13 14
(c)	contains, so that they may be easily read, the surname and the given name or given names (or the surname and the initials of the given name or given names) of, the residential address of, and the date on which the petition was signed by, each signatory, and	15 16 17 18
(d)	specifies whether the declaration sought is a declaration of general application or a declaration limited to specified hours or other periods of time.	19 20
(3)	An area for the purposes of a declaration under this Part may consist of (but is not limited to) a local government area or a ward of such an area.	21 22
(4)	If such an area consists of part of a ward only, subsection (2) (b) requires the signature of not less than 10% of all the people who reside in the whole of the ward and who are qualified to vote as referred to in that paragraph.	23 24 25
12	Declaration of local option area	26
(1)	The Minister must declare a local option area in accordance with such a request if the Minister agrees with the council of each local government area the whole or any part of which comprises or is included in the proposed local option area that any of the following situations apply:	27 28 29 30
(a)	there are widespread problems with youth which are related to alcohol being consumed in the proposed local option area,	31 32
(b)	there is widespread alcohol-related crime in that area,	33
(c)	there is widespread alcohol abuse in that area,	34
(d)	there are widespread alcohol-related illnesses, accidents or deaths in that area.	35
(2)	For the period of 4 months before a local option area is declared under this Part, notice of intention to declare the area (containing details of the proposed declaration) must be given at not less than monthly intervals in at least one local newspaper and at least one other newspaper circulated throughout the area.	36 37 38 39
13	Rescission of declaration	40
(1)	The Minister may rescind the declaration of a local option area, or any such declaration in so far as it relates to part of a local option area, but only in accordance with an agreement for rescission made between the Minister and the council of the local government area that constitutes that area or the part of that area.	41 42 43 44

(2) Such an agreement may not be made:	1
(a) until 6 months have expired after the declaration of the local option area concerned, or	2 3
(b) until 6 months after the last occasion (if any) on which the Minister or the council concerned unsuccessfully requested the other of them to agree to the rescission.	4 5 6
14 When declaration or rescission has effect	7
The declaration of a local option area, and any rescission of such a declaration, have effect only when notice of the declaration or rescission has been published in the Gazette.	8 9 10
15 Duration of declaration	11
(1) A declaration of a local option area must specify the nominal period for which the declaration will be in force unless it is sooner rescinded.	12 13
(2) The nominal period must commence at least one month after publication of the declaration in the Gazette and be a period of not less than 3 years or more than 5 years.	14 15 16
(3) A declaration of a local option area has effect only until the nominal period specified in the declaration expires or until it is rescinded, whichever occurs first.	17 18
16 Prohibitions applicable to local option areas	19
(1) A person commits an offence if the person:	20
(a) buys, sells or (for any direct or indirect material benefit to the person delivering) delivers any quantity of an alcoholic beverage, or	21 22
(b) consumes any alcoholic beverage in a public place,	23
within any local option area declared under this Part while the declaration is in force.	24
Maximum penalty: 1 penalty unit.	25
(2) If the declaration is expressed to be limited to specified hours or other periods of time, the declaration is taken not to be in force at any other time for the purposes of subsection (1).	26 27 28
(3) If a person is convicted of an offence under this section of buying, selling or delivering a quantity of an alcoholic beverage, the beverage and any bottle, keg, barrel, cask or other container in which it is contained:	29 30 31
(a) are forfeited to the Crown, and	32
(b) may be seized by an authorised officer or any police officer, and	33
(c) are to be disposed of as the Minister directs.	34
(4) After notice of the declaration of a local option area has been published in the Gazette and before the declaration commences to be in force, the average monthly quantity of any kind of alcoholic beverage sold from premises within that area that are (or are required to be) licensed for the purpose under the <i>Liquor Act 2007</i> is not to exceed the average monthly quantity of that kind of liquor sold per month for the 12 months before the notice was published.	35 36 37 38 39 40
(5) The regulations may provide for the making, keeping and inspection of records of sales of alcoholic beverages for the purpose of ensuring that subsection (4) is complied with.	41 42 43

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Part 3 Reintroduction of local option

- (6) If any quantity of an alcoholic beverage is sold in contravention of this section at any premises licensed under the *Liquor Act 2007*, any licence for the premises granted under that Act is taken to be cancelled. 1
2
3

Part 4 Alcohol Advertising Prohibition Committee	1
17 Alcohol Advertising Prohibition Committee	2
(1) The Alcohol Advertising Prohibition Committee is established.	3
(2) The Committee is to consist of 5 members appointed by the Minister, of whom:	4
(a) 1 is to be appointed as Chairperson, and	5
(b) 3 are to be appointed on the nomination of the Secretary of the Ministry of Health, and	6
(c) 1 is to be a person nominated by the Chief Executive Officer of the Outdoor Media Association of Australia.	7
(3) Schedule 1 sets out provisions with respect to the members and meetings of the Committee.	8
	9
	10
	11
18 Functions of Committee	12
(1) The Alcohol Advertising Prohibition Committee is to prepare and submit to the Minister a code which provides for the regular and progressive stages in accordance with which advertisements to which section 6 applies should be removed or obscured and sponsorships to which section 9 applies should be terminated.	13
	14
	15
	16
(2) The code is to provide for the removal or obscuring of advertisements and the termination of sponsorships by the relevant day.	17
	18
(3) The Committee's initial advice concerning the provisions of the code is to be given within 3 months after the commencement of this section.	19
	20
(4) The Committee has such other advisory functions as the Minister may determine.	21
19 Responsibility of Minister	22
(1) The Minister is required to recommend to the Governor the making of regulations which will ensure:	23
	24
(a) the removal or obscuring of advertisements to which section 6 applies, and	25
(b) the termination of sponsorships to which section 9 applies,	26
by regular and progressive stages.	27
(2) The Minister, in making any recommendation under this section, must consider any code submitted and any advice given by the Alcohol Advertising Prohibition Committee.	28
	29
	30
(3) This section does not apply to an advertisement or sponsorship which is the subject of an exemption under section 10.	31
	32
20 Provision of assistance to Committee	33
For the purpose of the exercise of its functions, the Secretary of the Ministry of Health is to provide the Alcohol Advertising Prohibition Committee with such assistance as it may reasonably require.	34
	35
	36

