ALCOHOL ADVERTISING:
THE EFFECTIVENESS OF CURRENT
REGULATORY CODES IN ADDRESSING
COMMUNITY CONCERN

FINAL REPORT
30 April 2014
The Australian National Preventive Health Agency
The Australian National Preventive Health Agency (the Agency) was established on 1 January 2011 by the Australian National Preventive Health Agency Act 2010, to strengthen Australia’s investment in preventive health and help turn the tide on the rising prevalence of preventable chronic diseases.

The Agency supports the development and implementation of evidence-based approaches to preventive health initiatives. Its initial focus, as requested by Commonwealth and state and territory Health Ministers, is to target obesity (including physical inactivity), harmful alcohol consumption and tobacco.

In partnership with all Australian governments, and co-operating with industry, NGOs and health experts, the Agency is driving the national capacity for change and innovation around preventive health policies and programs and is committed to improving health outcomes for all Australians. Further information about the Agency can be obtained at www.anpha.gov.au.

Note: While advice and expertise are provided to the Agency through its Advisory Council and Expert Committees, it should be noted that recommendations in the Report are those of the Agency, and do not necessarily represent the opinions of any members.
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EXECUTIVE SUMMARY

Introduction

This Final Report of the review of the effectiveness of alcohol advertising regulation in Australia makes several recommendations intended to achieve greater protection of children and adolescents from alcohol promotion and marketing. The Agency finds the current system to be inadequate.

In assessing where improvements could be achieved in the regulation of all aspects and forms of alcohol advertising and marketing in Australia, the current complex mix of self-regulatory, quasi-regulatory, co-regulatory and legislative provisions are explained and analysed. The analysis uses the framework from The Australian Government Guide to Regulation 2014 to set out for the reader the rationales for adopting or rejecting each of a range of regulatory reform options. The proposed changes address both placement and content of alcohol promotions within the existing regulatory system.

The context for alcohol regulation in Australia

Alcohol-related harm to people of any age remains an issue of ongoing concern for the Australian community and a challenging area for public policy response by Australian governments at all levels. The best estimates of the overall social and economic costs of alcohol misuse to the Australian community are more than $15 billion per annum.

In 2009, the National Health and Medical Research Council (NHMRC) reviewed the evidence of short and long terms risks of harmful alcohol consumption and published revised Drinking Guidelines for Australians. These Guidelines recommend that for Australians under the age of 18, not drinking is the safest option. The NHMRC provides further advice to parents of adolescents that delaying the age of drinking initiation, as long as possible, is important to protect the health and wellbeing of young Australians. The NHMRC developed the guideline in relation to young people (a departure from previous Guidelines) because “the evidence suggests that earlier initiation of drinking is related to more frequent and higher quantity alcohol consumption in adolescence, and those patterns are in turn related to the development of alcohol-related harms in adolescence…”

Despite this guideline, alcohol consumption among Australian adolescents remains prevalent, with about 31% of boys and 14% of girls aged 15 to 17 years exceeding the adult guidelines for single occasion risk. While underage drinking for the population has been decreasing recently, excessive drinking among those who drink in the age group remains a considerable social problem.

Regulators at the state and territory level have moved to address this emerging body of evidence on the risks of alcohol consumption by adolescents. The principal regulatory mechanism for controlling the supply of alcohol in Australia is state and territory liquor licensing legislation that establishes a minimum legal purchasing age for alcohol and where, when and how alcohol may be sold. Over the past decade, five State and Territory Governments (NSW, QLD, TAS, NT, and VIC), have also passed ‘secondary supply’ legislation to support parents in restricting the supply of alcohol to their adolescent children. At the same time, increased efforts to help counter demand by minors are warranted including in relation to alcohol advertising.

Children and adolescents are vulnerable to, and influenced by, the messages contained in alcohol advertising. A large body of Australian and international research, including several systematic reviews of longitudinal studies, shows that exposure to alcohol advertising and promotions through a range of channels influences adolescents’ awareness of alcohol brands and their readiness to adopt alcohol consumption as a normal activity. The links and relationships
have been identified in numerous studies. The evidence implies causality although it is very
difficult to separate even in the best studies the effects of advertising from the many social factors
affecting adolescents’ drinking behaviours. Nonetheless, there is more than sufficient evidence in
this area of public health risk to confirm the necessity of effective controls on the exposure of
children and adolescents to alcohol promotion and to ensure that those controls are as broad as
possible as new forms of marketing emerge.

This necessity has been accepted by several comparable countries, including France and Ireland
in which there is a long cultural history of alcohol consumption. The WHO Global Survey on
Alcohol and Health found that between 2002 and 2008, across seven survey categories of
alcohol marketing, there was a statistically significant shift towards more restrictive measures
among WHO Member States.

Community expectations regarding children's and adolescents' exposure to alcohol
advertising

Harm to children and adolescents from alcohol use is of special concern to the community. There
is considerable concern that the marketing and advertising of alcoholic beverages is influencing
Australian children and adolescents, promoting their earlier initiation of alcohol use (i.e. age at
first drink) and contributing significantly to patterns of harmful drinking. There is also the sensible
concern that advertising influences peer and parental attitudes – industry sees advertising
through the lens of ‘market share’ but the effects of marketing are not as narrow as this.

The National Drug Strategy Household Survey and the Annual Alcohol Polls have identified
community support for policy measures to deal with alcohol misuse - the Australian community is
firmly of the view that young Australians should be protected from alcohol-related harms. The
community also supports measures to protect Australian children and adolescents from exposure
to alcohol advertising and forms of alcohol advertising that appeal to them.

Alcohol advertising and marketing in Australia

Alcohol advertising in Australia is prominent in traditional media (television, print, radio, outdoor
billboards), with the majority of advertising expenditure being on television and outdoor
advertising. Broader marketing techniques including sponsorships and digital and social media
strategies have seen significant investment in the last decade; marketing through digital and
social media enables alcohol advertisers to engage and interact with consumers in newer ways
than were feasible with broadcast marketing tools.

Australians are thus now exposed to an extensive amount of alcohol advertising through a variety
of media and avenues. Australian adolescents are exposed to almost the same level of alcohol
advertising as adults aged 18-24. Adolescents’ exposure to alcohol advertising has changed over
time with exposure on traditional media continuing and exposure through digital media increasing
rapidly. While the alcohol industry and advertisers see the alcohol market as “mature” such that
they only advertise to increase market share, alcohol marketing is a social marketing
phenomenon to which Australian youth are susceptible.

Alcohol advertisers claim that they do not target underage drinkers or potential drinkers, but the
actual exposure is what is relevant and what needs to be addressed.

Current regulatory arrangements for alcohol advertising and marketing in Australia

One primary aim of Australia’s regulatory, co-regulatory, quasi- and self-regulatory framework is
to protect children and adolescents from exposure to unsuitable content including alcohol
advertising. That alcohol marketing is ‘harmful content’ is a fact made clear in the Australian Communications and Media Authority (ACMA) Children’s Television Standards.

There is some regulation of the placement (where and when) of alcohol advertising; this occurs primarily in the ACMA Children’s Television Standards and in the Commercial Television Industry Code of Practice (CTICP), a co-regulatory industry code registered with ACMA. There are also placement restrictions in the self-regulatory voluntary code of the Outdoor Media Association.

Regulation of the content of alcohol advertising is handled primarily by the quasi-regulatory Alcohol Beverages Advertising (and Packaging) Code (ABAC) Scheme initiated by alcohol producers but with the more recent involvement of alcohol retailers.

The regulation of content through the ABAC Scheme has been an evolving process with some improvements in recent years. With a recent internal review of the Code by the ABAC Scheme, some further improvements might be expected, but the results of that review have not been made available to the Agency or the public at the date of finalising this Report.

Recommendations

Current regulatory arrangements on the placement of alcohol advertising are failing to sufficiently protect children and adolescents and in some cases are facilitating their exposure to alcohol advertising. On television, this exposure is largely as a result of the exemption in the CTICP for broadcast of live sporting events on weekends and public holidays. The Agency recommends that the exemption that allows alcohol advertising to accompany live sports broadcasts at times when it would normally be prohibited be removed.

The Agency assesses that children and adolescents are exposed to significant alcohol advertising and promotion on free-to-air television, subscription television and in cinemas before 8.30pm and has made recommendations to all these media industry bodies to amend or develop their codes to reduce this exposure.

As in prior government reviews, the Agency has found that current quasi-regulatory arrangements for the content of alcohol advertising remain deficient; while some areas of the process are improved the current ABAC Scheme is failing to adequately protect children and adolescents from alcohol marketing which appeals to them.

The Agency has made a recommendation that the ABAC Scheme improve its quasi-regulatory system by seeking authorisation of an improved Code and relevant Rules and Procedures from the Australian Competition and Consumer Commission; this will ensure that the ABAC Scheme – controlling as it does much of the regulatory activity concerning alcohol marketing content in Australia – is subject to appropriate public scrutiny of its Code and Procedures, has the ability to provide for an effective range and hierarchy of sanctions for breach of its Code of Conduct and becomes characterised by improved transparency.

Another recommendation to improve the Code is in relation to the ABAC Scheme’s interpretation of the Code provision that alcohol advertisements “not have a strong or evident appeal to children or adolescents”; this interpretation should be reformed to exclude the current narrow interpretation of this clause that allows much alcohol marketing to appeal to adolescents below the age of legal purchase.

A number of further recommendations are made to improve the ABAC including extending its coverage to alcohol branded merchandise and alcohol sponsorships.

A significant increase in levels of exposure to alcohol advertising is occurring on digital and social media. While the ABAC Scheme covers the Internet, and a recent guide makes clear that all digital media is to be covered, there are inherent limitations on the effectiveness of age-gated sites. Further, the Code provisions themselves need to assert complete coverage to make it
comprehensive of any alcohol marketing communication irrespective of the form this takes. Digital and social media will, nevertheless, remain an ongoing challenge for regulatory response.

Finally, the Agency makes recommendations to the Australian and state/territory governments for more systematic monitoring, research, review of and reporting on, the effectiveness of regulatory performance in protecting children and adolescents.

A full list of these recommendations is appended to this Executive Summary.

The Agency also recommends that a review of the overall regulatory system (the legislative provisions, co-regulatory instruments and quasi- and self-regulatory elements) be conducted and reported on a triennial basis commencing in 2017. Before that time, however, in 2015, the Agency also recommends that a brief progress review of the implementation of this Review’s recommendations be carried out – for example, to ascertain whether the ABAC Scheme has sought to improve its Code and sanctions through an ACCC authorisation process and whether the exemption for alcohol advertisements accompanying live sport broadcasts on weekends and public holidays is being removed. If progress is not underway, then governments should legislate for a new regulatory regime for ensuring control of alcohol advertising and marketing to protect Australian children and adolescents.
RECOMMENDATIONS

The Agency recommends that Free TV Australia and the free-to-air television industry:

**Recommendation 1a** In consultation with ACMA, amend the Commercial Television Industry Code of Practice (CTICP) to remove the exemption for free-to-air television that allows direct advertising of alcohol products before 8.30pm as an accompaniment to live sport broadcasts on public holidays and weekends.

**Recommendation 1b** In consultation with ACMA, remove the current provision whereby alcohol products may be advertised on school days between 12 noon and 3pm.

The Agency recommends that the Australian Subscription Television and Radio Association (ASTRA) and the subscription television industry:

**Recommendation 2** In consultation with ACMA, amend the Australian Subscription Television Broadcast Code of Practice to restrict direct advertising of alcohol products on subscription television before 8.30pm and after 5.00am.

The Agency recommends that alcohol companies and social media companies:

**Recommendation 3** Review their policies for Australian residents to offer better protections to minors: specifically, that alcohol companies ensure their own websites require disclosure of date of birth (not just a tick-a-box claim to be of legal drinking age); that alcohol advertisements on YouTube (including accessible from other sites such as Facebook) be properly age-gated so that minors cannot easily access them; and that other social media providers examine their practices to ensure that age-gating policies to protect minors are deployed as a matter of course.

In the absence of a peak industry body and existing code, the recommendation is for the cinema industry:

**Recommendation 4** Establish immediate voluntary arrangements and then work with ACMA and/or the ACCC to establish a mechanism to introduce a restriction on the direct advertising of alcohol products on-screen in cinemas before 8.30pm and after 5.00am.

To improve the effectiveness of the Outdoor Media Association Code, the Agency recommends that the Outdoor Media Association and the outdoor advertising industry:

**Recommendation 5a** Apply for ACCC authorisation of the Outdoor Media Association’s Code of Ethics: Alcohol Advertising Guidelines to enable effective sanctions for enforcement of Code decisions, particularly in relation to the placement of advertising material near schools.

**Recommendation 5b** Amend the Outdoor Media Association’s Code of Ethics: Alcohol Advertising Guidelines to: increase the distance of advertising from schools from 150 m to 500 m; align the Guideline coverage...
of retail advertisements to that contained in the ABAC Code provisions.

**Recommendation 5c** Begin a regular program of proactive monitoring of compliance with the Outdoor Media Association’s Alcohol Advertising Guidelines, either in conjunction with the recommended ABAC monitoring or separately, and report on this monitoring publicly.

The Agency recommends that the ABAC Scheme Ltd members:

**Recommendation 6** Review and revise the ABAC Scheme Code and Guidance documents to include, and provide specific guidance on, alcohol branded merchandise.

**Recommendation 7** Review and revise the ABAC Scheme Code and Guidance documents to include, and provide specific guidance on, sponsorship of sporting events.

**Recommendation 8** Review and revise the ABAC Scheme Code and Guidance documents to include, and provide specific guidance on, sponsorship of music, cultural and all other events.

The Agency thus recommends that the ABAC Scheme Ltd:

**Recommendation 10a** Submit the draft proposed changes to its Code provisions to public scrutiny by placing these proposed changes on its website and inviting public comment from interested stakeholders.

**Recommendation 10b** Ensure that transparent consultation and review processes are put into place for the upcoming review of ABAC Scheme Governance and Operations.

**Recommendation 10c** Seek authorisation for a revised ABAC and associated Rules and Procedures from the ACCC which include improvements to the Code provisions as outlined in the recommendations of this Report.

**Recommendation 10d** As part of the current Code review, examine alternatives for an effective range and hierarchy of sanctions for enforcement of ABAC Scheme decisions including the options of public lists of firms breaching the Code (along with the nature of the breach), adverse publicity orders (published corrections), financial penalties, and recalls for any products found to be in breach of the packaging and naming provisions of the Code. Reconsideration should also be given to mandatory pre-vetting of alcohol marketing which would be permissible (provided the public benefit test is met) under an authorised code.

**Recommendation 10e** Rationalise the two separate governance entities responsible for the Scheme, by merging the Board and the Management Committee into a single Board of the ABAC Scheme Ltd.
Recommendation 10f  Appoint an independent chair of the Board, who is not associated with the alcohol or marketing communications industries.

Recommendation 10g  In addition to an independent Chair, ensure that the Board is appropriately balanced with three representatives of the alcohol industry peak bodies as well as three independent directors, selected from public health nominees nominated by the Commonwealth Minister for Health and representing both broad public health expertise and health/social marketing communications expertise. Additionally, retain a government appointee on the Board (as either a full Board member or an observer to represent the Department of Health’s interests).

Recommendation 10h  Clarify and specify what pre-vetting exemptions are intended for the marketing of wine products while ensuring that such exemptions do not provide a market advantage to one competitor in the market. In principle, like activities should be subject to the same marketing pre-vetting requirements for any alcohol product.

Recommendation 10i  Amend the Code to insert a provision which brings all forms of alcohol marketing communications under the code’s remit irrespective of the marketing medium.

Recommendation 10j  Institute regular periodic monitoring of alcohol marketing, preferably yearly, and publicly report on this monitoring.

Recommendation 10k  Review and revise the ABAC Scheme adjudication processes to enable any Adjudication Panel Member to raise any potential breach of the Code when examining a complaint irrespective of whether that matter was directly raised by the complainant.

Recommendation 10l  Revise the Code adjudication processes to ensure that the interpretation of the Code Part 1b) complies with the spirit of the Code and not a narrow interpretation of the wording: where an advertisement has strong or evident appeal to children or adolescents, then it should be found to be in breach of the Code irrespective of whether the marketing is also appealing to adults or the community generally or whether the advertisement is deemed not to be directed to children.

Recommendation 10m  Review and revise ABAC Scheme Guidance documents to reflect to the alcohol industry and marketing communication stakeholders the appropriate guidance in relation to Code Part 1b) and clarify expectations for appropriate content.

Recommendation 10n  Add new provisions to strengthen and improve clarity around the matter of appeal to children. At minimum, specific prohibitions are required in Part 1 in the areas of: a) identifiable heroes or heroines of the young; b) cartoon characters and animations appealing to children; c) use of childhood motifs or themes; and in Part 2, to prohibit naming and packaging which would lead to confusion with confectionary or soft drinks.
Recommendation 10o  Amend the Code to delete clause 2 of Part 2.

The Agency recommends to the Australian and state-territory governments and relevant bodies:

**Recommendation 9** States and territories include reporting on their regulation and enforcement issues for alcohol promotion in the proposed triennial reporting to COAG (see below).

**Recommendation 11a** Monitor, research and regularly review Australian children’s and adolescents’ continued exposure to alcohol advertising, particularly on digital media and the effectiveness of self-regulatory, co-regulatory, quasi-regulatory and legislative measures to limit this exposure and report at least every three years (with the first report due in 2017).

**Recommendation 11b** In 2015, prior to the planned 2017 review report, IGCD undertakes an assessment of the progress in implementing this Review’s recommendations. If, for example, the ABAC Scheme’s responsiveness to the recommendation to have its Code and associated Rules and Procedures authorised are not progressed, or if little headway is made in removing the live sports broadcast exemption, then governments should proceed to legislate to control alcohol advertising and marketing.

**Recommendation 11c** Establish triennial reporting to the relevant COAG Ministerial Council (currently the Standing Council on Health) on Australian children’s and adolescents’ exposure to alcohol advertising and the effectiveness of self-regulatory, quasi-regulatory, co-regulatory and legislative measures to limit this exposure (with the initial report due in 2017).
# Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>AANA</td>
<td>Association of National Advertisers</td>
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<td>AAPS</td>
<td>Alcohol Advertising Pre-Vetting Service</td>
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<td>AARB</td>
<td>Alcohol Advertising Review Board</td>
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<td>ABAC</td>
<td>Alcohol Beverages Advertising (and Packaging) Code</td>
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<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<td>ACCC</td>
<td>Australian Consumer and Competition Commission</td>
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<td>ACMA</td>
<td>Australian Communications and Media Authority</td>
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<td>ADCA</td>
<td>Alcohol and other Drugs Council of Australia</td>
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<td>ADMA</td>
<td>Association for Data-driven Marketing and Advertising</td>
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<td>ASC</td>
<td>Advertising Standards Canada</td>
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<td>AHA</td>
<td>Australian Hotels Association</td>
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<td>AHS</td>
<td>Australian Health Survey</td>
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<td>AICR</td>
<td>American Institute for Cancer Research</td>
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<td>AIHW</td>
<td>Australian Institute of Health and Welfare</td>
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<td>ALSA</td>
<td>Australian Liquor Stores Association</td>
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<td>AMA</td>
<td>Australian Medical Association</td>
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<td>ANCD</td>
<td>Australian National Council on Drugs</td>
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<td>ANPHA</td>
<td>Australian National Preventive Health Agency</td>
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<td>APEC</td>
<td>Asia-Pacific Economic Cooperation (Forum)</td>
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<td>ASB</td>
<td>Advertising Standards Board</td>
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<td>ASTRA</td>
<td>Australian Subscription Television and Radio Association</td>
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<td>BAANZI</td>
<td>Brewers Association of Australia and New Zealand</td>
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<td>CAD</td>
<td>Commercials Advice</td>
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<td>COPOLCO</td>
<td>International Organisation for Standardisation Committee on Consumer Policy</td>
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<td>CRA</td>
<td>Commercial Radio Australia</td>
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<td>COMPPS</td>
<td>Coalition of Major Professional &amp; Participation Sports</td>
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<td>CTICP</td>
<td>Commercial Television Industry Code of Practice</td>
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<td>CTS</td>
<td>Children’s Television Standards 2009</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>Distilled Spirits Industry Council of Australia</td>
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<td>EIDAA</td>
<td>European Interactive Digital Advertising Alliance</td>
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<td>FARE</td>
<td>Foundation for Alcohol Research and Education</td>
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<td>Fetal Alcohol Spectrum Disorder</td>
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<td>FFAR</td>
<td>Foundation for Advertising Research</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>Living With Alcohol program</td>
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<td>NABIC</td>
<td>National Alcohol Beverage Industries Council Incorporated</td>
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<td>NCETA</td>
<td>National Centre for Education and Training on Addiction</td>
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<td>National Health Survey</td>
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<td>NATSISS</td>
<td>National Aboriginal and Torres Strait Islander Social Survey</td>
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<tr>
<td>NPHT</td>
<td>National Preventative Health Taskforce</td>
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<tr>
<td>NDRI</td>
<td>National Drug Research Institute</td>
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<tr>
<td>NDSHS</td>
<td>National Drug Strategy Household Survey</td>
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<tr>
<td>NHMRC</td>
<td>National Health and Medical Research Council</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
<td>OMA</td>
<td>Outdoor Media Association</td>
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<tr>
<td>OTC</td>
<td>Over the counter (medicines)</td>
</tr>
<tr>
<td>PAAB</td>
<td>Publishers’ Advertising Advisory Bureau</td>
</tr>
<tr>
<td>PHAA</td>
<td>Public Health Association of Australia</td>
</tr>
<tr>
<td>RTD</td>
<td>Ready-to-drink</td>
</tr>
<tr>
<td>ScHARR</td>
<td>School of Health and Related Research, University of Sheffield</td>
</tr>
<tr>
<td>SRO</td>
<td>Self-Regulatory Organisation</td>
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<tr>
<td>SRP</td>
<td>Social Reference Pricing</td>
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<tr>
<td>The Agency</td>
<td>Australian National Preventive Health Agency</td>
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<td>VAADA</td>
<td>Victorian Alcohol and Drug Association</td>
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<td>WCRF</td>
<td>World Cancer Research Fund</td>
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<td>WFA</td>
<td>Winemakers’ Federation of Australia</td>
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<tr>
<td>WHO</td>
<td>World Health Organization</td>
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GLOSSARY OF TERMS

A note on age ranges: Where feasible, this report refers to those aged between 14-17 years inclusive as ‘adolescents’, while those aged less than 14 years are referred to as ‘children’. These definitions generally accord with the categories used by the Australian Association of National Advertisers and the ABAC Scheme. Some studies referenced also use various age groupings or definitions, and these may be referred to as ‘young people’. ‘Minors’ is used when specifically referring to the legal purchasing age (i.e. under 18 years of age).

Adspend: The expenditure on advertising for a product.

Advertising: A component of marketing where a message is conveyed to a target audience through various media.

Alcohol minimum pricing: A policy where a minimum price is set for a unit of alcohol, below which it cannot be sold.

Below-the-line marketing: Marketing through sponsorship, point-of-sales promotions, and social media and often focusing on short-term incentives.

Burden of disease: Used to assess and compare the relative impact of different diseases and injuries on populations.

Co-regulation: Where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced.

Digital marketing: Marketing that makes use of electronic devices such as personal computers, smartphones, tablets and game consoles to engage with potential consumers.

Disability-adjusted life years (DALY): The sum of years of potential life lost due to premature mortality and the years of productive life lost due to disability.

Fetal Alcohol Spectrum Disorders (FASD): A term covering a range of adverse, clinically significant effects caused by exposure to alcohol during pregnancy, including but not limited to growth retardation, facial anomalies and development abnormalities of the central nervous system.

Harm minimisation: actions that aim to address alcohol and other drug issues by reducing the harmful effects of alcohol and other drugs on individuals and society.

Harmful consumption of alcohol: Drinking at levels in excess of the National Health and Medical Research Council’s Alcohol Guidelines for long-term harm and/or short-term harm.

Initiation: The age when a person first tries alcohol.

Legal purchasing age: The age at which someone is legally allowed to purchase alcohol as specified in the relevant jurisdiction. In all Australian states/territories this is currently 18 years.

Marketing: The action or business of promoting and selling products or services and involves a wide range of ever evolving promotional activities.
Outdoor advertising: any type of (usually visual) advertising that reaches the consumer when he or she is outside of the home, such as on billboards or public transport.

Point-of-sale promotions: Placement strategies at retail outlets (e.g. buying a prominent location in-store, providing branded equipment, in-store tastings).

