

20 March 2008

Committee Secretary
Community Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

Australasian Associated Brewers – Alcohol Toll Reduction Bill Inquiry Submission

Please find attached the Australasian Associated Brewers' submission to the Community Affairs Committee Inquiry into the Alcohol Toll Reduction Bill.

Australasian Associated Brewers is an industry association for brewers, representing some of Australia and New Zealand's largest manufacturing brewers including Foster's Group, Coopers Brewery, J Boag & Son, and DB Breweries. The Associated Brewers is a policy-based organisation that has been representing its members in legislative and regulatory affairs in Australia since 1967 and in New Zealand since 2007. We maintain a presence in both Canberra and Wellington.

I thank the Committee in advance for its consideration of this submission and would welcome the opportunity to present my views to the Committee in person.

Yours faithfully



Stephen Swift
Executive Director

Australasian



**ASSOCIATED
BREWERS** Inc.

SUBMISSION

to the

AUSTRALIAN SENATE

COMMUNITY AFFAIRS COMMITTEE

inquiry into the

ALCOHOL TOLL REDUCTION BILL

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CONTENTS



LIST OF ABBREVIATIONS	3
EXECUTIVE SUMMARY	4
ADVERTISING.....	6
AUSTRALIA’S REGULATORY APPROACH.....	6
AN OVERVIEW OF THE ABAC SCHEME	7
THE PROVISIONS OF THE BILL	8
ABAC HAS BEEN TESTED.....	10
SUMMARY ON ADVERTISING	11
LABELLING	12
CURRENT POLICY SETTINGS.....	12
INTERNATIONAL COMPARISONS	13
STANDARD DRINKS LABELLING.....	13
THE BILL’S PROPOSED SECTION 87A.....	14
SUMMARY ON LABELLING.....	15
PEERS AND PARENTS	16
WHAT INFLUENCES YOUTH DRINKING DECISIONS?	16
<i>RETHINKING DRINKING: PEERS</i>	18
<i>RETHINKING DRINKING: PARENTS</i>	18
SUMMARY ON ‘PEERS AND PARENTS’	19
REFERENCES	20
ATTACHMENT A – ABAC STATISTICS.....	21
ATTACHMENT B – ABAC CODE	22
ATTACHMENT C – ABAC DETERMINATION: EXAMPLE	26
ATTACHMENT D – STATEMENT OF REASONS: ANZFA.....	37
ATTACHMENT E – EXTRACT FROM FSANZ ACT 1991	40

LIST OF ABBREVIATIONS



AAB	Australasian Associated Brewers Inc
AANA	Australian Association of National Advertisers
AAPS	Alcohol Advertising Pre-Vetting Service
ABAC	Alcohol Beverage Advertising Code
ACHPER	Australian Council for Health, Physical Education & Recreation
ACMA	Australian Communications and Media Authority
ADF	Australian Drug Foundation
AERF	Alcohol Education and Rehabilitation Foundation Ltd
ANZFA	Australia New Zealand Food Authority
ASB	Advertising Standards Bureau
CAAN	Community Alcohol Action Network
DCPC	Drugs and Crime Prevention Committee (Victoria)
FSANZ	Food Standards Australia New Zealand
MCDS	Ministerial Council on Drug Strategy
NAS	National Alcohol Strategy
NCRAA	National Committee for the Review of Alcohol Advertising
NHMRC	National Health and Medical Research Council
OBPR	Office of Best Practice Regulation
WHO	World Health Organization

EXECUTIVE SUMMARY



The Associated Brewers welcomes the opportunity that Senator Fielding's bill gives us to discuss Australia's National Alcohol Strategy with a Committee of Senators.

We endorse the goal of the proposed legislation: “...to create a culture of responsible drinking, and to facilitate a reduction in the alcohol toll resulting from excessive alcohol consumption.”

We agree that binge drinking among young Australians is of particular concern. However, the ends and means are not aligned in this bill.

As the Alcohol Toll Reduction Bill ('the Bill') is a proposed law, we must consider its provisions literally to assess their likely effects: not only upon the legitimate commercial interests of our members and their many staff and shareholders but also upon the public policy interests of the community in which our members, their many staff and shareholders live.

Taken at face value, it immediately becomes apparent that:

On advertising: the Bill would have the effect of lessening regulation rather than strengthening it. Billboards, newspaper, magazine, cinema and internet advertising would cease to be regulated as the legislation only relates to television and radio.

On labelling: the Bill's provisions for amending the *Food Standards Australia New Zealand Act 1991* are unworkable.

Australia has a very sophisticated approach to alcohol policy which is outlined in the National Alcohol Strategy 2006-2009 (NAS) with oversight by all Governments through the Ministerial Council on Drug Strategy (MCDS). The title of the NAS is **Towards Safer Drinking Cultures** and its goal is very similar to the long title of this Bill, i.e. “...to prevent and minimise alcohol-related harm to individuals, families and communities in the context of developing safer and healthy drinking cultures in Australia”¹.

The NAS has to sit within the broader policy foundations of the 'who, what, where, when' of regulation, as do all Government policies. Two key principles sit at the core of Australia's general regulatory approach:

- A commitment to evidence based policy; and
- A commitment to best practice regulation.

The Alcohol Beverage Advertising Code (ABAC) Scheme for regulating alcohol advertising is a quasi-regulatory scheme, as defined by the Office of Best Practice Regulation (OPBR). Guidelines for advertising have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry. Anyone may lodge a complaint against an alcohol advertisement and have it independently assessed against the Code.

¹ MCDS (2006).

Food Standards Australia New Zealand (FSANZ) is responsible for regulating labelling issues as part of the Food Standards Code and they have rigorous, transparent processes for assessing the evidence and competing claims. Anyone may lodge a proposal for mandatory warning labels and have it independently assessed against the evidence.

We acknowledge that there are anti-alcohol groups and activists who hold the view that governments should ignore industry. They are unapologetic about this. Obviously, we reject that view.

So what *does* change teen drinking behaviour? Parental and peer influence have been consistently shown to be the primary levers for change. One recent review of the research in this area is the Parenting Influences on Adolescent Alcohol Use by the Australian Institute of Family Studies in 2004.

Australia's brewers have had a long and positive association with practical partnerships to change teen drinking behaviour, through our *Rethinking Drinking* program. *Rethinking Drinking* has provided classroom teaching materials **aimed at peer behaviour** in schools since 1997 and a trial of Alcohol Information Nights **aimed at informing parents** was conducted in 2007. Both have been independently evaluated as successful models for culture change over time.

We welcome the Rudd Government's recent announcement of a National Binge Drinking Strategy with its emphasis on outcomes. We also welcome the broad concept of a National Preventative Health Taskforce.

Work on a new National Alcohol Strategy (post 2009) will no doubt commence later this year. This is an appropriate vehicle for reviewing and developing appropriate policy responses to the problems of youth binge drinking as part of a wider commitment to safer drinking cultures.

We ask that the current bill not be supported and ask that the Committee's views on matching 'means and ends' be considered as part of the development of the next National Alcohol Strategy.

ADVERTISING



The Bill and the Second Reading speech have a particular focus on the advertising of consumer products. In assessing the issues surrounding these proposals and claims...

Where do we start?

For industry: The starting point for the brewing industry and their many staff and shareholders must be ‘if it ain’t broke, don’t fix it’. The ABAC Scheme for regulating alcohol advertising is effective, transparent (see www.abac.org.au) and performing well.

Although the Executive Director of the Associated Brewers sits on the Management Committee of The ABAC Scheme, no Management Committee member makes any decision on an individual advertisement or a complaint against them.

For anti-alcohol activists: The starting point for anti-alcohol activists is often to oppose any scheme which acknowledges industry as legitimate stakeholders and, for some, to ban advertising altogether.

For legislators: The starting point for legislators should be a general understanding of the principles endorsed by Australian Governments for regulating businesses. Then an understanding of the current scheme and the scheme proposed within the Bill.

Australia’s regulatory approach

Where advertising is concerned, the Australian alcohol industry operates within a ‘quasi-regulatory’ system. The term is defined by the Office of Best Practice Regulation (OBPR), in their current Best Practice Regulation Handbook (2007):

“Quasi-regulation includes a wide range of rules or arrangements where governments influence businesses and individuals to comply, but which do not form part of explicit government regulation. Broadly, whenever the Government takes action that puts pressure on businesses to act in a particular way, the Government action may be quasi-regulatory.” (p.17)

OBPR was recently relocated as a consequence of the change of Government:

*“Mr Tanner said the Office of Best Practice Regulation has moved into the Department of Finance, reflecting its central role in improving the quality of regulation.”*²

Australia’s alcohol advertising regime is consistent with the principles of best practice regulation³ outlined by a landmark Productivity Commission report, and is both effective and rigorous.