Part 5	Enforcement	1
21	Removal of certain advertisements	2
(1)	This section applies to an alcohol advertisement:	3
(a)	if the advertisement was placed or displayed in contravention of this Act or the regulations, or	4
(b)	after the relevant day or such earlier day as may be prescribed by the regulations either generally or in a particular case or class of cases, whether or not the advertisement was placed or displayed in contravention of this Act or the regulations.	5
(2)	If an alcohol advertisement is situated in a public place or on any premises from which it can be seen from a public place, the Local Court may order:	6
(a)	that the advertisement be removed or obscured by an authorised officer, and	7
(b)	if any person has been convicted of an offence under this Act or the regulations relating to the placing or displaying of the advertisement, that the person pay the reasonable costs incurred by the authorised officer in removing or obscuring the advertisement.	8
(3)	Subsection (2) does not apply to an advertisement that is displayed inside a shop or other retail outlet where alcoholic beverages are offered or exposed for sale and that complies with the regulations.	9
(4)	An authorised officer does not commit a civil wrong and is not liable for damages for anything done or omitted to be done while removing or obscuring an alcohol advertisement with reasonable care under the authority of such an order.	10
(5)	Any alcohol advertisement in the form of an article that is removed in accordance with such an order is taken to be the property of such person as is specified in the order.	11
(6)	If any costs are payable under such an order, they may be recovered in a court of competent jurisdiction as a debt due to the Crown or a council, as the case requires.	12
(7)	This section does not apply to an alcohol advertisement while it may be lawfully displayed in accordance with an exemption provided by this Act or the regulations.	13
22	Power of entry	14
(1)	An authorised officer may enter any premises to remove or obscure an alcohol advertisement under the authority of an order made by the Local Court.	15
(2)	This section does not allow the entry into any premises or part of premises used as a dwelling.	16
23	Intimidation or obstruction of authorised officer	17
	A person must not in any way intimidate or obstruct an authorised officer who is removing or obscuring an alcohol advertisement under the authority of an order made by the Local Court or who is attempting to do so.	18
	Maximum penalty: 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.	19
24	Consent required for prosecutions	20
	Proceedings for an offence under this Act are not to be commenced without the consent in writing of the Secretary of the Ministry of Health or a person authorised by the Secretary in writing for the purpose of this section.	21

25 Penalties	1
(1) A person who commits an offence under section 6 (1), (2) or (3), 7 (1), 8 (1), 9 (1) or (2) or 30 (1) is liable:	2
(a) in the case of an individual, to a penalty of not more than:	3
(i) 50 penalty units for a first offence, or	4
(ii) 100 penalty units for a second or subsequent offence, or	5
(b) in the case of a body corporate, to a penalty of not more than:	6
(i) 200 penalty units for a first offence, or	7
(ii) 400 penalty units for a second or subsequent offence.	8
(2) If a continuing state of affairs is created by an offence referred to in subsection (1), the offender is liable to a penalty of not more than:	9
(a) 50 penalty units in the case of an individual, or	10
(b) 200 penalty units in the case of a body corporate,	11
in respect of each day on which that offence continues, in addition to the penalty specified in that subsection.	12
	13
	14
	15
26 Proceedings for offences	16
(1) Proceedings for an offence under this Act or the regulations may be disposed of in a summary manner before the Local Court.	17
(2) An offence under this Act may be dealt with as an indictable offence, but only if the prosecutor proposes that the offence be so dealt with.	18
(3) If proceedings for an offence under this Act or the regulations are disposed of in a summary manner before the Local Court, the maximum penalty that may be imposed is 100 penalty units, or the maximum penalty for the offence (whichever is the lesser), despite any other provision of this Act.	19
(4) If proceedings for such an offence are taken on indictment, the maximum penalty that may be imposed is the maximum penalty for the offence.	20
(5) Proceedings for such an offence may be commenced at any time within 12 months after the date on which the offence is alleged to have been committed.	21
	22
	23
	24
	25
	26
	27
	28
27 Offences by bodies corporate	29
(1) When a body corporate commits an offence under this Act or the regulations, every officer of the body corporate commits the same offence unless he or she proves that:	30
(a) the offence was committed without his or her consent or knowledge, and	31
(b) he or she exercised all such due diligence to prevent the commission of that offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.	32
(2) In subsection (1):	33
<i>officer</i> , in relation to a body corporate, means:	34
(a) a director, secretary or executive officer of the body corporate, or	35
(b) a receiver, or receiver and manager, of property of the body corporate, or any other authorised person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge, or	36
(c) an official manager or a deputy official manager of the body corporate, or	37
(d) a liquidator of the body corporate, or	38
	39
	40
	41
	42
	43

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Part 5 Enforcement

- (e) a trustee or other person administering a compromise or arrangement made
between the body corporate and another person or other persons, 1
and includes any other person, however described and whether or not a director of 2
the body corporate, who is concerned, or takes part, in the management of the body 3
corporate. 4
5

Part 6	General	1
28	Certain civil proceedings barred	2
	An action at law or in equity does not lie against a person for:	3
	(a) the omission to do any thing the doing of which, or	4
	(b) the doing of any thing the omission to do which,	5
	would constitute an offence under this Act.	6
29	Regulations	7
(1)	The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular:	8
	(a) prescribing the labelling of packages containing alcoholic beverages, including the position of labels on packages and the size, colour, style and nature of labels or labelling, and	11
	(b) prescribing the size, colour, style, position and nature of alcohol advertisements displayed inside shops and other retail outlets where alcoholic beverages are offered or exposed for sale, and any statements or warnings to be included in those alcohol advertisements, and	14
	(c) prescribing the duty of persons packing, or causing other persons to pack, specified alcoholic beverages prepared for drinking to label those alcoholic beverages in a specified manner, and	18
	(d) prohibiting the sale of packages containing specified alcoholic beverages prepared for drinking unless those packages are labelled in a specified manner, and	21
	(e) exempting persons from any of the requirements made by section 16, but only in specified circumstances and where the quantity of alcoholic beverage concerned does not exceed that specified in relation to those circumstances, and	24
	(f) creating offences and providing in respect of any such offence a penalty not exceeding 10 penalty units.	28
(2)	In this section, <i>specified</i> means specified in regulations made under this section.	30
30	Warnings	31
(1)	The producer of an alcoholic beverage commits an offence if a warning prescribed by the regulations is not displayed, in accordance with the regulations, on the packaging in which the alcoholic beverage is sold or supplied by the producer.	32
(2)	The warning must give information about the harmful effects of alcohol consumption.	35
	Note. The following are examples of warnings that may be prescribed:	37
	(a) alcohol consumption can be harmful to your health and can cause:	38
	(i) cirrhosis of the liver, and	39
	(ii) permanent brain damage,	40
	(b) alcohol consumption often leads to deaths on the road.	41
31	Review of Act	42
(1)	Within a period of 12 months commencing on the third anniversary of the day on which this Act commenced, the Minister must cause an investigation and review to be conducted and a report prepared, concerning the operation of this Act.	43
		44
		45

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
Part 6 General

- (2) The Minister must cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament as soon as is practicable after the completion of that report. 1
2
3

Alcoholic Beverages Advertising Prohibition Bill 2015 [NSW]
 Schedule 1 Provisions relating to Alcohol Advertising Prohibition Committee

