



Inner South Canberra Community Council

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SUBMISSION ON BILLBOARDS

The Inner South Canberra Community Council (ISCCC) is grateful for the opportunity to make comment on the inquiry into billboards.

Conclusions/Recommendations

The ISCCC believes that:

1. most Canberra residents do not wish to see the current restrictions on outdoor advertising relaxed;
2. the existing regulatory controls do not appear to be effectively enforced;
3. the existing regulatory controls are confused and do not cover all forms of outdoor advertising, and should be redrafted;
4. the proposal to identify special areas where billboards might be permitted has little attraction and raises problems;
5. the Government should seek expert advice on the balance of costs and benefits of any expansion of outdoor advertising, including public health aspects, and ensure that any such studies are published in full, before committing to any relaxation of the existing arrangements.

Considerations

We note that the Chief Minister Mr Barr suggested in January that it might be appropriate to relax the existing controls on billboard advertising as "There are many examples of outdoor advertising, such as billboards on trucks, utes and motorbikes - both parked and being driven around the city - and large banners draped from buildings, that stretch the current regulations", reported in the Canberra Times of 25 January 2017 (see <http://www.canberratimes.com.au/content/adaptive/canberratimes/act-news/act-may-relax-its-ban-on-billboards-20170125-qtyc7q.html>). The cynical might suspect a desire to boost government revenues through increased billboard licensing fees could be a factor in calls for a review of current rules, as most would not think that a failure to enforce existing legislation was a legitimate reason to seek to change the legislation.

The ISCCC has not noticed any great community concern about the existing restraints on advertising being too confining. It recognises that there are some members of the community who hold the view that an increase in the number of billboards would enhance the attractiveness of Canberra. While this is a legitimate view to hold the ISCCC believes that its proponents are in a distinct minority. That said, we have not conducted any polling to confirm these views.

It needs to be recognised that outdoor advertising is different from most other forms of advertising. Advertising on television or radio can be segmented according to time of broadcast, so that material generally regarded as unsuitable for children is only shown or broadcast at times that most children would reasonably be in bed. And with television one can always press the mute button and go and get a cup of tea during advertisements. Similarly advertising in junk mail or the print media allows discretion. No one is compelled to look through junk mail catalogs. And one can skip advertisements in magazines and in the press.

Outdoor advertising is different. It is universal in access, in that it is available to all segments of the population, and (unless it is a new, digital display) at all times. It is there, interrupting everyone's view. There is no scope to shield appropriate sections of the population from it, nor is it discretionary. No one can choose not to see it. And it is expropriating a public resource, the view that would otherwise be available in the absence of the billboard. Because of these significant differences between outdoor advertising signs and other forms of advertising it is appropriate that there be a more rigorous regulatory regime applied to it. Thus outdoor signs are not permitted to advertise smoking, or products or services that cannot be advertised on television during children's viewing times.

This leads us to public health considerations. The aim of advertising is to catch the attention of the viewer. After many decades of practice, advertisers are quite good at catching one's attention. However, if the viewer is doing something else at the time their attention is caught then they will be distracted from their task. Thus there is a direct relationship between effective advertising and driver distraction – the more effective the advertisements the more distracted the driver. And there is a second direct relationship – the more distracted the driver the larger the number of accidents. This is not a new discovery, and many (most?) jurisdictions have rules seeking to control advertising around intersections and other portions of the road that require great attention from drivers. But there is a tension here, as more advertising means more accidents. Pure public health considerations would suggest that public amenity would be maximised if outdoor advertising, or at least that portion aimed at motorists, were minimised.

Issues raised by the Terms of Reference

The Terms of Reference seek to explore the following issues:

1. Current Rules and Practices

a. Rationale for Existing Regulations

Controls on advertising in the ACT appear to go back to the Roads and Public Places Act 1937. Section 12 of this Act made it an offence for any person to display an advertisement or notice without the permission of the Minister or a roads and public places officer.