Indeed, as a report from the Productivity Commission⁴ suggests:

“...quasi regulation can offer advantages over more formal legislation in many circumstances, because it allows greater collaboration between government,

² <http://news.theage.com.au/deregulation-key-to-productive-economy/20080226-1uz7.html>

³ See OBPR (2007).

⁴ Productivity Commission (1998).

industry and consumers. It also allows development of more flexible, innovative arrangements.” (p.53)

The point of this detour through Australia’s regulatory approach is to dispel the myth that alcohol advertising is self-regulated; a claim that is often repeated by anti-alcohol activists with tabloid tendencies.

An overview of The ABAC Scheme

Australia has a quasi-regulatory system for alcohol advertising: Guidelines for advertising have been negotiated with government, consumer complaints are handled independently but all costs are borne by industry. The Alcohol Beverage Advertising Code (ABAC) Scheme is administered by a Management Committee which includes industry, advertising and government representatives.

From the consumer’s perspective Australia has one of the most accessible complaints systems in the world, accepting complaints via email, letter or fax with no cost to the consumer. There is a single avenue for complaints – through the Advertising Standards Bureau (ASB) – which triggers two independent but parallel processes.

Complaints received from the ASB are all assessed by the Chief Adjudicator under The ABAC Scheme. The current Chief Adjudicator is Professor the Hon Michael Lavarch. In turn, complaints are referred on to the full Alcohol Beverages Advertising Adjudication Panel unless they relate solely to the Australian Association of National Advertisers (AANA) Code of Ethics. Complainants are informed of the referral (or otherwise) and provided with a copy of any determination. Complainants who request confidentiality will be granted it and members of the alcohol industry are barred from either submitting complaints or adjudicating.

Typically, an Adjudication Panel will consist of three members, including the Chief Adjudicator. By agreement with Ministerial Council on Drug Strategy (MCDS) Ministers, every adjudication panel must include one Adjudicator with a Public Health background. Currently, this will be either Professor Fran Baum⁵ or Professor Richard Mattick⁶, both of whom were nominated by the MCDS.

From a company’s perspective there are four potential decision points to test compliance with the standards of the Code:

1. Proposed advertisements are checked by company and advertising agency staff against the Code, then;
2. Pre-vetted by non-company assessors⁷ using the Alcohol Advertising Pre-vetting Service (AAPS).
3. Any complaints (by consumers or non-consumers, e.g. the Community Alcohol Action Network - CAAN) are referred to the ABAC Chief Adjudicator.
4. Where a complaint is upheld, the company is asked to withdraw or modify an advertisement (and do).

⁵ Faculty of Health Sciences, School of Medicine, Flinders University.

⁶ Director, National Drug and Alcohol Research Centre, UNSW.

⁷ Employees of the alcohol industry are barred from being AAPS pre-vetters under ABAC rules.

The pre-vetting of complaints is rigorous. In 2006, 20 percent of proposed advertisements were rejected at this decision point, up from 13 percent in 2005. The 2006 ABAC Scheme Annual Report contains a full set of statistics for 2005 and 2006 (reproduced as Attachment A) as well as the Code and the rules of the Scheme. Copies of previous Annual Reports along with all adjudications from the Scheme are publicly available on www.abac.org.au. A copy of the current standards in the Code is provided as Attachment B.

The ABAC Scheme is not the only set of rules governing advertising in Australia. Alcohol beverage advertising must also be consistent with other applicable laws and codes, for example:

- The Trade Practices Act and state fair trading legislation;
- Australian Association of National Advertisers Code of Ethics;
- Commercial Television Industry Code of Practice;
- Commercial Radio Codes of Practice; and
- The Outdoor Advertising Code of Ethics.

The ABAC Scheme has an extensive reach. Of the top 50 advertisers, who represent the vast majority of all advertising, more than 98 percent of the spend is covered by companies using the ABAC system⁸.

To provide an insight as to the rigour of the complaints system we are happy to provide a current example of a complaint which was upheld to assist Senators to understand the high level of scrutiny invoked by The ABAC Scheme. In this example, the issue resolves around a simple box.

The company concerned in this example (Foster's Australia) had the advertisement approved by pre-vetters, but it was subsequently rejected by the Adjudication Panel. Pre-vetting provides guidance only but does not offer a guarantee of 'protection' from future complaint. Even though Foster's Australia did not agree with the decision and wrote to the Management Committee to express their clear frustration, they nevertheless complied with the decision – as they always do.

With their permission, we have supplied a copy of the advertisement, the adjudication and Foster's letter to the Management Committee as Attachment C to assist with your understanding of the complex issues involved in regulating advertising.

The provisions of the Bill

We have been provided with a copy of the Bill and the accompanying Second Reading speech. The Bill seeks to replace The ABAC Scheme with a new scheme operated by the Australian Communications and Media Authority (ACMA) through a proposed Responsible Advertising of Alcohol Division.

In our view, the Bill would have the effect of lessening regulation rather than strengthening it. Billboards, newspaper, magazine, cinema and internet advertising would cease to be regulated as the legislation only relates to television and radio. We think this would be a poor outcome for consumers and for the general community. It

⁸ ABAC (2007).

would also not help our member companies, who are all responsible advertisers, to promote an industry landscape which is much more open to irresponsible advertisers or 'cowboy companies'. So, on this ground alone, we ask Senators to reject the proposal.

The target of many of the provisions of the Bill is obviously sports sponsorship on television, but its specific provisions would amount to 'throwing out the baby with the bathwater' with regard to regulation of other media.

On sports sponsorship, we understand that the Committee has invited some peak sporting bodies to canvass views on this particular sub-set of the alcohol marketing mix, and we defer to their expertise. We have confined our submission to a defence of advertising in general and The ABAC Scheme for regulating it in particular as this is our area of expertise.

Nevertheless, as a general proposition our members do not want to see further restrictions on their ability to market consumer products which are widely consumed and enjoyed by the community.

We also note that proposed Section 122A(3) of the Bill is poorly drafted as its intention is to void the entire "commercial television industry code of practice" including provisions not relating to alcohol at all, while the equivalent radio code is not similarly threatened.

The Bill also seeks to strip the representatives of the brewing industry and other alcohol producers of any role in regulating their member companies and would have the effect of disenfranchising consumers as they would no longer have a process for lodging complaints, except on the general standards applicable to all products under the AANA Code. All of this would be replaced by a narrowly based group of people with a public health background and a token industry representative from the retailing sector. Broadcast alcohol advertising is, in the main, done by the production sector.

Having 'stacked' the pre-approval committee even consumers are excluded as there is no public complaint process to calibrate their decisions against community opinion.

There are two underlying assumptions in this model (a) the alcohol industry should be isolated from the public policy debate; and, (b) the view of the public health lobby should have precedence over all other public policy objectives. These are widely held propositions among Australian and New Zealand anti-alcohol activists.

The most audacious example of these propositions comes from the World Health Organization (WHO) where an Expert Committee recently made ten recommendations to that forum⁹ as part of a push for a global agreement on alcohol policy by Governments worldwide. The *rapporteur* for this group was Professor Robin Room, a well known Victorian in the field. The most astonishing of these recommendations is provided below:

"9. The Committee recommends that WHO continue its practice of no collaboration with the various sectors of the alcohol industry. Any interaction should be confined

⁹ WHO (2007).

to discussion of the contribution the alcohol industry can make to the reduction of alcohol-related harm only in the context of their roles as producers, distributors and marketers of alcohol, and not in terms of alcohol policy development or health promotion.”