Schedule 1	Provisions relating to Alcohol Advertising Prohibition Committee	1
		2
	(Section 17 (3))	3
1	Nominations	4
(1)	A nomination of a member of the Committee must:	5
(a)	be submitted in writing to the Minister at the request of the Minister, and	6
(b)	be in respect of a person who consents to being a member.	7
(2)	If a person or body does not submit a nomination within 30 days after the making of the relevant request, the Minister may appoint a person to be the member concerned to represent the interests of the person or body in default until the relevant nomination is submitted.	8 9 10 11
2	Term of office	12
	A member has such term of office, not exceeding 4 years, as may be specified by the Minister in the instrument appointing the member.	13 14
3	Quorum	15
	3 members constitute a quorum for a meeting of the Committee.	16
4	Presiding member	17
(1)	The Chairperson is to preside at each meeting of the Committee at which the Chairperson is present.	18 19
(2)	In the absence of the Chairperson from a meeting of the Committee, the members present are to select from among their number a member to preside at the meeting.	20 21
5	Decisions of Committee	22
(1)	A decision supported by the votes of the majority of the members present and voting at a meeting of the Committee is the decision of the Committee.	23 24
(2)	Each member present at a meeting of the Committee is entitled to one vote on a matter arising for determination at the meeting.	25 26
6	Calling of first meeting	27
	The Minister is to call the first meeting of the Committee in such manner as the Minister thinks fit.	28 29
7	Procedure	30
	The Committee is to decide its own procedure for the conduct of its meetings, except as provided by this Schedule.	31 32

Appendix 2 Submissions

No	Author
1	Brown-Forman Australia Pty Ltd
2	Australian Institute of Health and Welfare
3	Cancer Council NSW
4	Australian Health Promotion Association (NSW Branch)
5	New South Wales Wine Industry Association
6	Winemakers' Federation of Australia
7	Australasian College for Emergency Medicine
8	Distilled Spirits Industry Council of Australia Inc
9	NSW ACT Alcohol Policy Alliance
10	Lion Beer Australia
11	Alcohol Beverages Australia
12	Coca-Cola Amatil
13	AHA NSW
14	Diageo
15	Deakin University Centre for Drug, Alcohol and Addiction Research (CEDAAR)
16	Burnet Institute
17	Brewers Association of Australia
18	Mr Tony Brown
19	Confidential
20	The ABAC Scheme Limited
20a	The ABAC Scheme Limited
21	The Royal Australasian College of Physicians
22	oOh!media
23	McCusker Centre for Action on Alcohol and Youth
24	Public Health Association of Australia
25	Liquor Stores Association NSW
26	Australian Association of National Advertisers
27	AMA New South Wales
28	The Coalition of Major Professional & Participation Sports (COMPPS)
29	Australian Council of Children & the Media
30	National Rugby League Ltd
31	St Vincent's Health Australia

No	Author
32	Foxtel
33	APN Outdoor
34	Outdoor Media Association
35	Paradise Outdoor Advertising
36	Outdoor Systems Pty Ltd
37	JCDecaux Australia
38	ClubsNSW
39	Centre for Alcohol Policy Research (CAPR)
40	Royal Australasian College of Surgeons
41	TorchMedia Pty Ltd
42	Free TV Australia

Appendix 3 Witnesses at hearings

Date	Name	Position and Organisation
Friday 1 December 2017, Macquarie Room, Parliament House	Mr Paul Newson	Deputy Secretary, Liquor & Gaming NSW
	Professor The Hon Michael Lavarch AO	Chief Adjudicator of the ABAC Adjudication Panel, The ABAC Scheme Limited
	Ms Jayne Taylor	Executive Officer, The ABAC Scheme Limited
	Mr Fergus Taylor	Executive Director, Alcohol Beverages Australia
	Mr John Scott	Chief Executive Officer, Drinkwise Australia
	Associate Professor Nadine Ezard	Member, NSW ACT Alcohol Policy Alliance
	Mr Paul Klarenaar	Member, NSW ACT Alcohol Policy Alliance
	Ms Julia Stafford (<i>via teleconference</i>)	Executive Officer, McCusker Centre for Action on Alcohol and Youth
	Ms Amy Ferguson	Director Policy and Research, Foundation for Alcohol Research and Education
	Mr Alec Wagstaff	Chief Executive Officer, Distilled Spirits Industry Council of Australia Inc
	Mr Tim Wallwork	Vice President, Director of Corporate Affairs, Asia Pacific, Brown-Forman Australia
	Mr Tony Battaglione	Chief Executive, Winemakers' Federation of Australia
	Professor Elizabeth Elliott AM	Fellow, Royal Australasian College of Physicians
	Professor Katherine Conigrave	Fellow, Royal Australasian College of Physicians
Tuesday 5 December 2017, Macquarie Room, Parliament House	Dr Megan Lim	Deputy Program Director, Behaviour and Health Risks, Head of Sexual Health and Young People's Health Research, Burnet Institute (<i>via teleconference</i>)
	Ms Tess Phillips	General Manager, Outdoor Media Association

Date	Name	Position and Organisation
	Ms Charmaine Moldrich	Chief Executive Officer, Outdoor Media Association
	Ms Simone Brandon	Director of Policy & Regulatory Affairs, Australian Association of National Advertisers
	Mr Bruce Meagher	Group Director – Corporate Affairs, Foxtel
	Mr Brett Heffernan	Chief Executive Officer, Brewers Association of Australia
	Mr Julian Sheezel	Corporate Affairs Director, Carlton and United Brewers
	Mr Dan Holland	External Relations Director, Lion Beer Australia
	Mr Jules Norton Selzer	External Relations and Public Policy Manager, Diageo Australia
	Ms Anita Dessaix	Director, Cancer Prevention and Advocacy Division, Cancer Council NSW
	Ms Clare Hughes	Nutrition Program Manager, Cancer Council NSW
	Ms Jane Dibbs	Senior Nutrition Project Officer, Cancer Council NSW
	Mr Michael Moore	Chief Executive Officer, Public Health Association of Australia
	Dr Ingrid Johnston	Senior Policy Officer, Public Health Association of Australia
Wednesday 14 February 2018, Macquarie Room, Parliament House	Mr Malcolm Speed AO	Executive Director, The Coalition of Major Professional and Participation Sport (COMPPS)
	Mr Jaymes Boland-Rudder	Head of Government and Community Relations, National Rugby League and member of COMPPS steering committee
	Mr Tim Holden	Head of Legal and Business Affairs, Football Federation of Australia and member of COMPPS steering committee

Appendix 4 Minutes

Minutes no. 24

Thursday 28 September 2017

Portfolio Committee No. 1 – Premier and Finance

Room 1254, Parliament House, Sydney, at 4.03 pm

1. Members present

Mr Franklin, *Deputy Chair*

Mr Farlow

Mr Field

Mr Martin (via teleconference)

Mr Searle

2. Apologies

Revd Nile, *Chairman*

Mr Primrose

3. Inquiry into Alcoholic Beverages Advertising Prohibition Bill 2015

3.1 Terms of reference

The committee noted the following terms of reference referred by the House on 21 September 2017:

That Portfolio Committee No. 1 – Premier and Finance inquire into and report on the Alcoholic Beverages Advertising Prohibition Bill 2015.

3.2 Closing date for submissions

Resolved, on the motion of Mr Farlow: That the closing date for submissions be 12 November 2017.

3.3 Stakeholder list

A proposed list of stakeholders was circulated to members.

Resolved, on the motion of Mr Field: That the proposed stakeholder list be agreed to, and that members have until 5pm Tuesday 3 October 2017 to suggest any further additions to the list.

3.4 Advertising

The committee noted that the inquiry would be advertised via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales.