While we have not researched the background to the introduction of this Ordinance it seems reasonable to presume that this was done out of a desire to preserve the Garden City ambience of Canberra, or as the *Signs General Code 2008* (which forms part of the Territory Plan) puts it "*To ensure that advertisements and signs do not compromise the role of the Territory as the setting of the National Capital and Seat of Government of the Commonwealth*". The currently applicable regulatory framework appears to be a direct descendant of the original Ordinance and presumably reflects the same desire to preserve the natural beauty of Canberra unsullied by advertisements.

b. Terms of the Existing Regulations

At present the erection of advertising signs is governed by the *Signs General Code*, which specifies those signs that may be located on leased land. The Code identifies some 28 different types of sign and controls their use with 139 Rules, and divides signs into Principal, Second Party and Third Party Signs. Only Second and Third Party signs are regarded as advertising. Principal signs are those which advise the name of the business occupying the premises on which the sign appears. Second Party signs advise of products made by others that are sold by a business. Third Party signs advertise products that have no connection with the owner of the sign on which they are promoted. Most signs described as billboards would consequently be characterised as Third Party signs. However, the ISCCC notes that the Canturf billboard signs visible from the Monaro Highway in Fyshwick are Principal Signs under the above classification, and are permitted as they are erected on Canturf's land.

All signs in the ACT must comply with Criterion C4 of the *Signs General Code*. This specifies that

Signs must:

- a) Not create a hazard to traffic or pedestrians;*
- b) Be of a character and design standard consistent with the objectives and controls for the relevant zone and locality;*
- c) Recognise the heritage values of sites;*
- d) Not compromise the role of the Territory as the setting of the National Capital and Seat of Government of the Commonwealth;*
- e) Complement the streetscape and amenity of the locality by virtue of its size, location, illumination, utilisation of complementary shapes, forms, colours, durable quality materials and design concepts;*

- f) *If affixed to a building, complement the architectural style of the building by virtue of its size, location, illumination, utilisation of complementary shapes, forms, colours, durable quality materials and design concepts; and*
- g) *Not unnecessarily repeat or duplicate similar signs.*

The *Signs General Code* only permits Third Party signs on the ground floors of buildings in commercial and industrial zoned areas. Free standing third party signs are not permitted on leased land in the ACT, as billboards on public (ie unleased) land in the ACT are governed by the *Public Unleased Land Act 2013* (PULA). This provides at s25 that the Director General must approve any sign placed on unleased public land, and when granting such approval must be satisfied that the sign will not cause unacceptable risk to people, property or the public unleased land. It is an offence under s26 to place a fixed sign upon land without the approval of the Director General. Moveable signs must comply under s27 with the *Code of Practice for the Placement of Movable Signs in Public Places* (Code of Practice), introduced by the disallowable instrument *Public Unleased Land (Movable Signs) Code of Practice 2013 (No 1)*. It is an offence under s28 for a mobile sign to not comply with the Code of Practice.

c. Effectiveness of the Existing Regulations and Enforcement Measures

To the extent that there are no fixed billboards on public unleased land in the ACT it would appear that the existing legislation is relatively effective. The ISCCC notes that most of the problems identified in the Canberra Times article cited above, “billboards on trucks, utes and motorbikes” are forms of advertising that do not seem to have been envisaged by the drafters of the current regulation covering mobile signs, as these are restricted to sign of maximum size 900mm by 1200mm (See Clause 3(1) of the Code of Practice. As they do not conform with the permitted dimensions they are in breach of the Code of Practice, and consequently the owner of the sign is in breach of s28 of PULA, which is a strict liability offence.

It is not clear whether concerns about billboards flow from a perceived inability to enforce the existing regulations in relation to mobile signs (which the ISCCC believes could be easily remedied through instructions to Access Canberra), or by a desire to extend the regulatory regime to cover such signs. The ISCCC believes that the introduction of suitable amendments to the Code of Practice to cover the offending billboards, and possibly future proof the Code of Practice by being a little less prescriptive about the size of and type of signs, and their purposes, would be a relatively easy matter.

In relation to enforcement, the general feeling appears to be that there has been a slow but steady increase in the number of roadside signs (and also sandwich board signs on footpaths), which presumably reflects the current Government’s *laissez faire* tendencies and reluctance to enforce existing regulations, even at the expense of foregoing potential revenue (it seems likely, for example that a modest increase in parking inspectors would earn more than enough to pay the additional inspectors). The ISCCC believes that any community concern about billboards would be reduced by a more effective policing of the existing outdoor advertising rules.

d. Comparative Analysis of Billboard Regulation in Other Jurisdictions

The ISCCC notes that there is a useful introduction to how the five mainland States regulate outdoor advertising at <http://oma.org.au/regulation-and-community/regulatory-affairs>, which is part of the Outdoor Media Association's website. The NSW Department of Transport and Main Roads "*Roadside Advertising Guide*" of 2 August 2013 provides a summary of the NSW approach. Similar documents from other states do not seem to be easily accessible. The US Department of Transportation produced in 2011 a comparison of outdoor advertising regulation in Australia, Europe and Japan in the document "*Outdoor Advertising Control Practices in Australia, Europe, and Japan*" available at <https://international.fhwa.dot.gov/pubs/pl11023/pl11023.pdf>