Pourage rights: The rights to sell beverages at a licensed venue or event.

Pre-loading: Where people drink large quantities of alcohol before attending a social event or going out with friends.

Print media: Primarily newspapers and magazines.

Product placement: The practice of embedding a product, brand name or service within a medium such as film, television, music lyrics and videos or videogames.

Quasi-regulation: any rule or requirement that is not established by a parliamentary process, but which can influence the behaviour of business, community organisations or individuals e.g. industry codes of practice, industry-government agreements.

RTD (or Ready-to-drink): In this report, refers to packaged pre-mixed alcoholic beverages (such as alcopops).

Self-regulation: Rules and codes of conduct set up to regulate the behaviour of business or community organisations that are put in place and enforced by the industry or sector itself.

Social media: The creation and sharing of digital content, and associated interaction, through online social networks.

Sponsorship: financial support given, usually to an entertainment or sporting event, in return for advertising and marketing rights.

Standard drink: A drink containing 10 grams of alcohol (equivalent to 12.5mL of pure alcohol).

Systematic review: A systematic review attempts to identify, appraise and synthesise all the empirical evidence that meets pre-specified eligibility criteria to answer a given research question. Researchers conducting systematic reviews use explicit methods aimed at minimising bias, in order to produce more reliable findings that can be used to inform decision making.

Traditional media: Free-to-air and subscription television, commercial radio, newspapers, magazines, pamphlets, catalogues, films.

User-generated advertising: Consumer-driven advertising content.

Viral marketing: Where a supplier sends a message to a select number of influential consumers who then pass the message onto others.
INTRODUCTION

This Final Report on alcohol advertising has its origins in a recommendation of the National Preventative Health Taskforce. In its 2009 Report, *Australia: The Healthiest Country by 2020*, the Taskforce made a range of recommendations for action on alcohol including, inter alia, reform of alcohol taxation and pricing arrangements, re-consideration of alcohol outlet density levels and operating hours, local initiatives in relation to Aboriginal and Torres Strait Islander communities and for primary health care, education programs in workplaces and schools, and better regulation of alcohol promotion.

In the Taskforce Report’s Action Plan, specific recommendations for alcohol promotions are:

“Regulate alcohol promotions

- in a staged approach, phase out promotions from times and placements which have high exposure to young people:
  - monitor and evaluate impact of industry self-regulation
  - identify shortfalls in the voluntary approach and address these through introduction of a co-regulatory agreement;
  - introduce legislation if these measures are not effective.”

In its response to the Taskforce Report in 2010, the Commonwealth Government noted the recommendations and indicated that the “Government’s approach is to pursue voluntary and collaborative approaches with the alcohol industry to promote a more responsible approach to alcohol in Australia before considering more mandatory regulation.”

The Government at that time further indicated that the Council of Australian Governments would consider recommendations from the Ministerial Council on Drug Strategy for reform of ABAC (the industry self-regulatory scheme) in relation to whether it should be reformed as a mandatory co-regulatory scheme, and other reforms including “more meaningful sanctions for breaches of the Code.” The current Government released *The Australian Government Guide to Regulation* in March 2014 with the objective of seeking better regulation through consideration of a range of options against a default position of no new regulation. This Report is prepared consistent with that objective.

This Final Report marks one stage of the staged process recommended by the Taskforce, namely the appraisal of the self- and quasi-regulatory arrangements of the alcohol and media industries and their effectiveness in protecting young people from exposure to alcohol advertising. The review undertaken for the Report was agreed by Commonwealth, state and territory health Ministers in the Agency’s Operational Plan 2012-13.

The development of the Report
An Issues Paper titled *Alcohol Advertising: The effectiveness of current regulatory codes in addressing community concerns* was released at the end of 2012 with an invitation for stakeholders to present their views. Both the Issues Paper and submissions in response to it are on the Agency’s website (www.anpha.gov.au). A Draft Report was prepared for public consultation and released in March 2014; the Draft Report and submissions in response to it are

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also available on the website. A list of the submissions to both the Issues Paper and Draft Report are listed at Appendix B.

Technical expertise on the evidence presented in this Report was provided by members of the Agency’s Expert Committee on Alcohol, Chaired by Professor Margaret Hamilton AO. For information, the list of current members of the Expert Committee on Alcohol is at Appendix A. It should be noted that recommendations in the Report are those of the Agency, and do not necessarily represent the opinions of the Expert Committee members.

This Report is prepared within the context of the Australian Government Guide to Regulation 2014 and does not represent the views of governments who consider the Agency’s advice to formulate policy subsequent to a Final Report. This Final Report was provided to the Commonwealth Minister for Health on 30 April 2014.

Structure of the Final Report
The report is presented in six chapters with additional detail provided in Appendices.

Chapters 1 – 3 explain the extent and nature of the health problem being addressed in terms of the potential harm from alcohol and the contribution advertising makes to the prevalence of the problem, particularly for children and adolescents. These three chapters address two questions of: What is the problem to be addresses? and Why is government action needed? Alcohol promotion’s many forms are described in relation to appeal to children, adolescents and young people.

Chapter 4 explains the current regulatory schemes and measures for controlling advertising of alcohol in Australia. It also provides information about alcohol advertising regulation in some comparable countries. Of importance to recommendations for consideration in regulatory reform, Chapter 4 discusses the Australian Beverages (and Packaging) Code (ABAC) and the complaints and adjudication processes.

Chapter 5 helps the reader locate this Report within the framework of The Australian Guide to Regulation 2014. The chapter sets out the arguments for each of a full spectrum of options which need to be considered, and dismissed or further explored on the evidence available. It contributes to questions: What are the policy options being considered? and What is the best option from those considered?

Chapter 6 offers recommendations for several different advertising media where performance is assessed as wanting in relation to placement of alcohol marketing. It also explores the means by which reform might be achieved through several modifications of the existing quasi-regulatory ABAC Scheme. In relation to the content of alcohol marketing, the comprehensive recommendations cover governance, reporting, coverage, interpretation of the Code, the complaints process and Code enforcement.

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CHAPTER 1:
ALCOHOL IN AUSTRALIA

Key points

- Despite any benefits associated with drinking alcohol, the harm, especially to the young, should be addressed.
- Current NHMRC drinking guidelines (Guideline 3) say that for children and young people under 18 years of age, not drinking alcohol is the safest option.
- However, alcohol consumption among adolescent Australians is prevalent, and often excessive, with about 31% of males and 14% of females aged 15 to 17 years exceeding the adult guidelines for single occasion risk.
- In addition, initiation of drinking alcohol is occurring at a young age.
- Harmful consumption of alcohol is associated with social and economic costs to the Australian community.
- A mixture of different approaches to protection is required, but the different levels of government controls and community action are having limited success at reducing the level of harm in the Australian population.

1.1 Introduction

Alcohol has a prominent place in Australian culture. It is associated with social and recreational activities, celebration and cultural ceremonies. In some groups and communities drinking alcohol is considered a key part of the culture and many people drink to fit in and belong.\(^6\)\(^7\) In 2011-12 about four-fifths of Australians aged 18 years and over had consumed alcohol in the past year. The total value of alcohol produced in 2009-10 in Australia was $10,383 million with a value added (i.e. measure of the economic activity involved in an industry) of $3,356 million. The specific taxes on alcohol raised $3,853 million in tax in 2009-10, 1.3% of revenue, while the alcohol industry employed over 20,000 people.\(^8\)

Alcohol provides a range of benefits as well as costs on both individuals and society more generally. Used responsibly, benefits include the enjoyment and pleasure gained from consumption. The submission from the Australian Liquor Stores Association\(^9\) on the Draft Report emphasises that the majority of drinkers in Australia consume alcohol responsibly. However, alcohol consumption is associated with a range of harms that can affect the individual drinker, their families, friends and colleagues and the wider community (harm to others). Harm to the individual includes impacts on health, social and emotional wellbeing and productivity, while harm...
to others encompasses a wide range of social impacts including on public safety (drink driving, violence and antisocial behaviour), public amenity (noise, property damage, litter, hygiene problems) and to the health and wellbeing of others.

The National Health and Medical Research Council (NHMRC) produced a set of guidelines which aim to assist people to understand and balance the benefits and risks from alcohol consumption. The NHMRC undertook an extensive review of both the benefits and the short and long term risks associated with alcohol consumption in the preparation of the *Australian guidelines to reduce health risks from drinking alcohol* (2009). The key points are summarised in Box 1.

The NHMRC notes that: “Guideline 3 is based on an assessment of the potential harms of alcohol for this age group, as well as a range of epidemiological research that indicated that alcohol may adversely affect brain development and be linked to alcohol related problems later in life.”10 The Australian Association of National Advertisers (AANA) submitted11 in response to the Draft Report that they are concerned about the Agency’s interpretation of the NHMRC guidelines’ report, and are presently reviewing the earlier NHMRC work and more recent literature and will provide further information to the Agency at a later date. (Unfortunately, the Final Report cannot wait for the finalisation of one stakeholder’s analysis; the significant time taken between the Issues Paper and the Draft Report is partly as a result of the required analysis of the extensive additional research literature available).

### Box 1 Australian guidelines to reduce health risks from drinking alcohol

The NHMRC defines the harmful consumption of alcohol as drinking at levels that are more likely to cause injury or ill health. The NHMRC’s *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*12 recommend that:

**Guideline 1:** For healthy men and women, drinking no more than two standard drinks on any day reduces the *lifetime risk* of harm from alcohol-related disease or injury;

**Guideline 2:** For healthy men and women, drinking no more than four standard drinks on a *single occasion* reduces the risk of alcohol-related injury arising from that occasion;

**Guideline 3:** For children and young people under 18 years of age, not drinking alcohol is the safest option; and

**Guideline 4:** For women who are pregnant, planning a pregnancy or breastfeeding, not drinking is the safest option.

This chapter provides an overview of alcohol consumption, alcohol-related harm and the measures being taken to reduce that harm in Australia.

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1.2 Patterns of harmful consumption

While many drinkers consume alcohol responsibly, a substantial proportion of drinkers in Australia consume alcohol at a level that is considered to increase their risk of alcohol-related harm.\textsuperscript{13} The NHMRC Guidelines recommend that for people under 18 years of age, not drinking alcohol is the safest option to reduce the risk of injury and ill health in the short and long term. More specifically, the NHMRC Guidelines advise that:

- Parents and carers should be advised that children under 15 years of age are at the greatest risk of harm from drinking and that for this age group, not drinking alcohol is especially important.
- For young people aged 15–17 years, the safest option is to delay the initiation of drinking for as long as possible.

Despite this, the average age of first drinking alcohol for Australians aged 14–24 is 14 years and 8 months. This has remained relatively stable since 2001\textsuperscript{14} and is clearly at odds with the NHMRC Guidelines.

Also, regardless of NHMRC Guideline 3, the most recent survey of alcohol consumption data for school students reported that approximately three in every four Australian secondary students aged between 12 and 17 years had tried alcohol at some time and 51% reported that they had consumed alcohol in the past year.\textsuperscript{15} The proportion of current drinkers (reporting alcohol consumption in the seven days prior to the survey) increased from eight per cent of 13-year-olds to 37% of 17-year-olds. The proportion of students aged between 12 and 17 years reporting drinking in 2011 was lower than the levels found in the 2008 and 2005 surveys.\textsuperscript{16}

Secondary-school student data were noted in submissions received on the Draft Report, including those by Brewers Association of Australia and New Zealand and the Distilled Spirits Industry Council of Australia Inc. who highlight that there has been a steady decline in the proportion of young people age 12-17 years who reported drinking alcohol in surveys of Australian secondary school students conducted in 2005, 2008 and 2011 (85.7%, 82.1% and 74% respectively).\textsuperscript{17} Indeed, the most recent analysis of the National Drug Strategy Household Survey data reports there has been a sharp increase in non-drinking among Australian adolescents. Abstention increased significantly across all population subgroups examined. Between 2001 and 2010, abstention for 14-17 year olds increased overall from 32.9% to 50.2% (p<0.01).\textsuperscript{18} While this trend is certainly encouraging, the proportions and absolute numbers in this age group are still of public health concern. Indeed, excessive drinking among those who do drink in this age group is still a considerable problem.

The 2011-12 results from the National Health Survey (NHS) component of the 2011-13 Australian Health Survey provides the most recent data. It found many adolescents drink to excess. About 31% of males and 14% of females aged 15 to 17 years exceeded the adult guidelines for single occasion risk at least once in the past year.\textsuperscript{19} Surveys of Australian secondary school

\textsuperscript{13} National Health and Medical Research Council (2009) Australian Guidelines to Reduce Health Risks from Drinking Alcohol. Canberra: Commonwealth of Australia.
\textsuperscript{17} Livingston M (2014) Trends in non-drinking among Australian adolescents, Addiction, online publication April 10 2014
\textsuperscript{18} Australian Bureau of Statistics (2013) Australian Health Survey: First Results, 2011-12. ABS Cat. no. 4264.0.55.001. Canberra: ABS.
students also highlight the problem. The proportion of all students aged 12-17 who drank more than four drinks on a single occasion in the past week in 2011 has declined steadily since 2005 but the level of drinking amongst drinkers has remained steady.

Many young adults are also heavy drinkers of alcohol. In the most recent Australian Health Survey, young adults were much more likely than older adults to report consuming more than four standard drinks on a single occasion at least once in the past year, placing them at a higher risk of injury (Figure 1). More specifically, about 75% of males aged 18-24 reported alcohol consumption patterns that placed them at single occasion risk in the past year, compared to 13% of those aged 75 years and older. For females this ranged from almost 60% of those aged 18-24 years to only two percent of those aged 75 and over.

The 2011-12 the National Health Survey (NHS) also found that:
- 44.7% of Australian adults had on a single occasion consumed more than four standard drinks at least once in the past year, exceeding the NHMRC single occasion risk guidelines. This prevalence has been fairly static for a decade, proving difficult to shift.
- 19.4% of adults consumed more than two standard drinks per day on average, exceeding the NHMRC lifetime risk guidelines. This proportion was similar to 2007-08, when 20.9% of Australian adults exceeded the guidelines.

Figure 1: Proportion of people that drank in excess of 2009 NHMRC Guideline 1 for Lifetime risk and Guideline 2 for Single occasion risk, by age, 2011–12 (aged 18+)

1.3 Alcohol-related harm in the population

The World Health Organization states that harmful use of alcohol has a major impact on public health. It is currently ranked as the third leading risk factor for injury and disease in the world, and is responsible for 4.9 million global deaths each year and 5.5% of global disability-adjusted life years.

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Within Australia, alcohol consumption accounted for 3.2% of the total burden of disease (4.9% in males and 1.6% in females) in 2003, the last year for which a national burden of disease analysis was conducted. The burden of alcohol-related disease among Aboriginal and Torres Strait Islander people was estimated to be almost double the burden experienced by other Australians, although rates of abstinence are slightly higher than among non-Indigenous people.

Alcohol use is associated with a wide range of acute and chronic health harms including: injuries from assault, falls and other causes, alcohol abuse, cardiovascular disease, cancer, liver disease and diabetes (see Box 2). Two-thirds of the harms attributable to alcohol are the result of alcohol abuse, road traffic accidents and suicide. Submissions on the Draft Report from those involved with responses to community alcohol problems (e.g. Russell Family Fetal Alcohol Disorders Association, Lives Lived Well) support a regulatory response given the potential harm from alcohol use.

**Box 2: Alcohol and cancer**

The International Agency for Research on Cancer classifies alcohol as a group 1 carcinogen. The most recent comprehensive review of the scientific evidence by the World Cancer Research Fund (WCRF) and the American Institute for Cancer Research (AICR) concluded that there is convincing evidence that alcohol is a cause of cancer of the mouth, pharynx, larynx, oesophagus, bowel (in men) and breast (in women), and probable evidence that alcohol increases the risk of bowel cancer (in women) and liver cancer. Convincing evidence as classified by the WCRF and AICR is the strongest level of evidence and denotes a causal relationship.

The risk of these cancers has been found to increase with the amount of alcohol consumed, and even low-to-moderate levels of alcohol consumption increase the risk of some cancers. It is estimated that long term chronic alcohol use contributes to between 2,182 and 6,620 new cases of cancer in Australia each year.
Alcohol misuse is also a major contributor to avoidable mortality and hospital admissions. Between 1996 and 2005 an estimated 32,696 Australians aged 15 years and older died from alcohol-attributable injury and disease caused by harmful alcohol use. Over the same period (1996-2005) 813,072 people aged 15 years and older were hospitalised for alcohol-attributable injury and disease. A major cause of death was alcoholic liver cirrhosis, whilst the most common reasons for hospitalisation were alcohol dependence, falls and assaults. Australia experienced an increase in alcoholic hepatitis hospital admissions among younger people and a steady increase in alcoholic hepatic failure admissions among older adults between 1993 and 2005. Thankfully there was also a steady decline in the mortality associated with alcoholic liver disease during this same period, most probably due to advances in disease management.

Alcohol is a major factor in ambulance service and emergency department use. In Victoria, alcohol-related attendances remained the most common category of drug related events attended by ambulance in metropolitan Melbourne in 2009/10. Chikritzhs et al. undertook an analysis of emergency department (ED) data across Australia and found that alcohol related injury presentations accounted for a substantial proportion of all ED injury presentations. Australia-wide, the estimated proportion of ED injuries attributable to any level of drinking in the 6 hours prior to the injury was 28% and the proportion attributable to drinking in excess of current NHMRC guidelines for drinking on a single occasion was 18%.

Harms related to alcohol use during childhood and adolescence
A wide range of evidence supports the conclusion that alcohol use before the age of 18 years is particularly harmful, and increases the risk of a range of acute and long-term alcohol-related harms to adolescents.

Early alcohol initiation (before age 15) and high levels of consumption in adolescence are associated with a range of negative outcomes. In the short term, negative outcomes include: violence, accidents, reckless driving, physical injury, depression, school absenteeism, decreased academic performance, initiation of drug use, suicide, risky sexual behavior, sexual assault and unplanned pregnancies.

Adolescence is a critical period for brain development and appears to be a high-risk period for the development of alcohol problems later in life. The risk is influenced by the complex interplay of genetic and environmental factors, although external factors, such as the role of parents as moderators, are likely to play a more important role and interventions focused on modifying environmental factors are crucial. Early initiation of alcohol has been linked to higher consumption levels in adolescence and adulthood. For example, the NHMRC notes that

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“earlier initiation of drinking is related to more frequent and higher quantity alcohol consumption in adolescence, and these patterns are in turn related to the development of alcohol-related harms in adolescence and adulthood”.

The submission provided by the Brewers Association of Australia and New Zealand on the Draft Report notes a recent systematic review by Maimaris and Cambridge which proposes a more cautious interpretation of research on this issue. Maimaris and Cambridge suggest more research is required to address confounders, but also point out that it is still essential to address the acute and short term harms associated with drinking among children and adolescents even if there is some uncertainty about the long term implications on adult drinking behaviours.

Furthermore, during adolescence, the brain is more susceptible to alcohol-induced damage and depending on the intake and frequency, alcohol can cause short and long term harm to the brain. Structural changes and functional impairments in attention, learning ability and audio-spatial functioning have been noted among adolescents who drink in excess. In the long term, heavy alcohol use by teens can alter the trajectory of brain development and cause lingering cognitive defects; it remains unknown whether these defects are permanent.

Adolescents’ drinking behaviours can be more difficult to control compared with older drinkers as they have no context or reference point for assessing or regulating their drinking. Younger adolescents are smaller than adults and will have much higher blood concentrations after drinking small amounts of alcohol when compared to adults who have consumed a similar amount.

Harmful alcohol use among young adults

Early adulthood is the peak time for alcohol consumption and young adults (18-24 years) are more likely to consume alcohol in a pattern that places them at risk of short term harm than any other age group. Preloading (Box 3) is one contributor to this problem. A range of harms are associated with alcohol misuse in this age group, most notable injuries as a result of falls, assaults and motor vehicle accidents. Young drinkers exhibit significantly more delinquent behaviour than older drinkers for similar amounts or patterns of drinking. Within this age group both genders exhibit similar levels of problem behaviour for similar amounts or patterns of drinking. Alcohol is associated with many of the causes of mortality and hospitalisations among this age group.

50 National Health and Medical Research Council (2009) Australian Guidelines to Reduce Health Risks from Drinking Alcohol.
Canberra: Commonwealth of Australia.
54 National Institute on Alcohol Abuse and Alcoholism (2011) Alcohol Screening and Brief Intervention for Youth, A Practitioners Guide. National Institutes of Health, Department of Health and Human Services, USA.
56 National Institute on Alcohol Abuse and Alcoholism (2011) Alcohol Screening and Brief Intervention for Youth, A Practitioners Guide. National Institutes of Health, Department of Health and Human Services, USA.
Pre-loading
Young people report drinking alcohol prior to going out, which means they may already be intoxicated when they arrive at organised events. This pattern of consumption has become known as ‘pre-loading’.  

Using interviews conducted with young drinkers in two recent Australian studies it was determined that the price differential between packaged liquor and alcohol purchased in licensed venues is a significant factor influencing pre-loading. Interview participants explained that they pre-load because it is cheaper to buy alcohol from bottle shops than from clubs and pubs, particularly alcoholic-energy drinks, wine and alcopops.

Pre-loading is becoming both more common and more intense based on the available evidence, although the limited research in Australian is noted. A recent Australian study found a “strong relationship between pre-drinking and ‘extreme bingeing’”, (with ‘extreme bingeing’ being defined as consuming 11 or more standard drinks in a session at least once a month over the last year). Such extreme bingeing increases the risk of injury and accidents.

Harms related to drinking alcohol when pregnant
Drinking alcohol during pregnancy has been linked with preterm birth, low birth weight and Fetal Alcohol Spectrum Disorders (FASD). FASD is an umbrella term that refers to a range of adverse effects caused by exposure to alcohol during pregnancy. FASD encompasses a range of clinically significant effects, some of which include growth retardation, facial anomalies and development abnormalities of the central nervous system. The risk of FASD increases with greater exposure to alcohol, and although the risks of low-level drinking are likely to be modest, a ‘safe’ or ‘no-effect’ level has not been established. This uncertainty about how to best protect babies is reflected in the NHMRC Guideline.

The NHMRC Guideline 4 recommends that for women who are pregnant or planning a pregnancy, not drinking is the safest option. However, a recent report based on data from the 2010 National Drug Strategy Household Survey found that:

- 47% of women drank while pregnant, before knowledge of their pregnancy;
- 20% of women drank while pregnant, after knowledge of their pregnancy; and
- women who were older and with a higher household income were more likely to continue drinking after learning of their pregnancy.

Harmful alcohol use among older people
The incidence of daily drinking generally increases with age, with those aged 70 and older the most likely to drink daily (18% of males and 12% of females). While middle-age and older...

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drinkers may derive some health benefits from light to moderate alcohol consumption (one to two drinks per day), some individuals may be at increased risk from alcohol consumption. For example, older people may be less tolerant of alcohol, may have the presence of co-morbid conditions and may experience adverse interactions with medication. Further, alcohol can increase the risk of falls and fall-related injury.69

At any rate, while there is some evidence at the individual level that low levels of alcohol consumption may have some health benefits for middle-aged adults, at the population level, Australian time series data shows a significant association between total per capita alcohol consumption and total male mortality. An analysis of data from 1911-2006 found that every 1 litre increase in pure alcohol consumed per-capita was associated with a 1.5% increase in total male mortality. Among young men aged 15–29 year, a 1 litre increase in per capita consumption was associated with a 12.5% increase in mortality. At the population level therefore, a reduction in per capita consumption could make a major impact on Australia’s health, particularly where these changes result in reductions in binge drinking.70

### 1.4 Economic costs of harmful alcohol consumption

A range of costs and benefits are associated with alcohol consumption. For example, the economic benefit of alcohol is articulated by the WHO as follows:

> “Production, distribution, marketing and sales of alcohol create employment and generate considerable income for economic operators and tax revenue for governments at different levels. Public health measures to reduce harmful use of alcohol are sometimes judged to be in conflict with other goals like free markets and consumer choice and can be seen as harming economic interests and reducing government revenues. Policy-makers face the challenge of giving an appropriate priority to the promotion and protection of population health while taking into account other goals, obligations, including international legal obligations, and interests”71

However, harmful consumption of alcohol is also associated with economic costs to the Australian community, although there are differing estimates available. In 2008 a study by Collins and Lapsley (funded by the Australian Government) estimated an annual cost of $15.3 billion.72 Industry submissions to the Agency have argued that this estimate is inflated, with the Brewers Association of Australia and New Zealand citing a figure of $3.8 billion derived in 2011 by Crampton, Burgess and Taylor (funded in part by the National Alcohol Beverage Industries Council).73 These researchers view Collins and Lapsley’s estimate as incorrect because it includes private costs for individuals from the prevalence of drinking to excess. In contrast, some alcohol researchers consider the cost to be much higher at around $36 billion, attributable to the additional costs resulting from occasional or weekend excessive drinking which was not included

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in Collins and Lapsley’s $15 billion estimate, and which is known to pose the greatest risk in relation to alcohol-related violence, accidents and injury.74

Analysis of the differing assumptions and value judgments underpinning these figures commissioned by the Agency for its report Exploring the Public Interest Case for a Minimum (Floor) Price for Alcohol,75 concluded that the policy relevant costs of harmful alcohol are in excess of $15 billion annually.

