

**Submission  
No 32**

**INQUIRY INTO ALCOHOLIC BEVERAGES ADVERTISING  
PROHIBITION BILL 2015**

**Organisation:** Foxtel  
**Date received:** 13 November 2017

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Portfolio Committee No. 1 – Premier and Finance  
Parliament House  
Macquarie Street  
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13 November 2017

Dear Sir/Madam

### **Inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015**

Thank you for the opportunity to make a submission to the inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015 (the Bill).

Foxtel does not support the passage of this Bill primarily on the basis that:

- Existing regulatory controls including those relevant to subscription television are more than sufficient, highly successful and reflect community standards.
- Foxtel consistently experiences low complaint levels regarding alcohol related advertising. This experience is also supported by industry wide figures in the Alcohol Beverages Advertising Code Scheme annual reports.
- State based regulation has a disproportionate impact on the subscription television sector of the broadcast industry as unlike free-to-air television, it is not possible for Foxtel to place advertising on a state-by-state basis due to its single national programming signal.
- The Bill does not extend to online advertising and Foxtel considers that this will create a regulatory bypass which will have a disproportionate effect on those who also depend on advertising revenue via the traditional broadcast and print mediums.

### **The Bill and existing regulatory controls**

The Bill proposes banning advertising and other promotional activities aimed at supporting the sale of alcoholic beverages in public places, on radio and television and through collateral material. The Bill also contemplates the declaration of local option areas within which the purchase, sale or delivery, or the consumption in a public place, of alcoholic beverages will be an offence.

Foxtel considers that this Bill is completely out of step with levels of community concern and ignores the ongoing efficacy of existing safeguards.

Foxtel understands the importance of ensuring that alcohol advertising is undertaken in a socially responsible manner. For this reason, Foxtel supports and adheres to the already extensive regulations which control this category of advertising.



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However, as set out in this submission, the current regulatory regime is more than sufficient and further restrictions are unnecessary. The adoption of direct regulation would be oppressive and an unnecessary burden on Government resources.

### ***The Alcohol Beverages Advertising Code Scheme***

The primary way in which community concerns regarding responsible alcohol advertising are addressed is through the ABAC Responsible Alcohol Marketing Code (the ABAC Code) and the related Pre-vetting and Complaints Management Systems which form the ABAC Scheme.

The ABAC Scheme ensures that alcohol advertising does not promote excessive consumption or abuse of alcohol and that alcohol advertising does not target people under 18 years of age. Following recent updates to the ABAC Code, the Scheme also ensures that alcohol marketing is not placed with programs primarily aimed at, or watched by, minors. This ensures advertising is undertaken in line with community expectations, especially as regards excessive consumption and targeting of minors.

The ABAC Scheme is quasi-regulatory - guidelines are negotiated with government, consumer complaints are handled independently, and costs are borne by industry. Membership and compliance with the Scheme is voluntary however industry and stakeholder engagement with the Scheme is high, capturing the vast majority of alcohol marketing in Australia.

The ABAC Scheme was developed in consultation with participants in the alcohol and marketing industries including all major media and consumer bodies. The Commonwealth Government also has a very active role in the Scheme and is represented on the Scheme's management committee, which also includes representatives from industry, advertising and research.

The success of the ABAC Scheme is demonstrated by the low level of complaints received and the even lower level of complaints which are upheld. In 2016 of 136 complaints received by the ABAC Scheme, only 10 determinations were made which upheld complaints made to it and led to the removal of material.<sup>1</sup> Further, of the total 5,529 complaints received by the Advertising Standards Bureau in 2016, only 1.75% related to alcohol products.<sup>2</sup>

This demonstrates a very low level of community concern regarding alcohol advertising. Indeed, the level of concern is very far from the level that would be necessary to justify the approach taken in the Bill.

### ***ASTRA Codes***

The other key piece of regulation for Foxtel and subscription television is the Australian Subscription Television and Radio Association Codes (ASTRA Codes) which include restrictions on alcohol advertising on the basis of content and placement. The ASTRA Codes are developed by industry, but are required to be approved by the ACMA, which must be satisfied that the Codes are in line with community expectations.

The ASTRA Codes require that Foxtel:

- does not advertise products or services, or use advertising styles, that could place children in physical, mental or moral jeopardy; and

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<sup>1</sup> [http://www.abac.org.au/wp-content/uploads/2017/02/ABAC-2016\\_summary\\_single-pages2.pdf](http://www.abac.org.au/wp-content/uploads/2017/02/ABAC-2016_summary_single-pages2.pdf)

<sup>2</sup> [ASB Review of Operations 2017 https://view.joomag.com/advertising-standards-bureau-review-of-operations-2016/M0547142001499131627](https://view.joomag.com/advertising-standards-bureau-review-of-operations-2016/M0547142001499131627) pp 66, 84





- must take into account the intellectual and emotional maturity of the intended audience of the channel when scheduling advertising of alcoholic beverages.

The ASTRA Codes are also subject to a public consultation and are reviewed and subject to further public consultation every three years and therefore reflect current community standards.

We note that in addition to the ABAC Scheme and the ASTRA Codes, alcohol beverage advertising on Foxtel's platform must also be consistent and comply with all other applicable laws and codes, including:

- the Federal Competition and Consumer Act and State Fair Trading legislation;
- the Australian Association of National Advertisers Code of Ethics; and
- the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

Foxtel adheres to these requirements. Significantly, Foxtel has not received any complaints regarding alcohol related advertising in the period commencing 1 January 2016 to date. Again, this is evidence that existing safeguards are adequate in ensuring community expectations regarding socially responsible advertising are being met.

It should also be noted that there are a wide range of enforcement measures backing up the ASTRA Codes. In response to a Code complaint, where there has been a breach of the ASTRA Codes, the ACMA may accept enforceable undertakings, impose additional licence conditions or agree to accept measures by broadcasters to improve compliance.

#### **Foxtel's guidelines**

Further to the above described regulatory framework, Foxtel has also developed its own commercial guidelines for the placement of alcohol related advertising. This reflects the natural incentive that Foxtel has, as a provider of a discretionary service, to ensure its customers are satisfied with the way content and advertising is managed.

These guidelines include requirements which ensure that consideration is given to the needs of child audiences when placing alcohol advertising.

#### **Foxtel's National Signal**

Unlike the free-to-air television platform, where there are individual broadcast streams (and licences) for different geographic areas across Australia, Foxtel broadcasts a single national programming signal.

In practice, this means that, unlike free-to-air television broadcasters, Foxtel will not have the ability to tailor its broadcasts to adhere to state-based regulation. Any additional restrictions imposed by the NSW Government would become the de facto national standard for subscription television. This greatly enhances the potential commercial impact of additional regulation on the subscription television sector and means the sector is disproportionately affected compared to the free to air sector.

Any state based regulation of alcohol advertising will lead to a virtual national ban on Foxtel's platform which would be a disproportionate response to a topic which is already appropriately and responsibly controlled, and which is not generating significant community concern.



## **Online marketing**

Foxtel is also concerned that the Bill does not contemplate regulation of online alcohol advertising. 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.

Excluding online advertising also means that the Bill has a disproportionate impact on all offline advertising and would simply intensify the shift of advertising revenue to online sources.

Thank you for the opportunity to comment on these matters.

Yours Sincerely,

Lynette Ireland  
Chief General Counsel