Clearly there is a very significant amount of material to be mastered before one could usefully contribute on this topic and the ISCCC therefore has no useful comments to offer.

e. Definition of 'Billboard' when compared with Definitions for other Signage

Definitions of various types of advertising sign are given at Element 5: Appendix A: Description of sign types in the *Signs General Code*. Great effort has clearly gone into identifying every sign known to the drafter, but no provision is made for signs which don't fall into any of the categories identified. Many of the categories distinguish signs by their location (eg a *Blind Sign* is for instance an advertisement painted or affixed to a blind, and which is distinguished from a *Canopy Sign*, which is an advertisement painted or affixed to a canopy), while others are differentiated by ease of alteration (eg *Changeable Message Sign*) or purpose (eg a *Construction Site Fence Sign* is distinguished from a *Fence Sign*, and a *Display Home or Development Site Sales Sign* distinguished from an *Event Sign*) while being of essentially the same form and construction. Overall the impression is of a farrago of different classificatory approaches compounded together without much strategic thought.

Perhaps not unsurprisingly in light of the above, fixed billboards do not appear to be present amongst the 28 type of signs identified. The closest definition would seem to be a Pole Sign: "*A Pole Sign is a freestanding sign mounted on one or more vertical supports which has a smaller surface area and a lower height than a Pylon/Column sign*". The Pylon/Column sign referred to is "*a large display surface with its height being greater than its width. It may be erected on the ground or mounted on one or more vertical supports*". It appears that the drafter did not entertain the idea that there might be signs similar to a Pylon/Column sign but with height less than its width. By now the reader should begin to see the problem.

R74 restricts the area of a pole sign to 4.5m² per side, and R75 restricts the height to no more than 4.5m, while R88 specifies the maximum area of a Pylon/Column sign to 6 m² and R 89 a maximum height of 6m. Consequently only a relatively small billboard not more than 2m high by 3m wide would fall within the most generous of these definitions.

A sign on a truck or a ute would at first face appear to be a *Mobile Sign* ("a portable freestanding light weight sign, or a sign mounted on wheels to facilitate easy movement about a site"), except these are restricted (R68) to a maximum area of 2.5m², or for example 1.25m by 2m. Again most billboards on trucks would be larger than this. Again the definitions do not appear to easily cover signs on trucks or utes, or mounted on trailers.

In light of these gaps in the definitions the ISCCC believes that the *Signs General Code* could usefully be redrafted to ensure that all signs are covered in one way or another.

2. Community Views on Placement and Construction of Billboards

The ISCCC believes that most Canberra residents are relatively happy with the rules as they are currently applied, and would not like to see a significant relaxation of restrictions on outside advertising. However, we do recognise that there are some who feel that the existing regime is too restrictive, and that Canberra would suffer little detriment from an increase in the number of billboards permitted.

The ISCCC is not aware of any public pressure to require that billboards be constructed in any particular manner or use any particular material, beyond the usual reasonable expectation of the public that billboards will be generally safe and not cause a risk to people or property, particularly during periods of extreme weather.

3. Merits and Challenges of Establishing Designated Areas for Billboard Advertising

a. Impact on Business and Community Organisations

The impact of restricting the use of Billboards to specific designated areas will depend on what is understood by billboard. If billboard is taken to mean any large sign, whether Principal, Second Party or Third Party, to use the terminology of the *Signs General Code*, then it would appear that organisations within the designated area may have an advantage, in that businesses, and the products or services that they sold, could more readily be identified.

If on the other hand one expects the vast majority of billboards would be Third Party signs advertising products which were not made or sold by the organisation which owned the billboard, then the effect might be slight. However, such a system would be unlikely to be welcomed by advertisers, as exposure to their signs would be at the least somewhat constrained. Now that there is scope for large billboards to be made mobile relatively cheaply, by painting an advertisement on the side of a truck or van, or mounting a billboard on the back of a flatbed truck, ute or trailer, one could expect that the pressure to take advertising to billboard free areas by such means would become irresistible. In the absence of effective enforcement we would soon be back to the current situation with unapproved mobile billboards frequently visible on roads.