3.5 Hearing dates

Resolved, on the motion of Mr Farlow: That hearing dates be determined by the Chairman after consultation with members regarding their availability.

4. Adjournment

The committee adjourned at 4.06 pm, *sine die*.

Teresa McMichael

Clerk to the Committee

Minutes no. 25

Tuesday 10 October 2017

Portfolio Committee No. 1 – Premier and Finance

Members' Lounge, Parliament House, Sydney, at 2.15 pm

1. Members presentRevd Nile, *Chairman*Mr Franklin, *Deputy Chair*

Mr Farlow

Mr Field

Mr Martin

Mr Primrose

Mr Searle

2. Draft minutes

Resolved, on the motion of Mr Searle: That draft minutes no. 19, 20, 21, 22, 23 and 24 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 27 September 2017 – Letter from Hon Victor Dominello MP, Minister for Finance, Services and Property, attaching answers to questions on notice, answers to supplementary questions and transcript corrections
- 27 September 2017 – Letter from Mr Brett Newman, Chief Executive Officer, Property NSW, clarifying evidence provided to the committee during Budget Estimates
- 28 September 2017 – Letters from Hon John Ajaka MLC, President of the Legislative Council to the Chair, attaching answers to questions on notice and answers to supplementary questions
- 28 September 2017 – Letter from Hon Matthew Kean MP, Minister for Innovation and Better Regulation to the Chair, attaching answers to questions on notice, answers to supplementary questions and transcript corrections
- 4 October 2017 – Letter from Hon Gladys Berejiklian MP, Premier, attaching answers to questions on notice and answers to supplementary questions
- 4 October 2017 – Letter from Hon Dominic Perrottet MP, attaching answers to questions on notice, answers to supplementary questions and transcript corrections.

Sent:

- 7 September 2017 – Email from secretariat to Mr Jordan Lane, Minister Dominello's office, attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions
- 7 September 2017 – Email from secretariat to Mr Tom Anderson, President Ajaka's office, attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions
- 7 September 2017 – Email from secretariat to Mr Richard Hodge, Minister Kean's office, attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions
- 11 September 2017 – Email from secretariat to Mr Joseph Watson, Treasurer Perrottet's office, attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions
- 12 September 2017 – Email from secretariat to Mr Zach Bentley, Premier Berejiklian's office, attaching transcript of evidence with questions on notice highlighted, supplementary questions and instructions on how to correct the transcript and return answers to questions.

4. Inquiry into Budget Estimates 2017-2018

4.1 Supplementary hearings

Resolved, on the motion of Mr Searle: That the committee:

- seek further detailed answers from the Treasurer, the Hon Dominic Perrottet MP, due by Wednesday 18 October, regarding:
 - Question on notice on page 22 of the transcript: costs relating to the challenge to the Australian Energy Regulator determination
 - Question on notice on pages 22-23 of the transcript: total transaction costs for the electricity network transactions.
- meet on Thursday 19 October 2017 to decide whether to hold a supplementary hearing for the portfolios of Treasury, Industrial Relations following receipt of the answers.

Resolved, on the motion of Mr Farlow: That the committee hold no further hearings to consider matters relating to the following portfolios:

- Finance, Services and Property
- The Legislature
- Innovation and Better Regulation
- Premier.

5. Inquiry into Alcoholic Beverages Advertising Prohibition Bill 2015

5.1 Hearing dates

Resolved, on the motion of Mr Primrose: That the committee hold two hearings and a potential public forum in November/December 2017, the dates of which are to be determined by the Chairman after consultation with members regarding their availability.

5.2 Reporting date

Resolved, on the motion of Mr Primrose: That the committee report by the end of March 2018.

6. Adjournment

The committee adjourned at 2.25 pm, *sine die*.

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 28

Friday 1 December 2017

Portfolio Committee No. 1 – Premier and Finance

Macquarie Room, Parliament House, 10.00 am

1. Members present

Revd Nile, *Chairman*

Mr Franklin, *Deputy Chair* (until 2.00 pm)

Mr Farlow

Mr Field

Mr Martin

Mr Primrose

Mr Searle

2. Previous minutes

Resolved, on the motion of Mr Field: That draft minutes no. 27 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 13 October 2017 – Letter from Ms Lisa Anne Ayres, Director, Executive Office, Australian Competition and Consumer Commission (ACCC), to Director, advising that the ACCC will not be making a submission to the inquiry
- 24 November 2017 – Email from Australian Medical Association to secretariat, advising they are unable to attend public hearing on 1 December 2017
- 24 November 2017 - Email from Australia Hotel Association to secretariat, advising they are unable to attend public hearing on 5 December 2017.

Sent

- 27 November 2017 – Letter to Mr Rodd Staples, Acting secretary, Transport for NSW, regarding alcohol advertising on government infrastructure and property
- 27 November 2017 – Letter to Mr Paul Doorn, Chief Executive Officer, Venues NSW, regarding alcohol advertising on government infrastructure and property
- 27 November 2017 – Letter to Mr Charles Moore, Chief Executive Officer, Sydney Olympic Park Authority, regarding alcohol advertising on government infrastructure and property
- 27 November 2017 – Letter to Ms Mary Ann O’Loughlin, Deputy Secretary of Social Policy Group, Department of Premier and Cabinet, regarding alcohol advertising on government infrastructure and property.

4. Inquiry into Alcoholic Beverages Advertising Prohibition Bill 2015

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-18, 20-29, 31-32, 34-39.

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission nos. 33, 40 and 41.

4.2 Partially confidential submissions

Resolved, on the motion of Mr Farlow: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submission no. 9.

Resolved, on the motion of Mr Farlow: That the committee keep the following information confidential, as per the recommendation of the secretariat: potential adverse mention in submission no. 18.

4.3 Confidential submissions

Resolved, on the motion of Mr Searle: That the committee:

- keep submission no. 19 confidential, as per the request of the author, as it contains identifying and/or sensitive information
- contact the author of submission no. 30 to ascertain the basis for their request for confidentiality.

4.4 Letter to stakeholders regarding public forum

The committee noted that a letter was sent to all stakeholders that were invited to make a submission asking if their members would like to participate in a public forum, should the committee hold one.

4.5 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Paul Newson, Deputy Secretary, Liquor and Gaming NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Professor The Hon Michael Lavarch AO, Chief Adjudicator of the ABAC Adjudication Panel, The ABAC Scheme Limited
- Ms Jayne Taylor, Executive Officer, The ABAC Scheme Limited.

Professor Lavarch tendered the following documents:

- Annual Report 2016, The ABAC Scheme Limited
- The development of Australia's responsible alcohol marking code, The ABAC Scheme Limited
- 2015 Year in review, The ABAC Scheme Limited
- 2016 Year in review, The ABAC Scheme Limited.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Fergus Taylor, Executive Director, Alcohol Beverages Australia.

Mr Taylor tendered the following document:

- Portfolio of research material.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr John Scott, Chief Executive Officer, Drinkwise Australia.

