

**Submission
No 42**

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

Organisation: Free TV Australia

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**Submission by
Free TV Australia Limited**

**Parliament of New South Wales –
Portfolio Committee No. 1 – Premier and
Finance**

*Alcoholic Beverages Advertising Prohibition
Bill 2015*

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1 Executive Summary

- The *Alcoholic Beverages Advertising Prohibition Bill 2015* is unnecessary, does not recognise the significant regulations already in place on commercial free-to-air television or the reality of advertising in the current media market, and is out of step with community standards.
- There is already an extensive range of restrictions in place governing the content and scheduling of alcohol advertising on free-to-air television. These have been operating effectively and there is no evidence of policy failure in this area.
- Free TV members are bound by the Commercial Television Industry Code of Practice (**Code**) and Children's Television Standards (**CTS**), both of which contain rules on the placement of advertisements for alcoholic products and limit young peoples' exposure to alcohol advertisements. Compliance with the Code and the CTS is regulated by the Australian Communications and Media Authority (**ACMA**).
- In addition to the Code and CTS, Free TV supports the existing Alcohol Beverages Advertising Code (**ABAC**) which is designed to ensure that the content of alcohol advertising is consistent with responsible alcohol consumption and does not encourage under-age drinking.
- Commercial free-to-air broadcasters successfully comply with these restrictions and there is very little evidence of community dissatisfaction, with viewer complaint levels consistently very low.
- Free-to-air television is the only medium subject to such stringent regulatory requirements. Media consumption and usage patterns have evolved rapidly in recent times, particularly among young people. Content can now be accessed over a range of platforms and devices which are not subject to the onerous regulations and restrictions that apply to Free TV broadcasters.
- If further alcohol advertising restrictions were to be placed on free-to-air television then 'regulatory bypass' will occur and advertisements will simply move to those platforms which are not subject to such regulation. Any alcohol advertising restrictions should apply equally across all media platforms.

2 Introduction

Free TV Australia is the peak industry body representing Australia's commercial free-to-air television licensees. Free TV welcomes the opportunity to make a submission to the NSW Parliament's *Inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015*.

The commercial free-to-air television sector is committed to ensuring that television content aligns with community standards and expectations, particularly in relation to children and young audiences. Free TV members are cognisant of community concerns and sensitivities regarding the appropriate advertising of alcohol products.

Free TV does not support the passage of this Bill. Commercial free-to-air broadcasters are already subject to an extensive range of measures restricting alcohol advertising, especially in relation to child and youth exposure. These measures do not apply on other media platforms despite research showing that children are spending less time watching commercial free-to-air television and more time online.

In particular, Free TV members are bound by the Code and the CTS, as established through the *Broadcasting Services Act 1992 (BSA)*, and subject to the regulatory and enforcement powers of the ACMA. Compliance with the CTS is a condition on broadcasting licensees¹.

Complaints in relation to alcohol advertising under the Code (which has been in place since December 2015) make up less than 1% of overall complaints received by broadcasters during that time.

3 Regulation of Alcohol Advertising on Television

Commercial free-to-air broadcasters are subject to the following alcohol advertising restrictions:

- **The Commercial Television Industry Code of Practice**

The regulatory regime for television services is established at the federal level through the BSA and the regulatory and enforcement powers of the ACMA.

The BSA requires broadcasters to develop a code of practice pertaining to their broadcasting operations². The Code is co-regulated by industry and the ACMA. If broadcasters are found to be in breach of Code requirements, there is a range of strong enforcement mechanisms open to the ACMA.

The Code regulates the content and placement of advertisements designed to limit young peoples' exposure to alcohol advertisements.

Under the Code alcohol advertisements can generally only be broadcast in the M and MA15+ classifications zones (except between 5am and 6am, and 7.30pm and

¹ Section 7, Schedule 2 of the *Broadcasting Services Act 1992*

² Section 123 of the *Broadcasting Services Act 1992*

8.30pm), or as an accompaniment to a sports program on a weekend or a public holiday. Alcohol advertisements cannot be broadcast during any nominated children's programming periods.

Complaints about compliance with the Code can be made directly to the broadcaster who is obligated to respond substantively within 30 working days, and must advise the complainant of their right to refer the matter to the ACMA for further investigation if they are unsatisfied with the broadcaster's response.

The ACMA is empowered under the BSA to enforce compliance with the Code and Free TV members face substantial penalties for a breach of the Code.

- **The Children's Television Standards**

The CTS prohibit the broadcasting of advertisements and sponsorship announcements that identify or refer to a company, person, or organisation that manufactures, distributes or sells alcoholic drinks, during a C program (a program classified by the ACMA as suitable for children other than preschool children) or a P program (a program classified by the ACMA as being suitable for preschool children).

Complaints about advertising perceived to conflict with the CTS can be made directly to the ACMA who can investigate.

- **The Alcohol Beverages Advertising Code**

The ABAC applies to advertisements on television, radio and the Internet, in print and also to outdoor advertising. It is primarily concerned with regulating the content of alcohol advertisements in order to promote responsible use of alcohol. In November 2017, a new provision was inserted into the ABAC to require that marketing communications in relation alcoholic beverages only be placed where the audience is reasonably expected to comprise at least 75% adults.

