



**RADIO BROADCASTERS ASSOCIATION SUBMISSION
ON "ALCOHOL IN OUR LIVES" (LAW COMMISSION)**

28 October 2009

STATEMENT OF INTEREST

The Radio Broadcasters Association represents the non-competing interests of The Radio Network, MediaWorks Radio and 13 independently owned stations.

Our membership accounts for approximately 94% of radio advertising revenues, a sum of around \$268 million.

We receive a small amount of revenue from liquor advertising, approximately \$2 million p.a. mostly for on-and-off premise outlets. We also contribute \$1 million pro-bono advertising time p.a. to moderation causes via the Alcohol Advisory Council.

We are members of the Advertising Standards Authority of which our Executive Director, David Innes is a former Chair.

INTRODUCTION

The RBA thanks the Law Commission for the opportunity to make this submission and commends it on the thoroughness and fair-mindedness applied to this complex and controversial issue.

The primary emphasis on regulatory issues quite properly raises the question as to the extent to which regulation has contributed to problems or can contribute to solutions.

Certainly it is reasonable to assume that lowering the age of purchase and rapidly expanded access to both on- and off- premise consumption with relatively little supervision and extended hours of operation have contributed to at least some of the current problems.

But as noted in Chapters 3-6, the factors that lead to potentially dangerous behaviours are many and complex and changes to regulation alone are unlikely to provide a comprehensive solution.

In particular, the roles of the education and parenting are also likely to contribute to harm reduction. For not the first time, the RBA notes the outstanding success of

organisations such as Students Against Driving Drunk despite very modest resourcing, rebutting the arguments of many anti-liquor groups that education is ineffective.

Given that we are an industry association representing the interests of commercial radio, we confine our detailed comments to advertising issues.

HISTORICAL BACKGROUND OF LIQUOR ADVERTISING REVIEWS

As a constituent member of the Advertising Standards Authority, the RBA has considerable experience in review of the liquor advertising environment over the past 20 years.

In addition to numerous and varying enquiries as to the liquor advertising environment, the ASA conducted major, formal reviews including submissions from the public in 1994, 1998 & 2003. All Review Panels were chaired by persons with judicial experience – Justice Judith Potter QC, Hon Sir Ian Barker QC and Rt Hon Sir Michael Hardie-Boys QC and included a majority of non-industry members with knowledge of liquor industry issues.

Executive Summaries of their findings are **attached**. We consider it noteworthy that very little changed across the period of the 3 reviews; that there was repeated reference to the importance of avoiding impact on younger people and Maori and that there was no justification for bans.

Without exception, the ASA implemented the detailed recommendations of the respective Review Panels.

COMMENTS ON “ADVERTISING - CURRENT PRACTICE ON ALCOHOL ADVERTISING”, Commencing Page 178

10.51

While it is true that “*the ASA oversees.....the development of Codes of Practice for the advertising industry, including the Code for Advertising Liquor*”, we note that this process involves extensive stakeholder consultation, including advertising of the process to, and inviting submissions from the public.

10.53

Notes that “*the Complaints Board has 8 members*”. It is more correct to state that it has 9 members including the Chairman, who must also be a public member, thus ensuring that public members at all times hold a majority.

10.54

Regarding outcomes post the upholding of a complaint, media members of the ASA including RBA stations are also requested to withdraw offending advertisements and are committed to 100% compliance with this request.

10.57, 10.58, 10.59

The report correctly notes that links between alcohol promotion and consumption are “nevertheless complex”. In fact, it is somewhat less complex once it is understood that advertising works at individual brand levels and not at gross multi-brand consumption levels. Since the review chaired by Hon. Judith Potter in 1994, the various review panels have seen substantial evidence presented which disproves a correlative link between overall advertising expenditure, overall consumption and misuse indicators. During some periods, total expenditure has gone up and gross consumption down. In others, the reverse. In part this is because there are forces far more powerful than advertising at work at some times – e.g. lowering the purchasing age.

There has also been extensive evidence presented showing that notwithstanding declines in gross consumption, well-advertised brands can still achieve growth, Heineken & Stella Artois beer being amongst them. Conversely, during periods of overall growth in liquor consumption, there are still plenty of brands in decline. But perhaps the most important issue for the Commission to consider, is the lack of any evidence of a link between advertising, even at the micro level and **misuse** of liquor.