Further comment was provided in the Henry Review (2010), which made recommendations about potential changes to Australia’s tax system, and noted that:

“Spillover costs of alcohol abuse include foetal damage and child abuse, domestic violence, road accidents, crime and violence, increased mortality and a range of diseases and medical conditions. These costs can arise directly (for example, in the form of costs on victims of alcohol-related violence) and indirectly (for example, in the form of the cost to the community of additional demand on a publicly-funded health care system)”.76

1.5 Alcohol related harm to others

The harmful consumption of alcohol does not only affect the individual drinker. Harmful alcohol consumption affects families and the wider community through behaviour that can be exacerbated by alcohol intoxication. Alcohol intoxication is associated with increased public violence and anti-social behaviour. Intoxication has also been associated with increased vandalism, child abuse, domestic violence, road accidents, and decreased workplace productivity.77 Australian research examples are:

- A survey found that 70% of Australians felt affected by a stranger’s drinking in the previous 12 months, experiencing nuisance, fear or abuse. Thirty per cent reported negative effects from the drinking of someone close to them. Young adults were more likely to be negatively affected than other groups.78
- Australian research estimates that a significant proportion of assaults involve alcohol (ranging from 23 to as much as 73% of all assaults).79 One estimate indicates that in 2005, 70,000 Australians were victims of alcohol-related assault, of which 24,000 were victims of domestic violence.80
- The 2010 National Drug Strategy Household Survey reported that between 2007 and 2010 there was a statistically significant increase in the proportions of victims of alcohol-related physical abuse (from 4.5% to 8.1%) and of being ‘put in fear’ by someone affected by alcohol (from 14.1% in 2007 to 15.8% in 2010).81 Further, it was reported that recent drinkers were more likely to experience verbal abuse (26.5%) and physical abuse (8.9%) by someone under the influence of alcohol.

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78 Laslett AM et al. (2011) Surveying the range and magnitude of alcohol’s harm to others in Australia. Addiction 106: 1603-1611.
80 Laslett AM et al. (2011) Surveying the range and magnitude of alcohol’s harm to others in Australia. Addiction 106: 1603-1611
The Stewart Family\textsuperscript{82} submitted:

“[In] many families it is inevitable that domestic violence occurs when there has been consumption of alcohol. It is also a significant drain on the family budget and seems to be associated with neglect and the direct abuse of children. Many of these parents believe that they are not heavy drinkers, but drink at normal rates.”

1.6 Measures to reduce alcohol-related harm

Australian governments use a range of measures to minimise alcohol-related harm in the community, including taxation, placing restrictions on the times and places that alcohol can be purchased, regulating promotion and advertising, providing education and information, and supporting treatment programs. Community-level organisations play a key role in delivering public awareness campaigns and researchers study harm minimisation strategies. The alcohol industry also supports a range of harm minimisation initiatives. The following section will provide key examples of mechanisms to reduce alcohol-related harm in Australia in these different areas.

Government policy on alcohol

National policy

The Intergovernmental Committee on Drugs (IGCD) provides policy advice to relevant ministers on drug-related matters (including alcohol), and is responsible for implementing policies and programs under the National Drug Strategy 2010-2015 (which covers alcohol) and the National Alcohol Strategy 2006-2011, with the latter currently under review for updating. The IGCD is a cross-jurisdictional forum comprising Commonwealth, state and territory, and New Zealand senior government officers who represent health and law enforcement agencies.

The National Drug Strategy framework focuses on demand reduction, supply reduction and harm reduction with prevention an integral theme across these areas.\textsuperscript{83} The Strategy objectives that are of particular relevance to the issues discussed in this report include:

1. Prevent uptake and delay onset of drug use (which includes alcohol); and
2. Control and manage the supply of alcohol, tobacco and other legal drugs (which covers the promotion of legal drugs).

The National Alcohol Strategy 2006-2011 also highlighted actions that provide context to this report, particularly its aim to: “Facilitate safer and healthier drinking cultures by developing community understanding about the special properties of alcohol and through regulation of its availability”.\textsuperscript{84} The strategy recommended monitoring and annual reporting on the advertising and promotion of alcohol as a response to support safer and healthier drinking cultures.

State and territory policy

To complement the national policy framework, all states and territories have developed alcohol strategies and plans to address alcohol issues in their own jurisdictions. These strategies include:

- Western Australia – Drug and Alcohol Interagency Strategic Framework for Western Australia 2011-2015
- New South Wales – Drug and Alcohol Plan 2006–2010
- Victoria - Reducing the alcohol and drug toll. Victoria’s plan 2013 – 2017


State and territory liquor licensing legislation

The sale, supply and consumption of alcohol is regulated through liquor licensing legislation which is enacted independently in each jurisdiction (see Appendix C). This has resulted in common features across liquor licensing legislation in states and territories but also considerable diversity and variation. Additionally, legislation is continually changing to reflect changes in commercial and community needs, priorities and concerns.85 This section does not attempt to provide comprehensive information of such regulatory approaches as this has been done elsewhere.86

All Australian states and territories have legislation in place that regulates:
- who may sell and supply alcohol;
- the commercial practices of licensed premises;
- who is responsible for ensuring compliance with the regulations;
- who may consume and access alcohol;
- where alcohol may or may not be consumed; and
- the offences, disciplinary procedures, and penalties applicable to those who fail to adequately comply with their statutory obligations.87

While Australia does not have a minimum drinking age, there is a minimum purchase age of 18 in all state and territory liquor acts. States and territories, with the exception of Tasmania, have incorporated harm-minimisation principles and objectives into their liquor acts (such as lockouts or mandatory responsible service of alcohol training for bar staff).88

Secondary supply laws enacted in a number of states and territories seek to limit who can supply people aged under 18 (‘minors’) alcohol, as well as how alcohol is supplied to them. Selling or supplying alcohol to minors on licensed premises or public areas is prohibited in all states and territories. In premises not subject to regulation, minors are not prohibited from consuming alcohol.89

It is an offence to provide alcohol to a minor in Queensland, New South Wales, the Northern Territory, Tasmania and Victoria without the permission of the minor’s parents or guardian. In Queensland, the Northern Territory and Tasmania those who supply minors with alcohol must do so responsibly and are also required to supervise the consumption.90

Liquor promotion guidelines are supplementary to liquor licensing legislation in most states and territories. These guidelines set clear standards for the conduct of licensees in relation to responsible advertising and point-of-sale promotions. The guidelines also emphasise the importance of responsible attitudes towards the promotion and advertising of liquor and:

minimising the harm associated with liquor consumption. These are discussed further in Chapter 4 – Regulation of alcohol advertising.

Community-level approaches
Liquor accords are local community-based initiatives that can be viewed as a complementary strategy to liquor licensing legislation. Accords involve a written agreement or other arrangements between stakeholders that sets out practical harm minimisation strategies to reduce anti-social behaviour and alcohol-related violence in and around licensed venues. Liquor accords are usually voluntary agreements and encourage collaboration between a variety of stakeholders such as licensed premises, businesses, councils, police, government departments and other community organisations.

Dry zones or dry areas have been created by some local councils, often to manage problematic public areas such as reserves, main shopping precincts, car parks and foreshores that have frequently been affected by anti-social behaviour associated with excessive alcohol consumption.

A number of advocacy groups have been established in recent years in response to community concern about harmful drinking in the community. For example, the National Alliance for Action on Alcohol was formed in 2009 as a national coalition of over 75 health and community organisations from across Australia; one of their goals is reducing alcohol-related harm through influencing change in the three priority areas of alcohol pricing and taxation, marketing and promotion, and availability. There are also state-based groups with similar aims, such as the Alcohol Policy Coalition in Victoria.

Industry initiatives
Established in 2005 by the alcohol industry, DrinkWise Australia is a not-for-profit organisation focused on promoting change towards a healthier and safer drinking culture in Australia. It aims to effect generational change in the way all Australians consume alcohol, and to increase the age that adolescents are first introduced to alcohol, as the evidence emerges of the impact that alcohol has on a developing adolescent brain.

It works through the development and implementation of national information and education campaigns. DrinkWise Australia is governed by a board of seven community and six industry representatives.

DrinkWise’s Labelling Initiative supports the development of consumer information messages for voluntary inclusion on alcohol labels to support consumers to better understand the issues around alcohol consumption. Consumer information messages encourage consumers to ‘Get the Facts’ from the DrinkWise website which provides evidence based information on alcohol. In addition to the ‘Get the Facts’ logo, producers have the option of adopting the following issue specific consumer information:

- **Kids and Alcohol Don’t Mix**
- **Is Your Drinking Harming Yourself or Others?**
- **It is Safest Not to Drink While Pregnant.**

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1.7 Conclusion

Despite NHMRC Guidelines that highlight the dangers of alcohol consumption by adolescents, and despite the education and multiple controls put in place, many adolescents in Australia continue to drink although some promising trends are evident. Moreover, far too many adolescents who consume alcohol, drink at levels considered unsafe even for adult drinkers. The associated alcohol-related harm is considerable and well documented. Within the current social and economic environment in Australia, far too many young people are being physically, psychologically and socially harmed by their alcohol use and many are maturing into adults with alcohol-related health problems.
CHAPTER 2: ALCOHOL ADVERTISING

**Key Points**

- The alcohol industry employs a wide range of sophisticated, strategic and multifaceted marketing strategies.
- Alcohol advertising in Australia is prominent in traditional media (television, print, radio, outdoor billboards), with the majority of advertising expenditure being on television and outdoor advertising.
- Broader marketing techniques, including sponsorships and digital and social media strategies, enable the alcohol industry to engage and interact with consumers more directly, and to tailor marketing campaigns to different target audiences.
- Modern marketing is as much about creating a brand identity that people wish to be associated with, as it is about information provision.
- The alcoholic beverages industry is increasingly globalised, with a handful of major multinational companies dominant across the world market including the Australian market.

**2.1 Introduction**

Advertising has a substantial role in Australia’s economy. The Australian Association of National Advertisers (AANA) states that the advertising, marketing and media industry contributes in excess of $30 billion annually to the national economy. In 2011, total advertising expenditure in Australian media (including online advertising) was $12.3 billion. Television advertising made up the largest share of media expenditure (28.7%), followed by online (21.5%) and newspaper advertising (21%). A report commissioned by the Interactive Advertising Bureau values the online advertising market's GDP contribution at $17.1 billion and forecasts that it will rise to $26.5 billion by 2017. The report also estimates that online advertising will be worth $26.5 billion by 2017, reflecting a compound average annual growth rate of 7.5%.

This chapter illustrates the various methods and types of advertising being used by the alcohol industry, especially noting the rapidly increasing use of digital media advertising.

Advertising campaigns usually include a range of media strategies, with broader marketing and branding activities crossing and interlinking between media. Different methods of advertising are described in Table 1.

95 AANA submission #18 to the Agency Issues Paper, Alcohol Advertising: the effectiveness of current regulatory codes in addressing community concern. p 3.
Table 1: Methods of advertising

<table>
<thead>
<tr>
<th>Category</th>
<th>What does it cover?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Television, radio, print, cinema</td>
<td>Brand/product advertisements broadcast on free-to-air and subscription television, and commercial radio; advertisements in newspapers, magazines, pamphlets, catalogues; advertisements featured before films.</td>
</tr>
<tr>
<td>(traditional advertising)</td>
<td></td>
</tr>
<tr>
<td>Outdoor</td>
<td>Billboards located within public transport infrastructure (roadside, airports, railways/bus stations, on buses/trams), other public venues (shopping centres, petrol stations)</td>
</tr>
<tr>
<td>Digital media</td>
<td><strong>Official brand websites</strong>: Features include interactive competitions (free merchandise and co-development of new products), sports and music sections, listing of upcoming events, games, free audiovisual downloads (branded screensavers, interviews with celebrities, mobile phone apps promoting alcoholic beverages), and links to community-building forums in social media platforms.</td>
</tr>
<tr>
<td></td>
<td><strong>Social media platforms</strong> (e.g. Facebook) which offer the opportunity to create and share digital content, as well as offer advertising space.</td>
</tr>
<tr>
<td></td>
<td><strong>User-generated advertising</strong> (brand advocates) on social networking sites (Facebook, Twitter, Friendfeed, YouTube, blogs, podcasts). Also referred to as buzz/viral/word-of-mouth marketing.</td>
</tr>
<tr>
<td></td>
<td><strong>Mobile phone applications</strong>: promoting various products through engaging users via personalised input/outputs (e.g. text messages)</td>
</tr>
<tr>
<td>Product placement</td>
<td>Brand/product embedded on TV programs, films, music (brands mentioned in lyrics of popular songs), video clips, and videogames</td>
</tr>
<tr>
<td>Branded merchandise</td>
<td>Branded clothing, food, cosmetics etc.</td>
</tr>
<tr>
<td>Sponsorship</td>
<td>Product promotion at cultural, music and sporting events. Personalities sponsored to act as brand ambassadors (popular singers/bands or sport people). Sponsorship buys naming rights of events and teams, branding of merchandise and event venues (uniforms, equipment, fencing and signage), free promotional merchandise to attendees (T-shirts, hats, watches, glassware).</td>
</tr>
<tr>
<td>Point-of-sale promotions</td>
<td>Placement strategies at retail outlets (e.g. buying a prominent location in-store, providing branded equipment, in-store tastings). Non-price promotions (gifts with purchase, entry in competitions) and price-based promotions (sale prices, price discount for bulk purchases, ‘happy hour’ discounts)</td>
</tr>
</tbody>
</table>

2.2 Alcohol advertising: general marketing techniques

The alcoholic industry is increasingly globalised, with a few large, multinational companies dominant in the market. These companies have access to significant resources to assist in marketing their products. The marketing of alcoholic beverages is sophisticated, strategic and multifaceted. Products are marketed through a combination of traditional above-the-line media alongside sponsorship of sport and music events, social media, consumer generated content, SMS, mobile phone applications, internet games, product placement and point-of-sale promotions (gift with purchase, competitions, price discount for bulk purchases), alcohol-branded merchandise, alcohol-flavoured and branded foods (pretzels, chips, chocolate biscuits), and

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cosmetics (cocktail-inspired lip-gloss).\textsuperscript{99,100,101,102} It is now estimated that the majority of international alcohol marketing is carried out via these broader marketing strategies that are commonly referred to as \textit{below-the-line media}.\textsuperscript{103}

The Federal Trade Commission (FTC) in the United States, in its Report on Alcohol Advertising in March 2014, found the following distribution of industry expenditure in 2011 (as a percentage of total industry alcohol advertising expenditure - figures rounded):

- Traditional Media: TV: 25%; radio: 4%; magazines and newspapers: 3%
- Helping others promote alcohol: point of sale: 29%; promotional allowances: 5%
- Outdoor and Transit: 7%
- Online and Digital: 8%
- Sponsorships: entertainment: 6%; sports: 12%
- Other (direct mail, cinema, product placements): 2%

The FTC noted in particular that expenditures on online and digital forms of advertising had increased fourfold since the last analysis by the agency in 2008. As well, cross-category expenditures for sport – i.e. including TV, radio, print, point of sale, online or through sponsorships - totalled 29% of total expenditure related to sports; and about 3% of cross-category expenditure was devoted to social responsibility programs or messages. While it is not possible to extrapolate these figures into the Australian context, it is instructive to note the extent of expenditure related to sport and the significant increase in funds devoted to online and digital media which is likely to be reflected in Australian marketing as well.

\textbf{Alcohol marketing strategy}

An alcohol marketing strategy – of which advertising is a key component – is commonly analysed through the ‘four Ps’ of the marketing mix: product, price, place and promotion.\textsuperscript{104}

- **Product** design involves market research and product development to appeal to target audiences.
- **Pricing** strategies include general price point decisions, as well as on-premises discounts, ‘happy hours’ and discounts on bulk purchases.\textsuperscript{105}
- **Place** refers to the distribution of the finished product to target consumers and has an impact on the number and volume of alcohol purchases. Alcohol availability is a known factor in harmful consumption patterns, as recognised in state and territory liquor licensing laws which regulate where and when alcohol can be sold.\textsuperscript{106}

\textsuperscript{100} Jernigan DH (2009) The global alcohol industry: an overview. \textit{Addiction} 104: (Suppl. 1), 6–12.
\textsuperscript{102} Dobson C (2012) Alcohol marketing and young people: time for a new policy agenda. Australian Medical Association, Kingston, Australia. \texttt{wwwاما.com.au}
Promotion activities combine advertising, sales promotions, sponsorships and public relations to create brand awareness. This multi-component strategy produces a cohesive message and achieves mass coverage to reach different target groups.  

Box 4 examines how the four elements of the marketing mix (product, price, place, promotion) are used in the marketing of Ready-to-drink beverages (RTDs), and the impact of these strategies on reaching young consumers. Researchers have argued that (RTDs) are marketed to younger drinkers in particular in Australia.

Box 4: Marketing RTDs to young people in Australia

Product: RTDs (also known as designer drinks or alcopops) are sweet flavored and brightly coloured alcoholic drinks, with numerous brands available on the market and some brand names blurring the distinction between soft drinks and alcohol (“Hard Lemonade”, ”Hard Cola”). Young people under 15 years of age have a stronger preference for sweet flavours compared to those aged over 19 years, and the sweet taste of RTDs masks the alcohol taste, making it more appealing to inexperienced drinkers.

Price per alcohol volume: A decade ago, RTDs were seen as sophisticated, low strength, sweet flavoured drinks (the early generation of RTDs contained about 5% alcohol by volume (ABV) equating to 1 standard drink) targeted to young females. However, the alcohol industry has been increasing their alcoholic strength (the new generation of RTDs contain from 7% to 9% ABV, comprising 2 to 2.7 standard drinks per bottle/can) and decreasing its cost per standard drink, expanding its target market towards young males. A NSW study found 150 individual RTD products across 52 bottle shops in 2011, ranging from 4.8% to 7.5% ABV (1 to 2.7 standard drinks per unit). When purchased in multipacks (4 or 6 units) the cost per standard drink ranged from $1.95 to $3.70. When on special, the cost per unit dropped to $1.22.

Place: A NSW-based study found that 40% of glass-door display fridges at a sample of alcohol retailers were dedicated to RTDs, with fridges supplied by the alcohol industry for the exclusive display of their products in a prominent position. The alcohol industry notes in regards to RTDs that “the best proven overtime promotion that has the best pulling power without any doubt is the in-store tasting…price specials (discounting) comes second”.

Promotion: The brand values of RTDs appeal to a younger market, and this is supported by a range of industry statements:

- RTDs are “a sophisticated but affordable drink that will appeal to young people on a budget who want to get drunk very quickly”.
- RTDs are “one of the few drinks where you don’t necessarily know you are drinking alcohol, and that’s a conscious effort to make these drinks more appealing to young people”.

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“the biggest challenge is to effectively communicate our offer to the primary RTD consumer (18 to 24 year olds) which can be difficult given this age segment is not a big user of traditional media”.117

It is also argued that the packaging of RTDs is youth-oriented, including sexualised images.118

The Australian Medical Association (AMA) notes that RTD promotional campaigns are more likely to use online formats and youth-oriented events than traditional media, and use innovative approaches such as product co-development competitions that interact with customers to create new flavours which are promoted through websites, social media and mobile messaging.119

Impact of marketing strategies

RTD marketing strategies appear to be effective in reaching Australia’s youth market in particular,120 as demonstrated by the following research:

- The 2010 National Drug Strategy Household Survey (NDSHS) showed that RTDs are the main drink consumed among Australians aged 14 to 19 years (50% of persons, and 62% of females). However, the main drink consumed had changed by the 20-29 year age group to beer among males (44%) and bottled spirits/liqueurs among females (25.3%).121
- A 2011 NSW study of 1,263 adolescents aged 12-17 years found that RTDs appeal to this group for a number of reasons, including taste, alcohol strength and cost. Other important factors were the physical appearance and the ease of carrying and concealing. Both non-drinkers and experimental drinkers reported that advertising was a key influencer.122
- According to the AMA (2012) “young Australians are among the most prolific RTD drinkers in the world... These beverages have also become the drink of choice for high-risk drinkers under the age of 25...The packaging and promotional elements of RTD beverages, in addition to the sweet taste and low price, have been central in heightening the popularity of RTDs among teenagers and new drinkers”.123

The purpose of alcohol marketing is defined by the alcohol industry as follows: The advertisers’ objectives are to encourage customers to switch to their brand and to create or maintain brand loyalty. Thus, advertisers gain market share at the expense of other producers, who lose market share.124 The Submission on the Draft Report from The Newspaper Works125 reiterated the industry view that consumers are already aware of the product and its basic characteristics, and therefore overall consumption is not affected significantly by advertising specific brands.

125 The Newspaper Works (2104) Submission to the Agency on the Draft Report on Alcohol Advertising: the effectiveness of current regulatory codes in addressing community concern.
It is worth noting, however, that such alcohol marketing competition has a cumulative effect with hundreds of alcohol brands being marketed simultaneously through multiple media channels, all with the purpose of gaining market share (this is discussed further with respect to children and adolescents in Chapter 3).

2.3 The Australian alcohol advertising landscape

The last published estimate for total alcohol advertising expenditure in Australia was $128 million in 2007. However, this figure is dated and likely to be conservative as expenditure on below-the-line media, such as sponsorship, point-of-sales promotions, and social media have not been captured. Alcohol advertising follows a seasonal pattern, with advertising expenditure (adspend) peaking in the final quarter of the year.

Australians are exposed to alcohol advertising in a variety of ways with television being the most common source (65% of exposure), followed by sporting events (49%), newspapers and magazines (47%), and pamphlets and catalogues (41%). Men are more likely than women to come across alcohol advertising and sponsorship at sporting events, while women are more likely to come across alcohol advertising and sponsorship in catalogues.

The main methods of alcohol advertising exposure in Australia are summarised below.

**Television**

Alcohol advertising ranks in the top ten advertisers on free-to-air television by expenditure. For example, alcohol producer Lion spent $33.7 million on television advertising in 2012 (the largest amount of any alcohol producer), while a total of $15.8 million was spent on metropolitan television alcohol advertising over just two months in 2012. Television accounted for the largest proportion of adspend (44%) by media outlet (including radio, magazines and newspapers, cinema and outdoor advertising) in 2007.

Alcohol companies’ advertising expenditure and the level of exposure achieved make free-to-air and subscription television a key component of alcohol marketing strategy in Australia. An average 2,419,000 Australians view television after 8.30pm daily. Alcohol advertising during live sports broadcasts is particularly common. Live sport broadcasts also attract a large viewing audience, for example, a 2013-14 Ashes Fifth Test cricket match broadcast (which aired before 8.30pm) attracted 1,761,000 viewers in five metropolitan cities alone. King, Taylor and Carroll (2005) found that three-fifths of alcohol advertising in Adelaide, Brisbane, Melbourne, Perth and Sydney between April 2004 and March 2005, was broadcast on weekdays and the other two-fifths was placed in weekend and public holiday programing. Importantly, 38% of alcohol

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advertising broadcast on weekend and public holidays was shown between 5am and 8.30pm reflecting the sizeable proportion of alcohol advertisements shown as an accompaniment to live sporting programs with potential interest to people of all ages.  

Outdoor advertising

Outdoor advertising is important in the alcohol advertising landscape and features on roadsides, airports, railway/bus stations, buses/trams and shopping centres. In 2012, alcohol advertising was the fifth outdoor advertiser category by expenditure, spending $39.4 million on advertising. Outdoor advertising expenditure rose from 21% to 32% of total adspend between 2005 and 2007, which placed it almost on par with television advertising at 34% of alcohol advertising expenditure.