Mr Scott tendered the following document:

- A snapshot: Australian drinking habits 2007 vs 2017, Drinkwise Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Associate Professor Nadine Ezard, Member, NSW ACT Alcohol Policy Alliance
- Mr Paul Klarenaar, Member, NSW ACT Alcohol Policy Alliance.
- Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth (*via teleconference*)
- Ms Amy Ferguson, Director Policy and Research, Foundation for Alcohol Research and Education.

Ms Ferguson tendered the following document:

- Australia an intoxicated society: 40 years on from the Baume Report, November 2017, Foundation for Alcohol Research and Education.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Alec Wagstaff, Chief Executive Officer, Distilled Spirits Industry Council of Australia Inc
- Mr Tim Wallwork, Vice President, Director of Corporate Affairs, Asia-Pacific, Brown-Forman Australia
- Mr Tony Battaglione, Chief Executive, Winemakers' Federation of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Professor Elizabeth Elliott AM, Fellow, Royal Australasian College of Physicians

- Professor Katherine Conigrave, Fellow, Royal Australasian College of Physicians.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The hearing concluded at 4.55 pm.

4.6 Tended documents

Resolved, on the motion of Mr Field: That the committee accept and publish the following documents tendered during the public hearing:

- Annual Report 2016, The ABAC Scheme Limited, tendered by Professor The Hon Michael Lavarch AO
- The development of Australia's responsible alcohol marking code, The ABAC Scheme Limited, tendered by Professor The Hon Michael Lavarch AO
- 2015 Year in review, The ABAC Scheme Limited, tendered by Professor The Hon Michael Lavarch AO
- 2016 Year in review, The ABAC Scheme Limited, tendered by Professor The Hon Michael Lavarch AO
- Portfolio of research material, tendered by Mr Fergus Taylor
- A snapshot: Australian drinking habits 2007 vs 2017, Drinkwise Australia, tendered by Mr John Scott
- Australia an intoxicated society: 40 years on from the Baume Report, dated November 2017, Foundation for Alcohol Research and Education, tendered by Ms Amy Ferguson.

4.7 Witnesses

The committee noted that The Coalition of Major Professional & Participation Sports (COMPPS) were unable to attend the hearing on 5 December 2017 and will instead be invited to appear in the new year on a date to be determined, subject to members' availability.

The committee also received a request from a local MP to appear as a witness on one of the industry panels at the hearing on 5 December 2017.

Resolved, on the motion of Mr Primrose: That the secretariat seek the advice of the Clerk regarding the appearance of a local member on an industry panel.

5. Adjournment

The committee adjourned at 5.11 pm, until 10.30 am, Tuesday 5 December 2017 (*public hearing*).

Rhia Victorino
Committee Clerk

Minutes no. 29

Tuesday 5 December 2017

Portfolio Committee No. 1 – Premier and Finance

Macquarie Room, Parliament House, 10.38 am

1. Members present

Revd Nile, *Chairman*
Mr Franklin, *Deputy Chair*
Mr Farlow
Mr Field
Mr Martin
Mr Primrose
Mr Searle

2. Correspondence

The committee noted the following items of correspondence:

Received

- 29 November 2017 – Email from Mr Anthony Trimarchi, Manger – Policy and Government, ClubsNSW / Clubs Australia, to secretariat, advising they are unable to attend the public hearing on 5 December 2017
- 29 November 2017 – Email from Mr Michael Waters, Executive Director, Liquor Stores Association NSW & ACT, to secretariat, advising they are unable to attending the public hearing on 5 December 2017
- 30 November 2017 – Email from Mr Malcolm Speed, Executive Director, The Coalition of Major Professional & Participation Sports to secretariat, advising they are unable to attend public hearing on 5 December 2017.

3. Inquiry into Budget Estimates 2017-2018

3.1 Consideration of Chair's draft report

The Chairman submitted his draft report entitled *Budget Estimates 2017-2018* which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Franklin: That:

The draft report be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

That the report be tabled on Thursday 14 December 2017.

4. Inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015

4.1 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined via teleconference:

- Dr Megan Lim, Deputy Program Director, Behaviours and Health Risks, Head of Sexual Health and Young People's Health Research, Burnet Institute.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Tess Phillips, General Manager, Outdoor Media Association
- Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association
- Ms Simone Brandon, Director of Policy & Regulatory Affairs, Australian Association of National Advertisers
- Mr Bruce Meagher, Group Director – Corporate Affairs, Foxtel.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Brett Hefferman, Chief Executive Officer, Brewers Association
- Mr Julian Sheezel, Corporate Affairs Director, Carlton and United Brewers
- Mr Dan Holland, External Relations Director, Lion Beer Australia
- Mr Jules Norton Selzer, External Relations and Public Policy Manager, Diageo.

Mr Holland tendered the following document:

- Understanding behaviour in the Australian and New Zealand night-time economies: An anthropological study, Dr Anne Fox, January 2015.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Anita Dessaix, Director, Cancer Prevention and Advocacy Division, Cancer Council NSW
- Ms Clare Hughes, Nutrition Program Manager, Cancer Council NSW
- Ms Jane Dibbs, Senior Nutrition Project Officer, Cancer Council NSW
- Mr Michael Moore, Chief Executive Officer, Public Health Association of Australia
- Ms Ingrid Johnston, Senior Policy Officer, Public Health Association of Australia.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

4.2 Tendered documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following documents tendered during the public hearing:

- Understanding behaviour in the Australian and New Zealand night-time economies: An anthropological study, Dr Anne Fox, January 2015, tendered by Mr Dan Holland.

5. Adjournment

The committee adjourned at 3.39 pm, *sine die*.

Rhia Victorino
Committee Clerk

Minutes no. 30

Wednesday 14 February 2018

Portfolio Committee No. 1 – Premier and Finance

Macquarie Room, Parliament House, 1.02 pm

1. Members present

Revd Nile, *Chairman*
Mr Franklin, *Deputy Chair*
Mr Farlow
Mr Field
Mr Martin
Mr Primrose
Mr Searle

2. Draft minutes

Resolved, on the motion of Mr Farlow: That draft minutes nos. 28 and 29 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 5 December 2017 – Email from the author of submission no. 30 to secretariat, regarding the publication of their submission
- 12 December 2017 – Email from Mr Todd Lister, Manager, Parliamentary Services, Customer Services, Transport for NSW, to secretariat, attaching a response to the committee's request for information regarding advertising on government infrastructure and property
- 14 December 2017 – Email from the author of submission no. 30 to secretariat, regarding the publication of their submission
- 18 January 2018 – Letter from Mr Charles Moore, Chief Executive Officer, Sydney Olympic Park Authority, to the Chairman, in response to the committee's request for information regarding advertising on government infrastructure and property
- 22 January 2018 – Email from Mr Matthew Jones, Executive Director, Communications and Engagement, Department of Premier and Cabinet, to the Chairman, responding to the committee's request for information regarding advertising on government infrastructure and property.

Resolved, on the motion of Mr Franklin: That the committee keep the correspondence from the author of submission no. 30 regarding the publication of their submission, dated 5 and 14 December, confidential, as per the request of the author.

Resolved, on the motion of Mr Farlow: That the committee publish correspondence from Transport for NSW, Sydney Olympic Park Authority and the Department of Premier and Cabinet regarding advertising on government infrastructure and property.

4. Inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015

4.1 Submissions

Resolved, on the motion of Mr Searle: That the committee authorise the publication of submission nos. 20a and 42.

4.2 Publication of submission no. 30

Mr Franklin moved: That the committee publish submission no. 30 with the exception of the redactions proposed by the committee, as well as the second sentence of the final paragraph on p 5, at the request of the author.

Mr Searle moved: That the motion of Mr Franklin be amended by inserting 'the opening words of' before 'the second sentence of the final paragraph on p 5'.

Amendment of Mr Searle put.

The committee divided.

Ayes: Mr Field, Mr Primrose, Mr Searle.

Noes: Mr Farlow, Mr Franklin, Mr Martin, Revd Nile.

Amendment of Mr Searle resolved in the negative.

Original question of Mr Franklin put and passed.

4.3 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Ms Simone Brandon, Director of Policy and Regulatory Affairs, Australian Association of National Advertisers, received 14 December 2017

- Ms Julia Stafford, Executive Officer, McCusker Centre for Action on Alcohol and Youth, received 15 December 2017
- Dr Megan Lim, Burnet Institute, received 20 December 2017
- Ms Jane Taylor, Executive Officer, The ABAC Scheme Limited, received 21 December 2017
- Ms Jane Dibbs, Senior Nutrition Project Officer, Cancer Prevention and Advocacy – Nutrition Unit, Cancer Council NSW, received 21 December 2017
- Ms David Simpson, Foxtel, received 22 December 2017
- Mr Brett Heffernan, Brewers Association, received 22 December 2017
- Mr Alec Wagstaff, Distilled Spirits Industry Council of Australia, received 4 January 2018
- Ms Nicole Cosgrove, Winemakers' Federation of Australia, received 8 January 2018
- Mr Fergus Taylor, Alcohol Beverages Australia, received 8 January 2018
- Ms Madeleine Day, Foundation for Alcohol Research and Education and NSW ACT Alcohol Policy Alliance, received 8 January 2018
- Ms Fay Charafeddine, Liquor & Gaming NSW, received 8 January 2018
- Mr Sam Barr, Lion Beer, received 8 January 2018
- Ms Tess Phillips, Outdoor Media Association, received 12 January 2018.

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of the following answers to supplementary questions, with the exception of commercially sensitive information or identifying information which is to remain confidential, as per the request of the author:

- Mr Jules Norton Selzer, Diageo, received 22 December 2017
- Mr Tim Wallwork, Brown-Forman Australia, received 5 January 2018
- Dr Ingrid Johnston, Public Health Association of Australia, received 8 January 2018.

4.4 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Malcolm Speed AO, Executive Director, The Coalition of Major Professional & Participation Sports
- Mr Jaymes Boland-Rudder, Head of Government and Community Relations, National Rugby League
- Mr Tim Holden, Head of Legal and Business Affairs, Football Federation Australia.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The hearing concluded at 2.08 pm.

5. Adjournment

The committee adjourned at 2.08 pm, until 9.30 am, Friday 23 March 2018, Room 1254 (*alcohol advertising – report deliberative*).

Rhia Victorino
Committee Clerk

Draft minutes no. 31

Friday 23 March 2018

Portfolio Committee No. 1 – Premier and Finance

Room 1254, Parliament House, 9.31 am

1. Members presentRevd Nile, *Chairman*Mr Franklin, *Deputy Chair*

Mr Fang (substituting for Mr Farlow)

Mr Field

Mr Martin

Mr Primrose

Mr Searle

2. Draft minutes

Resolved, on the motion of Mr Martin: That draft minutes no. 30 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 15 February 2018 – Email from Mr Jaymes Boland-Rudder, National Rugby League Ltd to committee, providing additional information regarding health benefits associated with moderate alcohol consumption
- 5 March 2018 – Letter from Mr Paul Doorn, Chief Executive Officer, Venues NSW, to the Chairman, providing information regarding advertising on government infrastructure and property
- 8 March 2018 – Email from Ms Kerri Grott, Manager, Audit, Risk and Governance, Venues NSW, to the secretariat, requesting that part of the correspondence from Venues NSW, dated 5 March 2018, and its attachments be kept confidential.

Resolved, on the motion of Mr Franklin: That the committee publish the correspondence from Mr Doorn, Venues NSW, dated 5 March 2018 regarding advertising on government infrastructure and property, with the exception of the last paragraph on page 1 (leading into the first paragraph on page 2) and the attachments to the correspondence, which are to be kept confidential, as per the request of the author.

Resolved, on the motion of Mr Martin: That the committee keep the correspondence from Ms Grott, Venues NSW, dated 8 March 2018 regarding the publication of Venues NSW's correspondence dated 5 March 2018, confidential, as per the request of the author.

4. Inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015**4.1 Answers to questions on notice and supplementary questions**

Resolved, on the motion of Mr Franklin: That the committee authorise the publication of answers to questions on notice and supplementary questions received from:

- Mr John Scott, Chief Executive Officer, Drinkwise Australia, received 22 January 2018
- Mr Jules Norton-Selzer, External Relations and Public Policy Manager, Diageo Australia, received 14 February 2018
- Mr Malcolm Speed, The Coalition of Major Professional & Participation Sports, received 15 March 2018
- Mr Tim Holden, Football Federation Australia, received 15 March 2018.

4.2 Attachment to answers to supplementary questions

Resolved, on the motion of Mr Martin: That the committee authorise the publication of the attachment to answers to supplementary questions from DrinkWise Australia, received 22 January 2018.

4.3 Consideration of Chairman's draft report

The Chairman submitted his draft report entitled *Alcoholic Beverages Advertising Prohibition Bill 2015* which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Field: That paragraph 1.60 be amended by inserting '(a not-for-profit organisation funded by the alcohol industry to promote a healthier and safer drinking culture in Australia, as discussed in Chapter 3)' after 'Mr John Scott, Chief Executive Officer, DrinkWise Australia'.

Resolved, on the motion of Mr Searle: That paragraph 1.170 be amended by:

- a) Omitting 'Going a step further, there is clear evidence that alcohol is a carcinogen and causes cancer, thereby rendering it a substance that cannot be consumed safely.' and inserting instead 'There is clear evidence that alcohol is a carcinogen and causes cancer.'
- b) Omitting 'Just as we know that "every cigarette is doing you damage", the committee also believes that no level of alcohol consumption is without risk.' and inserting instead 'Just as we know that "every cigarette is doing you damage", it may also be that no level of alcohol consumption is without risk.'
- c) Omitting at the end: 'It is unfortunate that this public health message is being drowned out by a powerful industry selling the message that alcohol means good times.'

Resolved, on the motion of Mr Searle: That paragraph 1.171 be omitted: 'Given this, the committee believes that alcohol is an inherently harmful product that should not be promoted in any way, shape or form ... and yet it is.', and the following new paragraph be inserted instead:

'It is important that public policy be made on the basis of firm evidence. The committee believes that NSW Health should closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is so the community is properly informed. This should also inform policy makers about whether alcohol advertising in New South Wales should have further restrictions placed upon it.'