10.64, 10.65, 10.66, 10.67, 10.68

The Commission quite properly considers issues around restrictions on price advertising. The RBA believes that there are not only serious impediments on advertising restrictions or bans under the terms of the Bill of Rights Act 1990, but also the Commerce Act which is quite explicit in its provisions for limiting constraints on competition, particularly price competition.

PROMOTIONS – CURRENT PRACTICE ON ALCOHOL PROMOTIONS, Page 182

10.75, 10.76

The “work in progress” noted by the Commission in these paragraphs has now been completed, and a Promotions Code has now been adopted by the ASA, along with an appropriate management structure and financial resources, fully funded by industry. This Code will work in partnership with the advertising code to ensure that activities such as packaging, product names, sales promotions, sponsorship and the like are subject to the same principles and constraints as mass media advertising.

TOWARDS A NEW FRAMEWORK FOR REGULATION LIQUOR – DEMAND REDUCTION, Commencing Page 224

12.42 (Advertising)

This paragraph raises concepts covered in draft legislation from the previous Labour administration – first, the revised Sale of Liquor Act advancing the concept of “enforced self regulation” whereby the ASA would be charged with administering a self-regulatory regime, but within the terms of a Memorandum of Understanding between the ASA and the Ministry of Health as to performance standards. Should, in (presumably) the view of the Minister of Health, the ASA was falling short of expected standards, regulations and/or a new regulatory body could take over

control of liquor advertising. While the ASA reluctantly agreed to this, having no option, it fails to recognise the “ethos” of self-regulation, which is in effect “self responsibility” or “discipline”. The moment the self-regulatory system is backed by potential regulation, it ceases to become “self”!

With the prospect of regulatory sanctions comes the need for a more judicial and thus by definition complex costly and time consuming process. A more formal appeal process would be necessary. In effect the self-regulatory system would end. Clearly that is an unacceptable outcome for the RBA.

The second strand in 12.42 is that raised in the draft Public Health Bill, also vigorously opposed by all members of the ASA, and many others beside. This provided for the establishment of regulation to control marketing of liquor products if, in the view of the Director General of Health industry was not acting responsibly in marketing of such products. We continue to see this option as draconian and arbitrary, potentially constraining an important freedom in an open and democratic society at the whim of a senior, unelected health official, without the need for even being submitted to the transparency of the Select Committee process.

All sectors of the liquor industry, including advertising media accept the need to be “tough on ourselves”. Indeed, this is in our best interests since advertising which deceives or offends the public will ultimately lose credibility.

Imposition of draconian and arbitrary regulations simply invites defiance and evasion. We vigorously assert to the Law Commission that reasonable constraints negotiated with industry will produce far better results.

QUESTIONS (Page 231)

Question 22 – Should the way alcohol is marketed (including advertising, promotions & sponsorship) have greater restrictions? If so, what restrictions are appropriate?

Restrictions on the marketing and particularly advertising of liquor are a soft and thus common target for the anti-liquor lobby.

In the course of three extensive and expensive reviews of the liquor advertising environment, chaired by prominent New Zealanders with impeccable legal qualifications (Hon. Judith Potter in 1994; Hon. Sir Ian Barker in 1998; and Rt Hon Sir Michael Hardie-Boys in 2003) very little was found to be at fault with the advertising environment, as can be seen by the Executive Summaries of their findings. We invite the Commission to note that where recommendations were made by the respective review panels, these were accepted in their entirety and implemented promptly by the Advertising Standards Authority.

We submit that 2 things in particular stand out – that there is no established link between the advertising of liquor and *misuse* of liquor, and that the imposition of

bans or severe restrictions are unlikely to make any difference whatever to the *misuse* of liquor.

Worse, there is a risk that well-intentioned people, including Members of Parliament reasonably seeking to reduce misuse, will be tempted to see new restrictions on advertising as “job done” and reduce their efforts to attack the real and far more complex factors behind misuse.

DEMAND REDUCTION, Page 238

Advertising Options

A - No Change

The RBA supports this position, arguing that there is no evidence to support the hypothesis that further restrictions will reduce the incidence of misuse of liquor, particularly amongst younger people.