Print media

Alcohol advertising is prominent in Australian print media, with advertisements for alcohol found in two-thirds of a sample of 93 magazines, and found to take up entire pages of national newspapers. While print media only accounts for a small proportion of alcohol adspend, it is frequently and predominantly used by the major alcohol retailers. Daily national newspapers attract a substantial number of readers, with over 950,000 people reading the weekend editions of The Age and The Sun Herald. Wilson et al. (2012) note that newspapers are an important advertising medium, "because consumers give newspapers their undivided attention...it's the ideal environment for advertising messages to influence consumer behavior".

Point-of-sale promotions

Point-of-sale strategies are a prominent marketing tool for alcohol products. Examples of point-of-sale promotions include free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases (e.g. 3 for the price of 2), and sale prices. In a sample of 24 hotel bottle shops and liquor stores across Sydney and Perth, an average of 33 promotions featured per outlet. Just over 50% were classified as 'non-price' promotions. Spirits were the most commonly promoted type of alcohol. Alcohol outlets that were part of supermarket chains had a higher number of promotions, more price-based promotions, and required a greater quantity of alcohol to be purchased to participate in the promotion. Marketing at the point-of-sale has become increasingly widespread with the expansion of alcohol sales into more retail outlets, with the number of outlets themselves increasing significantly in Australia over the past decade. Point-of-sale marketing also occurs in pubs and clubs, often in the form of 'happy hours' or free merchandise with drink purchases. Such advertising in licensed premises may be regulated by state/territory liquor licensing legislation.

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Sponsorship of sports
Although there is increasing alcohol sponsorship of music and cultural events, the principal form of alcohol sponsorship in Australia is in sport. Alcohol has long been intertwined with Australia’s sporting culture from the elite to the grassroots levels, and sport is a key setting for the promotion of alcohol. Alcohol companies sponsor Australia’s most popular national sporting competitions and events, including the Australian Rules Football League (AFL), National Rugby League (NRL), Melbourne Cup, the Australian Grand Prix and V8 Supercars series, and the Cricket Australia competitions, as demonstrated by their websites.

The benefits for companies include: naming rights of events and teams, which raises awareness of the brand; signage on clothing and sports grounds; promotional products and pourage rights. Sponsorship of live sport also enables companies to take advantage of exemptions that allow alcohol advertising to be shown during televised sporting events.

While there are no published estimates on the total expenditure for alcohol industry sponsorship of sport, it can be identified that alcohol companies are often the major sponsors of national and community sporting competitions. For example:

- According to the Australian Sports Commission, some sports (and in particular the professional codes) receive approximately 25% of their income from alcohol beverage sponsorship agreements or associated income.
- It has been estimated that in Australia each year, $50 million of sponsorship for major sporting events comes from alcohol companies, with 80% invested by three companies: Fosters, Lion Nathan and Diageo.
- 95% of sponsorship received by a sample of Australian sportspeople over 18 years was from the alcohol industry, with 194 people receiving alcohol industry sponsorship out of the 204 people who received some form of sponsorship.
- The Australian Drug Foundation notes that “most major sporting competitions and teams promote and advertise alcohol consumption and many sports clubs have a tradition of heavy drinking. A large number of clubs depend on revenue from alcohol to finance club activities.”

The 2012 Annual Alcohol Poll conducted by the Foundation for Alcohol Research and Education (FARE) found that 49% of people surveyed recalled being exposed to alcohol advertising through sports. Viewers’ exposure to alcohol branding during alcohol-sponsored sports events can be difficult to avoid, and this includes children and adolescents. For example, beer branding was visible for 74% of a beach cricket match television broadcast on a Sunday, featuring on players’ uniforms and equipment, on fencing and signage, and on spectators’ promotional merchandise.

Sponsorship has the potential to be a powerful advertising tool, as it allows sponsors to associate their brand with an already engaging event or celebrity, which can create positive associations.

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and emotional connections with the brand. Sport sponsorship can also create an association between the sponsor and the promotion of community health and wellbeing. For example, Roche et al. (2007) suggest that:

“Sponsorship by alcohol companies also enhances the perception that the alcohol industry is ‘a good corporate citizen’, with a genuine interest in promoting a healthy sports-oriented lifestyle.”

Social media
Most Australian alcohol companies and brands have a dedicated website and alcohol advertising has a prominent place in the Australian social media environment. As at June 2013, official Facebook pages for Australian alcohol brands (beer, wine, cider and spirits combined) attracted over 3.8 million fans. This is over a million more fans than for Australian non-alcoholic beverages (2.6 million) and automotive Facebook pages (2.1 million).

2.4 The changing advertising landscape

While advertising is still prominent in traditional media, it is expanding into more interactive methods and appearing in social media – including platforms such as Facebook and Twitter – as well as other indirect forms of advertising (such as consumer-driven advertising or user-generated advertising and product placement).

The rise of social media
Social media advertising has become a particularly significant marketing tool, and is reflected in the increased focus and investment in internet-based media advertising by the alcohol advertising industry globally. For instance:

- Alcohol brands utilise a wide range of Internet applications. In addition to their own websites, companies are also represented in many social networks, such as Facebook (see Box 5), Friendfeed and Twitter.
- As of 30 April 2012 alcohol brands were among the highest engaging industries on Facebook, second only to automobiles.
- In January 2011, Bacardi announced that ‘it would shift up to 90% of its digital spend to Facebook as it no longer deems dotcom sites relevant.’

The 2014 Annual Alcohol Poll reports 22% of Australians have notices alcohol advertising or promotions on social media, an increase from the 14% reported in 2013. Further, the Poll finds

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159 Socialbakers measures the Engagement Rate as the average number of Likes, Comments and Shares per post on a given day divided by the total number of Fans for the page. It reflects the percentage of the Fan base that interacts on average with a post.
that of those who have noticed alcohol advertising on social media, 41% have interacted with an alcohol brand.

**Box 5: The reach of social media: the Facebook example**

In 2012, Australia had over 19 million Internet users, representing 9 out of 10 Australians (88.8%). The reach of social media is extensive, with Facebook having well over 1 billion regular users internationally, and over 11 million users in Australia. The number of people accessing the internet through mobile devices now exceeds computer-based users. In 2012, Facebook reported 680 million mobile users, representing an increase of 57% year-over-year. Facebook offers advertising space that companies can purchase to advertise products, sponsored events and brand-related content, while also offering opportunities to interact with people directly through fan pages, competitions and games; all of which are free and easy to use. Numerous alcohol companies are engaging in this space.

The alcohol industry is investing strategically in social media, for example, in 2011 international alcohol producer Diageo secured a multimillion dollar partnership with Facebook anticipated to “drive unprecedented levels of integration and joint business planning and experimentation between the two companies”. The partnership enables Diageo to access metrics collected by Facebook “to help Diageo define ROI [return-on-investment] and performance across its priority brands”. Diageo’s strategy has proven to be highly effective and demonstrates the power of social media to drive alcohol promotion, with five key brands in the US alone showing a 20% increase in sales as a result of Facebook activity.

**Product placement**

Product placement or integration is the practice of embedding a product, brand name or service within a medium such as film, television, music lyrics and videos or videogames. Product integration can range from a casual mention in a scene to a brand being a major presence in a movie supported by joint advertising and promotional activities. For example, an estimated $45 million was spent by Heineken in the latest James Bond film ‘Skyfall’. It was reported that this amount covered almost one third of the film's budget and that the sponsorship was necessary for the film's production and release. Attitudes towards product placement seem to be less negative and the general public more tolerant of the practice. The non-commercial and somewhat hidden, secondary nature of product placement makes it inherently different from traditional advertising and this suggests that viewers may process the message differently.

**User-generated advertising**

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164 Facebook Reports. Fourth Quarter and Full Year 2012 Results. [http://investor.fb.com/](http://investor.fb.com/)
Consumers are increasingly being encouraged to become active participants in producing marketing messages, with various techniques being employed by advertisers to encourage what can be broadly described as user-generated advertising. Word-of-mouth marketing refers to companies strategically harnessing “the act of consumers providing information to other consumers” with evidence demonstrating that individual consumers who are influential in the social media landscape can have a large impact on other consumers’ choices. Viral marketing refers to a similar approach, where a supplier sends a message to a select number of consumers to pass on the message to others. Buzz marketing is a less explicit process, defined broadly as “contagious talk about a brand, service, product, or idea” (pp 779-780). Advertising industry documents often refer to these approaches as ‘seeding’.

2.5 Conclusion

The alcohol industry utilises multifaceted marketing strategies, to reach different target groups, in order to achieve brand loyalty and increased market share. This competition has a cumulative effect with hundreds of alcohol brands being marketed simultaneously through multiple media channels.

While advertising through traditional media such as television, radio, print and outdoor advertising continues to be strong, alcohol advertising is increasingly occurring in below-the-line media: social media on many platforms, resulting in ubiquitous and global media messaging on media particularly popular among young people. The promotion of alcohol is also extremely prominent through sport and entertainment events.

Given the volume of advertising through a plethora of media platforms it is difficult to prevent exposure of children and adolescents to alcohol promotion.

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CHAPTER 3:
THE INFLUENCE OF ALCOHOL ADVERTISING ON CHILDREN AND ADOLESCENTS

Key Points

- Children and adolescents can be exposed to alcohol promotions, whether intended or not.
- Australian adolescents are exposed to almost the same level of alcohol advertising as adults aged 18-24.
- Adolescents’ exposure to alcohol advertising has increased over time, with exposure on television and traditional media continuing and exposure through digital media increasing rapidly.
- There are concerns that early and cumulative exposure to alcohol advertising among young Australians contributes to positive adolescent attitudes towards alcohol, earlier initiation of alcohol use and more frequent and heavy drinking by young Australians, which is of immediate harm and can progress to harmful drinking in adulthood.

3.1 Introduction

Although alcohol products are only supposed to be advertised and promoted to Australians aged 18 years and over, this chapter highlights evidence that children and adolescents are exposed to significant levels of alcohol marketing and advertising, and in many situations, at levels equivalent to adults’ exposure. The alcohol industry maintains that alcohol marketing is not being intentionally targeted to children and adolescents, but it is clear from the evidence that the messages contained in alcohol advertising are reaching children and adolescents below the legal purchasing age and that this advertising is having an influence on attitudes and behaviour.\(^{177}\)

Australian research on alcohol advertising has predominantly focused on the extent of adolescents’ exposure to traditional media, with some studies also measuring its impact. In addition, a large body of international research from similar English-speaking countries provides further insight into the impact of alcohol advertising on adolescents. These studies offer evidence that adolescents are influenced by alcohol marketing strategies across a range of exposure channels. The international research is increasingly relevant for Australia given the globalisation of alcohol companies and their adoption of transnational marketing practices and investments.

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3.2 Intentional versus unintentional exposure

The issue of targeting is contentious. In response to the Draft Report, the Brewers Association of Australia and New Zealand\textsuperscript{178} argues that alcohol is a mature product not advertised to increase consumption but to increase brand share, and consistent with this, children and adolescents are not targeted. The Association submitted:

“Despite the growing prevalence of alcohol promotion in Australia across a number of platforms, this does not correlate with increased consumption, nor is it targeted at recruiting consumers who would otherwise not drink alcohol. Specifically, alcohol producers do not target their promotional activities at those under the legal drinking age.”

Furthermore, the submission from Diageo refers to the Industry Views on Beverage Alcohol Advertising and Marketing, with Special Reference to Young People prepared for the World Health Organization by the International Center for Alcohol Policies on behalf of its alcohol industry sponsors.\textsuperscript{179} This document highlights the industry’s ethical position of never targeting those under the legal drinking age and only promoting responsible drinking patterns.

By contrast, others are persuaded that alcohol marketing to adolescents is intentional, suggesting that alcohol marketing contributes to the ongoing recruitment of adolescents to replace older drinkers,\textsuperscript{180} and to prepare the next cohort of potential drinkers.\textsuperscript{181} It is argued that adolescents are an unspoken part of the alcohol market, since heavier and irregular drinking patterns are concentrated in the late teenage years and young adulthood.\textsuperscript{182}

The Australian National Council on Drugs is explicit in its submission to the Draft Report stating that it “does not accept the premise that alcohol marketing only creates, maintains, or increases brand loyalty in order to increase a brand’s share of the existing market … [it] also normalises alcohol consumption …[and] increases the overall size of the market.”\textsuperscript{183}

Empirical evidence of possible targeting of alcohol advertising to people below the legal drinking age (21 years) comes from the USA. Ross et al.\textsuperscript{184} found that young people aged 18-20 in the USA were exposed to high and growing levels of alcohol advertising, particularly through cable television, and found evidence of targeting of 18–20-years olds relative to 21–24-year olds by alcopops, beer, and spirits advertisers, in each year from 2008 through 2011. Likewise, Chung et al.\textsuperscript{185} report on their analysis of US cable TV viewership and advertising data for an inferred association between alcohol advertising timing and adolescent viewership. The study found that across the vast majority of time slots studied, adolescent viewers, especially girls, were exposed to more beer, spirits, and alcopop ads on cable television than would be expected through incidental exposure.


\textsuperscript{179} Industry View on Beverage Alcohol Advertising and Marketing, With Special Reference to Young People, Prepared for the World Health Organization by the International Centre for Alcohol Policies (ICAP).


Inappropriate targeting through print advertising has also been raised as a concern in the USA. In their study on the issue, the Centre for Alcohol Marketing and Youth found that young people, including a large percentage under the legal drinking age, were exposed to high levels of alcohol advertising in magazines.186 However, Nelson187 refutes these claims, which he suggests are based on a flawed research methodology and points to the findings from his own study on alcohol advertising in 28 major US magazines for the time period 2001-03. This study failed to demonstrate that targeting of adolescents is taking place, although there was evidence that advertisers tended to favour young adult audiences. Nelson states other factors such as the size of the adult audience and the price charged for an ad placement appeared to be more important factors in determining alcohol advertising content in magazines.

While overall the research on adolescent targeting is limited, it is salient to note that a 2009 United Kingdom House of Commons Health Select Committee inquiry into the conduct of the alcohol industry provides some information. The review accessed internal marketing documents from alcohol producers and advertising agencies, concluding that adolescents are a key target group for alcohol advertisers, noting that “market research data on 15 and 16 year olds is used to guide campaign development and deployment, and there is a clear acknowledgment that particular products appeal to children”188 (note that in England and Wales adolescents aged 16 and 17 can drink beer, cider or wine with a meal at a table in a bar or restaurant, as long as they’re accompanied by someone aged 18 or over).189

The investigation of internal documents by the House of Commons Health Select Committee found multiple references to the need to recruit new drinkers and establish loyalty to a particular brand. It also showed that the youth market is engaged through a mix of strategies, which increasingly includes interactive digital marketing techniques such as “seeding” alcohol products onto private social media pages and inviting users to generate advertising content.190

3.3 Marketing practices that appeal to young people

Branded merchandise
Alcohol branded merchandise has expanded to include T-shirts, hats, watches and glassware bearing alcohol industry logos and is associated with numerous major sports such as cricket, rugby and motor racing. For example, Jack Daniel’s branded hats and T-shirts were designed to look like racing shirts and these were worn by many adolescents at the Clipsal 500 Adelaide, which is Australia’s largest domestic motor sport event.191

Interactive digital marketing
The emergence of platforms such as Facebook, Twitter and YouTube has fundamentally changed the nature of digital marketing. Digital media provide an effective communication platform for companies to engage with adolescents through virtual communities, social networks and mobile phone apps. Digital media also enables repeated exposures through different digital platforms and increases the opportunities for individuals to view, share, ‘go viral’, and interact
It has been suggested that the primary aim of alcohol marketing via social media is not necessarily to increase consumption of alcohol beverages initially, rather to ‘normalise’ alcohol and drinking by embedding brands “in the lives and lifestyles of consumers, creating an intimate relationship and sense of kinship between the brand and the user”. The alcohol industry utilises digital media to engage younger consumers with innovative techniques such as the co-design and promotion of products. For example, alcohol producers run competitions to design new products, using Facebook to track entries and voting patterns of friends, encouraging a dialogue with the audience and expanding a campaign’s reach. Digital media also gives the alcohol industry the opportunity to influence the communication that brand advocates (ordinary people who like the brand) have with other consumers in order to expand the brand’s reach. Such techniques have the potential to appeal to adolescents and the majority of adolescents in Australia participate in social networking on the internet.

Not surprisingly, recent papers and reviews support the conclusion that the alcohol advertising industry is using digital marketing as a forum for promoting products to build up brand recognition with adolescents in particular. Official branded websites target adolescents by using images, language and content that resonates with youth culture, for example, through interactive competitions and games, sports and music sections, free prizes, audiovisual downloads (e.g. branded screen savers), community-building forums, and providing links to other social networking sites.

Others have suggested that the alcohol advertising industry is using social media to bypass advertising guidelines to promote alcohol products and potentially binge drinking, to all ages on social network sites such as Facebook, for example through sharing photos depicting adolescents drinking alcohol excessively. Further complicating the issue, young people may not always associate social media with advertising. For example a 2012 survey conducted in the United Kingdom found that 51% of the adolescents did not recognise official alcohol product Facebook groups as digital alcohol marketing, and another study shows that portraying oneself as a drinker was considered to be a socially desirable component of one’s identity in the social networking environment.
Alcohol company websites are not only capable of appealing to adolescents because of content but are also readily accessible due to low-level security measures.\(^{207}\) While alcohol companies' websites are "age gated," (requiring a consumer to enter a date of birth or certify that they are 18 years old or older) a 2014 Australian analysis of a selected sample of 25 alcohol brands found that companies had inefficient filter systems for preventing entry of underage persons. Only half of the websites reviewed required the user to provide a date of birth, and none had any means of preventing users from trying again. Even the most effective commercial internet filters (software installed on computers to prevent access to specific content) allowed access to one-third of the sites examined.\(^{208}\)

Likewise, many of the alcohol-related fan, event and group pages on Facebook are accessible to users of any age.\(^{209}\) Facebook and other providers of social media platforms are increasingly offering "age gating" mechanisms that use the date of birth provided by the user to filter out alcohol advertising.\(^{210}\) The option to take up this age gating is provided to users of Facebook and the age gating mechanism is able to filter out alcohol advertising to different age groups depending on the agreements and regulations of country the account is set up in. Twitter and YouTube also provide this kind of filter. As pages can be created by both alcohol companies and third parties (including individuals) it is not possible to ensure all social media users take up this option or comply with Facebook's or other social media providers' advertising guidelines for restricting underage users.

**Appealing content**

A 2009 study which examined 30 alcohol advertisements in Australia found that all contained at least one element known to appeal to adolescents, with 23 of those containing two or more such elements.\(^{211}\) Several Australian reports exploring the exposure of adolescents to alcohol advertising have noted the use of features such as real-life and animated characters.\(^{212,213,214}\) In particular, the AMA (2012) noted the following:

"... alcohol marketing frequently deploys images, messages and elements that appeal to young people. Empirical studies have shown young people are drawn to music, characters, story and humour, and find the quirky, playful, and subversive elements of alcohol advertising appealing. The use of animal characters is known to engage children and younger audiences, and memorable animal characters such as the Bundy Bear (associated with Bundaberg Rum), Bud Frogs (Budweiser) and the charming lizard team of Frank and Louie (Budweiser) illustrate how alcohol companies have successfully deployed this strategy to promote their products."\(^{215}\)

**Linking alcohol to social celebrations and positive experiences**


\(^{212}\) Australian Communications and Media Authority (2007) Television advertising to children: A review of contemporary research on the influence of television advertising directed to children. Canberra: Commonwealth of Australia.


Alcohol sponsorship of sports, music and cultural events is a marketing strategy that embeds alcohol products into leisure activities, associating the brand with positive experiences, lifestyles and/or role models that are often highly valued by young people.

Alcohol companies seek sponsorship opportunities that are reflective of their target audience. For example, music festivals which generally attract a large number of young adults and adolescents. An Australian example is the ‘Big Day Out’ music festival which has received sponsorship from a number of alcohol companies. Attendance is open to people aged 15 years and older. The high frequency of adolescents participating in organised sport and other cultural events highlights the potentially significant reach of alcohol promotion through sponsorship, as discussed in Box 6 in relation to alcohol advertising in sport.

Box 6: Alcohol advertising in sport: reaching adolescents

Sport is one of the primary settings in Australia for the marketing of alcohol products. Children and adolescents are also exposed to the cumulative effect achieved by alcohol sponsorship of sports series, such as the National Rugby League (NRL) and Australian Football League (AFL) and cricket, which take place over many months and are often aired on daytime television.

In their submissions on the Draft Report, the Australian Liquor Stores Association (ALSA) and the Coalition of Major Professional and Participation Sports reported from OzTam 2008 - 2012 data, that adolescents between 13-17 years comprise less than 6% of the viewing audience for the top 20 weekend sport programs in 2012 and that children aged 5-17 years represent less than 12% of the total viewing audience of the top 10 sporting events in 2012. When expressed at a percentage of the total viewing audience the potential exposure of children and adolescents during daytime sporting telecasts appears low. The numbers in this age group so exposed are nonetheless large. For example, an estimated 117,000 people aged 5-17 watched the television broadcast of the Bathurst 1000 V8 car race. A total of 35 minutes of alcohol marketing featured during the broadcast (including visual alcohol branding during the race).

ALSA also submits that advertisements during the sporting telecasts are not designed to appeal to children and most children and adolescents watch these programs with an adult present. The Agency is not aware of any research which supports a neutralisation of exposure to alcohol advertising by parental supervision. Although there is limited Australian research on the impact of young people’s exposure to alcohol advertising in sport, the available studies show that young people are aware of and recall alcohol advertising during sport. For example:

- A small sample of children aged 10-12 years (12 children) had a high awareness of the alcohol sponsors and alcohol brands advertised during sporting telecasts, and associated these products with sport and with positive personal characteristics and outcomes. 230
- 76% of 164 children (aged 5-12 years) in a Western Australian study linked at least one sponsor (food or alcohol) with the relevant sport. 231

Sponsorship can create an association between the sponsor and sports celebrities who are commonly revered by children and adolescents. As Jones et al. (2010) state, “the potential impact of the ‘branding’ of sport by alcohol marketers could create powerful emotional associations between the physical product, the sport and the ‘sporting heroes’ who are required to wear the branded merchandise of the alcohol sponsor and often feature in the associated commercials.” 232

This association between sports celebrities and alcohol has the potential to promote both positive and negative messages about alcohol use to adolescents. Researchers have noted that “Sports celebrities are also influential in shaping young people’s behaviours. They act as powerful role models, setting up standards for young people's behaviour”. 233

### 3.4 Exposure of children and adolescents to alcohol advertising

As outlined in Chapter 2, Australians, including those below the legal purchasing age, are exposed to substantial levels of alcohol promotions through a range of media channels, both directly (television and print media, official brand websites and alcohol sponsorship of sports and cultural events) and indirectly (product placement in films, music videos and television programs, social media and in-store promotions). 234,235,236 This exposure is assumed to be increasing due to the expansion of alcohol advertising into digital media237, and other global platforms, and is likely to have a cumulative effect. 238
Whether children and adolescents are being targeted or not by alcohol industry promotions, it is clear they are exposed. For examples, a 2011 cross-sectional survey of 1,113 Australian adolescents aged 12-17 years revealed the majority had reported being exposed to alcohol advertising through a range of media channels, with television being the highest (94%) 75% in magazines, 61% on a billboard or poster, 55% on the Internet, 53% in a newspaper and 51% as promotional material. Internationally, researchers observe that the measured level of exposure among adolescents is an underestimation due to difficulties in accurately measuring exposure reliant on recall. Generally exposure of adolescents follows the same general pattern of exposure of young adults. Controlling exposure differentially between adolescence and young adulthood is particularly difficult given their common interests and use of the same media platforms.

Television advertising

Child and adolescent exposure to television alcohol advertising is a growing concern in many countries. A substantial amount of research on the issue has been undertaken in the United States, and in particular, by the Center on Alcohol Marketing and Youth. The Centre has developed sophisticated techniques to monitor levels of alcohol advertising exposure among young people in the USA below the legal minimum drinking age of 21 years. The work of the Centre has been influential in informing policy on this issue at the Federal and State level.

A number of studies undertaken by the Centre have shown that young people in the United States are regularly exposed to high rates of alcohol advertising on television despite the current system of industry self-regulation. For example, one study of alcohol advertising during 40 programs across 25 markets in the USA found that almost a quarter of alcohol advertisements aired during times when people below the legal drinking age were greater than 30% of the total viewing audience, exceeding the alcohol industry’s voluntary 2003 self-regulatory codes on proportionate audience thresholds. Similarly, an editorial in the British Medical Journal highlighted the findings of a study by the RAND Corporation for the European Commission showed that British regulatory structures are so flawed that teenagers, far from being shielded from alcohol promotion, are more exposed to it than are adults. The RAND study showed that, for example, 10-15 year olds in the UK see 10% more alcohol advertising on TV than their parents do.