Recommendation 10 reads:

“Recognizing that alcohol is a special commodity in terms of its toxic and dependence-producing properties, with serious implications for public health, and that mechanisms should be developed to protect the public health interest concerning alcohol in trade, industrial and agricultural decisions, the Committee recommends that WHO...”¹⁰

We reject both of the underlying assumptions implicit in the Bill’s approach to advertising. We believe that Australian brewers have a legitimate role in the public policy debate concerning a full range of overlapping policy areas and gratefully acknowledge that, in our experience, the preference of most Australian parliamentarians is to involve and engage all stakeholders, rather than deliberately exclude them as this Bill seeks to do, expressed here in a recent report of the Victorian Drugs and Crime Prevention Committee (DCPC):

“Good public health policy that minimises alcohol-related harms relies on a partnership of Government, health professionals, health service providers, community organisations and the alcohol industry. The recommendations contained in the Final Report both assume this positive relationship and seek to strengthen it.”¹¹

ABAC has been tested

Australia’s regulatory approach to alcohol advertising has been subjected to intense scrutiny. The ABAC scheme operates in a well-defined framework of regulatory and ethical standards, and has been subjected to intense scrutiny by three quite different review processes, all reporting within the last five years:

- **National Committee for the Review of Alcohol Advertising (NCRAA) (2003):** undertook a detailed examination of the regulatory environment of Australian alcohol advertising. The NCRAA report provided a large number of recommendations to improve The ABAC Scheme and alcohol advertising more broadly. An agreement on many improvements to the scheme was reached between MCDS Ministers and the ABAC Management Committee and these have been implemented.
- **NSW Alcohol Summit (2003):** recommended aligning ABAC with the National Health and Medical Research Council (NHMRC) recommendations for responsible drinking, which has been implemented.
- **Victorian Parliamentary Inquiry (2006):** by the DCPC¹² examined strategies to curb harmful alcohol consumption. The Inquiry recommended, among other things, that the ABAC Scheme develop a website to allow the dissemination of ABAC determinations to the general public. An ABAC website (www.abac.org.au) has been developed and provides copies of determinations and a range of other information for the general public.

¹⁰ WHO (2007).

¹¹ DCPC (2006).

¹² *Ibid.*

Summary on advertising

Australia has a robust, transparent scheme for regulating alcohol advertising which is quasi-regulatory. Guidelines for advertising have been negotiated with government, consumer complaints are handled independently but all costs are borne by industry. This approach is consistent with the processes set out in Australia's Best Practice Regulation Handbook.

Although industry (and government) representatives administer The ABAC Scheme, they play no role in assessing any advertisement against the standards set out in the Code, nor are they advertisers themselves.

A user pays pre-vetting service provides guidance to companies about a proposed advertisement's compliance with the Code (but offers no guarantee against complaint, much to the frustration of advertisers). In 2006, 20 percent of proposed advertisements were rejected at this stage, proving that the scheme has teeth.

A separate Adjudication process is currently chaired by Professor the Hon Michael Lavarch, and Panel determinations are publicly available on www.abac.org.au.

We reject the underlying assumptions in the Bill and believe that industry associations have proven themselves as good regulators in this field. The narrow focus of the Bill's alternative scheme on broadcasting (particularly TV) would see all print, cinema and internet advertising become 'open slather' for advertisers.

The ABAC Scheme has been tested by three major review processes initiated by Governments, reporting in the past five years.

If it ain't broke, don't fix it.

LABELLING



Current policy settings

The Food Standards Code regulates the labelling of consumer products in both Australia and New Zealand. The Code is managed by Food Standards Australia New Zealand (FSANZ).

FSANZ operates within the *Food Standards Australia New Zealand Act 1991*:

Object of Act

The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:

- (a) a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand;
- (b) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;
- (c) the provision of adequate information relating to food to enable consumers to make informed choices; and
- (d) the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.

Anyone can initiate a proposal for a new standard, for no cost, without needing the assistance of any further legislative intervention to do so.

In July 2000, an application (A359) for health warnings on alcohol labels was rejected on the evidence by FSANZ, which was then known as the Australia New Zealand Food Authority (ANZFA):

“ANZFA has made a full assessment of this application and has rejected it for the following reasons:

- *Scientific evidence for the effectiveness of warning statements on alcoholic beverages shows that while warning labels may increase awareness, the increased awareness does not necessarily lead to the desired behavioural changes in ‘at-risk’ groups. In fact, there is considerable scientific evidence that warning statements may result in an increase in the undesirable behaviour of ‘at risk’ groups.*
- *In the case of alcoholic beverages, simple, accurate warning statements, which would effectively inform consumers about alcohol-related harm, would be difficult to devise given the complexity of issues surrounding alcohol use and misuse, and the known benefits of moderate alcohol consumption.”¹³*

The full Statement of Reasons issued by ANZFA is provided as Attachment D.

¹³ Note: The current Food Standards Code prohibits alcohol producers from making claims to consumers about health benefits of moderate alcohol consumption (e.g. reduced risk of heart disease from middle age onwards).

There is a current application before FSANZ (A576) for warning labels on drinking during pregnancy and all interested stakeholders have had the opportunity to make submissions on the Initial Assessment. A Draft Assessment is likely to be released by FSANZ in May of this year.

International comparisons

In 1997 there were only nine countries with any form of mandatory warning labelling: six Latin-American countries, South Korea, the USA and Zimbabwe¹⁴. By 2007, this number had risen to only 18¹⁵.

FSANZ reports¹⁶ that:

“There is no international consensus on the use of warning labels on alcoholic beverages nor consistency of format and/or wording,” and that “The European Union (EU) has recently decided not to require standard EU-wide legislation for alcoholic drinks to carry warning labels (including for pregnant women). Instead, Members States are urged to develop their own requirements with respect to warning labels on alcoholic beverages.”

The same report records that warnings on pregnancy will be mandatory from October 2007 in France. Finland was also cited for proposals to label in the FSANZ summary, but media reports suggest that this will now not proceed:

YLE News, 16 January 2008: The Health and Social Services Minister Paula Risikko announced that she is proposing scrapping plans to introduce warning labels on bottles and cans containing alcohol. The Minister does not believe that the labels would have much of an impact on excessive drinking in the country or contribute to harm reduction.

Standard drinks labelling

Australia has led the way in the development of the concept of a ‘standard drink’. In Australia and New Zealand a standard drink contains 10g of alcohol. This measure differs in other countries, e.g. 14g in the USA and 19.75g in Japan. Although the Food Standards Code requires mandatory labelling for standard drinks, industry has gone further than required by law; Australia’s major brewers have introduced a new graphic logo for standards drinks to ensure that consumers can readily count their drinks:



We believe that the concept of standard drinks, and readily identifiable standard drinks logos, provides a sensible foundation to educate consumers about alcohol use and misuse over time.

¹⁴ ICAP (1997).

¹⁵ FSANZ (2007), minus Finland

¹⁶ *Ibid.*

The Bill's proposed Section 87A

Senator Fielding's private members bill seeks to amend the *Food Standards Australia New Zealand Act 1991* by creating a new Section 87A which reads:

“87A Publication of alcohol standard or variation

- (1) A standard must be made in accordance with Section 87 to provide for the labelling of alcohol products and food containing alcohol to provide for:
 - (a) the consumption guidelines of the National Health and Medical Research Council;
 - (b) the unsafe use of alcohol;
 - (c) the impact of drinking on populations vulnerable to alcohol;
 - (d) health advice about the medical side effects of alcohol;
 - (e) the manner in which the information may be provided, (including provision in text or pictorial form).
- (2) A standard or a variation to a standard made in accordance with subsection (1) is a disallowable instrument for the purposes of the *Legislative Instruments Act 2003*.
- (3) The standards required by subsection (1) must comply with any directions given by the Minister in accordance with section 15.”

This design seems unworkable as Section 87 relates not to the *making* of standards, but to the *publication*¹⁷ of them as well as describing the extent of the role of the ANZ Food Regulation Ministerial Council *vis á vis* the Authority.

The powers to make a standard are endowed under completely different Sections of the Act. For a standard to be accepted it would have to be developed in accordance with all the steps outlined in Section 54 (e.g. the whole of Part 3, Divisions 2 & 3) and Section 87 only applies to Step 10 in this process.

So, in our view, a standard cannot be made “in accordance with Section 87” and the rest of the words fall away at this point as essentially meaningless in assessing outcomes.

However, that aside, the rest of the proposal is at best vaguely worded and begs a number of questions for which no guidance is provided in the Second Reading speech (the Bill has no Explanatory Memorandum) for example:

- The Australian Drinking Guidelines, published by the NHMRC would simply not fit on a label, given that there are 43 separate Guidelines and 5 explanatory footnotes currently in force.
- The literal reading of 1(b) is that labels should “provide for the unsafe use of alcohol”. Surely, this is not the intention?
- The intention of Section 87A(2) is unclear. We can only note that Section 87 (8) of the current Act provides for the opposite, i.e. “*Standards are legislative instruments, but not subject to disallowance or sunseting.*”

¹⁷ Section 87 is reproduced at Attachment E.

Summary on Labelling

The brewing industry has implemented the roll-out of new Standard Drink logos on containers as a foundation for educating consumers about their drinking choices.

The current Act provides rigorous, transparent processes where anyone can make an application for mandatory labelling of alcohol products.

Any application will be assessed strictly on the evidence by an independent trans-Tasman Authority (FSANZ) which was set up for this purpose.

The proposed new Section 87A would be a move away from evidence based processes and could be viewed as a vote of no confidence in FSANZ processes.

As it stands, the new Section 87A is unworkable and good intentions are not sufficient reason for supporting poor legislation.