In addition, the ABAC requires that advertisements:

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

The ABAC scheme is well known and respected by industry. It is co-regulatory, with a government-nominated representative on the management committee in addition to industry and advertising representatives. ABAC's independent adjudication panel is run at arm's length from the industry. The Alcohol Advertising Pre-Vetting Service is a helpful tool for advertisers and industry alike. Determinations made by the ABAC

adjudication panel carry significant weight in the industry and the vast majority of advertisers have withdrawn or modified advertisements relating to upheld complaints. Further, the Code provides that all advertisers on free-to-air television are expected to comply with the ABAC.

- **The AANA Code of Ethics**

The AANA Code of Ethics contains a provision that marketing material must not depict material contrary to prevailing community standards on health and safety, while the AANA Code for Advertising & Marketing Communications to Children (**Children's Code**) specifically provides that "advertising or marketing communications to children must not be for, or relate in any way to, alcohol products or draw any association with companies that supply alcohol products".³

The AANA's self-regulatory system applies to all advertisers and marketers in Australia, regardless of AANA membership. It is also platform neutral and applies in the same way to traditional advertising, outdoor, online and social media.

As with the ABAC, the Code provides that all advertisers on free-to-air television are expected to comply with the AANA Code of Ethics and Children's Code.

4 No Evidence of Regulatory Failure regarding Free-To-Air Television

As indicated above, there is an extensive range of restrictions and placement rules already in place for advertising of alcohol products on free-to-air television. The existing pre-vetting and complaints processes are well established, well known in the industry and provide for a robust and efficient complaints handling scheme.

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.

4.1 Adequacy of the Commercial Television Industry Code of Practice

There has long been recognition of the need to ensure that advertisements for alcohol products are not in any way directed at children.

There have been very low levels of viewer complaints about advertisements for alcohol products under the Code.⁴ Between December 2015 and December 2017 viewer complaints relating to the alcohol advertising time zones under the Code made up less than 1% of overall viewer complaints received about Code related matters⁵. Additionally, there were no ACMA investigations in relation to alcohol advertising reported in the 2015-16 or 2016-17 ACMA Annual Reports.⁶

³ CI 2.12 AANA Children's Code

⁴ Free TV, Complaints under the Commercial Television Industry Code of Practice, December 2015- December 2017.

⁵ Free TV Australia Annual Code of Practice Complaints Reports 2015-17

⁶ ACMA Annual Report, 2015-16, 2016-17, Appendix 6.

4.2 Ongoing Review of the Code and responsiveness to shifting community standards

The Code is reviewed regularly and was last updated in 2015. As part of each review, it is the role of the regulator to register the Code after ensuring that it reflects community standards.

There are important safeguards built into the Code review process, ensuring that the ACMA is only permitted to register a Code where it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.⁷

During the last Code review a provision which specifically bans alcohol advertising in the new M classification zone between 7.30-8.30pm was included after considering community concerns.

This highlights the responsiveness of the existing co-regulatory arrangements and the way the Code review process allows for community concerns to be expressed and addressed.

Free TV endorses the existing processes of review, community consultation and the ACMA registration of the Code as the most appropriate means in which to address any community concerns regarding the scheduling of alcohol advertising.

5 Online advertising and regulatory bypass

Free TV is concerned that the Bill does not recognise the realities of the current media landscape and completely ignores online advertising.

Content can now be accessed over a range of platforms and devices which are not subject to the kinds of regulations and restrictions that apply to commercial free-to-air broadcasters. A single device (such as a connected TV) can be used to view substantially similar content that is subject to very different levels of regulation.

It is important that any alcohol advertising restrictions apply equally across all media platforms. Otherwise 'regulatory bypass' will occur, and the relevant advertisements will simply move to those platforms which are not subject to any regulation or have less onerous regulation.

6 Unfeasible for national advertising broadcasts

The provisions of the Bill do not consider national advertising broadcasts. Commercial free-to-air television broadcasters frequently broadcast advertising on a national basis. This makes it impractical to tailor broadcasts to different regulations in every State and Territory and would limit the ability of broadcasters to schedule

⁷ Broadcasting Services Act, s 123.

national advertising or to broadcast programs that included product placement or other forms of alcohol promotion. The commercial consequences of this would be very extremely detrimental, particularly given the Bill does not apply to online advertising and alcohol advertisers could freely advertise nationally online.

Section 9 of the Bill in particular prohibits the promotion of, or agreements to promote, alcoholic beverages or their trademark or brand name in return for sponsorship of some activity. This is unworkable for a number of reasons. It would mean that broadcasters would need to renegotiate existing broadcast sponsorship agreements, including those which apply on a national basis. This would be likely to result in significant loss of advertising revenue in all Australian markets. In addition, the Bill would appear to preclude the broadcast of many sporting events in NSW, where teams or stadium signage or other incidental content included the promotion of an alcohol sponsor.