Free-to-air television is a far-reaching advertising medium for adolescents. A recent national survey found 96% of Australian children aged 5-14 years watched television, DVDs or videos, and spent more time doing so than in any of the other selected recreational activities (an average of 15 hours outside of school hours in a fortnight, followed by 10 hours on other screen-based activities). The highest audiences for children 2-14 years are in the early evening and they view programs for general audiences with older family members at these times. There is still a large audience of children to 9.30pm for some channels.

A 2012 Australian study examined 2,810 alcohol advertisements aired on television over two months, and found that 50% appeared during viewing times when children were regularly

watching; these were 7.00-9.00am and 3.30-10.30pm on weekdays and 7.30-10.30pm on weekends.\textsuperscript{245} While television alcohol advertising is restricted to being shown after 8.30pm to reduce adolescents’ exposure, an estimated 9.2\% (223,000 people) of Australians that view television after 8.30pm daily are aged 0-17 years\textsuperscript{246} (for context, just over 20\% of the Australian population is aged 0-17 years).

On more specific questions about adolescent exposure it was found that adolescents in Australia are exposed to similar levels of alcohol advertising on television as adults:

- A study measuring exposure levels to 156 different alcohol advertisements over 12 months (March 2005 to February 2006) in Sydney showed that adolescents (13-17 years) were exposed to the same amount of alcohol advertising on free-to-air television as young adults (18–24 years); and children (0–12 years) were exposed to one-third of alcohol advertising seen by adults.\textsuperscript{247,248}

- A 2007 study found that adolescents in Sydney and Melbourne were exposed to advertising for beer and wine at between 72-84\% of the rate of exposure for 18-29 year olds. In Melbourne, four of the thirty top spend brands generated the same or greater exposure with 13-17 year olds compared with those aged 18-29 years (three of these four brands were for beer).\textsuperscript{249}

Alcohol advertising is also permitted during a live sports broadcast at any time on weekends and public holidays and also when “the sporting event is broadcast simultaneously across a number of license areas and … in the license area in which the event is held or, if the event is held outside Australia, direct advertisements for alcoholic drinks are permitted in a majority of the metropolitan license areas in which the event is simulcast”.\textsuperscript{250} From the available figures, the viewing audience of adolescents during live sports is higher than the audience of adolescents after 8.30pm. For example, the Brewers’ Association reports that children and adolescents comprised an average 11.7\% of the viewing audience for the National Rugby League season in 2012.\textsuperscript{251} Almost half of all alcohol advertising airs during the day as part of a live sport broadcast.\textsuperscript{252} The implications for these findings are further addressed in Chapter 6.

Outdoor advertising

A 2011 Australian parliamentary inquiry into outdoor and billboard advertising noted that “outdoor advertising… is visible to all audiences and cannot be avoided”, and that “all people, including children, do not have a choice about viewing it”.\textsuperscript{253} The report noted that adolescents are particularly likely to be exposed to outdoor advertising, as those within this age group are often users of public transport where some of this advertising is displayed.\textsuperscript{254} While outdoor alcohol

\textsuperscript{246} AANA (2013) submission #18 to the Agency Issues Paper, Alcohol Advertising: The effectiveness of current regulatory codes in addressing community concern, p 8.
\textsuperscript{251} Brewers Association of Australia and New Zealand (2013) Submission #13 to ANPHA Issues Paper, Alcohol Advertising: The effectiveness of current regulatory codes in addressing community concern p 21.
\textsuperscript{254} Australian House of Representatives (2011) Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, p.41. Available from:
advertising is restricted from being displayed within 150 metres of a school, except at a licenced premises or alcohol retailer, it has been found on billboards directly opposite schools in breach of these restrictions. 255 As noted in Chapter 2, the alcohol industry is among the top ten spenders for outdoor advertising in Australia which features in a wide range of public spaces, and it can be assumed that adolescents see the same outdoor alcohol advertising that is targeted at adults.

Print media
Adolescents are exposed to alcohol advertising in print media, although the extent to which this is the case is hard to gauge, partly because print media represents “a very small proportion of the advertising spend for the alcohol industry”. 256 For example, one study showed a steady growth in the advertising of RTD products in daily newspapers in Victoria over a 20-year period. 257 Another study of 93 magazines popular with adolescents in Australia found that over two-thirds featured alcohol advertising and promotion. The study found that 34% of items had a strong appeal to adolescents, and 28% promoted positive social, sexual and psychological expectancies of consumption. 258

Indirect exposure through product placement
Product placement and alcohol use is widespread in films. For example, a study of over 500 high-grossing United States (US) films found that 83% depicted alcohol use (including 57% of G or PG-rated movies), with 52% referencing specific brands. 259 Technologies such as film downloads from the Internet increase access to films, bypassing the rating system and leading to unsupervised viewing. 260

Music is another established medium for alcohol product placement. It is estimated that the average adolescent in the US is exposed to 34 alcohol references in popular music daily. 261 Another US study noted that 23% of the 720 most popular songs in 2009, 2010 and 2011 included an alcohol mention, and a further 6.4% included an alcohol brand mention in a positive context. 262 Audiences listen to songs through radio or watch music videos on YouTube, media which are used to advertise alcohol, thereby enabling repeated exposure to branded products. 263 Adolescents are likely to be influenced by product placement to some extent, as adolescents seek to identify with celebrity role models and desire to emulate behaviour portrayed in the media. 264

Digital marketing


Despite a lack of evidence on Australian adolescents’ level of exposure to digital alcohol advertising, it is known that most Australian children use information technology frequently as a source of information, entertainment and social communication.\textsuperscript{265} For example:

- The ABS found that Internet access by children aged 5-14 years has steadily increased in recent years, from 65% in 2006; to 79% in 2009; and 90% in 2012. The proportion of children accessing the Internet increased with age (accessed by 79% of 5-8 year olds; 96% of 9-11 year olds; and 98% of 12-14 year olds).\textsuperscript{266,267}
- A recent AU Kids Online study found that, compared with 25 European nations, Australian children were amongst the youngest to start using the Internet at just under 8 years of age.\textsuperscript{268}
- The majority of Australian children (63% of 9-16 year olds)\textsuperscript{269} and adolescents (88% of 15-17 year olds)\textsuperscript{270} use the Internet for social networking.

However, as noted in a 2012 European Commission report, alcohol advertising in digital media is so pervasive that it is almost impossible to assess the true level of exposure among adolescents, who are among the highest users of such media.\textsuperscript{271}

**Mobile phone applications**

Adolescents are among the growing population using mobile phones to access the Internet, with 60% of Australian children aged 9-16 years old found to access the Internet via a mobile device in 2011.\textsuperscript{272} Mobile phone use contributes to alcohol advertising exposure, as numerous alcohol promotional activities are downloadable as mobile phone applications (smartphone apps).\textsuperscript{273} A recent Australian study of 384 alcohol-related smartphone apps available to download found that 50% of these apps were categorised as entertainment apps, rather than health apps, and endorsed or encouraged alcohol consumption.\textsuperscript{274} As a result of this study, a British politician: reported that Google and Apple have been recently “urged to launch an urgent investigation into irresponsible drinking games, sold through their international online apps markets, that could fuel drink-related health problems and anti-social behavior”.\textsuperscript{275}

### 3.5 Young people’s susceptibility to alcohol advertising messages

There is evidence that certain biological and psychosocial attributes make children and adolescents more vulnerable to advertising strategies than are adults. For example, the Australian Medical Association notes that the neurological changes during adolescence increase young people’s susceptibility to marketing, and that adolescence is characterised by novelty

\textsuperscript{265} Australian Bureau of Statistics. Australian Social Trends June 2011; children of the digital revolution. ABS catalogue no. 4102.0
\textsuperscript{266} Australian Bureau of Statistics. Square eyes and couch potatoes children’s participation in physical activity and screen-based activities. ABS catalogue no. 4156.05.001 - Perspectives on Sport. June 2013.
\textsuperscript{267} Australian Bureau of Statistics. Children's Participation in Cultural and Leisure Activities. Australia, Apr 2012. ABS catalogue no 4901.0
\textsuperscript{275} Adelaide Advertiser Apps fuel drinking Concerns, Adelaide 11 Nov 2013.
seeking, impulsivity, social adaptation, emotionality (self-consciousness and self-doubt during the transition into adulthood) and risky behavior.276

In a similar vein, a 2007 report into Australian television advertising to children by the Australian Communications and Media Authority (ACMA) concluded the following based on the published evidence:

- Young children (2-6 years) have a limited capacity to distinguish between advertising and program content as well as a limited ability to think sceptically about what they watch, noting that “before the age of six, children do not understand the selling intent of advertising… and are likely to see television advertising as an information source”.277
- Even as children grow older (around 6-11 years) they may not respond critically to advertising without prompting.
- Children’s “cognitive capacity to process advertising messages remains unchanged in the new media environment” and the distinction between content and advertising is becoming progressively blurred.
- Children requesting or nagging their parents for certain items while shopping, known as ‘pester power’ is observed from two years of age, indicating that advertising is influencing their preferences and behaviour.
- Repeated exposures are necessary to communicate advertising messages to children.277

Leslie et al.278 note that adolescents are more receptive to some forms of advertising than adults or children, as they look for adult-only products and activities that help them project a mature and positive self-image to boost their self-esteem. The authors argue that adolescents are prone to making poor decisions, overweighing benefits versus costs when emotionally aroused and note that digital marketing techniques, in particular, take place in circumstances that produce high emotional arousal among adolescents: namely, social or peer-to-peer interactions.

### 3.6 Impacts on product and brand awareness

Most young people exposed to alcohol advertising attend to it sufficiently well to enable them to recall the alcohol brand.279 A 2010 Western Australian study found that 75% of 155 children aged 9-15 years recognised Bundy Bear (associated with Bundaberg Rum) and correctly associated it with the alcoholic product.280 Jones, Phillipson and Barrie (2010) reported that young people had a high awareness of the alcohol sponsors and alcohol brands advertised during sporting telecasts and that they associated these products with sport and with positive personal characteristics and outcomes.281 Another Australian study found that adolescents have a high level of awareness of alcohol advertisements in the magazines they read.282 In a 2007 report on the effects of television...
alcohol advertising on children, the ACMA noted that a literature review found that exposure leads to increased awareness and predicts more positive attitudes to drinking.283

Digital marketing through social media is particularly effective in engaging adolescents due to its socially interactive nature. According to one study,284 users are prompted to make decisions about alcohol consumption under high emotional arousal, exacerbating adolescents' already high risk of making poor consumption decisions, playing on their tendency to believe that their peers drink more frequently and that they approve more of drinking. An Australian exploratory study of official alcohol brand websites noted that they often feature content forbidden in traditional media channels, such as sexual references or encouraging excessive drinking. Participants of focus groups stated that the content of these sites encouraged them to think about the brands they were exposed to and about consuming alcohol generally. 285

Point-of-sale promotions involving price or volume discounts can have a strong impact on young people, and are particularly effective in encouraging the purchase of increased volumes of alcohol. For example, in a focus group study of 85 Australians aged 16-25 years, most subjects demonstrated a strong recall of previous in-store promotions and almost all participants indicated they had been influenced to buy more or a particular brand of alcohol because of an in-store promotion.286

3.7 Impacts on attitudes and beliefs about alcohol

Alcohol advertising contributes to the cultural context in which adolescents construct meaning around alcohol, and to the consolidation of social norms around drinking.287 The role of advertising in shaping cultural norms includes associating alcohol with positive experiences and personal outcomes, and embedding alcohol into celebrations and social events. All of these factors contribute to the development of adolescents' beliefs about alcohol.

Alcohol is widely used and socially acceptable in Australia, with researchers arguing that consumption, including alcohol consumption, has become central to the leisure experience. “Excessive consumption of various forms – extending well beyond just alcohol – has become normative in contemporary consumer society”. 288 Additionally, “consumption of alcohol in the social context of status-defining and image enhancing has become a popular leisure activity in itself, an important element of socialisation, and a source of identity within friendship groups”. 289

An exploratory study looking at the cultural drivers of alcohol consumption among 14-24 year olds found alcohol consumption is a central feature in Australian culture and identity particularly for

283 Australian Communications and Media Authority (2007) Television advertising to children, a review of contemporary research on the influence of television advertising directed to children.
young people.\textsuperscript{290} Roche et al\textsuperscript{291} suggest that the alcohol industry exploits this pathway from youth to adulthood.

\textbf{Portrayals of alcohol use and drinking expectancies}

Both adolescents and adults are regularly exposed to advertisements that depict alcohol consumption as fun, social and inexpensive.\textsuperscript{292} Such messages are likely to reinforce existing alcohol-related cultural norms.\textsuperscript{293} For adolescents who have not started to drink, expectations about drinking are influenced by normative assumptions as well as the observation of drinking by parents, peers and role models in the mass media.

Research has linked exposure to portrayals of alcohol use in the mass media with the development of positive drinking expectancies by children and adolescents.\textsuperscript{294} which in turn are thought to lead to drinking behaviour. For example, Austin and Knaus (2000)\textsuperscript{295} undertook a study which examined the relationships between children’s beliefs about alcohol advertising, their expectancies for drinking, behavioural precursors to drinking, and self-reported risky behaviour. They found that the children’s ratings of the desirability of and their identification with people portrayed in alcohol advertising are associated with positive expectancies towards alcohol use and that positive expectancies were in turn associated with risky behaviour, including actual drinking. The authors concluded that the study provides some evidence for the proposition that decision making progresses through a number of steps over time (desirability, identification, positive expectancy, pre-behaviour) to produce an effect on behaviour.

Though not strictly on advertising, some studies have examined the impact of alcohol portrayals in a variety of media and alcohol related attitudes and behaviours. In their reviews of the evidence on the influence of the portrayal of alcohol use among characters in television, film, music and music video, magazines and the Internet on adolescents’ attitudes towards and use of alcohol, Grube\textsuperscript{296} and Grube and Waiters (2005)\textsuperscript{297} note that the portrayal of alcohol use across television, film and music was quite common and generally of a positive nature. Negative portrayals were uncommon. Less research was available in relation to the Internet and magazines. The reviews also found that there was some evidence, from experiments and cross-sectional studies, that alcohol portrayals in television, film and music can create positive expectancies around alcohol use among adolescents and intentions to drink, although the authors suggest that the results are mixed and inconclusive.

Morgenstern et al. (2011) followed a group of non-drinking German adolescents aged 11-17 over 9 months. The authors found that from baseline to 9 month follow-up 28% of students had commenced drinking and 15% had commenced binge drinking. There was a significant association between exposure to alcohol advertising at baseline and alcohol use and binge drinking initiation at follow up. Around 35% of the total effect between alcohol advertising and alcohol use and 51% of the total effect of alcohol advertising on binge drinking initiation was


mediated through an increase in positive alcohol-related attitudes. The authors concluded that part of the effect of alcohol advertising on youth drinking was mediated through a change in attitudes toward the product group in general. They suggested that reducing young people’s exposure or regulating the content of alcohol advertising to reduce alcohol’s appeal may lead to a reduction in adolescent drinking initiation and adolescent binge drinking. 298

Similar results have been noted in other studies. For example:

- A 2009 Australian study found that over two-thirds of 287 young people aged 15-24 years perceived that selected print and TV alcohol advertisements suggested that consuming the product would help them have a great time. 299
- A 2013 longitudinal survey in Los Angeles that followed 3,890 students from 12 to 16 years of age who were exposed to television alcohol advertising found that liking of those advertisements at age 12 was predictive of later alcohol use. 300
- The depiction of intoxication in popular television shows and movies has been linked with positive alcohol-related expectancies, intentions to drink and normative beliefs around drinking, as well as alcohol use and early-onset drinking. 301

3.8 Impacts on alcohol-related behaviours and consumption

Over the last few decades, numerous studies have been published which examine the relationship between alcohol advertising, in various forms, and alcohol consumption. This research includes four main study designs: econometric studies which use country level data as ecological studies; cross-sectional studies of individuals; longitudinal studies of individuals; and systematic reviews of the literature. Box 7 summarises the key strengths and limitations of the various approaches.

**Box 7: Econometric research, cross-sectional studies, and longitudinal studies**

Econometric studies consider the relationship between alcohol advertising expenditure and total alcohol sales or per capita alcohol consumption, which suggests that alcohol advertising has an effect on brand choice but little or no effect on consumption. 302,303 While econometric studies can show broad relationships and trends over time, they have several limitations. They exclude expenditure on below-the-line advertising, underestimating the advertising effort since much alcohol advertising expenditure has shifted to channels such as digital media and sponsorship. 304,305 Use of national data on advertising expenditure with little aggregated change is likely to reveal no effect on consumption. They focus on the total population, concealing the differential effect that alcohol advertising may have on vulnerable population subgroups such as adolescents. 306,307 Third, confounding variables can...
sometimes be difficult to predict and statistically control. Ecological studies comparing groups rather than individuals are suitable for making inferences but not for proving causality.

Cross-sectional studies examine the relationship between individuals’ self-reported exposure to advertising and their attitudes towards alcohol advertising and/or alcohol drinking behavior at one specific point in time. While these studies can demonstrate a positive association between exposure to alcohol advertising and consumption, they do not demonstrate causality, as they cannot show whether exposure preceded drinking uptake and suffer from recall bias.

Longitudinal studies measure people’s differing self-reported natural exposure to alcohol advertising at time A and examine how this relates to alcohol drinking outcomes at a future time B. Longitudinal studies are susceptible to the effects of chance, selection and measurement bias and confounders, although these can be minimised at both the design and analysis stage of a study. Provided that longitudinal studies are well designed, conducted and analysed, they can demonstrate probable relationships, providing the strongest evidence about the long-term effects of exposure to alcohol advertising on drinking behavior, but are also at risk of recall bias.

Systematic reviews focus on collating, critically appraising, and summarising the findings of all existing research studies on an issue. Many systematic reviews also include a meta-analysis which pools the statistical findings from individual findings to create a weighted ‘average’ assessment of the relevant effects. Systematic reviews generally follow agreed protocols which specify how they should be conducted. Systematic reviews rely on published material which can favour positive results. Nelsen (2010) suggested a method to adjust for publication bias in such reviews and recommends further research before drawing strong inferences from any associations.

Econometric studies
Grube (2003), an author cited in some of the industry submissions received on the Draft Report, provides a review of ecological studies examining links between alcohol advertising and alcohol use. He begins with a discussion of studies that have focused on the relationship between alcohol advertising expenditures and per capita alcohol consumption, and/or alcohol related harms. While there is some similarity in approach among the various studies, there are also some key differences including: the use of regional data versus national data; a focus on lagged effects rather than immediate effects; and degree of control for potential confounders.

Grube states that overall, the results are mixed. The studies that have found a positive correlation have tended to show impacts on some types of alcohol but not others and/or have found small positive effects. By contrast, several studies have shown no effect or a tendency towards


changes in the pattern of consumption of individual beverage types rather than in overall per capita consumption. Hastings et al\textsuperscript{314} also note that while some studies by Saffer and colleagues show a significant relationship between alcohol advertising expenditure and per capita alcohol consumption in many countries, several other studies suggest that alcohol advertising has no effect (or a minimal effect, when compared to other variables) on aggregate alcohol consumption.

In the same paper as above, Grube also reviews ecological studies that have studied the relationship between alcohol advertising bans and per capita alcohol consumption. Grube notes that a study by Saffer of 17 European and North American countries suggested that countries with partial advertising restrictions had alcohol consumption rates that were about 16\% lower than countries with no restrictions, and countries with complete restrictions had consumption rates that were 11\% lower than countries with partial restrictions. Another study by Saffer and Dave (2006)\textsuperscript{315} also indicated that both partial bans and complete bans on alcohol advertising may reduce consumption and they estimated that each added restriction on alcohol advertising (e.g. disallowing spirits advertising on television) reduced consumption by 5 to 8\%.

On the other hand, studies by Nelson and Young (2001)\textsuperscript{316} concluded that a total ban on broadcast alcohol advertising had no measurable effects on alcohol consumption, cirrhosis deaths, or traffic fatalities, although the number of countries with such bans was quite small. By contrast, significant associations were found between per capita consumption and unemployment levels, tourism, and an ageing population. Grube concludes that in general, the findings from the ecological studies provide little consistent support for a relationship between advertising restrictions and aggregate alcohol consumption or problems. He notes however, that they do provide evidence that alcohol advertising may lead to changes in brand or beverage preferences without increasing total consumption.

**Cross-sectional studies**

A 2007 cross-sectional survey of 2,125 US students aged 11-13 years found that ownership of alcohol branded promotional items among adolescents increased the likelihood of drinking. Students who owned at least one alcohol promotional item were 3 times more likely to have ever tried drinking and 1.5 times more likely to report current drinking than students without such items.\textsuperscript{317}

The University of Sheffield 2008 review\textsuperscript{318} of both cross-sectional and longitudinal studies noted the following:

- Four US cross-sectional studies show that ownership of alcohol-branded merchandise is associated with initiation or current drinking.
- Ten US cross-sectional studies show that exposure to print media and outdoor alcohol advertising increases the likelihood of early onset of alcohol drinking and influences the level of drinking.

More recently, a 2012 cross-sectional survey of 2,538 adolescents aged 13 to 14 years in New Zealand found that:

- exposure to all forms of alcohol marketing was associated with drinking;
- the level of impact was correlated with the level of active engagement, for example, owning merchandise and downloading screensavers are stronger predictors of drinking;


\textsuperscript{317} Hurtz SQ et al. (2007) The relationship between exposure to alcohol advertising in stores, owning alcohol promotional items, and adolescent alcohol use. *Alcohol and Alcoholism* 42:2 143 – 149.

engagement with web-based marketing increased the odds of being a drinker by 98%;
engagement with traditional marketing increased the odds of being a drinker by 51%;
awareness of each alcohol marketing channel increased the odds of being a drinker by 8%;
establishing a brand loyalty at age 13 to 14 years was related to future drinking intentions and
to consuming larger quantities. Brand loyalty was also associated with more frequent alcohol
consumption (1.65 times more drinking occasions per year) and 86% more alcohol consumed
on a typical occasion. 319

A 2011 cross-sectional survey of 1,113 Australians aged 12-17 years assessed levels of
exposure to alcohol advertising through a range of media channels ranging from 94% on
television to 51% as promotional material. This study concluded that the current levels of
adolescent exposure to alcohol advertising in Australia are associated with drinking patterns:
60% of adolescents exposed had initiated alcohol consumption; 38% indicated that they had
regularly consumed alcohol in the previous 12 months; and 44% had consumed alcohol
recently.320

Longitudinal studies
While initial studies used cross-sectional survey designs, allowing for statements of correlation to
be made, more recent studies have used longitudinal prospective cohort designs.

A longitudinal US study of 6,522 adolescents aged 10 to 14 years by McClure at al. found that
ownership of alcohol-branded merchandise was independently associated with attitudinal
susceptibility to, as well as with initiation of, drinking and binge drinking.321 McClure et al.
(2006)322 had examined a possible association between the ownership of ABM and initiation of
drinking in adolescence among middle school students in New Hampshire and Vermont. The
study found that adolescents aged 10 to14 who owned ABM were 1.5 times more likely to have
initiated drinking in the last one to two years than those who did not own ABM after other several
other potential confounding variables were controlled for.

Snyder et al. (2006)323 used objective measures of advertising expenditures from industry data,
which were largely on television advertising expenditure, to complement the self-reported data.
Their longitudinal study found increased consumption with increases in exposure to advertising.
Additionally, youths younger than 21 who were more exposed to advertising showed increases in
drinking levels in their later 20s. Greater alcohol advertising expenditures in a market were
related to both greater levels of youth drinking and steeper increases in drinking over time. This
study used a large national sample in the United States for telephone surveys in 1999 and 2001.

