

# Alcohol Advertising

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Prepared for Frances Bedford MP, Deputy Speaker of the House of Assembly and Member for Florey  
PARLIAMENT OF SOUTH AUSTRALIA

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## Background

In July 2015, following on from a 2013 Social Development Committee interim report into the Sale and Consumption of Alcohol, the Member for Florey, Frances Bedford MP requested that the Parliamentary Library "Provide [a] comparison of tobacco and alcohol costs to society and effectiveness benefits from banning advertisements in each of the states".<sup>1</sup> The paper summarised that:

- The total social cost of drug abuse in Australia was estimated at \$55.2 billion in 2004/05;
- Tobacco accounted for \$31.5 billion (56.2 per cent);
- Alcohol accounted for \$15.3 billion (27.3 per cent); and
- Advertising of tobacco (which was legal until relatively recently) and alcohol in Australia has generally provided at best little information other than price and at worst impressionistic images totally at odds with the actual effects of abuse of these products.<sup>2</sup>

In addition to this paper, there is almost undisputed evidence that the advertising of alcohol, specifically on television, has a significant impact on Australian society.

A 2013 research paper by Jones et al identified an increasing body of academic research; and a level of agreement between experts, that the of exposure young people to alcohol advertising increases their consumption of alcohol.<sup>3</sup> This is likely contributing to the social estimated \$55.2 billion identified in the parliamentary paper, however, this is difficult to assess in a systematic way.

It has been argued by the Government of South Australia that laws affecting alcohol in recent years has been changed to reflect the changing attitudes of the community towards alcohol consumption and violence. This change liquor regulation, however, has not sought to deal with the effect of advertising on consumption.<sup>4</sup>

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<sup>1</sup> Parliamentary Paper #93, Tobacco and Alcohol Advertisement Bans, 21 July 2015, p1

<sup>2</sup> *ibid*

<sup>3</sup> Regulation of alcohol advertising: Policy options for Australia, 2013, p2

<sup>4</sup> [http://www.cbs.sa.gov.au/assets/medicoms/mrelease\\_latenightcodeOCT2013.pdf](http://www.cbs.sa.gov.au/assets/medicoms/mrelease_latenightcodeOCT2013.pdf)



## General Television and Radio Advertising Regulation in Australia

In Australia, the regulation of television and radio advertising are governed according to the sector involved and generally under the Commonwealth *Broadcasting Services Act 1992*<sup>5</sup> with the Australian Communications and Media Authority (ACMA) responsible for overseeing the regulation and complaints process on behalf of the Commonwealth Government. General exceptions include:

1. Tobacco advertising is prohibited on all kinds of radio and TV services.
2. Therapeutic goods advertising is prohibited on all radio and TV stations unless approved by the Therapeutic Goods Administration.
3. ABC and SBS advertising.
4. Political advertising on all radio and TV stations is regulated by licence conditions.<sup>6</sup>

Provisions of Section 51(v) of the Constitution of Australia may apply to advertising on television and radio may imply that regulation of television and radio advertising is solely the responsibility of the Commonwealth.<sup>7</sup> Further investigation into this need to be assessed and crown law advice would need to be sought.

## Alcohol Advertising Regulation in Australia

The alcohol industry has a high degree of self-regulation. This self-regulation is through a co-regulatory system with guidelines (The Code<sup>8</sup>) being negotiated with government and consumer complaints handled independently. The alcohol industry bares the cost of this regulatory and complaints system.<sup>9</sup>

Analysis of The Code by Jones et al found that whilst the "broadcast of alcohol related advertisements on commercial television is only permitted during periods of M (mature classification), MA (mature audience classification) or AV (adult violence classification) programs (these are restricted to between 8:30 pm and 5:00 am). The one (somewhat counterintuitive) exception to this is that alcohol advertisements are permitted during the live broadcast of sporting events on weekends and public holidays (Free TV Australia 2004)."<sup>10</sup> Advertising during sporting events could be seen as a more highly influential time for children and young people to be absorbing the information conveyed in these advertisements.

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<sup>5</sup> Broadcasting Services Act 1992 Cwth

<sup>6</sup> <http://www.acma.gov.au/theACMA/About/Corporate/Responsibilities/advertising-on-radio-and-tv>

<sup>7</sup> Sec 51v Commonwealth Constitution.