Australia's brewers can endorse the goal of the proposed legislation, expressed in the Long Title of the Bill: "...to create a culture of responsible drinking, and to facilitate a reduction in the alcohol toll resulting from excessive alcohol consumption."

We agree that binge drinking among young Australians is of particular concern. However, we also believe there are more direct measures available to address the poor drinking choices of young Australians than those outlined in the provisions of the Bill, which begs the question...

What influences youth drinking decisions?

There is considerable academic literature available on this point. The consensus is that the primary influences on youth drinking behaviour are 'peers and parents'.

There are varying views as to the extent of the influence of alcohol advertising on the drinking decisions of young people and these have been debated at length within recent inquiries. A useful overview of this question is set out in Section Eight of the extensive (1423 page) report of the Inquiry into Strategies to Reduce Harmful Alcohol Consumption, published in 2006¹⁸. This exhaustive Inquiry was conducted by the Drugs and Crime Prevention Committee of the Victorian Parliament and took nearly two years to complete:

"The Committee conducted more than 102 Public Hearings and meetings in Victoria, other Australian States and Territories and in Europe, eliciting the expert opinion and experience of legislators, community leaders, researchers and experts, drug and alcohol workers, medical and legal professionals, ambulance officers, police, public servants, administrators, alcohol manufacturers and retailers, regulators as well as young people and individuals whose lives have been powerfully affected by the consequences of harmful alcohol consumption."

On page 425, the Victorian Inquiry states:

"The Committee acknowledges that the issues and debates pertaining to alcohol advertising and its regulation are complex ones. Notwithstanding the highly persuasive sources and arguments in favour of stricter (statutory) interventions, the Committee believes any firm links between alcohol advertising and increased or harmful alcohol consumption (particularly among young people) remain inconclusive. As contributing authors to a leading Australian textbook on alcohol policy have recently remarked, 'The effect of advertising restrictions on [young people's] drinking is best considered an open question...'"

While there is no consensus about the impact of advertising there is strong agreement within academic literature on the impact of peers and parents in influencing youth drinking decisions.

The following summary of the available literature is worth reproducing in full here:

"Parents, Family, and Peers

Young people's attitudes toward drinking, their drinking patterns, and the likely outcomes are most influenced by parents, family and peers. Parents have been

¹⁸ DCPC (2006).

identified as the leading factor in decisions young people make about alcohol (Bjarnason et al., 2003; Kuntsche & Kuendig, 2006) and parental drinking habits provide the model and help shape behavior in youths. Parents' acceptance of drinking and whether they consider it normative behavior also play a role (Donovan et al., 2004; Hellandsjø Bu, Watten, Foxcroft, Ingebrigtsen, & Reilling, 2002; Milgram, 2001; Wood, Read, Mitchell & Brand, 2004) Moreover, they are effective at modifying other influences on their children's drinking (Nash, McQueen & Bray, 2005).

Family structure and functioning are important factors in the development of a range of social behaviors among young people, including alcohol consumption. Young people who have a close relationship with their parents and are surrounded by strong family support are less likely to experience problems than those whose families are not intact or lack adult support and supervision (Bjarnason, et al., 2003; Hellandsjø Bu et al., 2002; Milgram, 2001; Sanchez-Sosa & Poldrugo, 2001; Turrisi, Wiersma & Hughes, 2000; Vakalahi, 2001; Wood et al., 2004).

There is no doubt that peers and friends also play an important role (Borsari & Carey, 2001; Geckova & Van Dijk, 2001; Milgram, 2001; Miller & Plant, 2003; Wood et al., 2004). Peer approval has a significant part in shaping youth drinking habits, particularly in the adolescent year (Milgram, 2001; Wood et al., 2004) and peer influence emerges as the most consistent predictor of adolescent drinking (Gaughan, 2006)."¹⁹ (p.152)

In 2004 the Australian Institute of Family Studies published a report entitled '*Parenting Influences on Adolescent Alcohol Use*'²⁰ which is a very readable overview, drawing lessons for public policy from existing research. This report was commissioned by the Australian Government Department of Health and Ageing and provides a concise summary of the overlapping influence of peers and parents:

"Although the influence of peers on adolescent alcohol use was not a major focus of this review, it has been included in the model because, as shown in Section 6, peer influence can be a primary risk factor. In the model, peer alcohol use is depicted in close proximity to adolescent use. There are many studies that have shown that peers have a more important direct influence than parents on ongoing alcohol use. However, other research has taken a wider perspective and suggests that parents influence the selection of peers at the outset. The model indicates the bi-directional nature of parental monitoring, peer influence, and adolescent alcohol use. Each of these three factors continually exert bi-directional influences." (p.84)

The Institute of Family Studies report (in Section 8) also examines six examples of prevention/early intervention programs, three American and three Australian. Although laudable and showing promise, none of the Australian examples were alcohol specific.

The Institute of Family Studies report²¹ includes six conclusions for policy and practice with the fourth conclusion being:

"Parent education and family intervention programs should be supported in Australia to assist parents to gain skills for encouraging their adolescents to delay initiation to alcohol use and to adopt less risky patterns of use. Intervention and prevention programs should receive best practice evaluations." (p.92)

Australia's brewers have taken up the challenge on both 'peers and parents' through our continuing *Rethinking Drinking* project.

¹⁹ Stimson et al. (2007).

²⁰ Hayes et al. (2004).

²¹ *Ibid.*

Rethinking Drinking: Peers

Since 1993, Australian brewers have been involved in supporting classroom teachers by providing quality teaching materials under the *Rethinking Drinking* banner.

This project was prompted by the fact that although Australian governments officially embraced harm minimisation as the policy approach for alcohol, there were few practical materials available to teachers to implement the policy.



In 1997, the first edition of *Rethinking Drinking: You're in Control*, was launched after extensive trials. The original research and development task for these kits was undertaken by the Youth Research Centre at the University of Melbourne and fully funded by members of the Associated Brewers to the tune of \$1.3 million. The resulting classroom teaching kits provide lesson plans, student workbooks and provide a series of 'discussion starter' role plays on DVD involving common examples of peer group behaviour. The initial trial of the teaching materials was independently evaluated by Deakin University.

In 2004 a second edition was launched after a review of the materials to make them culturally appropriate for indigenous Australians. This review was a joint project led by the Federal Government. The second edition kits were mailed to all schools in October 2004 and extra copies can be purchased from the Australian Council of Health, Physical Education & Recreation (ACHPER) – www.achper.org.au.

We are happy to provide copies of these kits at the Committee's request.

Rethinking Drinking: Parents

Following the release of the Australian Institute of Family Studies report on parenting influences, the Alcohol Education and Rehabilitation Foundation initiated a round of grants aimed squarely at this 'hard to reach' target audience.

Australia's brewers, through the Associated Brewers Inc, took up the challenge of adapting the *Rethinking Drinking* materials for this purpose, as the brand was already well established and the materials already complied with the stringent Principles for School Drug Education.

The result was a web-based resource available to Australian schools wanting to host an Alcohol Information Night for students and their parents. The site provided examples of agendas plus a range of downloadable resources. One special feature of the trial was the ability to secure the attendance of a local General Practitioner to answer health-related questions, by arrangement with participating Divisions of

General Practice. This project was jointly funded by industry and the Alcohol Education Rehabilitation Foundation Ltd (AERF).



www.rethinkingdrinking.org

The trial of fourteen participating schools across three states concluded late last year and has been independently evaluated by Quantum Research. We received the evaluation in February and copies of the report are available upon request.

Feedback from the trial was very positive. An overwhelming majority of attendees reported an increased knowledge and awareness of alcohol issues. Importantly, the evaluation revealed that almost 90 percent of participants had a decreased tolerance for risky alcohol use among peers following the Information Nights, and the majority reported feeling an increased sense of community responsibility for addressing youth alcohol issues.

Changing behaviour is a long and complex process and programs like *Rethinking Drinking* represent concrete steps towards a responsible drinking culture. The Associated Brewers has always been committed to targeted evidence-based initiatives involving practical partnerships between stakeholders. Positive outcomes such as this reinforce the success of this approach.

The web-based resource can be viewed at www.rethinkingdrinking.org.

Summary on 'Peers and Parents'

Advertising is not the primary influence on the drinking behaviour of young people. Peers and parents are the key drivers for changing behaviour.

When harm minimisation was adopted as the standard for schools education, Australia's brewers stepped in to develop classroom teaching materials to support the policy.

When parents were identified as a major gap in alcohol education, Australia's brewers stepped in to develop Alcohol Information Nights to inform and encourage families to discuss the issue.