Collins et al. (2007) describe a longitudinal study that examined the effects of exposure to alcohol
advertising across a range of media among grade 6 students in South Dakota elementary
schools on their grade 7 drinking behaviour and intentions to drink. The study found that high
levels of exposure to advertising through multiple sources significantly increased the likelihood of
intention to drink and actual drinking at grade 7, when other factors were controlled for, compared
to lower levels of exposure to multiple sources of advertising.324

320 Jones SC, Magee CA (2011) Exposure to Alcohol Advertising and Alcohol Consumption among Australian Adolescents. Alcohol
and Alcoholism 46(5): 630-637.
324 Collins RL, Ellickson PL, McCaffrey D, Hambarsoomians K (2007) Early adolescent exposure to alcohol advertising and its
relationship to underage drinking. The Journal of Adolescent Health : Official Publication of the Society for Adolescent Medicine, 40(6):
527–34. doi:10.1016/j.jadohealth.2007.01.002
Connolly et al. (1994) examined data obtained from a longitudinal study of growth and development undertaken in New Zealand which followed 1,661 babies born in Dunedin during 1972. The researchers found a significant association between the recall of commercial advertisements at age 15 and the maximum amount and the average amount of beer consumed at age 18 (but not other types of alcohol, or other types of advertising). By contrast, the number of commercial advertisements recalled at age 13 years was negatively associated with frequency of women's beer consumption at age 18 years. There was also a negative association between recall of alcohol portrayal in entertainment at age 13 years with the maximum amount of beer consumed by 18-year-old females. The authors concluded there was some evidence that young men's experiences of commercial alcohol advertising when younger were related to beer consumption when older.  

Similarly, in their prospective cohort study of adolescents in New Jersey, USA, Warner and White (2003) found that early onset of drinking (before age 11) was a risk factor for future problem drinking compared to late onset drinking regardless of whether the drinking took place at a family gathering or outside a family gathering, although the risk was relatively greater when early first use occurred outside a family gathering compared to at a family gathering.  

Systematic reviews

While each of these studies provides evidence of an effect of alcohol advertising on adolescent alcohol consumption, recent systematic reviews provide even more definitive information. As noted, systematic reviews allow researchers to collate information from multiple studies, critically assess each study, and draw conclusions about patterns and trends across the body of research on a topic. In their 2008 review of the effects of specific alcohol promotion types, which included the results of 12 studies conducted in US, the UK, New Zealand and Australia, the University of Sheffield concluded that there is moderate and consistent evidence that point-of-sale promotions are likely to affect the overall consumption of underage drinkers, binge drinkers and regular drinkers. The University of Sheffield review (2008) of the effects of alcohol promotion noted the following:  

- Based on a review of 31 studies conducted in several countries, there is evidence, including from the 10 longitudinal studies included in this review, that exposure to broadcast media alcohol advertising (television, films, radio, music and music video as well as the Internet) is associated with early initiation of drinking as well as drinking patterns.  

Smith and Foxcroft published an analysis in 2009 of the collective data from seven studies following up 13,255 young people aged 10 to 26 years. Their report on the effects of advertising generally was based on Gallet’s 2007 meta-analysis of 132 studies and Smith and Foxcroft’s 2007 review of seven cohort studies. The authors acknowledged the limitations of such studies but believed there was conclusive evidence of a small but consistent association of advertising with consumption at the population level, and with consumption by young people at the individual level. They found an association, but not causality, between exposure to alcohol advertising and promotion and subsequent alcohol consumption. They noted the confounding potential was variably handled among the studies. For three of the studies, a temporal relationship between exposure and drinking was shown, and a dose response between amount of exposure and frequency of drinking was demonstrated.

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Anderson’s 2009 review,330 of 13 longitudinal studies concluded that there is a strong association between exposure of adolescents to alcohol promotion and the likelihood that this group will initiate alcohol consumption or increase their drinking if already initiated. Both these reviews acknowledged the potential for publication bias.

A common stream of research has been on alcohol branded merchandise (ABM). This research includes a mix of cross sectional and longitudinal research. Overall, there is strong evidence demonstrating a relationship between ownership of alcohol-branded promotional items and drinking patterns among adolescents, particularly underage drinkers and binge drinkers,331,332,333,334,335 and the intensity of involvement with alcohol brands has been strongly associated with drinking patterns.336

Critique
The Agency notes that submissions received from the Australian Association of National Advertisers, Diageo, The Brewers Association of Australia and New Zealand, Distilled Spirits Industry Council of Australia Inc., and the Winemakers Federation of Australia question the assertion that alcohol advertising influences children and adolescent’s consumption of alcohol, contributing to early and/or harmful drinking. These submissions cite the works of Grube, Nelson and others who have critiqued this research base.

In general, Grube tends to favour a cautious interpretation of the literature. For example in one review337 he acknowledges that many cross-sectional survey studies have found small, but significant, positive relationships between reported exposure to alcohol advertising and drinking beliefs and drinking behaviours among young people. In a slightly later review he states: “In general, research on the impact of alcohol advertising on actual drinking behavior has been mixed, and observed effects have been small. In addition, many of the cited studies are subject to recall bias. Furthermore, many studies have been cross-sectional, making it difficult to draw definitive conclusions about the relationship between advertising and alcohol consumption (Grube 2004).”338 Finally, in Grube and Waiters339 he concludes that the research confirms small but consistent evidence that alcohol advertising can create favourable attitudes and beliefs towards alcohol among adolescents and increase the likelihood they will start drinking, although the reviewers caution that the evidence is far from conclusive.

Nelson is generally more definitive in his concerns about the research base and the conclusions drawn from it. For example, in addition to his critiques of ecological studies, Nelson340 suggests

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that most longitudinal studies on alcohol and advertising are beset by one or more limitations including: selection bias; omission of relevant covariates; measurement errors caused by self-report; inconsistent and ill-defined exposure variables; inconsistent and weak positive results; and publication bias.

In a similar vein, Aspara and Tikkanen\(^{341}\) review 16 of the most commonly cited studies on the association between advertising exposure and adolescent alcohol consumption and critique them against the methodological standards routinely applied in scientific marketing and consumer research as opposed to the standards of ‘alcohol and addiction researchers’. While the authors note a number of strengths in the studies examined, including their use of prospective cohort design, participant selection and control for confounds such as peer and family influence, they also express concern about a number of perceived limitations. The authors’ main concern revolves around these studies’ reliance on self-report surveys to measure the exposure and outcome variables of interest potentially leading to: recall bias; common methods bias; and/or command effects (such as social desirability).

Others concerns focus on: attrition rates; the influence of outliers; and the definition of alcohol advertising exposure used in some studies, which they argue is too broad; failure to control for other confounding variables such as pricing, and the general regulatory and cultural environment; the generally small effect sizes noted; and incomplete presentation of key statistics. The authors suggest that these flaws affect the studies’ findings and conclude there is insufficient evidence to support the contention that alcohol advertising increases alcohol consumption by adolescents.

Despite this controversy, it is salient to note that the literature on this issue has been reviewed by various independent groups commissioned by governments around the globe to assist them with formulating relevant policy. For example, in 2004, the UK Academy of Medical Sciences noted that the unintended effects of otherwise legitimate alcohol marketing strategies include "underage drinkers starting to drink, regular young drinkers becoming prone to binge drinking patterns and established young drinkers accruing a heavy level of consumption which can place them at risk of harms".\(^{342}\) The University of Sheffield reviewed the status of research in this area in 2008 for the UK Department of Health as indicated above. Likewise, in Europe, Babor and colleagues,\(^{343}\) and in Australia the AMA, have conducted comprehensive reviews of the evidence which confirms a relationship between high levels of alcohol advertising exposure and adolescent alcohol use. Indeed, based on these analyses, Jernigan\(^{344}\) argues that there is consistent evidence that youth exposure to various forms of alcohol advertising (TV, print, billboards and other outdoor structures and at the point of sale, and the ownership of alcohol branded merchandise) is associated with underage drinking.

Roche at al. (2007) concluded that it is the cumulative nature of alcohol advertising in its various forms that significantly influences adolescents’ decisions about drinking and their expectancies related to alcohol use.\(^{345}\) These influences include their perceptions of alcohol, their initiation to drinking, what they drink, how much and how often they drink, and where and with whom they


drink. One study noted: “The effects of exposure seem cumulative and, in markets with greater availability of alcohol advertising, young people are likely to continue to increase their drinking as they move into their mid-20s, whereas drinking decreases at an earlier age in people who are less exposed to it.”

It is also worth noting that a protocol (2013) published for a Cochrane Collaboration review of the evidence for restricting or banning of alcohol advertising to reduce alcohol consumption in adults and adolescents highlights that the link between advertising and consumption is well supported by the evidence but further research is necessary to evaluate the effectiveness, possible harms and cost-effectiveness of reducing or banning advertising. The authors argue that small reductions to population exposure to large risks would yield substantial health gains.

3.9 Other Risk Factors

The Agency notes that submissions received from industry groups in response to the Issues Paper and the Draft Report highlight that young people drink for a variety of reasons and that parental and peer influences are probably more important than alcohol advertising.

Indeed, several other risk factors have been identified that influence young people’s patterns of alcohol use. Commonly cited risk factors include: genetic predisposition; personality characteristics such as extraversion, sensation seeking, disinhibition and nonconformity; comorbid low self-esteem, depression and/or anxiety; family and parental influences; peer influences; and socioeconomic and cultural influences. Guerrini et al. (2014) highlight the complex interplay of genetic and environmental factors that influence the development of alcohol use disorders. While certain genetic characteristics appear to influence the development of alcohol use disorders, a range of external environmental factors, such as parental involvement and monitoring, peer drinking patterns and stress can modulate gene expression and play a very influential role. Importantly, the interplay of genes and environment varies across different stages of development. Adolescence and young adulthood are a particularly high risk period for the development of future alcohol related problems so reducing negative environmental influences at this critical time is essential.

Family and parental influences have been well studied and are clearly important. The Australian Institute of Family Studies undertook a comprehensive review of parental influences on adolescent alcohol use in 2004 for the Federal Department of Health and Ageing. The reviewers note the widespread use of alcohol among Australian adolescents and its associated significant harm. The review highlights the importance of parental influences on the pattern of adolescent alcohol use in particular parent–adolescent relationship quality, parenting style, parents’ own attitudes and behaviours towards alcohol use, and parental monitoring of adolescent alcohol use. The review also noted that peer influences were quite powerful. Peer influences work in various ways. For example, social norms theory proposes that young people’s use of alcohol may be influenced by their perceptions of how others think and behave. The theory predicts that

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overestimating other’s drinking behaviour will increase one’s own drinking.\textsuperscript{351}

Comorbid mental health problems appear to be another important risk factor. Bonomo et al.\textsuperscript{352} (2001) found that drinking was commonplace among Victorian adolescents aged 16-17 as were alcohol related harms such as injury and risky sexual activity. Not surprisingly, risk factors for accidents/injury included high frequency drinking, high dose drinking and for risky sexual activity included high frequency drinking. However it was also noted that some adolescents’ alcohol misuse occurred in the context of comorbid antisocial behaviour and/or depression/anxiety. In a similar vein, Best et al. (2006)\textsuperscript{353} found that excessive drinking among schoolchildren aged 14-16 years in South London, was often part of a constellation of problem behaviours among adolescents and that excessive drinking, illegal drug use, truancy and other behavioural problems may constitute a pattern of counter-conformity variables which interact and potentially reinforce each other.

Bryden et al. (2013)\textsuperscript{354} conducted a systematic review of studies that examined the relationship between alcohol consumption and local community social factors such as socioeconomic deprivation, social disorder and crime, social capital and community norms about alcohol use. Across the 54 papers reviewed, the researchers found that associations between alcohol use and deprivation, poverty, income, unemployment, social disorder and crime were inconclusive but there was some indication that high social capital in a community was associated with lower alcohol use.

Roche and colleagues\textsuperscript{355} undertook an extensive review of drinking habits of young people in Australia and the multitude of cultural factors that impacted on their views and use of alcohol. The review examines the role of: culture and youth culture more specifically; social trends and interpersonal factors, in particular parental, familial and peer influences; leisure and lifestyle; market forces; and structural, legislative and regulatory factors. While the review highlights the complex interplay of factors which shape adolescent and youth drinking behaviours, they note that alcohol marketing is an important factor in its own right that impacts on young people’s attitudes, beliefs, intentions and behaviours. Indeed, the summary of the chapter on market forces concludes: “alcohol ads influence non-drinkers to start drinking; exposure to ads influences the level of drinking in established drinkers; and drinking generates positive attitude towards alcohol ads (a two-way relationship). In addition, by embedding alcohol products within youth culture, alcohol companies interact with young people and, thus, proactively contribute to the overall composition of that culture. Overall, new marketing techniques are grounded in social science theories of identity formation and consumption. This is shown in the pervasive multiplicity of avenues, formats and media used to promote particular brands that reach beyond raising awareness of a particular product to incorporating the product into the normal culture of a targeted group.”

Finally, it is important to note that while adolescent alcohol use is influenced by a range of proximal and distal individual, family, peer and social factors, in the majority of cross-sectional and longitudinal studies on the issue, these additional ‘confounding’ factors – in particular

parental and peer influences\textsuperscript{356} – have been controlled for and an independent relationship between alcohol advertising exposure and alcohol consumption has been found to exist.

3.10 Conclusion

Adolescents are influenced by alcohol promotions through a range of channels to the potential detriment of their health. The various avenues range from strategies to increase alcohol brand awareness; to create positive attitudes and expectations towards alcohol use and intentions to drink; to engage with the brand, to reinforcement of early initiation of alcohol consumption as part of the Australian culture.

Most alcohol marketing strategies currently used in Australia reach adolescents, and adolescents are exposed to about the same level of alcohol advertising as are young adults. The multiple strategies used in alcohol advertising – both traditional media and digital media - make it difficult to measure total exposure: existing measures are likely to be an underestimation of the total advertising effort.

Early initiation and the greater risk of harmful drinking in adolescence and beyond are harms requiring limits on exposure to advertising. It is becoming increasingly difficult to prevent exposure of children and adolescents to alcohol advertising because of the multiple and cumulative nature of the industry’s marketing strategies. Those strategies amenable to controls should be considered for further efforts to limits exposure of children and adolescents to advertising.

CHAPTER 4: REGULATION OF ADVERTISING AND ALCOHOL ADVERTISING IN AUSTRALIA

Key Points

- The advertising of alcohol is regulated in some way in almost every country around the world. While there is diversity across jurisdictions, there are many common features based on agreed best practice frameworks. The World Health Organization’s (WHO) Global Strategy to Reduce the Harmful Use of Alcohol identifies the marketing of alcohol products as one of ten target areas for attention by nation states.

- The framework for Australia’s advertising conduct, including for alcohol, has regulatory, co-regulatory and self- and quasi-regulatory elements.

- A primary aim of Australia’s alcohol regulatory framework is to protect children and adolescents from exposure to unsuitable content such as alcohol advertising.

- The regulation of advertising, including alcohol advertising, is largely undertaken through a range of industry codes of practice; many of these codes are based on a common foundation created internationally.

- Complaints about the content of alcohol advertising are handled primarily by the Alcohol Beverages Advertising (and Packaging) Code (ABAC) but content issues relating more broadly to matters such as taste and decency are separately and concurrently considered by the Advertising Standards Bureau (ASB).

- There is limited regulation of the placement (where and when) of alcohol advertising. There are some placement restrictions in the Children’s Television Standards of the Australian Communications and Media Authority (ACMA) and in the Commercial Television Industry Code of Practice (CTICP), a co-regulatory industry code registered with ACMA.

- The current system is largely complaints driven, although voluntary pre-vetting is used for a certain range of advertising and promotions of alcohol.

4.1 Introduction

Regulation is present in our society in a number of different forms, commonly to regulate economic relationships between individuals and corporations, between one or more corporations, or relationships between governments and corporations and/or individuals. Regulation may limit or prohibit conduct, including in areas of business licensing, environment and hazard management, and employment. Regulation may also regulate the availability or promotion of products or services, which citizens (primarily through their government) have deemed to be harmful or conducive to harm. For example, certain products or activities have been prohibited entirely for supply or promotion purposes; others have their advertising and availability to consumers restricted – such as Schedule 4 drugs (prescription drugs), gambling or alcohol.
The 2014 Australian Government Guide to Regulation defines the different forms of regulation as follows:

**Self-regulation** – industry-written rules and codes of conduct set up to regulate the behaviour of business or community organisations that are enforced by the industry or sector itself.

**Quasi-regulation** – covers a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of explicit businesses, community organisations and individuals. Examples include codes of practice developed with government involvement, guidance notes, industry government agreements and accreditation schemes.

**Co-regulation** – a solution where industry develops and administers its own arrangement and government provides the underpinning legislation to enforce it. Such legislation can set out mandatory standards, but may provide for enforcement through a code overseen by industry.

**Regulation** – any ‘rule’ endorsed by government where there is an expectation of compliance. This includes legislation, regulations, quasi-regulations and any other aspect of regulator behaviour which can influence or compel specific behavior in business, community organisations or individuals.

Alcohol advertising sits within the overall framework of advertising controls within Australia, comprising a combination of regulatory approaches. The bulk of Australia’s alcohol advertising regulatory framework might well be described as quasi-regulatory because of government involvement. However, the distinction is not always clear-cut and the system has many self-regulatory elements. In essence this is a system of industry codes and complaints structures, administered by industry bodies, which at various times government seeks to influence either through some form of government approval and/or registration of the code, possibly a nominee on a relevant management committee, and/or through periodic government review.

This chapter describes the different modes of advertising regulation, to provide context for the recommendations made in Chapter 6.

### 4.2 International standards and guidelines on advertising and self-regulation

The International Chamber of Commerce (ICC) Consolidated Code of Advertising and Marketing Communication Practice forms the basis of the self-regulation advertising codes by industry advertising standards organisations in over 35 countries.

The ICC Code covers all forms of advertising and marketing in all media and is intended to achieve the following objectives:

- to demonstrate responsibility and good practice in advertising and marketing communications across the world;
- to enhance overall public confidence in marketing communications;
- to respect privacy and consumer preferences;
- to ensure special responsibility as regards marketing communications and young people;

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to safeguard the freedom of expression of those engaged in marketing communications (as embodied in article 19 of the United Nations International Covenant of Civil and Political Rights);

- to provide effective practical and flexible solutions;

- to minimise the need for detailed governmental and/or inter-governmental legislation or regulations.\(^{359}\)

The ICC has defined advertising and marketing broadly as well as the scope of messages intended to be covered by its Code:

“the term ‘marketing communications’ includes advertising as well as other techniques, such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any communications produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour.”\(^{360}\)

Importantly for the credibility of marketing self-regulation, the ICC has not delineated any media specificity in its definition; this position on ‘media neutrality’ as a result automatically picks up the newer forms of digital marketing, such as on Facebook, in which advertisers are operating. Stephen Loerke, Managing Director of the World Federation of Advertisers, has reaffirmed this universality of coverage of marketing communications in an editorial arising from an Australian self-regulatory determination of a complaint about Diageo and Facebook:

*I believe that this case has fundamental lessons for us all and helps highlight the key challenges that we need to address.*

*First, social media is becoming a test case for the continued credibility of self-regulation. Consumers and policy makers won't believe that we are serious about self-regulation unless we can demonstrate that the same standards we apply to traditional media also apply to evolving channels such as social media.*

*That basic principle is enshrined in the global marketing code of the International Chamber of Commerce, which clearly establishes that self-regulation applies to “all advertising and other marketing communications” – no exceptions.*\(^{361}\)

The ICC Commission on Marketing and Advertising has developed a new framework for alcohol advertising, “to increase existing confidence in the self-regulatory approach even further, and ensure that it reaches across all markets”; the framework, released in March 2014,\(^{362}\) has been based on the International Centre for Alcohol Policies (ICAP), *Guiding Principles: Self-Regulation of Marketing Communications for Beverage Alcohol*, which is similar in content to the ABAC.\(^{363}\) The ICAP is supported by major international alcoholic beverage producers.

In Australia, the advertising industry’s main self-regulatory complaints-handling organisation, the Advertising Standards Bureau (ASB), administers a variety of self-regulatory codes of the Australian Association of National Advertisers (AANA), such as the AANA Code of Ethics and AANA Code for Advertising & Marketing Communications to Children.\(^{364}\) While not explicit in all instances, many of the AANA Codes are aligned to the ICC’s international work.

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\(^{361}\) World Federation of Advertisers website. There are no exceptions. (accessed 14 January 2014).


ASB is a member of the European Advertising Standards Alliance (EASA). EASA describes itself as “the single authoritative voice on advertising self-regulation issues.” Twenty-four national European-based industry bodies are members of EASA, as well as 7 non-European ones (from Canada, New Zealand, South Africa, Brazil, Chile, India and Australia). EASA has also established the International Council on Advertising Self-Regulation.

The EASA provides a range of best practice guides for industry self-regulatory advertising schemes such as how complaints structures should be established for handling public complaints on advertisements that allegedly do not adhere to the industry standards, effective sanctions and enforcement including the publication of decisions, provision of advice and training to industry practitioners in order to raise standards, pre-emptive monitoring of marketing, pre-clearance services and promotion of the self-regulatory system.

The EASA formally committed itself, in the EASA Charter in 2004, to the following principles:

1. Comprehensive coverage by self-regulatory systems of all forms of advertising and all practitioners.
2. Adequate and sustained funding by the advertising industry proportionate to advertising expenditure in each country.
3. Comprehensive and effective codes of advertising practice based on the globally accepted codes of marketing and advertising practice of the International Chamber of Commerce (ICC) applicable to all forms of advertising.
4. Broad consultation with interested parties during code development.
5. Due consideration of the involvement of independent, non-governmental lay persons in the complaint adjudication process.
6. Efficient and resourced administration of codes and handling of complaints thereon in an independent and impartial manner by a self-regulatory body set up for the purpose.
7. Prompt and efficient complaint handling at no cost to the consumer.
8. Provision of advice and training to industry practitioners in order to raise standards.
9. Effective sanctions and enforcement, including the publication of decisions, combined with efficient compliance work and monitoring of codes.
10. Effective awareness of the self-regulatory system by industry and consumers.

These principles are given effect in the EASA Best Practice Self-Regulatory Model, though principle 4 – broad consultation with interested parties in code development – is de-emphasised in the model.

In 2006, DG-SANCO (the European Union Health and Consumer Protection Directorate-General) held a Round Table of NGO, government and EASA representatives to discuss the EASA self-regulation model and to arrive at a clearer definition of such a model. A variety of determinants of effectiveness are outlined in the report of the Round Table including the need for sanctions (the minimum sanction being withdrawal of advertising copy), coverage (which must include all marketing communications in any medium or distribution channel), and independence (which the meeting suggested deserved reinforced attention by EASA including the ‘effective contribution of
the stakeholders to the elaboration of codes’ and the need for independent persons on the adjudication bodies).370

The EASA best practice model formed the basis of a regional APEC dialogue in 2012 entitled Dialogue on Advertising Standards – Principles and Practice;371 the dialogue was an initiative of the Australian Standards Bureau.

In a similar vein to the EASA principles, Brujin and colleagues from the Dutch Institute for Alcohol Policy and the European Centre for Monitoring Alcohol Marketing,372 state that the key features of an effective regulatory system include: a supporting legal context; commitment of all stakeholders; transparency; a mandatory pre-screening system; an effective complaints system; independent advertising evaluation committee; effective sanctions; strong monitoring; and coverage and flexibility.