<sup>8</sup> <http://www.abac.org.au/publications/thecode/>

<sup>9</sup> <https://adstandards.com.au/products-issues/alcohol-advertising>

<sup>10</sup> Jones et al, p4

## Australian Bans on other Products and Services

Successive Australian and South Australian government have all banned other products and services on the grounds of community standards. These include the following:

### ***Cigarette Advertising (Australia, 1973–2010):***

From 1973 the Whitlam government sought to phase out tobacco advertising. Cigarette advertising on television and radio was banned throughout Australia under Commonwealth Legislation.<sup>11</sup> State laws also apply to other forms of advertising, and where these state laws are inconsistent with Commonwealth law the State law will precede that of the Commonwealth.<sup>12</sup>

In South Australia, two pieces of legislation regulate advertising and promotion of tobacco products, the *Tobacco Products Regulation Act 1997*<sup>13</sup> and the *Tobacco Products Regulations 2004*.<sup>14</sup> However, this legislation specifically excludes television and radio advertising from being regulated in South Australia, this therefore falls solely with the Commonwealth.<sup>15</sup>

### ***Live Betting Odds Advertising (South Australia, 2013):***

Live Odds/Gambling – were banned by Jay Weatherill in from 1 August 2013, using the Gambling Code of Practice under the Gaming Act as a response to public discourse regarding the 'Tom Waterhouse' live betting odds shown during sporting events which were watched by children. Mr Weatherill stated that he was placing the ban to take "significant action to reduce the intolerable burden of problem gambling in our communities".<sup>16,17</sup>

<sup>11</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/eqatop>

<sup>12</sup> <http://www.naa.gov.au/collection/fact-sheets/fs252.aspx>

<sup>13</sup> Tobacco Products Regulation Act 1997 (SA). Available from:

[http://www.austlii.edu.au/au/legis/sa/consol\\_act/tpra1997293/](http://www.austlii.edu.au/au/legis/sa/consol_act/tpra1997293/)

<sup>14</sup> Tobacco Products Regulations, 2004 (SA). Government of South Australia. Available from:

<http://www.legislation.sa.gov.au/LZ/C/R/TOBACCO%20PRODUCTS%20REGULATIONS%202004.aspx>

<sup>15</sup> INSERT CLAUSE OF LEGISLATION\*\*\*\* Tabaco Act 97

<sup>16</sup> Weatherill, J. Media Release – Live Odds, 7 July 2013, Available at:

[http://www.premier.sa.gov.au/images/news\\_releases/13\\_07Jul/liveodds.pdf](http://www.premier.sa.gov.au/images/news_releases/13_07Jul/liveodds.pdf)

<sup>17</sup> Independent Gambling Authority (SA), Gambling Code of Practice Notice 2013 V. 3, 27 March 2015, Available at: <http://www.iga.sa.gov.au/files/GCoP13-V03-dist.pdf>

### **R-Rated DVD's in Stores (South Australia, 2010):**

Legislation initiated by Family First Legislative Councillor, Dennis Hood MLC, was passed in 2010 restricting the location of R-Rated. It is evident when visiting DVD retailers and hire stores that this legislation has been more or less ineffectual and is seldom policed.<sup>18 19</sup>

### **Alcohol Advertising Legislative Attempts**

In 1998, New South Wales Legislative Councillor, the Honourable Reverend Fred Nile MLC, introduced a Bill into the NSW Parliament for the prohibition of alcoholic beverages advertising in the State of New South Wales.<sup>20</sup> This Bill has continuously lapsed through successive parliaments and was reintroduced in 2003, 2006, 2010, 2012 and 2015.

Reverend Nile's Bill seeks to discourage the consumption of alcohol, reduce alcohol related domestic violence, reduce death, road accidents and other crimes and prevent alcohol related illness and workplace injury.<sup>21</sup>

In 2013, the Bill was reviewed by the New South Wales Legislation Review Committee which concluded that the Bill trespassed "*on personal rights and liberties*" and outlines several clauses which intrude on these liberties.<sup>22</sup> This concern was reported to both Houses of Parliament and the Bill has not further progressed in Private Members Business, but was reintroduced in 2015.

### **International Jurisdiction Prohibitions**

Jurisdictions across the world have successfully implemented either blanketed bans on alcohol advertising; or have partial advertising bans in place which have been successfully implemented.