Both sets of *Rethinking Drinking* materials have been independently evaluated as successful contributions to the field.

The current National Alcohol Strategy embraces the theme of 'Towards Safer Drinking Cultures' and industry supports this objective. We would hope that the Senate Committee would express support for the use of practical partnerships such as *Rethinking Drinking* as supplements to the Government's recently announced 'binge drinking strategy'.

Culture change will take time, but the impending design of Australia's next (post 2009) National Alcohol Strategy provides a good vehicle for considering the views of the Committee.

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ATTACHMENT A – ABAC STATISTICS

2006—some numbers compared

Pre-vetting		2005	2006
Number of Alcohol Advertisements pre-vetted		761	936
Of the advertisements pre-vetted:	Number that were accepted	641	701
	Number that were accepted subject to conditions	34	53
	Number that were rejected	86	182
Complaints		2005	2006
Number of complaints received:		105 ¹	53 ²
Number of Advertisements these complaints referred to:		29	26
Number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel: (i.e. complaints that fell within the code – all others fell solely within the Australian Association of National Advertisers Code of Ethics covering general advertising issues. See www.advertisingstandardsbureau.com.au for further information)		17 ³	9 ^{4 5}
Number of complaints upheld:		2	2

1 54 complaints were for one advertising campaign.

2 These figures refer to complaints received by ABAC Adjudication Panel in 2006. An additional 29 complaints dated 2006 were received by the Adjudication Panel in 2007. These complaints will be displayed in the 2007 numbers.

3 Three of these determinations were made in 2006 that referred to complaints received in 2005. All of these determinations were dismissals.

4 An additional advert resulted in an ASB determination and full withdrawal of the ad obviating the need for an ABAC determination.

5 Two of these determinations were made in 2007 against advertisements received in 2006 (both determinations were dismissals).

Observations

- The level of complaints between the two years was fairly static, when adjusted for the 54 complaints received for one advertisement in 2005.
- The pre-vetter net tightened considerably between the two years. In 2006, almost 20 per cent of proposed advertisements were rejected, up from 13 per cent in 2005.
- The pre-vetters receive advertisements in three different stages—in story board, preliminary and final stage. The advertisements may go through substantial changes through this process and it can stretch out over 12 months or more depending on the development of an advertising campaign. For this reason, it can be difficult to track the exact number of advertisements submitted and resubmitted with variations, although the end result is full and rigorous review of all advertisements submitted.

ALCOHOL BEVERAGES ADVERTISING CODE

Preamble

Australasian Associated Brewers Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

Definitions

For the purpose of this Code –

adult means a person who is at least 18 years of age;

alcohol beverage includes any particular brand of alcohol beverage;

adolescent means a person aged 14-17 years inclusive;

Australian Alcohol Guidelines means the electronic document 'Guidelines for everyone (1-3)' published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

child means a person under 14 years of age; and

low alcohol beverage means an alcohol beverage which contains less than 3.8% alcohol/volume.

Advertisements for alcohol beverages must –

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage under-age drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages;

- b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Internet advertisements

The required standard for advertisements outlined in (a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to

be made available in Australia, and to banner advertising of such products on third party sites.

Retail Advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and

- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

Third Parties

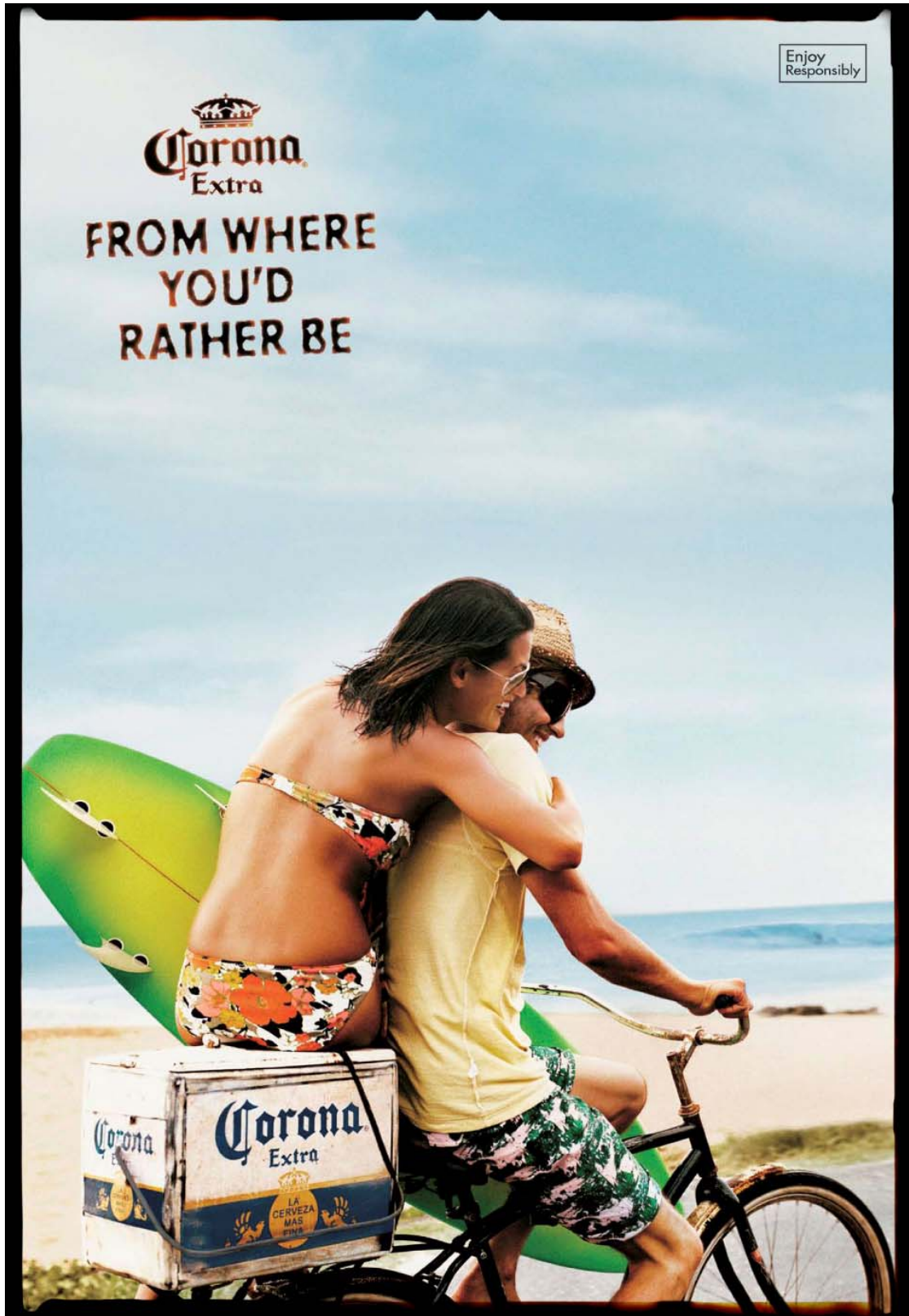
At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

Public Education

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.

ATTACHMENT C – ABAC DETERMINATION: EXAMPLE



ABAC

ABAC Complaints Panel
Determination No: 01/08

IN THE COMPLAINT OF Mr Kim Laurie
Product: Corona Beer
Advertiser: Foster's Group Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Richard Mattick – Member
Professor Liz Danger - Member

8 February 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns a billboard advertisement for Corona Beer by the Foster's Group Limited ("the Advertiser") and arises from a complaint received from Mr Kim Laurie ("The Complainant").

The Quasi-Regulatory System

2. Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.
4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If

not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.

5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of an email received by the ABAC Panel on 26 December 2007.
7. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. Determination of this complaint has been impacted by the Christmas/New Year period and illness experienced by the Panel's Administration Officer.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the advertisement.

The Advertisement

9. The complaint refers to a billboard advertisement which features:
 - (a) a man riding a bicycle that looks reasonably old and has no bell;
 - (b) the man is smiling and wearing beach shorts, a T-shirt, sunglasses and a hat and appears to be barefooted;
 - (c) a wooden box bearing the Corona Extra logo is strapped to the back of the bicycle;
 - (d) a young woman, wearing a bikini and sunglasses and looking straight ahead over the man's right shoulder and laughing, is sitting on the box on the back of the bicycle with her right arm around the man's shoulders and her legs to the left side of the man;
 - (e) the woman and/or the man are carrying a surfboard on their left side;
 - (f) the man and the woman are not wearing bicycle helmets;
 - (g) the bicycle is traveling along a road that is next to a beach and the ocean and beach provide the backdrop for the advertisement;
 - (h) at the top right side of the page the Corona logo and the following text appears "Corona Extra: From where you'd rather be".