4.3 Alcohol advertising regulation in overseas jurisdictions

The World Health Organization’s (WHO) Global Strategy to Reduce the Harmful Use of Alcohol was endorsed by the Sixty-third World Health Assembly in May 2010. The Strategy identifies that “member states have a primary responsibility for formulating, implementing, monitoring and evaluating public policies to reduce the harmful use of alcohol”.373

The Strategy identifies 10 recommended target areas for national policy options and interventions and the marketing of alcoholic beverages is one of these (refer Box 8 below).

| Box 8: WHO Global Strategy to Reduce the Harmful Use of Alcohol 2010 |
| Marketing of Alcoholic Beverages: for this area policy options and interventions include: |
| (a) setting up regulatory or co-regulatory frameworks, preferably with a legislative basis, and supported when appropriate by self-regulatory measures, for alcohol marketing by: |
| (i) regulating the content and the volume of marketing; |
| (ii) regulating direct or indirect marketing in certain or all media; |
| (iii) regulating sponsorship activities that promote alcoholic beverages; |
| (iv) restricting or banning promotions in connection with activities targeting young people; |
| (v) regulating new forms of alcohol marketing techniques, for instance social media; |
| (b) development by public agencies or independent bodies of effective systems of surveillance of marketing of alcohol products; |
| (c) setting up effective administrative and deterrence systems for infringements on marketing restrictions. |

Globally, countries use a wide range of policies to control alcohol advertising and marketing.374 Approaches in other jurisdictions span the full spectrum of regulatory approaches from outright

bans and statutory regulations, to co-regulation and industry self-regulation. The most common approach is voluntary self-regulation.\textsuperscript{375} Of 132 countries reporting to the World Health Organization in 2008, 72 reported some restriction on alcohol advertising, with 60 reporting no restrictions. The greatest restrictions were in Eastern Mediterranean, Nordic and South-East Asian countries.\textsuperscript{376} Few countries have a complete ban on alcohol advertising and promotion, however there are a number of jurisdictions in which legislation restricts advertising in specific media and/or of particular beverages. In an examination of 106 countries surveyed, there was a statistically significant shift towards more restrictive marketing measures between 2002 and 2008.\textsuperscript{377} Generally speaking, countries with higher life expectancy, higher per capita income, a higher share of the population that is young, and with a majority Muslim population, are significantly more likely to have broad ranging alcohol marketing restrictions in place than other countries.\textsuperscript{378}

Restrictions include: the types of alcohol that can be marketed through each media; restrictions on placement, duration or saturation (e.g. percentage of underage youth in the audience, watershed times); and content. Importantly, most of the regulation is focused on ‘traditional’ media such as television, radio, print and outdoor advertising.\textsuperscript{379} Another touted approach to television restriction includes ‘V-chip filters’ which would enable parents to limit children’s exposure to alcohol advertising. However, parental lock-out controls are only in limited use on subscription television.\textsuperscript{380} By contrast, the regulation of alcohol marketing through new media (e.g. social media) and through new products is less well advanced. Likewise, point of sale, product placement, branded events and sponsorship of entertainment and sports are often outside the scope of many countries’ regulations.\textsuperscript{381} For example, of all WHO Member States, 27% indicated they had either a full or partial ban on alcohol industry sponsorship of sport for at least one beverage category, 5% reported self-regulation, and 44% reported no regulation.\textsuperscript{382} Sponsorship can be quite extensive, for example sports sponsorship may be associated with naming rights, pourage rights, billboard placement, and sponsor credits and advertising on televised broadcasts.\textsuperscript{383}

While self-regulation is commonplace, there is criticism, however, that self-regulation approaches invariably lead to under-regulation and under-enforcement. Common failings of self-regulation systems include: the complaint driven nature of the process; the subjective nature of code interpretation; the potential for complaint review delays; lack of representativeness or independence of panel review members; and the limited array of sanctions available.\textsuperscript{384}

Examples of alcohol advertising regulation internationally

\begin{itemize}
\item \textsuperscript{376} World Health Organization (2011) Global Status Report on Alcohol and Health. WHO Library Cataloging-in-Publication Data.
\item \textsuperscript{377} Babor T et al. (2010) \textit{Alcohol: No Ordinary Commodity in Research and Public Policy}, 2nd Edition, UK: Oxford University Press.
\item \textsuperscript{380} Moore R JL. (2010) Block the Insanity: Leveraging Cable Franchising Authority to Grant Parents the Ability to Block Advertising Targeting Young Children (Vol. 510, pp. 135–168).
\item \textsuperscript{382} World Health Organization (2011) Global Status Report on Alcohol and Health. WHO Library Cataloging-in-Publication Data.
\end{itemize}
As noted, advertising regulation approaches vary between countries. Some countries have significant regulation or prohibition of elements of alcohol advertising while others have less. The difference in approaches is particularly evident in relation to sanctions where, for example, the self-regulatory structures have mainly (or only) withdrawal or modification of marketing as their available tool.

Examples of government regulation
Many European countries have enacted legislation that restricts alcohol advertising to varying degrees. For example, Austria, Belgium, Finland, France, Germany and Ireland have banned the advertising of spirits on television. France's alcohol advertising legislation, Loi Évin, is one of the more restrictive schemes in Europe and bans alcohol sponsorship and advertisements on television and cinema. The legislation restricts alcohol advertising to billboards, some radio and print media for adults, and applies to alcohol advertising on the internet. Targeting of young people is prohibited. The advertisements must only contain information about the product, such as its strength and place of production, and a health warning must be included. There are significant monetary sanctions for infringements of the law.

Examples of combined self- and co-regulation
The United Kingdom (UK) Advertising Standards Authority (ASA) is responsible for enforcing the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing Code (which is self-regulatory) and the UK Code of Broadcast Advertising (which is co-regulatory). The United Kingdom's Office of Communication (Ofcom) is the regulatory body responsible for broadcast media but relies on the ASA to enforce the broadcast advertising codes. For broadcast advertisements, the responsibility to withdraw, change or reschedule a commercial lies with the broadcasters and it is a condition of their broadcast licences to enforce ASA rulings.

The ASA has a range of sanctions available to it. In the first instance, the publishing of an adjudication is generally sufficient for ensuring compliance (removal or modification of an advertisement). Through the Committee of Advertising Practice (CAP), which maintains the Codes, the ASA or CAP can: include the advertiser on Ad Alerts which requests media outlets to refuse advertisements by the advertiser; be removed by a CAP member from certain trading privileges (for example the Royal Mail can withdraw its bulk mail discount making a direct marketing campaigns prohibitive); require the advertiser to have its advertisements pre-vetted; and/or add the advertiser to its public list of non-compliant on-line advertisers. In cases of persistent non-compliance with ASA rulings, broadcasters risk being referred to Ofcom which can impose fines and even withdraw their license to broadcast.

The content of the Alcohol components of both the Non-Broadcast and Broadcast advertising codes is not dissimilar to the Alcohol Beverages Advertising Code in Australia. In addition, the UK's Portman Group (established by alcohol producers) is an industry-run self-regulatory body dealing with a variety of matters not covered by the ASA or Ofcom; its "Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks" covers marketing practice that falls outside of the codes detailed above.

Additionally, the UK has developed a voluntary labelling scheme (the first in Europe) in conjunction with Health officials. A target was set (by December 2013) for drinks companies to

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display the number of units (standard drinks), the alcohol guidelines (equivalent to the Australian NHMRC Guidelines) and a pregnancy warning on 80% of drinks containers on shelves in off-trade retailers. No assessment of the scheme is yet available.

Ireland, which has a system of mixed regulation and self-regulation of alcohol advertising, is proposing to enhance this with a package of measures designed to better address alcohol misuse.

Currently, the Advertising Standards Authority for Ireland’s (ASAI) Code of Standards for Advertising, Promotional and Direct Marketing incorporates provisions for alcohol marketing communications in its self-regulatory code. The code is largely based on the standard international model. Much more important are the legislative provisions for broadcast media and the voluntary marketing and sponsorship codes agreed with health authorities.

The General Commercial Communication Code of the Broadcasting Authority of Ireland (BAI) contains a range of provisions in respect of alcohol; importantly, it prohibits the advertising of spirits (products which contain alcohol content of 25% alcohol by volume and above) and alcopops or similar products. The Code also requires alcohol advertising to comply with the voluntary codes agreed with and ‘recognised’ by the Department of Health and Children. These codes were agreed between the Department and the drinks, TV, radio, cinema, outdoor and peak advertising industry bodies. They are designed to limit the exposure of young people to alcoholic drink advertising and include, for example, that: cinemas do not carry advertisements from ‘strength’ alcohol brands; that no wrap-round advertising be permitted on buses, bus shelters, on rail or on taxis; that no alcohol sponsorships of TV sports programming or bulletins is permitted and “solus/whistle breaks” alcohol advertising on TV is also prohibited. Effectively, by incorporating these voluntary codes into the General Commercial Communication code of the BAI, the alcohol advertising control system in Ireland has become essentially legislatively based and co-regulatory.

Two additional bodies complement the framework for control of alcohol advertising in Ireland. A separate self-regulatory organisation, CopyClear, established by the Advertising Practitioners in Ireland, the Association of Advertisers in Ireland and the Drinks Industry Group of Ireland, prevents alcohol beverage advertisements. Alcohol brand owners and their advertisers are not permitted to participate in the running of the organisation or have any involvement in its decisions. CopyClear applies all of the voluntary and mandatory codes described above. Print, all broadcast media including cinema, all electronic media and platforms (including any marketing communications in the non-paid for space online which can be controlled by the advertiser or their agent), posters, outdoor and promotional marketing are covered. Approved alcohol advertisements are issued an approval number which is required for acceptance of alcohol marketing by Irish media.

The Irish Government has also established a standing monitoring body for its alcohol codes, the Alcohol Marketing Communications Monitoring Body. The members, appointed by the Minister for Health and Children, consist of an independent chair, two members from the Department, one representative of the drinks industry and one representative of the advertising industry. The Monitoring Body has access to a range of data (from the ASAI, CopyClear, A C Neilson, etc) and can also commission research to determine if the codes are being adhered to. Breaches, if unresolved, are referred to the Minister.

In October 2013, the Irish Minister of State for Primary Care announced that the Government had approved the drafting of a Public Health (Alcohol) Bill that would, for the first time, introduce public health legislation to address alcohol misuse.\textsuperscript{397} The package of proposed measures was based on a 2012 Substance Misuse Report and includes proposals for a minimum price for alcohol and regulatory controls on alcohol advertising and marketing. The information released by the Government on what the Bill’s advertising regulation may cover includes: limiting advertising of alcohol in cinemas to films classified as over 18s; statutory codes for alcohol advertising in print and outdoor media and to govern sports sponsorship. The Bill is also intended to further regulate the sale, supply and consumption of alcohol products. Further health warnings would be covered in the Bill and other labelling requirements. The Bill is not yet available for review.

Canada’s scheme is also a mixed regulatory arrangement. The Canadian Radio-Television and Telecommunication Commission has a Code for Broadcast Advertising of Alcohol Beverages while provincial governments have separate and distinct legislation controlling alcohol advertising more broadly (for example, the Province of Ontario’s Guidelines set out by the Alcohol and Gaming Commission, which also governs the minimum prices set in that province).\textsuperscript{398,399} Advertising Standards Canada (an industry body) adjudicates on alcohol advertising complaints in relation to the broadcast code. Like Australia, the scheme largely operates in a self-regulatory manner, with Advertising Standards Canada offering a voluntary pre-vetting service and reviewing advertisements only in the event of a complaint.\textsuperscript{400}

In the United States, the Bureau of Alcohol, Tobacco and Firearms (BATF) has primary authority over alcohol labelling and advertising. In addition, numerous states place restrictions on alcohol advertising, and the alcohol industry operates under various self-regulatory industry codes. However, according to the most recent review by the Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services (DHHS), the US federal system lacks specific prohibitions against advertising appealing to youth, and the enforcement authority of the BATF is “limited.”\textsuperscript{401} The Federal Trade Commission conducts, every five years, a review of the self-regulation of alcohol advertising and the success or otherwise of the goal of limiting exposure to minors; its latest report was released in March 2014.

New Zealand’s Code for Advertising and Promotion of Alcohol is self-regulated but provides clearer guidance, in some areas, of what is unacceptable targeting of advertising to minors. For example, the code states that:\textsuperscript{402}

\begin{quote}
Alcohol advertising and promotions shall not... use or refer to identifiable heroes or heroines of the young...
use designs, motifs or cartoon characters that have strong or evident appeal to minors or that create confusion with confectionary or soft drinks.
\end{quote}

The Code also contains the following guidelines for sponsorship advertisements:\textsuperscript{403}

\begin{enumerate}
\item[(4a)] Shall not contain a sales message.
\item[(4b)] Shall not show a product or product packaging.
\item[(4c)] Shall not imitate or use any parts of product advertisements from any media.
\end{enumerate}

4(d) Shall not portray consumption of alcohol.
4(e) Shall only briefly and in a subordinate way mention or portray the sponsor’s name and/or brand name and/or logo orally and/or visually.
4(f) May be broadcast at any time except during programmes intended particularly for minors.

Guidelines for sponsorship:
4(g) Alcohol producers, distributors or retailers should not engage in sponsorship where those under 18 years of age are likely to comprise more than 25% of the participants, or spectators.
4(h) Sponsors shall not require or permit sponsored parties to feature alcohol branding on children’s size replica sports kit or on any promotional material distributed to minors.

In 2010 the New Zealand Law Commission recommended the following three-stage plan over five years to control alcohol promotion, advertising and sponsorship.\textsuperscript{404}

\textbf{Stage one:} Makes it an offence to promote any event or activity that encourages excessive alcohol consumption. Promotions specifically targeting young drinkers will also become an offence.

\textbf{Stage two:} Creates a joint committee run by the Ministers of Health and Justice. This will oversee a programme to reduce exposure to alcohol advertising and increase control of advertising content.

\textbf{Stage three:} restricts the advertising and promotion of alcohol in all media. Eventually, no alcohol advertising will be allowed, except if it gives factual product information.

At this point, the New Zealand Government has accepted only stage one of the Law Commission’s recommendations\textsuperscript{405}, and this recommendation has been included in the new \textit{Sale and Supply of Alcohol Act 2012}.\textsuperscript{406}

\textbf{4.4 Australia’s framework applying to alcohol marketing}

As noted earlier, Australia’s regulatory framework on alcohol marketing is a combination of regulatory, co-regulatory, quasi-regulatory and self-regulatory constituents.

Figure 4.1 portrays the overall system and the key organisational infrastructure and codes involved.

The key legislation which applies to any form of advertising in Australia including alcohol is contained in the Australian Consumer Law (ACL) which is Schedule 2 of the \textit{Competition and Consumer Act 2010} (previously the \textit{Trade Practices Act 1974}); the critical provision prohibits misleading and deceptive conduct in trade and commerce. The Australian Competition and Consumer Commission has primary responsibility for enforcement of the misleading conduct provisions of the Act and publishes a variety of material including guidelines for advertisers and sellers. The misleading conduct provisions of the ACL are not a focus of this Report.

\textsuperscript{404} Drug Foundation New Zealand. Advertising and the Alcohol Reform Bill. (accessed 20 December 2013).
\textsuperscript{405} Drug Foundation New Zealand. Advertising and the Alcohol Reform Bill. (accessed 20 December 2013).
Figure 4.1: Australian Alcohol Advertising Regulatory Framework
The other important regulator is the Australian Communications and Media Authority (ACMA). ACMA administers, *inter alia*, the *Broadcasting Services Act 1992*, the *Telecommunications Act 1997*, and the *Radiocommunications Act 1992*. ACMA's role, which comprises of regulatory and co-regulatory elements, includes: determining certain standards (for example the Children’s Television Standards); the review and registration of a number of voluntary, industry-regulated codes some of which bear on marketing matters; the initiation or supervision of reviews of codes; and handling certain unresolved complaints related to television and radio.

**Specific legislation and co-regulatory codes on alcohol marketing communications**

As noted above, the ACMA has responsibility for the *Children’s Television Standards 2009* (CTS). The CTS is an ACMA standard made under the relevant section of the *Broadcasting Services Act 1992*. Under that Act, compliance with a standard is a licence condition for commercial television broadcasters.

Apart from the objective of ensuring that children have access to a variety of quality television programs made specifically for them, the CTS also provides for the protection of children from possible harmful effects of television including bans on any advertising during preschool (P) viewing periods and restrictions on the quantum and content of marketing that can be run during children's (C) viewing periods. The P bands are 7:00am to 4:30pm Monday to Friday; C bands are 7:00 – 8:30am and 4:00 – 8:30pm on weekdays and 7:00am – 8:30pm Saturday, Sunday and school holidays.

In relation to alcohol specifically, CTS 36 - Advertising of alcoholic drinks - provides “that:

1. Advertisements for alcoholic drinks may not be broadcast during a C period.
2. No advertisement or sponsorship announcement broadcast during a C period may identify or refer to a company, person, or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.
3. No advertisement for alcoholic drinks may be broadcast during a C program or P program that is broadcast outside a C period or P period, or in a break immediately before or after any C program or P program.
4. No advertisement or sponsorship announcement broadcast during a C program or P program that is broadcast outside a C period or P period, or in a break immediately before or after such a C program or P program, may identify or refer to a company, person or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.”

Alongside the *Children’s Television Standards 2009* sits the *Commercial Television Industry Code of Practice – January 2010* (CTICP). The CTICP Code is a registered code with the ACMA and as such a licensee can be required to comply. The CTICP was developed primarily by industry (through Free TV Australia), in consultation with ACMA, and covers a range of matters prescribed in Section 123 of the *Broadcasting Services Act 1992* and other matters relating to program content including: program classifications; accuracy, fairness and respect for privacy in news and current affairs; advertising time on television; placement of commercials and program promotions; and unresolved complaints handling.

Sections 6.7 – 6.13 inclusive of the CTICP deal with Commercials which Advertise Alcoholic Drinks (see Appendix E for full details). The Code only permits direct advertising for alcoholic

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drinks in M, MA or AV classification periods (see Box 9 below) with the exception of live broadcasts of a sporting event on weekends and public holidays.

<table>
<thead>
<tr>
<th>Box 9: The Commercial Television Industry Code of Practice (CTICP) 2010 – Commercials which Advertise Alcoholic Drinks</th>
</tr>
</thead>
</table>
| Section 6.7 of the code states that:  
| A commercial which is a “direct advertisement for alcoholic drinks” may be broadcast:  
| 6.7.1 only in M, MA or AV classification periods; or  
| 6.7.2 as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.  
| 6.8 Notwithstanding Clause 6.7, a commercial which is a “direct advertisement for alcoholic drinks” may be broadcast as an accompaniment to the live broadcast of a sporting event if:  
| 6.8.1 the sporting event is broadcast simultaneously across a number of licence areas: and  
| 6.8.2 Clause 6.7 permits direct advertisements for alcoholic drinks in the licence area in which the event is held or, if the event is held outside Australia, direct advertisements for alcoholic drinks are permitted in a majority of the metropolitan licence areas in which the event is simulcast.  
| 6.11 “Direct advertisement for alcoholic drinks” means a commercial broadcast by a licensee that draws the attention of the public, or a segment of it, to an alcoholic drink in a manner calculated to directly promote its purchase or use. This does not include the following, provided that their contents do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use:  
| 6.11.1 a program sponsorship announcement on behalf of a brewing company or other liquor industry company;  
| 6.11.2 a commercial for a licensed restaurant; or  
| 6.11.3 a commercial for a company whose activities include the manufacture, distribution or sale of alcoholic drinks. |

The **M** classification zones are:
- **Weekdays (schooldays):** 8.30pm – 5.00am  
- **Weekdays and Weekends:** 12.00pm – 3.00pm  
- **(and school holidays)**

The **MA** classification zone is all days between 9.00pm and 5.00am.

The **AV** classification zone is all days between 9.30pm and 5.00am.

The CTICP also makes provision for the classification of commercials. Commercials Acceptance Division (CAD) is operated by Free TV Australia; the Code requires that all commercials – including infomercials and community service announcements – must be classified before they can be broadcast. Each commercial is provided with a CAD (Classification) number. CAD may withdraw the number when the ABAC (Alcohol Beverages Advertising Code) Adjudication Panel has upheld complaints against a commercial requiring it to be modified or discontinued. Appendix E outlines the advice on alcohol advertisements provided by CAD.

Further relevant co-regulatory codes, registered by ACMA include: the Commercial Radio Code of Practice; the Subscription Television Broadcast Code of Practice; and the Subscription Narrowcast Television and the Subscription Narrowcast Radio Codes. The latter three codes were developed by the Australian Subscription Television and Radio Association (ASTRA). All are briefly outlined below.

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The Commercial Radio Code requires compliance with all other codes of practice ‘so far as they are applicable’, and requires that a radio licensee must not broadcast programs (including advertisements) which “present as desirable the misuse of alcohol” or associate betting or gambling with alcohol. The peak industry body responsible for the creation of the Codes, Commercial Radio Australia, has no direct role in complaints handling. Alcohol content complaints are handled primarily by ABAC.

The Subscription Television Broadcast Code (SBT) requires compliance with the AANA and ABAC Codes (see below). In addition, the SBT Code specifically requires licensees to take into account the intellectual and emotional maturity of the audience when scheduling advertising relating to certain categories of products and services, including alcoholic beverages. The Subscription Narrowcast Television and Radio Codes do not refer to the AANA or ABAC codes specifically but prohibit the association of betting or gambling with alcohol. Alcohol content complaints are handled primarily by ABAC.

Unlike the CTICP (for the free-to-air television broadcasters), the subscription television broadcast code does not restrict the placement (time zones) of marketing of alcohol. ASTRA indicates that for subscription services “ASTRA does not believe that banning certain types of advertising is the appropriate way to deal with health and social concerns that arise in the community from time to time.” Some content providers of subscription channels have made alternative decisions in this regard – see the Disney channel for example. In its submission, however, ASTRA indicates that “in practice, alcohol advertisements are never scheduled on STV channels dedicated to children.” Apart from dedicated children’s channels, for the consumers of subscription services, it is the customer who must block material through disabling technology such as parental lock-out. Foxtel indicates that parents can control TV viewing “by blocking channels, setting up viewing restrictions based on classifications, or PIN protection on Foxtel On Demand purchases.”

State and territory role in alcohol advertising regulation

State and territory Governments also participate in the regulation of alcohol advertising through liquor licensing legislation. Although liquor licensing legislation varies in each jurisdiction, advertising regulation in licensing legislation is broadly similar across the different statutory frameworks. For brevity, the case of NSW is provided as an example in Box 10. Advertising restrictions in state and territory licensing legislation are not a further focus of this Report, on the basis that they are limited in scope and generally focus on the actions of on-premises licenses, such as pubs and clubs.

Box 10: Example of state advertising regulation: NSW Liquor Promotion Guidelines

In July 2013, the NSW government released updated Liquor Promotion Guidelines which apply to all licensed premises under the Liquor Act 2007 (NSW) that run

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alcohol promotions including hotels, bars, nightclubs, registered clubs, bottle shops, producer/wholesalers, limited licences, licensed restaurants and other on-premises venues.

The guidelines address the promotion of alcohol through methods such as supermarket vouchers and shopper-dockets, as well as through social media and the internet. Licensees found in breach of the guidelines could face restrictions or bans on promotions, or a monetary fine.

The **Liquor Promotion Guidelines** identify inappropriate promotions including those that:

- **Appeal to minors** – such as promotions that use characters, imagery, motifs, merchandise, naming, designs or interactive games or technology likely to appeal to minors.
- **Are indecent or offensive** – such as promotions that use images that may be offensive to a reasonable adult; offer free or discounted drinks for participating in activities that may be offensive; use insulting or offensive language; or involve discriminatory, demeaning or vilifying language or imagery.
- **Use non-standard measures** – promotions that serve alcohol in non-standard measures such as teapots or jam jars where the alcohol content is not apparent, or use novelty drinkware that encourages rapid drinking such as test tubes, water pistols, and yard glasses.
- **Use emotive descriptions or advertising that encourage excessive or irresponsible drinking** – including through the use of language, images or slogans such as ‘Drink till you drop’ or ‘Drink like a fish’ or promotions of ‘Mad Monday’.
- **Offer free drinks or extreme discounts that create an incentive to consume** – promotions which encourage rapid and excessive drinking through free, heavily discounted or all-you-can-drink offers or drinking games such as skolling games and boat races.
- **Encourage irresponsible, rapid or excessive drinking** – examples include using drinkware encouraging rapid consumption, drinking games, encouraging stockpiling of drinks, and late night promotions encouraging patrons who have been drinking for a significant period to continue drinking.
- **Are not in the public interest** - Promotions that are deemed undesirable for reasons that may include encouraging unlawful, anti-social or discriminatory behaviour.  

**Self-regulatory or quasi-regulatory structures**

As noted earlier, the Advertising Standards Bureau (ASB) is a company funded through industry levies which serves as the advertising industry’s generalist self-regulatory complaints organisation. The ASB website provides links and guidance on how members of the public may complain about marketing communications including issues about the use of language, the discriminatory portrayal of people, issues about advertising and children, portrayals of violence, sex, sexuality and nudity, and health and safety issues in marketing materials. Complaints about alcohol advertising, including those handled by the alcohol industry’s quasi-regulatory body, are initially sent to the ASB.

The Board of Directors of the ASB are drawn primarily from companies who engage in marketing and advertising as well as firms providing advertising and marketing services in the market. The ASB serves as the secretariat to the Advertising Standards Board which is the committee.

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determining the outcome of a complaint; the Advertising Standards Board, drawn from a wide range of community interests, is appointed by the Board of Directors of the ASB.

The ASB administers complaints in relation to advertising arising from a variety of industry codes as follows (note that at this stage the Australian codes have not been consolidated into a single document as per the international ICC codes):

AANA Code of Ethics
This is the generic Code for industry which “has the objective of ensuring all advertising is ethical, and prepared with a proper sense of obligation to consumers and fairness to competitors.” This overarching Code essentially seeks to enable the determination of complaints to reflect ‘prevailing community attitudes’ in relation to use of language, portrayal of people, depictions of violence, nudity and so on.

AANA Code for Advertising and Marketing to Children
The Code for Advertising Marketing to Children has the following relevant provision: 2.13 ALCOHOL: Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products. The AANA indicate that this Code is “designed to ensure that advertising and marketing communications directed at Australian children are conducted within prevailing community standards.”

