



**Submission to the Justice and Electoral Committee**  
**on the Alcohol Reform Bill**

Prepared by  
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## **Submission to the Justice and Electoral Committee on the Alcohol Reform Bill**

1. This submission is made by ThinkTV, the organisation representing the common interests of the major Free-to-Air Television broadcasters in New Zealand. Contact details for ThinkTV are:

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This submission has been prepared by Rick Friesen, Chief Executive of ThinkTV, who can be reached at rick@thinktv.co.nz, via telephone on 09 280 3802 or via mobile on 021 643 353.

2. We wish to be heard by the Committee.
3. Generally, ThinkTV supports the objectives and intent of the Bill, but we wish to make a few general comments and then focus on two specific provisions of the bill.
4. Despite the comments of many individuals, led by false perceptions, there is absolutely no link between consumption of alcohol and advertising. The Foundation for Advertising Research has done a very good job of locating research on this subject, and there is no link whatsoever. We encourage your careful review of their submission.
5. On a personal basis, I grew up in a province of Canada (Saskatchewan) in which there was no alcohol advertising of any kind permitted for forty years. When the ban came off, there was no increase in alcohol consumption. There was a change of brands, as purchasers of alcohol were influenced in their brand choice by advertising, but overall consumption was unchanged.
6. There is an effective Self-Regulation regime in New Zealand. The Advertising Standards Authority (ASA) operates the advertising Self-Regulatory regime. Its members are the advertisers, advertising agencies and media. It has Codes and a complaints system that all members agree to abide by. There is the *Code for Advertising Liquor* for advertising and the *Code for the Naming, Labelling, Packaging and Promotion of Liquor* for all other forms of promotion. The ASA submission to this Committee will provide in-depth information on this topic.
7. The Self-Regulatory regime is not confined to the ASA, as there is a sophisticated system of pre-vetting and advice operated by the advertisers in cooperation with the media and advertising agencies. No doubt the ANZA and ASA submissions will provide more detail on the work of both the ASA and the pre-vetting and advice systems
8. It is important to note that the self-regulatory regime of the ASA provides very efficient and effective controls over alcohol marketing. Several of the points raised by the Alcohol Reform Bill are already covered under the codes which all advertisers adhere to.

9. A point often raised by those who would put further limitations on alcohol advertising is that alcohol advertising appeals to the young. The system currently in place deals with that issue very effectively, including specific prohibition of the use of any “heroes of the young” in alcohol advertising.
10. Clause 220-1, subclause (e) is well covered by both the Code for Advertising Liquor and the Promotion of Liquor Code. The question we pose is, would a Government regulated environment produce a better result than the existing Self-Regulatory model?
11. Government regulation has many disadvantages:
  - It is slow. Complaints may take months or years to complete the process. Two years is quite common.
  - The burden of proof is the higher ‘beyond reasonable doubt’ compared with the Self-Regulatory ‘balance of probabilities’.
  - The onus of proof is different. With Government regulation the prosecutor must prove the breach. With Self-Regulation the onus is on the advertiser, agency and media to prove there is no breach.
  - A punishment system of fines undermines the goodwill of the parties and leads to the playing of regulatory cat and mouse. The tobacco industry is a good example of this.
  - A Self-Regulatory regime requires adherence to the codes in the spirit and intention as well as the letter. Thus loopholes cannot be used. Government regulation requires adherence only to the technical wording thus loopholes can be exploited.
  - With a Self-Regulatory system the complainant is empowered and is a party from beginning to end. With a Government regulatory system the complainant makes a complaint to the regulator who then takes over the entire process.
  - A Government regulatory system is costly, so is either a burden on the Government or an additional compliance cost for New Zealand businesses. There should be no appetite for either of those options.
12. The Self-Regulatory system already in place has been a very effective tool at limiting alcohol marketing to the adult population, and specifically not targeting those under 25.

**We therefore recommend that subclause 220 -1(e) be deleted**

13. However, should the Committee be of the view that subclause 220-1 (e) should remain, we would recommend a change in the wording. The words in the subclause “*or is likely to have*” make the test subjective and lack precision and in our submission should be omitted.

**We therefore alternatively submit that the subclause be amended by omitting the words “*or is likely to have*”.**

14. Clause 383 gives the power to promulgate regulations to ban certain products or to declare designated products to be a restricted alcohol product. If a product is declared a restricted alcohol product then the regulations can stipulate the distribution, sale and promotion of the product. There are wide discretionary powers and care needs to be taken that there are suitable restraints and fetters in place.
15. The following restraints are noted with regard to declaring a product to be banned:
  - The product must be dangerous to health
  - The product must have special appeal to minors because of its nature or promotional material
  - The Minister must consult with interests that are likely to be substantially affected by a ban.

In our view these restraints are appropriate.

16. However the only restraint regarding regulations to regulate (including ban) the distribution, importation, manufacture, sale, display, labelling, packaging or promotion of a restricted alcohol product is the requirement of the Minister to consult affected parties. Thus the regulations could state that the sale of beer is prohibited at supermarkets or the sale of wine sold only to persons who order two-course meals at a restaurant or over 25. Indeed it would be possible for the regulation to ban the sale of beer with an alcohol content over 3.5% or even all beer. Thus the Minister has virtually unfettered powers to regulate or ban all aspects of the distribution, sale and promotion of alcohol products. Such a power would be an affront to Parliament, which quite rightfully has been responsible for the regulation of the distribution, sale and promotion of alcohol.

The matter can be remedied by having the same constraints that apply to banning a product. That can be achieved by deleting subclause (6) and making a consequential amendment to subclause (7).

**We therefore submit that subclause (6) be deleted and the reference to “subsection (6)” be substituted with the words “subsection (5)”.**

17. ThinkTV thanks the Select Committee for its diligence and for its thoughtful consideration of this and all the other submissions.

This concludes the ThinkTV submission.

  
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