Mr Field moved: That paragraph 1.171, as amended, be amended by inserting at the beginning: 'The committee believes that alcohol is an inherently harmful product and that its promotion should be regulated to reduce harmful consumption.'

Question put.

The committee divided.

Ayes: Mr Field.

Noes: Mr Fang, Mr Franklin, Mr Martin, Revd Nile, Mr Primrose, Mr Searle.

Question resolved in the negative.

Resolved, on the motion of Mr Franklin: That paragraph 1.172 be amended by omitting at the end: 'Why else would the alcohol industry spend millions of dollars each year to advertise their products, if not to grow the alcohol market?'

Resolved, on the motion of Mr Field: That paragraph 1.174 be amended by omitting at the end: 'It also leads the committee to wonder whether the fall in tobacco consumption has also had an effect on recent alcohol consumption trends.'

Resolved, on the motion of Mr Searle: That paragraph 1.175 be amended by omitting ‘restricting alcohol advertising’ and inserting instead ‘the strict regulation of alcohol advertising’.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 1.175:

‘Given the matters canvassed at paragraphs 1.129-1.130 and 1.132-1.145, the committee recommends that NSW Health should closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is. The outcome of this research should determine whether alcohol advertising should have the further restrictions applied to it.’

Resolved, on the motion of Mr Searle: That Finding 1 be amended by omitting ‘restricting’ and inserting instead ‘the strict regulation of’.

Resolved, on the motion of Mr Searle: That the following new recommendations be inserted after Finding 1:

‘Recommendation X

That NSW Health closely examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is.

Recommendation X

That the NSW Government use the research conducted by NSW Health into whether there is any safe level of alcohol consumption and, if so, what level, to determine whether alcohol advertising should have further restrictions applied to it.’

Resolved, on the motion of Mr Franklin: That the following new committee comment and recommendation be inserted after the new recommendations inserted after Finding 1:

‘Committee comment

The committee also believes that the NSW Government should consider providing more funding and support toward health promotion and education campaigns regarding alcohol consumption.

Recommendation X

That the NSW Government consider providing more funding and support toward health promotion and education campaigns regarding alcohol consumption.’

Chapter 2

Resolved, on the motion of Mr Searle: That paragraph 2.112 be omitted:

‘However, the committee believes that the Bill represents a necessary step towards curbing the ubiquity of alcohol advertising present today, as discussed in Chapter 1. In restricting advertising in this way, the committee hopes the Bill will go some way to de-normalising alcohol, and in turn reducing consumption and alcohol-related harm in our community. Indeed, the committee considers the Bill to represent exactly what the World Health Organisation calls a ‘best buy’ – an intervention that is cost-effective and feasible to prevent and control the impact of alcohol consumption on mortality and morbidity.’

Resolved, on the motion of Mr Searle: That paragraph 2.113 be amended by omitting ‘We are also encouraged by’ and inserting instead ‘We also note the’.

Resolved, on the motion of Mr Searle: That paragraph 2.114 be omitted: ‘The committee is particularly appreciative of the views of stakeholders who suggested amendments to the Bill in order to strengthen it and ensure it is a comprehensive instrument. In particular, the committee agrees with the suggestion that the Bill should encompass all media platforms, including digital media, particularly as technology and the means by which people are communicating continue to evolve. In addition, the committee acknowledges the case for considering local option areas separately to alcohol advertising, given its potential intersection with the *Liquor Act 2007*.’, and the following new paragraph be inserted instead:

‘The committee is also appreciative of the views of stakeholders who suggested amendments to the Bill. We agree that any new form of regulation should encompass all media platforms, including digital media, particularly as technology and the means by which people are communicating continue to evolve. In addition, the committee agrees that local option areas should be considered separately to alcohol advertising, given its potential intersection with the *Liquor Act 2007*.’

Resolved, on the motion of Mr Searle: That:

- a) the following new paragraph be inserted after paragraph 2.114: ‘However, the committee is unpersuaded that the Bill, at least in its current form, is the appropriate way to meet the challenges posed to the community by alcohol and its advertising.’
- b) paragraph 2.115 be omitted: ‘Therefore, the committee recommends that the Bill be passed with the following amendments:
 - that digital media, including social media, be included in the Bill’s definition of ‘telecommunication medium’ in clause 5
 - that Part 3 of the Bill relating to local option areas be removed.’

and the following new paragraph be inserted instead: ‘Therefore, the committee recommends that the Bill not be passed.’

- c) Recommendation 1 be amended by omitting: ‘the Alcoholic Beverages Advertising Prohibition Bill 2015 be passed, with the following amendments:
 - that digital media, including social media, be included in the Bill’s definition of ‘telecommunication medium’ in clause 5
 - that Part 3 of the Bill relating to local option areas be removed.’

and inserting instead: ‘the Alcoholic Beverages Advertising Prohibition Bill 2015 not be passed.’

Resolved, on the motion of Mr Searle: That:

- a) paragraph 2.116 be amended by omitting at the end:

‘While the committee agrees that this demographic is especially vulnerable, the committee is not persuaded that amending the purpose or focus of the Bill will ensure that children and young people are protected from alcohol advertising in practice, more effectively than the Bill’s complete prohibition on all alcohol advertising.’

- b) paragraph 2.117 be amended by omitting ‘However’ and inserting instead ‘In particular’.

Chapter 3

Resolved, on the motion of Mr Field: That paragraph 3.140 be amended by omitting at the end: ‘The committee found particularly compelling the evidence from the Chief Adjudicator of the ABAC Adjudication Panel, and other inquiry participants, about the quality and independence of the Panel’s determinations.’

Resolved, on the motion of Mr Field: That paragraph 3.143 be amended by omitting ‘and its message that alcohol cheers us up, reduces our anxieties and helps us have a good time’ after ‘Given the proliferation of alcohol advertising.’

Resolved, on the motion of Mr Field: That paragraph 3.144 be amended by omitting ‘, if the Bill is not passed,’ before ‘The committee is therefore of the view that’.

Resolved on the motion of Mr Field: That the following new recommendation be inserted after paragraph 3.146:

‘Recommendation X

That Liquor & Gaming NSW complete the review and finalisation of the updated NSW Liquor Promotion Guidelines by the end of 2018.’

Resolved, on the motion of Mr Searle: That paragraph 3.147 be omitted: ‘Given the evidence that the former NSW Office of Liquor, Gaming and Racing conducted a review into shopper docketts which recommended that shopper docketts promoting discounted alcohol be banned, the committee believes that this ban should finally be introduced in New South Wales.’, and the following new paragraph be inserted instead:

‘The committee heard evidence that the former NSW Office of Liquor, Gaming and Racing conducted a review into shopper docketts which recommended that shopper docketts promoting discounted alcohol be banned. As the committee was not able to source this report, we cannot pursue this further at this time. But this is a matter to which we draw the government’s attention for further consideration.’

Resolved, on the motion of Mr Franklin: That Recommendation 2 be amended by omitting ‘prohibit’ and inserting instead ‘consider the issue of’.