The Complaint

10. The complainant argues that the advertisement raises a number of concerns, specifically that:
- a) The ad is offensive as it associates normally healthy outdoor activity with the consumption of alcohol;
 - b) The ad is suggesting excessive consumption of alcohol by depiction of a box of the product on the bicycle and the implication that the two characters shown will consume a large amount of the product;
 - c) A dangerous activity *i.e.* cycling, is being associated by alcohol consumption;
 - d) The ad shows behaviour, namely riding a bicycle "two up" and without the use of helmets, which contravenes traffic laws and regulations;
 - e) The ad suggests that the male character will be held in high esteem by the female character for his beer-drinking ability and disregard for safety;
 - f) The ad will be particularly attractive to adolescents through its beach setting and use at the time of year that "schoolies" activities are occurring.

The Code

11. The ABAC provides at Sections (a) (b) (c) and (d) that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - b) not have a strong or evident appeal to children or adolescents;
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –

i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices.

Arguments in Favour of the Complaint

12. In favour of the complaint it can be argued that the advertisement breaches multiple sections of the ABAC as follows:
- (a) Section (a) is breached by depicting an irresponsible approach to the consumption of alcohol through its association of alcohol with the activities of cycling and beach pursuits;
 - (b) Section (a)(i) and (iii) are breached as the presence of the box bearing the product's logo on the bicycle implies that excessive alcohol consumption will or has taken place;
 - (c) Section (b) has been breached through the ad having a strong or evident appeal to adolescents by its imagery and its likely audience, including a significant number of teenagers involved in "schoolies" activities;
 - (d) Section (c)(i) is breached by the implication that the male will achieve social or sexual success with the female by displaying a disregard to danger and having the capacity to drink excessive amounts of alcohol;
 - (e) Section (d) is breached by the portrayal of unsafe cycling practices in association with alcohol consumption.

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 25 January 2008. The advertiser's comments to an earlier complaint are also relevant. Key points made by the Advertiser in relation to the advertisement were:
- (a) There is no depiction of consumption of alcohol and no indication that the couple have been drinking. There are no empty bottles, open carton or evidence of alcohol, nor do the couple appear intoxicated. Consumption would be depicted through behaviour, empty bottles or an open carton – and this is not the case with this advertisement. The complainant incorrectly states there is a "very large quantity of alcohol with them".
 - (b) The Corona box on the back of the bike is just a box. It is not an esky or a carton of beer and is not representative of current Corona packaging in either look or size. It is an old, slightly battered box that suggests it has been part of the guy's bike for some time. It is fixed to the bike and could contain a variety of things (personal effects, beach paraphernalia or nothing). It does not specifically suggest it contains beer. It represents a way of branding the ad in a cool way that has meaning and context to the scene.

- (c) In relation to targeting young people, Fosters is a responsible marketer which abides by the regulatory codes (the Corona ad was pre-vetted and approved) and the alcohol advertising guidelines. We advertise throughout summer as it is the peak period for consumption and we use a number of mediums, but when doing so are always governed by the relevant restrictions that apply to alcohol advertising. In the case of Corona, the billboards selected contain a mix of high profile sites across the nation and available to advertisers.
- (d) The Gold Coast is specifically raised and as such we will provide some details about the advertising details for the region. Two Corona bicycle billboards appeared in what could be defined as the Gold Coast area (outdoor locations including the Gold Coast Highway and Pacific Fair Shopping Centre – Broadway) during the months of November and December. Whilst “schoolies” would represent a portion of visitors over that period of time, it’s important to note that the Gold Coast is a large area that attracts a significant number of local and international adult residents and holiday-makers. For these reasons, we strongly refute the suggestion that the sites were chosen to appeal to those under 18. In addition, cycling and surfing are popular adult activities and could not be said to exclusively target those under 18.
- (e) We fully support and endorse the notion of bicycle safety however the advertisement is in no way representative of day to day life here in Australia. The imagery was photographed overseas. The advertising campaign “From where you’d rather be” depicts a mystical make believe place and as such is not representative of our ‘real’ world. This is made more credible by the brand itself – Corona, a well known Mexican beer – which is strongly associated with escape beyond Australian shores. The theme across the campaign suggests that it’s a place we would all like to escape to, an idyllic place which is relaxed, carefree and a world away from our own. As such this fantasy world should not be taken literally.

The Panel’s View

14. This is the second determination made by the Panel in relation to this advertisement. The earlier determination – In the complaint of Normal Monshall No: 82/07 – dealt with Section (d) of the ABAC and the concern that the ad depicted a direct association between alcohol consumption and the engagement in any sport or hazardous activity. The Panel dismissed the complaint and will not re-visit the same specific issue raised under the current complaint. A copy of the earlier determination can be found at: www.abac.org.au under the “Publications” menu.
15. The complaint raises a series of different concerns about the ad which will be dealt with in turn. The first issue concerns Section (a) of the ABAC and the argument that the ad is irresponsible as it associates alcohol with healthy activities and suggests the two people shown will consume a very large quantity of alcohol. The complainant argues that this implication arises because of the presence of a box of the product being carried on the bike.

16. The advertiser's argument is that the ad does not depict alcohol consumption and there is nothing to suggest consumption has taken place prior to the bike ride. Further, it is stated that the box on the bike is not a carton of the product, but is rather an old box attached to the bike for carrying items of any kind, and not necessarily alcohol.
17. Section (a) of the Code provides both a "positive" and a "negative" set of standards which alcohol advertising is to satisfy. The positive standard is that ads are to present a "mature, balanced and responsible approach to the consumption of alcohol". The negative standards contained in sub-sections (i) to (iii) describe what ads must not do, which in general terms is promote excessive consumption, under-age drinking and offensive behaviour.
18. The ad does not depict alcohol consumption. While "consumption" is more than depictions of actual swallowing of liquid, there is nothing in the ad to give rise to the conclusion that consumption is occurring or has occurred. The Section (a) standard, however, uses the phrase "approach to the consumption of alcohol" which is a wider concept than "consumption". The first question is whether the ad can be taken to imply that excessive drinking is being suggested.
19. The preamble to the ABAC provides guidance as to how the Code provisions are to be interpreted. The preamble provides that "conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole".
20. The advertiser argues that the bicycle is equipped with a Corona logo stamped storage box (which could be carrying anything), not a carton of beer. However, the panel concludes that this differentiation is not clear and that the general impression given by the billboard from, say, a passing car, would likely be that the bike is carrying a carton of beer. In this case, the Panel believes that a reasonable person would conclude that the couple is travelling to the beach to consume a significant quantity of beer.
21. The section (a) standard is about "a responsible approach" to alcohol consumption. It is not irresponsible *per se* to consume alcohol on a beach, but the ad portrays two people taking an entire carton of beer to the beach and a majority of the Panel believes that this suggests excessive consumption. A majority of the Panel concludes that the ad breaches Section (a) on this point.
22. The second Section (a) issue raised by the complainant is whether the depiction of healthy activities such as cycling and beach activities within an alcohol ad is offensive or irresponsible. The Panel is obliged to apply the ABAC Code as it is written and the Code does not prohibit appealing images to promote alcohol. While some may believe that alcohol should not be advertised in association with appealing or stylized or romantic images, the Panel is tasked with applying the Code as it is.
23. The ABAC prohibits particular messages and the use of specific imagery. Use of the expressions "irresponsible" and "offensive" within Section (a) have a meaning drawn from the context of the Section and Code as a whole. It is not sustainable to impart upon these expressions meaning which is entirely independent of their use within the notions of excessive consumption, under-age drinking, misuse and abuse of alcohol and moderate consumption, which

are the themes of the standard set by Section (a). This means that the ABAC notions of “irresponsible” and “offensive” are not breached by the mere association of alcohol with cycling and surfing.