B – Introduce a system of enforced self-regulation to set out the public policy goals of the proposed systems, roles of the body responsible for the self-regulatory system and offences and sanctions

We invite the Commission to note in the first instance, that the phrase “enforced self-regulation” is oxymoronic. That is, the essence of “self-regulation” is to impose discipline on oneself – in this instance, the liquor industry, including media groups such as the RBA being tough on ourselves in the way we promote liquor. This is in direct contradiction with the concept of “enforced”, implicit in which is the concept of rules imposed by an external party, presumably Parliament.

However, ignoring the contradiction in the term, we submit that such a process is unlikely to achieve any reduction in liquor misuse. In the first instance, the self-regulatory Codes that control advertising are subject to extensive public consultation, including inputs from public health officials and experts in treatment of liquor abuse; adjudication of complaints about liquor advertising is undertaken by a Board with a majority of public members, the composition of which has always included at least one person experienced in public health issues; and compliance by mass media in the case of an upheld complaint is 100%. It might well and correctly be argued that from time to time, internet content breaches the rules and fails to meet the 100% standard. We can advise the Commission that in the case of websites originating in New Zealand, virtually the same i.e. 100% level of compliance has been achieved. In the case of websites originating outside New Zealand we make every reasonable attempt to correct any breaches, and would argue that any failures to achieve this would be experienced equally by any “enforcement” agency.

In the case of promotions such as names, packaging, sponsorship etc, we are confident that the new Liquor Promotion Code will also achieve a very high level of compliance because of the commitment by all major liquor retail groups in New Zealand to removal of offending products.

The establishment of an enforcement body empowered with “offences and sanctions” would, in our view, be complex, costly, slow in response and ultimately seriously limited by the structure of legal process. Unlike the present self-regulatory system, it would also need to be funded by the taxpayer.

We further submit that a legal framework inevitably becomes focussed on process. The self-regulatory system has the flexibility and breadth of perspective to be able to focus on outcomes. Included in this is the ability to implement change quickly in response to e.g. the findings of soundly based reviews.

C – Establish a legal framework and statutory body to regulate and control liquor advertising

Given the RBA’s comments in A and B, we obviously are opposed to Options C & D. As noted in our submission and referred to on a number of instances by the Commission’s Discussion Paper constraints on the advertising of liquor pricing would be controversial and would need careful positioning to comply with the Bill of Rights (possible in our view) and the Commerce Act (impossible in our view). Moreover, we assume that the Commission had intended constraints only on low prices – there are some occasions when a high price is a legitimate part of the overall marketing strategy for product and we assume there would be no objection to that?

Regarding D., advertisements of “irresponsible promotions” is simply not permissible at present under the pre-vetting structure, well established for media advertising and about to be implemented for activities covered by the new promotions code.

Regarding the third point, the codes already specifically preclude advertising or promotions targeted to young people.

D – Ban advertising of all alcohol in all media

In light of the above A-D, the RBA is obviously opposed to this option and invites the Commission to observe the consequence of the most wide reaching and draconian ban in the history of liquor marketing – prohibition in the U.S between the two World Wars. Not only did consumption of liquor continue unabated, but much of the manufacturing and marketing passed into criminal hands with very negative consequences. In short, bans simply don’t work!

F – Restriction of television advertising between certain hours

As is widely known, television advertising of liquor products, with the exception of sponsorships cannot be undertaken before the AO time zone commencing 8.30pm. While not directly our business, the RBA supports this to the extent of the supporting logic – that if the programmes are deemed suitable for adults, and requiring supervision of younger viewers, it is surely only consistent that advertising of liquor be subject to the same rules.

G – Restrict sponsorship linked to alcohol products

We consider this possible restriction more properly addressed by sponsored organisations. However, in brief, estimates prepared by the Foundation of

Advertising Research in 2007 suggested that around \$20 million is spend by liquor companies in sponsorship of sport, culture, recreation etc in New Zealand each year.

While the point could reasonably be made that this has some effect in exposing participants to liquor at an earlier age, and in a more positive way than might otherwise have been the case, we believe this is more than outweighed by the health, recreational and cultural benefits of participation made possible by sponsorship support.

We also note that the new Liquor Promotion Code provides sanctions against sponsorship of activities which are directed predominantly toward younger audiences.

H – Provide for a reserve power to regulate advertising only if there is evidence of a lack of compliance with the current self-regulatory scheme

As noted earlier, we believe such action would be unnecessary since voluntary compliance is already at a 100% level with the possible exception of the internet – where legal enforcement powers are unlikely to achieve anything more than the self-regulatory system operated by the ASA.