Resolved, on the motion of Mr Franklin: That Recommendation 3 be amended by omitting: ‘the:

- mandatory placement of pregnancy warning labels on all alcoholic beverages
- development of comprehensive labelling standards.’

and inserting instead: ‘the development of comprehensive labelling standards on all alcoholic beverages, including pregnancy warning labels.’

Chapter 4

Resolved, on the motion of Mr Field: That paragraph 4.72 be amended by inserting ‘, and who idolise sports stars’ after ‘who play or watch sports regularly’.

Resolved, on the motion of Mr Franklin: That paragraph 4.73 be amended by omitting ‘believe there is no legitimate place for’ and inserting instead ‘are concerned about the prevalence of’.

Resolved, on the motion of Mr Searle: That paragraph 4.73 be amended by omitting ‘, as it is promoting a harmful product that cannot be consumed safely’ after ‘alcohol advertising in sport’.

Mr Field moved: That paragraph 4.75 be omitted: ‘At the same time, we recognise that alcohol advertising and sponsorship accounts for a significant proportion of revenue for sporting bodies.’, and the following new paragraph be inserted instead:

‘While the committee recognises that alcohol advertising and sponsorship accounts for a significant proportion of revenue for sporting bodies, we are not convinced by sporting code arguments that this advertising and sponsorship revenue would not be able to be replaced.’

The committee divided.

Ayes: Mr Field.

Noes: Mr Fang, Mr Franklin, Mr Martin, Revd Nile, Mr Primrose, Mr Searle.

Question resolved in the negative.

Mr Franklin moved: That paragraph 4.75 be amended by inserting ‘and that many sporting bodies rely upon this revenue to support important community activities and campaigns’ after ‘revenue for sporting bodies’.

The committee divided.

Ayes: Mr Fang, Mr Franklin, Mr Martin, Revd Nile, Mr Primrose, Mr Searle.

Noes: Mr Field.

Question resolved in the affirmative.

Resolved, on the motion of Mr Franklin: That:

- a) paragraph 4.76 be amended by omitting ‘if the proposed Bill is not passed,’ after ‘The committee therefore recommends that’

- b) paragraph 4.76 be amended by omitting 'introduce legislation to phase out alcohol sponsorship of sport over time' and inserting instead 'consider a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged,'
- c) Recommendation 4 be amended by omitting: ' , if the Alcoholic Beverages Advertising Prohibition Bill 2015 is not passed, the NSW Government introduce a bill phasing out alcohol sponsorship in sport.' and inserting instead 'the NSW Government consider a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged.'

Resolved, on the motion of Mr Franklin: That Recommendation 5 be amended by omitting ' , if the Alcoholic Beverages Advertising Prohibition Bill 2015 is not passed,' after 'That'.

Resolved, on the motion of Mr Franklin: That paragraph 4.77 be amended by omitting 'and insidious' after 'such outdoor advertising is troubling'.

Resolved, on the motion of Mr Franklin: That paragraph 4.78 be amended by omitting 'prohibited' and inserting instead 'appropriately restricted'.

Resolved, on the motion of Mr Franklin: That Recommendation 6 be amended by:

- a) omitting ' , if the Alcoholic Beverages Advertising Prohibition Bill 2015 is not passed,' after 'That'
- b) omitting 'prohibit alcohol advertising on all government infrastructure and property' and inserting instead 'consider appropriate restrictions and/or exclusions on alcohol advertising on all government infrastructure and property, particularly advertising to which children and young people are exposed'.

Resolved, on the motion of Mr Primrose: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the report be tabled on 29 March 2018.

5. Adjournment

The committee adjourned at 10.52 am, *sine die*.

Rhia Victorino
Committee Clerk

Appendix 5 Dissenting statement

Mr Justin Field MLC, The Greens

The Greens are not prohibitionists or against all advertising of alcohol. We support a vibrant night life in our cities and towns and support local businesses that contribute to this. We have a burgeoning small bars community in NSW supported by local boutique beers, wines and spirits that have emerged alongside a maturing culture of alcohol consumption. While alcohol use continues to cause significant social and health consequences, consumption has fallen, and tastes have changed in ways that point to some improvement.

This doesn't remove the responsibility of Government to address the health and social consequences of alcohol use.

Alcohol is inherently harmful

I am disappointed that the committee chose not to make a more unequivocal statement about the inherent harm of alcohol consumption.

The industry and some public health organisations talk about the 'harmful use of alcohol'. The question of what is 'harmful use' often remains unstated and in that gap is room for vested interests to raise doubt, and for politics to be played.

The World Health Organisations describes "harmful use" as drinking that causes detrimental health and social consequences for the drinker, the people around the drinker and society at large, as well as the patterns of drinking that are associated with increased risk of adverse health outcomes.

The Cancer Council states that "Alcohol use is a cause of cancer. Any level of alcohol consumption increases the risk of developing an alcohol-related cancer; the level of risk increases in line with the level of consumption".

It leads from this that alcohol use, at any level, is inherently harmful. This recognition is an important starting point in developing public policy and regulating its promotion.

Recognising that alcohol is inherently harmful does not take away from the social, cultural, and religious connections and benefits to drinking alcohol. This conclusion does not necessarily demand a more prohibitionist approach to alcohol regulation. But it would provide a more solid foundation to consider the issue of alcohol promotion and advertising, especially to children and those people who have not yet started drinking.

It is heartening that the committee has called on NSW Health to "examine the issue of whether there is any safe level of alcohol consumption and, if so, determine what that level is so the community is properly informed". This is a good first step and should be supported by the Government.

The case against alcohol advertising and sponsorship of sport

While the committee accepted that restricting alcohol advertising in sport needs active consideration by Government, however ultimately the majority supported the notion that the risk to sporting code revenues from the loss of alcohol advertising revenue justified a ‘slowly, slowly’ approach.

The community will remember hearing claims of financial devastation from the big sporting codes when cigarette advertising was prohibited. The sports found new sponsorship and have since thrived.

The Greens don’t accept that the Government is responsible to protect the revenue of the major commercial professional sporting codes, especially where that conflicts with public health policy. If we accept that there are reasons to reduce, regulate or remove alcohol advertising from publicly owned infrastructure including from public transport, which the committee does, it is difficult to understand why the same case wouldn’t be made for alcohol advertising in sport which equally permeates our society and almost every screen.

Young people are especially vulnerable to the normalisation of alcohol created by endless advertising and promotional messages linked to their sporting heroes and teams and shown during sports broadcasts.

The voluntary advertising code prohibits advertising that shows the consumption or presence of an alcohol beverage as a cause of contributing to personal, social or sporting success. The suggestions by the alcohol industry and sporting codes that sponsorship and advertising linked to sport is not seeking to make this very connection by association fails the pub test. Professional sport is about success, competition, winning, striving and sporting heroes occupy a place within society that is fundamentally linked to success and attainment. That they are often filmed and photographed and used in social media wearing clothes emblazoned with alcohol brands. Many people, including public commentators refer to some teams by their alcohol sponsor.

The community supports change in this area and the evidence heard by the inquiry justified a much stronger finding in this report to end alcohol advertising in sport.