24. The complaint raises the issue of whether the ad is attractive to young people through its placement at locations near the Gold Coast at the time of the annual “schoolies” activities, combined with its alleged appeal to a youth beach and surf culture. Section (b) of the ABAC provides that alcohol ads must not “have a strong or evident appeal to children or adolescents”.
25. The ABAC is not primarily a Code which deals with the placement of advertisements. This can be contrasted with the television industry code of practice which specifically provides that alcohol ads are not to be broadcast outside of certain time slots or with specified programs. The ABAC deals only indirectly with placement through the preamble references to “the class of persons to whom the advertisement is directed” or may be communicated.
26. The issue is whether the ad has “strong or evident” appeal to adolescents. The advertiser’s argument is that the billboard was displayed at two Gold Coast locations during the school holidays, but that the Gold Coast attracts visitors of all age groups, not particularly under 18 year olds. Further, and more importantly, the advertiser contends that cycling and beach activities are popular adult activities.
27. In the Panel’s view, the ad cannot be said to have a “strong or evident appeal” to adolescents. The two characters depicted are clearly older than teenagers or young adults and the overall scene invokes a romantic notion of escape from daily reality as reflected in the strapline “from where you’d rather be”. While inevitably an impression created by an advertisement is in the “eye of the beholder”, it is difficult to support the conclusion that the ad has a “strong or evident” appeal to younger viewers as opposed to the overall audience of the ad.
28. The next issue concerns Section (c) of the ABAC and the complainant’s argument that the ad suggests that the young male will be regarded in high esteem by the young female for his beer drinking ability and disregard for safety. Section (c) provides that an ad must not suggest the presence of alcohol contributes to a significant change in mood and be a cause of personal, social or sexual success.
29. The Panel does not believe the ad breaches the Section (c) standard. There is no change in mood caused by the presence of a carton of the product depicted in the ad and it does seem an untenable stretch to conclude that the male will achieve success with the female, as argued by the complainant.
30. For the reasons explained in paragraphs 15-21, the complaint is upheld.



21 February 2008

Prof Michael Lavarch
Chief Adjudicator,
ABAC Adjudication Panel
Room C420, Level 4, C Block,
2 George St,
Brisbane,
QLD 4000

Dear Prof. Lavarch,

Ref 426/07

Thank you for your correspondence dated 13th February which contained the case report relating to a complaint against Foster's brand Corona which the ABAC adjudication panel has upheld. Your letter requested Foster's to supply specific detail relating to the withdrawal of the advertisement – the withdrawal being the result of a complaint upheld by the Advertising Standards Bureau.

For your information, I can confirm the following action is either complete or underway:

Outdoor billboard – the removal of the billboard in question began on Wednesday 30 January and was complete by Monday 4 February 2008. In addition to the above action, Foster's voluntarily removed all of the same creative from the marketplace. The details of this are as follows: **Magazine advertising** – the creative has been withdrawn from all upcoming publications (unless they had already gone to print). **Point of sale** – Foster's has destroyed all point of sale in circulation and in our warehouse and is working with its sales team to remove any items from venues. Foster's aims to complete this by end of February 2008. **Cinema and subscription TV** (a short video piece that features only the male talent sitting on a stationary bike gazing out to the ocean – he is then approached by the female talent who brings him a Corona). By the end of February 2008 this will no longer be used. This further voluntary action is above and beyond the request made to us by the Advertising Standards Bureau and has been undertaken as a sign of our willingness to support the ruling and uphold the spirit and intent of all relevant advertising codes and guidelines.

That said, Foster's would like to record its disappointment and frustration at the outcome of the ABAC ruling. As noted in our response to ABAC when addressing the complaint, the campaign was pre-vetted and approved by AAPS. As part of that pre-vetting process, Foster's and its agency both spoke to the AAPS representatives (in this instance Una Lawrence and Jeremy Bean) about numerous executions of the Corona campaign some of which were approved and some of which were rejected.

FOSTER'S GROUP

Foster's Group Limited ABN 49 007 620 886

The execution featuring the Corona branded box on the back of the bicycle was specifically discussed with one aspect of that discussion being a debate on whether the presence of the box may imply a situation leading to excessive consumption. It was agreed it did not because the box does not resemble current Corona packaging, it has a distinctly vintage look and feel and is permanently fixed to the bike - all of which we agreed added credence to the fact that the box could contain any manner of personal effects and paraphernalia rather than be full of alcohol as the complainant would have us believe.

We would specifically like to review paragraph 15 of the ABAC determination which stated in part: *While "consumption" is more than depictions of actual swallowing of liquid, there is nothing in the ad to give rise to the conclusion that consumption is occurring or has occurred. Why cannot it also be argued that "there is nothing in this ad to give rise to the conclusion that consumption is occurring, has occurred or is about to occur," if the box is indeed just a box and not a carton of beer?*

Paragraph 15 also stated *"The Section (a) standard, however, uses the phrase "approach to the consumption of alcohol" which is a wider concept than "consumption". The first question is whether the ad can be taken to imply that excessive drinking is being suggested."* In full, ABAC section a) says that advertisements must: "present a mature, balanced and responsible approach to the consumption of alcohol beverage and accordingly: i) must not encourage excessive consumption or abuse of alcohol," etc. We maintain our position that this advertisement upholds the ABAC and that excessive consumption is neither suggested nor encouraged by the presence of a Corona-branded, slightly battered box fixed to the back of a bike, particularly since there is no actual product on display, consumed or otherwise. Even if it did contain beer, which it does not, we would ask the adjudication panel if the mere presence of a slab of beer were to suggest excessive consumption would not many more beer advertisements become the target of consumer objection and come under ABAC scrutiny?

Furthermore, we believe it is pure conjecture to suggest that this couple – who are cycling home at the end of the day after having already been in the water, as illustrated by the female's wet hair – would continue on their journey, stop off somewhere to consume an excessive amount of alcohol (which is not expressly evident in the image) before either continuing on their way or going for another swim or surf.

We would argue against hypothesising on potential scenarios not depicted in the advertisement itself given the potential impact on a producer's ability to advertise its products. To illustrate the point:

- If an advertisement shows a man walking into a bottle shop and purchasing a slab of beer, would that suggest that the individual is then going to take the slab home and drink the contents? [excessive consumption]
- If a man is seen at the bar buying several pots of beer and his mates are not in the same scene, is it reasonable to hypothesise that he will consume these drinks himself rather than that he is purchasing a round? [excessive consumption]
- If an advertisement were to show a man consuming a beer in the company of a woman, would it be fair to assume that later in the day, off screen, the couple would go on to have a sexual liaison? [sexual success]

These are common images portrayed in many alcohol advertisements and if we were to hypothesise about what happens beyond the image or storyline itself it could significantly restrict the advertiser's legitimate creative licence.

Foster's prides itself on upholding the spirit and intent of the alcohol advertising guidelines in everything it does and we appreciate we have no right of appeal on an ABAC decision. We strive to provide our brand marketing team with counsel and best-practice guidance on all elements of the AAPS and ABAC management processes in the development of their campaigns from the most embryonic concepts to finished creative. We would be grateful if you could give us guidance on how we might continue this role when the complaint is upheld on a hypothesis and the Alcohol Pre-vetting System has failed us on a fundamental element of the campaign – not a peripheral message that was overlooked at the pre-vetting stage, but a key branding moment that was specifically discussed and subsequently approved.

I am copying this letter to the ABAC Management Committee since this issue is at the heart of on-going discussions regarding the effectiveness of the Alcohol Pre-Vetting System and recommend that this case be considered as a pertinent example of the inconsistencies between advertising pre-approvals and subsequent ABAC rulings.

Yours sincerely

Jacqui Moore
General Manager, Brand Communications
Foster's Group

cc:

ABAC Management Committee

Anthony Heraghty – Marketing Director, Foster's Australia, Asia & Pacific

Natalie Toohey, Director, Foster's Corporate & AAP Communications



5 July 2000
01/01

STATEMENT OF REASONS

REJECTION OF APPLICATION A359 – REQUIRING LABELLING OF ALCOHOLIC BEVERAGES WITH A WARNING STATEMENT.

The Australia New Zealand Food Authority (ANZFA) has before it an application received on 22 April 1998 from the Society Without Alcoholic Trauma requesting an amendment the *Food Standards Code* to include a requirement that all alcoholic beverages be labelled with the statement:

This product contains alcohol. Alcohol is a dangerous drug

ANZFA has made a full assessment of this application and has rejected it for the following reasons:

- Scientific evidence for the effectiveness of warning statements on alcoholic beverages shows that while warning labels may increase awareness, the increased awareness does not necessarily lead to the desired behavioural changes in 'at-risk' groups. In fact, there is considerable scientific evidence that warnings statements may result in an increase in the undesirable behaviour in 'at risk' groups.
- In the case of alcoholic beverages, simple, accurate warning statements, which would effectively inform consumers about alcohol-related harm, would be difficult to devise given the complexity of issues surrounding alcohol use and misuse, and the known benefits of moderate alcohol consumption.
- Costs associated with alcohol related harm are high in both Australia and New Zealand. Estimates vary, but studies undertaken by national governments on a regular basis show a steady downward trend in alcohol consumption and in alcohol-related harm. In Australia alcohol-related mortality rates decreased by 20% between 1990 and 1997; in New Zealand alcohol-related mortality rates decreased by 38% between 1980-82 and 1994-96. These decreases are related to reductions in overall alcohol consumption in both countries: 25% in New Zealand since 1980 and 1997; and 12% in Australia between 1990 and 1997. These cost reductions are due at least in part to the implementation of successful public health initiatives based on harm reduction strategies.
- Comprehensive public health strategies aimed at reducing alcohol-related harm are implemented in both Australia and New Zealand. These strategies concentrate on those interventions already identified as being effective including controlling price, availability and the advertising of alcoholic beverages; identifying and targeting 'at risk' groups with health campaigns aimed at reducing alcohol-related harm; and devoting considerable resources to the discouragement of drink-driving.