Promotions Options

A – No change

Since the system is only in the establishment phase, it is our view that it is clearly too early to contemplate change.

As is normal practice, the ASA will conduct a public review of the functioning of the new Code after two or so years.



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1994 REVIEW CHAIRED BY JUSTICE POTTER

EXECUTIVE SUMMARY

- An independent Review Team appointed by the Advertising Standards Authority examined the desirability or otherwise of the advertising of liquor on radio and television, and if there were to be advertising, the Rules which should govern such advertising. A total of 1,282 submissions were received, and the Review Team conducted hearings in Auckland and Wellington.
- The Review Team does not recommend that the advertising of liquor on radio and television be banned.
- The Review Team recommends that:
 - The Code for Broadcast Advertising of Liquor be strengthened and tightened by:
 - the inclusion of 5 new basic principles reflecting the spirit and intention of the Code.
 - re-drafting of some of the individual Rules (a draft new Code is included in this Report as Item 11)
 - There be a co-ordinated directed research programme that focuses on the implications and effects of liquor advertising and the effectiveness of moderation messages on Maori in particular.
 - The LAPS adjudicator meet 6 monthly with an advisory group including Maori, youth and health representatives.
 - There be no change in the curfew prior to 9.00pm for liquor advertisements on television, and no curfew be introduced for radio, but that an exemption from the television curfew be available for tourist channels on a case by case basis.
 - There be no change to the ASCB or its procedures, but that steps be taken to make better known both the ASA and the ASCB and their facilities.
 - There be a further Review in 3 years.

1998 REVIEW CHAIRED BY HON SIR IAN BARKER Q.C

EXECUTIVE SUMMARY

An independent Review Team appointed by the Advertising Standards Authority examined the desirability of the advertising of liquor on radio and television, and if there was to be advertising, the Rules which should govern such advertising. A total of 101 submissions was received, and the Review Team conducted hearings in Auckland and Wellington.

The Review Team does not recommend that the advertising of liquor on radio and television be banned.

The Review Team recommends that:

- A complete re-write of the Code for Advertising Liquor not be implemented.
- The existing Code for Advertising of Liquor be strengthened by:
 - placement of the Principles as headings, accompanied by the Rules that correspond with each Principle.
 - re-drafting and reconsideration of some of the individual Principles and Rules in the light of submissions.

(a draft revised Code is included in this Report as Appendix A)

- There be a co-ordinated directed research programme that focuses on the implications and effects of liquor advertising on young people in particular.
- There be no change in the existing 9.00pm curfew for liquor advertisements on television.
- There be no change to the ASCB or its procedures.
- There be a further Review in 5 years.

2003 REVIEW CHAIRED BY RT HON SIR MICHAEL HARDIE-BOYS

EXECUTIVE SUMMARY

An independent Review Panel recommended by the Advertising Standards Authority in accordance with the procedure agreed to by the Government in 1992, examined the desirability of the advertising of liquor on radio and television, and if there was to be advertising, the Rules which should govern such advertising. A total of 74 written submissions were received, and the Review Panel conducted hearings in Auckland and Wellington.

The Review Panel does not recommend that the advertising of liquor on radio and television be banned.

The Review Panel recommends that:

1. The existing Code for Advertising of Liquor be strengthened and clarified by:
 - redrafting some of the definitions.
 - redrafting some of the Principles and Guidelines, and in particular to clarify which of the Guidelines are mandatory.
2. The current Code be amended in order to address concerns about advertisements that may encourage drinking by young people, in particular by:
 - the introduction of a new Principle of Social Responsibility which will enable the ASCB to better deal with advertisements which appeal to young people.
 - a strengthening of the prohibition against advertising liquor products which are perceived to have a particular appeal to young people.
3. There be a change from 9.00pm to 8.30pm in the time after which liquor advertisements are permitted on television.
4. There be no change to the use of heroes of the young in liquor advertisements or in advertisements advocating moderate drinking.
5. There be no change to the ASCB or its procedures.
6. The issue of harmonisation of the Liquor Codes of New Zealand and Australia be addressed by a group of advertisers, media, advertising agencies, Government and health groups on both sides of the Tasman.
7. Government agencies, industry and health groups commission pertinent and relevant research on the relationship between liquor advertising and liquor abuse.
8. There be a further independent Review in 5 years.