Other problems with this proposal include how one would decide which areas or roads were suitable for billboard display, and the equity of granting some leaseholders the right to erect signs on their property while denying this right to others. Clause 8(2) of the Code of Practice identifies Designated Areas where signs may not be placed without the approval of the National Capital Authority. This would exclude billboards from a large proportion of the roads that, were they subject to other rules, might be of great interest because of their traffic flows. Among such Designated Main Avenues and Approach Routes are Canberra Av, Fairbairn Av, Pialligo Av, Northbourne Av, Federal Highway, Barton Highway, and Monaro Highway. Advertisers are unlikely to welcome being restricted to the Fyshwick, Hume and Mitchell industrial areas. To permit advertisements by the roadsides of Tuggeranong, Woden, Weston Creek, Belconnen and Gungahlin while excluding them from the inner north and south of Canberra might be seen as underlining an invidious distinction between various parts of Canberra.

b. Use of New Billboard Technology

The advent of so called 'digital' billboards allows billboards take advantage of electronic technology to change their message and or colour, flash or otherwise modify their display either in some cyclic pattern or in response in some way to passing traffic. Such abilities are only going to be enhanced by advances in technology and ever lower equipment costs.

It can be expected that advertisers will use this new technology to make their advertising more effective, that is more capable of catching the attention of drivers. This increased diversion of driver's attention from the task of driving can be expected to lead to an increase in accidents with an impact on public health and increased property losses. This problem will be resolved when and if autonomously driving vehicles become the dominant form of transport. Until we reach this happy situation however the interests of advertisers and proponents of public health would appear to be opposed. Hopefully Governments will address this issue somewhat more rapidly than they did the public health impacts of smoking.

c. Potential to Enliven Urban Areas

The ISCCC believes that it is confused to believe that a proliferation of outdoor signs can "enliven" a locality. Enlivenment arises from the variety of opportunities to eat, drink, socialise, relax and be entertained. Signs on their own provide none of these opportunities. A plethora of such opportunities may lead under some circumstances to a large number of signs, but it is a strange kind of transference to confuse the potential consequence of a lively locality with liveliness itself.

4. Ways in which Elements of Billboard Advertising could be Regulated in the ACT

This is, in effect, an invitation to redesign the outdoor advertising control arrangements if we were to abandon or amend the current regulatory structure.

Clearly an essential first step is to rewrite the Signs General Code and the Code of Practice to ensure that the definitions cover all possible forms of sign, to prevent the replication of the current situation where a sizeable proportion of signs in use fall outside the definitions in the regulations. Controlling signs by their purpose, for example distinguishing between commercial advertising signs, election signs and information and traffic signs is probably more fruitful than distinguishing between signs on blinds, awnings or the walls of buildings.

The regulations should be rewritten to be technology neutral as much as possible, and to be adaptable to future changes in styles, habits, and materials used. Consequently the regulations should specify the outcomes required rather some attribute of the sign. For example specify that signs must not present a danger to the public under any circumstances including accidents and extreme weather, rather than saying they may not be made of sheet metal.

In 2016 NSW issued draft changes to its outdoor advertising regulatory arrangements to extend these to cover electronic advertising. The changes would introduce specific criteria for electronic signs to minimise driver distraction and maximise road safety, including:

- specifying the amount of time an image can be displayed depending on the speed limit in certain areas
- the brightness of the image
- the use of colour, shapes and patterns
- the content, font, size and amount of text

In addition the new guidelines would prohibit:

- videos and animation
- message sequencing
- television, internet and satellite broadcast
- flickering or flashing content.

It is not clear if these changes have yet been introduced, but they provide a guide as to the sort of matters that might be covered in any changes to the ACT regulations in relation to electronic or digital advertising.

5. Any other relevant matter.

Before legislating to permit more outdoor advertising the Government should ensure that it has taken into account the public health impacts of any increase in advertising. Politicians are unlikely to have the skills or the temperament to make this assessment unassisted, and so it would probably be desirable for the government to outsource the preparation of appropriate cost benefit analyses, and insure that any such studies are published in full, before undertaking any action in this area.

Finally, having reached a consensus on the amount of outside advertising desirable, effective and autonomous enforcement arrangements should be put in place to ensure that the new rules are complied with. By autonomous we mean that the enforcement provisions once decided upon must be applied without being dependent on the will or determination of the responsible Minister. Enforcement might be made more successful if the public were given a role, and in this regard it might be worth considering arrangements whereby citizens who report billboards which infringe the applicable regulations are rewarded by receiving some portion of the fine imposed.

The ISCCC thanks the Committee for the opportunity to present the Council's views.

Yours sincerely



John Edquist

Deputy Chair
ISCCC

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