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<sup>18</sup> <http://www.adelaidenow.com.au/news/south-australia/avert-your-eyes-r-rated-dvd-cover-up-in-south-australia/story-e6frea83-1225820484287>

<sup>19</sup> Parliament of South Australia, Classification (Publications, Films and Computer Games) (R 18+ Films) Amendment Bill 2009, Available at: [http://legislation.sa.gov.au/LZ/B/ARCHIVE/CLASSIFICATION%20\(PUBLICATIONS%20FILMS%20AND%20COMPUTER%20GAMES\)%20\(R%2018%20FILMS\)%20AMENDMENT%20BILL%202009\\_HON%20DENNIS%20HOOD%20MLC.qspdx](http://legislation.sa.gov.au/LZ/B/ARCHIVE/CLASSIFICATION%20(PUBLICATIONS%20FILMS%20AND%20COMPUTER%20GAMES)%20(R%2018%20FILMS)%20AMENDMENT%20BILL%202009_HON%20DENNIS%20HOOD%20MLC.qspdx)

<sup>20</sup> New South Wales Parliament Alcohol Advertising Prohibition Bill 2012, Available at: <http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/E61252ADD1457845CA257886002B1BFA>

<sup>21</sup> Nile, Fred, Hansard Parliament NSW – Second Reading – pp 14309, Available at: [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/131a07fa4b8a041cca256e610012de17/e61252add1457845ca257886002b1bfa/\\$FILE/Alcohol%20Ads%20\(Prohibition\)%20-%20LC%202nd%20Read.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/131a07fa4b8a041cca256e610012de17/e61252add1457845ca257886002b1bfa/$FILE/Alcohol%20Ads%20(Prohibition)%20-%20LC%202nd%20Read.pdf)

<sup>22</sup> NSW Legislative Review Committee, No 23/55, 4 September 2012, Available at: [http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/cf5f96c14056cdc5ca257a6f0018fab0/\\$FILE/Digest%20No%2023.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/cf5f96c14056cdc5ca257a6f0018fab0/$FILE/Digest%20No%2023.pdf)

It is also interesting to note that Sweden had originally banned alcohol advertising (with some exceptions), however, since a European Union Directive in 2005, newspapers have been allowed to carry advertisements for wine and spirits despite objections from the Swedish Government.<sup>23</sup> ?????????

Other notable international jurisdiction prohibitions:

### **Russia, 2013**

The Russian Federation has long been known for its high consumption of alcohol. To combat this consumption in 2013, the Kremlin introduced a blanket ban on advertising of alcohol, prior to this the Federation had banned advertisements that depicted people drinking alcoholic products.<sup>24</sup>

### **Finland, 2015**

Finland: In January 2015, Finland banned advertising to protect children from the dangers of alcohol advertising after recognising its responsibility.<sup>25</sup> As the ban was only recently introduced there is no substantial evidence to suggest its effectiveness and further research is required.

### **Further Research Opportunities**

Opportunities exist to visit jurisdictions with alcohol ban such as Finland (Banned total from January 2015); and Russia (Banned from 2013) and assess the effectiveness of these bans.

### **Issues and Concerns**

Anecdotal evidence suggests there are a number of issues and concerns with attempts to ban the advertisement of alcohol products.

Firstly, whether an individual state or territory has any powers to make such bans on television or radio.

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<sup>23</sup> <http://eucam.info/2014/12/21/sweden-takes-its-case-against-foreign-alcohol-advertising-broadcasters-to-the-ec/>

<sup>24</sup> <http://www.bbc.com/news/world-europe-18960770>

<sup>25</sup> <http://nordan.org/new-alcohol-advertising-restrictions-come-to-force-in-finland/>

Secondly, a number of small sporting organisations such as local football rely heavily on sponsorship from the alcohol industry to enable their operation to continue. A blanket ban could see the demise of local sporting clubs and this should be considered when deciding whether a blanket ban or a conditional ban should be imposed, for example, banning the advertisement of alcohol on television and radio rather than all forms of advertisement or sponsorship.

Thirdly, whether a full ban on television or radio advertising is necessary, or whether the ban could be extended to include televised sporting events (as is a current exemption during such telecasts).<sup>26</sup>

## Recommendations

### 1. **Meet with Experts:**

Meet and discuss options with Sandra Jones and Ross Gordon from the University of Wollongong as to policy options that South Australia could introduce as an individual jurisdiction.

### 2. **Assess Impacts on the Community:**

Assess the impact of advertising bans on local sporting clubs and their ability to operate without sponsorship from alcohol advertising.

### 3. **Seek Counsel Advice on Legislative Options:**

Seek advice from Parliamentary Counsel on the ability, through current legislation, regulation or codes of practice, to extend the advertising regulation provisions to include advertising in other forms, as has been suggested Jones et al.<sup>27</sup> Failing this ability through current legislation, provide drafting instructions to Counsel to provide a Bill for introduction to the House of Assembly to ban the advertisement of alcohol with certain provisions.

### 4. **Visit Other Jurisdictions:**

Visit international jurisdictions that have introduced bans in alcohol advertising.

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<sup>26</sup> Jones et al, p4

<sup>27</sup> *ibid*, p23