- When consumed at low to moderate levels alcohol has significant health benefits. These benefits result in a lower overall mortality for those who drink alcohol in moderation as compared with those who abstain from alcohol or consume it at higher levels. These health benefits are mainly due to reductions in the risk for coronary heart disease, a major cause of death in Australia and New Zealand in middle and old age. As alcohol consumption increases beyond low to moderate levels, these health benefits are countered by a rise in alcohol-related harm to health.
- Although risks for some cancers and liver cirrhosis are increased, even at levels of alcohol intake regarded as moderate, these excess risks are more than outweighed by reduced rates of coronary heart disease.
- The available scientific and medical evidence suggests that 'there was no evidence that light drinking by pregnant women harms the foetus'. In Australia the incidence of alcohol consumption in pregnant women is low and consumption at hazardous or harmful levels is uncommon. Evidence also indicates that the incidence of Fetal Alcohol Syndrome (FAS) is rare, even among 'heavy drinkers', and is highly concentrated in areas of low socio-economic status, where heavy drinking is associated with smoking, poor nutrition, poor health, increased stress and use of other drugs. Whereas none of the individual factors gives rise to FAS themselves, it is possible, if not likely, that they exacerbate the effects of heavy alcohol intake, resulting in FAS.
- The National Health Advisory Committee (NHAC) of the National Health and Medical Research Council (NHMRC) is currently reviewing its 1992 recommendations regarding responsible drinking behaviour. The review is also paying specific attention to the issues associated with FAS.
- In both Australia and New Zealand, alcoholic beverages are currently required to be labelled with alcohol content information. In Australia, all alcoholic beverages are also required to be labelled with information on the number of standard drinks. ANZFA's recent review of provisions regulating alcoholic beverages in Australia and New Zealand proposed that mandatory standard drinks labelling be extended to products sold in New Zealand. This information, together with existing public health and education initiatives, provide consumers with sufficient information to make informed decisions about the alcohol they consume.
- While alcohol is, in fact, a drug, foods containing alcohol are regarded as foods and are regulated in food standards. Evidence strongly suggests that the general population has a significant level of understanding of the risks and benefits of alcohol consumption. The Full Assessment report concludes that a statement on the label of alcoholic beverages to the effect that alcohol is a dangerous drug is not likely to provide any additional useful information to the consumer.
- Simple, direct comparisons of tobacco warning statements with alcohol warning statements are not valid because of the differences between the two with respect to health risks and benefits. There is no level of tobacco consumption that can be considered to be safe or low risk. Therefore warning messages for tobacco could be easily devised. On the other hand, low to moderate consumption of alcohol confers significant health benefits and brief, accurate health messages that pertain to the majority of consumers relating to alcohol use would be difficult to devise.
- There is no international consensus on the use of warning labels on alcoholic beverages. Nine countries, including the USA, prescribe warning statements for alcoholic beverages. Health warnings were considered and rejected by the New Zealand, United Kingdom and Canadian governments and are not used in any European country. There is a lack of evidence as to the effectiveness of warning labels on alcoholic beverages in protecting

public health and safety, reducing health, social and economic costs or providing additional useful information to consumers. This lack of evidence may leave Australia open to challenge through the WTO if the application were to be accepted.

- There is an existing framework for the regulation and self-regulation of advertising and sponsorship of alcoholic beverages and also for the regulation of availability. In addition, interventions to minimise alcohol-related harm are already in place and supported by the alcoholic beverages industry.
- The size and placement of existing alcohol labelling information has been considered as a part of the review of food standards and the development of a joint FSC. ANZFA is recommending that, unless otherwise expressly permitted, all information required to be on a food label must be written or set out legibly and prominently and in the English language.
- The costs to industry of labelling alcoholic beverages with a warning statement are not expected to be high. However, scientific evidence shows that warning statements are not effective in modifying at risk behaviour in relation to consuming excessive amounts of alcohol. Additionally, strategies are already in place in Australia and New Zealand, based on their public health on policy on alcohol, and are seemingly effective, as demonstrated by the trend of decreasing alcohol consumption and decreasing alcohol-related costs and harm in both countries.
- Requiring the labelling of alcoholic beverages with a warning statement does not fulfil ANZFA's objectives in relation to section 10 of the *Australia New Zealand Food Authority Act 1991*. Scientific evidence shows that warning statements are not effective in modifying at risk behaviour in relation to consuming excessive amounts of alcohol, and would therefore not provide any additional protection of public health and safety. Information to enable consumers to make an informed decision or prevent fraud and deception is already provided by existing labelling requirements and public health policies and campaigns.

REGULATION IMPACT

ANZFA has undertaken a regulation impact assessment process which also fulfils the requirement in New Zealand for an assessment of compliance costs. That process concluded that requiring the labelling of alcoholic beverages with a warning statement would offer no clear benefits to government, industry or consumers but would introduce costs to government, industry and consumers.

WORLD TRADE ORGANIZATION (WTO) NOTIFICATION

Australia and New Zealand are members of the WTO and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the agreement between the Governments of Australia and New Zealand on Uniform Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

As ANZFA will not be recommending a variation to food regulation be made as a result of this application, there is no need to make a notification to the WTO.

87 Publication of standard or variation

Standard or variation not subject to review at the request of the Council

- (1) If:
- (a) the Authority notifies the Council under section 34, 41, 64 or 69 that the Authority has approved a draft standard or variation (with or without amendments); and
 - (b) the Council informs the Authority that the Council does not intend to request the Authority to review the draft;
- then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (5) in relation to the draft or the draft as so amended.

Standard or variation subject to a first review at the request of the Council

- (2) If:
- (a) the Authority notifies the Council under subsection 84(6) that the Authority has:
 - (i) made a decision under paragraph 84(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
 - (ii) made a decision under paragraph 84(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments; and
 - (b) the Council informs the Authority that the Council does not intend to request the Authority to review the draft;

Section 87

then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (5) in relation to the draft or the draft as so amended.

Standard or variation subject to a second review at the request of the Council

- (3) If:
- (a) the Authority notifies the Council under subsection 85(6) that the Authority has:
 - (i) made a decision under paragraph 85(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
 - (ii) made a decision under paragraph 85(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments; and
 - (b) the Council informs the Authority that the Council does not intend to amend or reject the draft;

then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (5) in relation to the draft or the draft as so amended.

Standard or variation amended by the Council at the second review

- (4) If:
- (a) the Authority notifies the Council under subsection 85(6) that the Authority has:
 - (i) made a decision under paragraph 85(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
 - (ii) made a decision under paragraph 85(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments; and
 - (b) the Council informs the Authority that the Council has amended the draft;

then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (5) in relation to the draft as so amended.

Publication requirements

- (5) The publication requirements applicable to a draft or draft as amended are as follows:
- (a) the Authority must prepare a notice stating that the draft or the draft as so amended is to come into effect on a date specified in the notice;
 - (b) the Authority must cause a copy of the notice to be published:
 - (i) in the *Gazette*; and
 - (ii) in the *New Zealand Gazette*; and
 - (iii) in a generally circulating newspaper, in each State or Territory and in New Zealand;together with information about where a copy of the draft or draft as amended may be obtained or inspected;
 - (c) the Authority must make a copy of:
 - (i) the notice; and
 - (ii) the text of the draft or the draft as so amended; available for inspection by the public;
 - (d) the Authority must publish on the Authority's Internet site a copy of:
 - (i) the notice; and
 - (ii) the text of the draft or the draft as so amended.

When standard or variation made under this Act

- (6) If a standard or variation is the subject of a notice under subsection (5), the standard or variation is taken to have been *made under this Act* if and when the standard or variation comes into effect in accordance with the notice.

Draft as so amended

- (7) To avoid doubt, a reference in this section to a *draft as so amended* does not imply that a reference in another provision of this Act to a draft does not include a reference to an amended draft.

Part 3 Food regulatory measures

Division 3 Council may request a review of approved draft standard etc.

Section 87

Standards are legislative instruments, but not subject to disallowance or sunseting

- (8) A standard, or a variation of a standard, in relation to which a notice is published under this section is a legislative instrument, but section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the standard or variation.