The term ‘directed at children’ is important in the context of examining marketing communications; in many of the complaints documented in this area, the question is not whether the marketing being heard or seen appeals to children or that it may influence them but rather whether the marketing was actually directed at them. Many of the complaints about the self-regulatory complaints system itself turn on this distinction. The AANA Food and Beverages Advertising and Marketing Communications Code is even more explicit in its language on this matter: “Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children.”

Outdoor Media Association (OMA) - Code of Ethics; Alcohol Advertising Guidelines
The OMA covers forms of outdoor advertising such as billboards, on buses, taxis and so on. Its Code of Ethics requires members to adhere to both the AANA Code of Ethics and the Alcohol Beverages Advertising Code (ABAC – see below) including the ABAC pre-vetting system. In addition, the Alcohol Guidelines “require all members to limit the advertising of “alcohol products” on fixed signs that are located within a 150 metre sight line of a primary or secondary school. This generally relates to any access gates to the school.”

The OMA policy does not apply where a school is in the vicinity of an establishment selling alcohol products (e.g. clubs, pubs, bottle shops). The OMA, in its submission to the Draft Report, emphasises that it took a decision in 2012 not to accept alcohol advertisements which had not been subject to the pre-vetting process of the ABAC Scheme; where an alcohol advertiser refuses this requirement, then advice from a lawyer must be provided that the advertisement is not in breach of the ABAC.

Publishers’ Advertising Advisory Bureau’s (PAAB) Guiding Principle for Alcohol Beverages

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The Publishers’ Advertising Advisory Bureau membership comprises newspaper and magazine publishers. For print media, the PAAB Guiding Principle indicates that its members support adherence to the Alcohol Beverages Advertising Code (ABAC) and contains further principles for the print advertising of licensed premises and brands. In relation to brand advertising, the PAAB Principle re-articulates the statement of Responsible Practices for Alcohol Advertising and Marketing of the Distilled Spirits Industry Council of Australia that:

- advertisements should only be placed where at least 70% of the audience is reasonably to be expected to be above the legal purchase age (determined by using reliable, up-to-date audience or readership data);
- advertisements should not contain the name of, or depict Santa Claus, Easter Bunny, or any other culturally significant figure or character likely to appeal to a person below the legal purchase age;
- the use of the word “schoolies” is banned in print advertisements;
- alcohol products should not be advertised or marketed on the comic or youth pages of newspapers, magazines; and
- all paid advertisements should contain a responsibility message in a manner and location that a reasonable person would be aware of its presence.424

The PAAB Principle also requires that brand advertisements be cleared prior to publication and that “publishers must request ABAC approval numbers from producers of beer and spirits who seek to place print advertisements in their publications and report to ABAC any producer who cannot do so in a reasonable time frame.”425

Other Self-Regulatory Activity
A number of subscription television content providers, some alcohol industry bodies, as well as a number of online sites, also have statements or guidance in relation to alcohol advertising. Many of these are either derived from or included in other codes as discussed above. Of note, is the DSICA Statement, parts of which are quoted above, but which also contains provisions related to advertising on websites and emerging media; these are much more specific than the ABAC material in this area.

4.5 Alcohol Beverages Advertising Code

The most important alcohol-specific code is that of the alcohol industry - the Alcohol Beverages Advertising (and Packaging) Code (ABAC).

History and Purpose
The Alcohol Beverages Advertising Code (now part of the ABAC Scheme Ltd) was initially established in 1998 by the Brewers Association of Australia and New Zealand Inc. (BAANZ), the Distilled Spirits Industry Council of Australia Inc. (DSICA), and the Winemakers’ Federation of Australia (WFA), with the aim of:

…[ensuring] 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.426

Currently, the ABAC Scheme consists of three elements: a code to which members of the Scheme must adhere; a pre-vetting service; and a complaints and adjudication process available to all members of the public. A summary of the development of the ABAC Scheme can be found in the ABAC publication The development of Australia’s Alcohol Beverages Advertising (and Packaging) Code.427

The ABAC

The Code outlines standards for the content of alcohol advertisements on television, radio, print, billboard, cinema and the Internet and for the naming and packaging of alcoholic beverages; one section of the Code addresses the promotion of alcohol at events.

The Code addresses the content of alcohol advertising and not its placement directly (only the CTS, the CTICP and the outdoor advertising codes address placement matters). Nevertheless, the Scheme’s guidance notes indicate that placement is indirectly raised by the Code as a result of the use of the terms “the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated” which are contained in the Code’s preamble; further, the guidance indicates that “decision makers will take placement into account when assessing the class of persons to whom the advertisement may be communicated.” 428

Broadly the Code states that alcohol advertising must:
- present a mature, balanced and responsible approach to the consumption of alcohol beverages;
- not have a strong or evident appeal to children or adolescents;
- not suggest that the consumption of alcohol may contribute to a significant change in mood or environment, or to personal, business, social, sporting, sexual or other success;
- not depict any direct association between the consumption of alcohol beverages and the operation of vehicles or the engagement in any sport (including swimming and water sports);
- not challenge or dare people to consume or sample a particular alcohol beverage;
- not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the National Health and Medical Research Council; and
- comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.429

The full code is attached at Appendix E.

Guidance notes have been developed for industry to assist in the interpretation of the Code. In addition to the specific matters addressed in the Code, the Guidance Notes also make clear that alcohol advertising must comply with other relevant co-regulatory and industry codes, specifically the codes discussed above which are registered by ACMA, as well as the AANA Code of Ethics and the OMA code. The ABAC also released additional guidance in November 2013 on best practices in the digital marketing space.430

Alcohol Advertising Pre-Vetting Service (AAPS)

ABAC’s pre-vetting service is a confidential, user-pays service that allows advertisers to have their proposed advertisements assessed against the ABAC Scheme prior to release. It also examines proposed product names and packaging. The pre-vetting process is compulsory for

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signatories to the ABAC Code and can also be utilised by non-signatories. The ABAC Scheme Rules indicate that:

For beer producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics. For spirits producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For wine producers all television, cinema and outdoor advertising should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For all producers pre-vetting of naming and packaging is optional.431

Where an advertisement (or name or packaging) is deemed to potentially breach any part of the Code, this prevents signatories from proceeding with that advertisement or packaging as is. For non-signatories, the AAPS assessment will be persuasive but not binding.

While pre-vetting does not guarantee that intended marketing will not breach the ABAC, the ABAC Adjudication Panel is advised on whether or not AAPS approval was given for the advertisement referred to in a complaint. Pre-vetters are appointed by the Management Committee and the Scheme notes that the “ABAC complaints handling process and the AAPS Pre-Vetting are conducted separately by independent experts.”432 In 2011, the ABAC Scheme introduced training for the pre-vetters and panelists, conducted by the Chief Adjudicator, with a view to achieving “better consistency of decision making and a greater understanding of the ABAC and its interpretation.”433

Table 4.1: ABAC pre-vetting statistics 2004-2012

<table>
<thead>
<tr>
<th>Pre-vetting (number)</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total No. of advertisements, names &amp; packaging pre-vetted</td>
<td>754</td>
<td>761</td>
<td>936</td>
<td>1267</td>
<td>1110</td>
<td>1369</td>
<td>1050</td>
<td>1059</td>
<td>1229</td>
</tr>
<tr>
<td>Accepted advertisements, names &amp; packaging</td>
<td>607</td>
<td>641</td>
<td>701</td>
<td>913</td>
<td>849</td>
<td>1046</td>
<td>929</td>
<td>938</td>
<td>978</td>
</tr>
<tr>
<td>Accepted advertisements, names &amp; packaging subject to conditions</td>
<td>63</td>
<td>34</td>
<td>53</td>
<td>61</td>
<td>29</td>
<td>85</td>
<td>44</td>
<td>39</td>
<td>59</td>
</tr>
<tr>
<td>Rejected advertisements, names &amp; packaging</td>
<td>84</td>
<td>86</td>
<td>182</td>
<td>293</td>
<td>232</td>
<td>238</td>
<td>77</td>
<td>82</td>
<td>192</td>
</tr>
</tbody>
</table>


There is little summary information provided by ABAC on the extent to which pre-vetted and approved advertisements and packaging have been the subject of complaint and of complaints subsequently upheld.

The complaints and adjudication scheme

Complaints relating to alcohol advertising are sent to the Advertising Standards Bureau (ASB) but since the 2004 review of the Scheme (initiated by the Ministerial Council on Drug Strategy) and the resulting reforms, the Bureau automatically sends every complaint to the Chief Adjudicator of the ABAC Scheme who determines the applicability of the ABAC. If the complaint raises issues solely within the AANA Code of Ethics, such as taste and decency, or sexism and discrimination, the complaint is only considered by the ASB; matters solely within the ABAC Scheme are examined by the ABAC adjudication panel.434 If a complaint covers an issue outside the

provisions of the ABAC it will be referred back to the ASB for action. Advertisers and complainants are usually consulted during the assessment process.

The decisions or determinations for complaints assessed by the ABAC process are communicated to the complainant by ABAC. ABS will advise the complainant of decisions being handled by them relating to their Code of Ethics.

The ABAC complaints-handling process is outlined in Figure 4.2.
THE ALCOHOL BEVERAGES ADVERTISING (AND PACKAGING) CODE (ABAC)

COMPLAINTS PROCESS

Complaint about Alcohol Marketing

ADVERTISING STANDARDS BUREAU (ASB)

Complainant advised by ABAC of its decision (any decision by ASB under their Code is advised by ASB)

Complaint may also be handled by ASB under their code

ABAC Chief Adjudicator

Is Complaint a matter for the ABAC code?

Yes

ABAC Adjudication Panel considers complaint either solely or in parallel with ASB complaint process.

ABAC advises ASB of determination (and where the complaint is upheld, the advertiser’s response)

If complaint is upheld, advertiser is asked to modify or withdraw the ad
Over the course of the last ten years, the number of complaints dealt with by ABAC have varied quite considerably – presumably driven by particular advertisement(s) or packaging which caused considerable concern and was the subject of numerous complaints. The number of incidents to which the complaints refer, however, has been relatively steady, with a noticeable increase in the 2011 and 2012 reporting periods (figures are not yet available for 2013).

Table 4.2: ABAC complaints handling statistics 2004-2012

<table>
<thead>
<tr>
<th>Complaints (number)</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints received</td>
<td>212</td>
<td>105</td>
<td>53</td>
<td>87</td>
<td>162</td>
<td>117</td>
<td>87</td>
<td>119</td>
<td>98</td>
</tr>
<tr>
<td>Advertisements &amp; packaging these complaints referred to</td>
<td>23</td>
<td>29</td>
<td>26</td>
<td>38</td>
<td>44</td>
<td>42</td>
<td>38</td>
<td>74</td>
<td>63</td>
</tr>
<tr>
<td>Complaints considered by the ABAC Adjudication Panel with a determination</td>
<td>8</td>
<td>17</td>
<td>13</td>
<td>25</td>
<td>49</td>
<td>47</td>
<td>41</td>
<td>63</td>
<td>53</td>
</tr>
<tr>
<td>Determinations from complaints received that year</td>
<td>-</td>
<td>-</td>
<td>10</td>
<td>22</td>
<td>36</td>
<td>39</td>
<td>31</td>
<td>45</td>
<td>36</td>
</tr>
<tr>
<td>Complaints upheld (at least in part)</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>8</td>
<td>12</td>
<td>12</td>
<td>15</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>Determinations upholding complaints</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>8</td>
<td>7</td>
<td>10</td>
<td>11</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>Time to complete the determination (business days)</td>
<td>30*</td>
<td>30*</td>
<td>30*</td>
<td>29*</td>
<td>20*</td>
<td>31*</td>
<td>23*</td>
<td>25*</td>
<td>20*</td>
</tr>
</tbody>
</table>

*A target of 30 days on average for the handling of complaints
* Average time that it took for a complaint to reach a determination (in business days)

The average length of time taken by the ABAC adjudication process has been relatively stable and below 25 days in the last three reporting periods.

**ABAC Adjudication Panel**

The ABAC Adjudication Panel currently has five members including the Chief Adjudicator. The Panel is appointed by the Management Committee (see description below). Two of the five Panel members are public health experts selected from nominations provided by the federal Minister with responsibility for alcohol (or their nominee). A minimum of three Panel members adjudicate on a single complaint with one of the three adjudicators being from the public health members of the panel.

No person appointed to the Adjudication Panel may, at the time of or during the term of his or her appointment to the Panel, be a current employee or member of the alcoholic beverages industry; or have been an employee or member of that industry in the five years prior to their appointment. There are no restrictions on a Panel member having had responsibilities within the advertising or marketing industry for alcohol promotions although no current member is apparently from that background.

The Adjudication Panel is required to prepare an annual summary of the complaints received and the Panel’s decisions for the Management Committee which includes these details in its Annual Report. The Annual Report of the Scheme contains not only this statistical information but a Report from the Chief Adjudicator as well.

**ABAC Management Committee and ABAC Scheme Ltd Board**

The ABAC Scheme Ltd is a registered company limited by guarantee. ABAC is administered by a Management Committee although the company also has a Board of Directors which is appointed by the alcohol industry. Currently, the Board of Directors consists of the three alcohol industry members of the Management Committee. Information about the role of the actual Directors of the
company is somewhat difficult to find but it appears primarily to be financial (e.g. ensuring that the Scheme is adequately funded).

The ABAC website indicates that the Management Committee “is responsible for the management and oversight of all aspects of the Scheme.”\(^{435}\) For example, the Committee would review ABAC operations and would be responsible for deciding upon any amendments to the Code or Scheme procedures. The Management Committee consists of five persons: one each from the peak alcohol industry bodies which established the Scheme (the Brewers Association of Australia and New Zealand Inc., the Distilled Spirits Industry Council of Australia Inc., and the Winemakers’ Federation of Australia); one from the peak body of the marketing communication industries, the Communications Council Ltd; and one from the Commonwealth Government (currently from the Department of Health). There is provision in the ABAC Scheme: Rules and Procedures for an independent chair to be appointed to the Management Committee by the Directors of the company; at this stage, it does not appear that this option has been exercised.

The ABAC Scheme Ltd is fully funded by its industry membership; although the public Annual Reports prepared by the Management Committee of the Scheme do not disclose any information of a financial nature, the ABAC Scheme Limited prepares a financial report. These reports indicate that, recently, the overall costs of the Scheme (both the complaints system and pre-vetting service) are about $460,000 for 2013 and around $400,000 for 2012; and that member contributions (as distinct from payments for the pre-vetting service) were about $210,000 (2013) and $220,000 (2012). To put this in perspective, the most recent estimate (2007) for total alcohol advertising expenditure in Australia was $128 million.\(^{436}\) Given this industry expenditure on alcohol advertising, the ABAC appears to be a scheme providing very fair value for money.

A detailed assessment of the ABAC and recommendations for improvement are provided in Chapter 6 (Section 6.3).

### 4.6 Recent action to improve the ABAC Scheme

A major national review was prepared in 2003 for the Council of Australian Governments through the then Ministerial Council on Drug Strategy (MCDS), comprising health and law enforcement Ministers from all jurisdictions by the National Committee for the Review of Alcohol Advertising. The “Review of the self-regulatory system for alcohol advertising” recommended that the following shortcomings of the ABAC Scheme required addressing:

- the majority of complaints about alcohol advertising are dealt with under the general advertising complaints resolution system rather than the ABAC;
- the general public is largely unaware of the complaint resolution system and, in particular, how to make complaints;
- the lack of transparency about the Scheme. For example, there is insufficient reporting of how complaints are adjudicated and the outcomes of those complaints;
- the failure to address public health concerns associated with alcohol advertising;
- the ABAC does not apply to all forms of advertising, such as internet advertising, advertising on digital platforms and promotions; and

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the effectiveness of the ABAC is compromised by the amount of time taken to resolve complaints.\textsuperscript{437}

The ABAC Scheme Limited advises that ABAC acted on the report as follows:

- In response to the identified shortcoming about complaints dealt with under general advertising complaints, ABAC procedures were changed so that rather than ASB deciding which complaints raised ABAC issues, all alcohol related complaints were provided to the Chief Adjudicator of the Panel to make that assessment.
- In response to the shortcoming on public awareness, ABAC set up a website with information about the Scheme, how to complain and providing copies of all ABAC Panel decisions. ABAC also began publishing public Annual Reports and ASB initiated various awareness campaigns on how to make a complaint.
- In response to criticism about transparency, since 2004 Panel decisions are communicated directly to the ABAC Management Committee, the complainant and the ASB.

In 2005 and 2009, reports for the Ministerial Council on Drug Strategy (MCDS) on alcohol advertising were informed by detailed quantitative and qualitative research into both the extent and nature of young Australians’ exposure to alcohol advertising.\textsuperscript{438,439} The MCDS again considered binge drinking issues at their 24 April 2009 meeting and agreed “that the existing Alcohol Beverages Advisory Code [Scheme] had significant shortcomings and should be reformed as a mandatory co-regulatory scheme”\textsuperscript{440}.

On 27 November 2009, the MCDS submitted to COAG options to reduce binge drinking. Health and law enforcement Ministers supported the following proposals to reform alcohol advertising regulation\textsuperscript{441} (refer to Figure 6.1 Timeline of key ABAC changes):

- Mandatory pre-vetting of all alcohol advertising;
- Expanding the ABAC management committee to have a more balanced representation between industry, government and public health;
- Expanding the adjudication panel to include a representative specialising in the impact of marketing on public health;
- Expanding the coverage of the Scheme to include emerging media, point-of sale and naming and packaging; and
- Meaningful and effective sanctions for breaches of the Code.\textsuperscript{442}

The ABAC Scheme Limited provided to the Agency a copy of a letter submitted to MCDS in 2010 in which they indicate that they have implemented all five recommendations (see Appendix to the


ABAC submission to the Draft Report). However, the analysis in Chapter 6 reassesses this in terms of the outcomes achieved. The MCDS was disbanded in 2010 and further consideration of alcohol advertising was undertaken by the Intergovernmental Committee on Drugs which wrote to the Agency in 2011 recommending action. The Agency notes that in the submissions received in response to the Draft Report, the Australian Association of National Advertisers, Diageo, The Brewers Association of Australia and New Zealand, Distilled Spirits Industry Council of Australia Inc., and the Winemakers Federation of Australia generally state that the current regulatory system in Australia is working effectively to meet community expectations around the protection of Australian children and adolescents, and that additional regulatory intervention is unnecessary.

On 27 March 2014, the ABAC Scheme launched a television advertisement for both free-to-air and subscription television to raise awareness of the ABAC Scheme. The Scheme identified from research that there was low awareness of the Code and of the mechanisms for making complaints.

Discussion on the effectiveness of the current ABAC Scheme is taken up in Chapter 6.

4.7 Conclusion

The framework for regulation of alcohol advertising in Australia is complex and consists of a mix of self-regulation, quasi-regulatory, co-regulation, and some limited legislative provisions. As a result of the evolution of these elements quite separately – and in the case of media platforms, focused solely within their own industries and needs – the system does not display the coherence that would be desirable overall. This complexity is now increased with the emergence of new advertising forms in the social media space.

The crucial question is whether this system meets Australia’s goal for protecting children and adolescents from inappropriate advertising material – i.e. the marketing of alcohol. The following chapter looks at the available regulatory options within the context of current government regulatory policy (Chapter 5); Chapter 6 then assesses the success of the current regulatory arrangements both in the context of international best practice and Australian community expectations.
CHAPTER 5: REGULATORY OPTIONS FOR ALCOHOL ADVERTISING

Key Points

- The Agency has adopted the following objective for assessing regulatory options: “Ensure that the regulatory framework for alcohol advertising and marketing protects children and adolescents from the exposure-related risks of alcohol-related harm.”

- Maintaining the existing system unchanged, removing regulation or creating a total ban are not feasible options based on the current analysis against this objective.

- The preferred option is to improve the current system with further consideration to be given to developing a new advertising regulation system should subsequent improvements not provide adequate outcomes.

5.1 Introduction

Reviews by government advisory bodies in recent years into alcohol policy and regulation have identified issues with regulatory performance in relation to alcohol advertising. Some of the resultant recommendations have been implemented, but concern from public health professionals and the community regarding marketing and advertising remains high.

Western Australia has the most recently completed community consultation and review report of a state or territory liquor licensing legislation. The December 2013 Report of the Independent Review Committee reviewing Western Australia’s Liquor Control Act 1988 has recommended that protecting health should be retained as one of the primary aims of the Act.\(^\text{443}\) It concluded that:

> “there is also a clear demand from the community for the government to act to protect children and young people from exposure to all forms of alcohol advertising, marketing and promotion.”\(^\text{444}\)

The Australian Government Guide to Regulation indicates that use of regulation may be necessary “to achieve some form of desirable social outcome” and notes that the important regulatory benefits for public health and safety can often be hard to measure.\(^\text{445}\)

This chapter systematically examines the regulatory options for protecting public health in relation to alcohol promotions.


The Agency has adopted the following regulatory objective:

Ensure that the regulatory framework for alcohol advertising and marketing protects Australian children and adolescents from the exposure-related risks of alcohol-related harm.

5.2 Regulatory assessment

This Final Report uses elements of the framework for considering regulatory options informed by The Australian Government Guide to Regulation\textsuperscript{446}

The need for regulation of alcohol advertising as a health hazard for the young is summarised as follows:

1. Young people’s misuse of alcohol, and the associated harms connected with it, continue to be a significant public health problem in Australia.

2. There are concerns that early and cumulative exposure to alcohol advertising may contribute to both an earlier initiation of alcohol use (i.e. younger age of first drink) and more frequent and heavy drinking by adolescents.

3. Given the available evidence, the current high level of exposure to alcohol advertising among children and adolescents is a cause for concern.

4. Current regulatory arrangements are not only failing to protect young Australians from exposure to alcohol advertising, but in some cases may actually facilitate their exposure.

5. The community is firmly of the view that young Australians should be protected from exposure to alcohol advertising and there is therefore substantial support for effective regulation.

Detailed evidence to support these statements is compiled at Appendix D.

The problem is defined from a regulatory perspective as presenting unacceptable risks to health; market failure and regulatory failure as detailed in Table 5.1 below.

Table 5.1 Alcohol advertising as a regulatory issue

<table>
<thead>
<tr>
<th>Regulatory issue</th>
<th>Evidence of regulatory issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unacceptable hazard or risk</td>
<td>• The National Health and Medical Research Council’s comprehensive evidence review for the 2009 Drinking Guidelines for Australians has identified new and emerging evidence on the health impacts of alcohol consumption by adolescents.</td>
</tr>
<tr>
<td></td>
<td>• Further published evidence that exposure to alcohol advertising and marketing contributes to increased risks of harmful alcohol use by adolescents is becoming available.*</td>
</tr>
<tr>
<td>Market failure</td>
<td>• Children and adolescents exposed to alcohol advertising</td>
</tr>
</tbody>
</table>

## Regulatory failure

<table>
<thead>
<tr>
<th>Regulatory failure</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-regulatory and quasi-regulatory arrangements by the Australian alcohol and advertising industries are not keeping pace with both longstanding and emerging practice in other jurisdictions.</td>
<td></td>
</tr>
<tr>
<td>The Australian system is in need of reform to adequately meet objectives despite changes in recent years.</td>
<td></td>
</tr>
<tr>
<td>For the ABAC Scheme, the current internal review is limited to internal considerations only.</td>
<td></td>
</tr>
<tr>
<td>Governments are not monitoring or researching Australian children’s and adolescents’ continued exposure to alcohol advertising, particularly on digital media, and the impacts of this exposure.</td>
<td></td>
</tr>
<tr>
<td>Regulatory monitoring and review by Australian Governments in this area has been sporadic.</td>
<td></td>
</tr>
</tbody>
</table>

* Detailed national research on the extent of Australian children’s and adolescents’ exposure to alcohol advertising was last undertaken in 2007. Since that time exposure has undoubtedly increased, particularly in digital media (refer Chapters 2 and 3), and further evidence for the advertising and marketing exposure-related risks of alcohol-related harm has been published (refer Chapter 3).

An ongoing program of research into children’s and adolescents’ continued exposure to alcohol advertising, particularly on digital media and the effectiveness of self-regulatory, co-regulatory or regulatory measures to limit this exposure is vital to inform future regulatory reviews. Recommendations to the Australian and state/territory governments on commissioning research and regularly reviewing regulatory performance are provided in Section 6.4.

### The need for government intervention

Government intervention is required under the conditions of market and regulatory failure in protecting the population from a hazard to health. Promotion of alcohol, especially with the exposure achieved to children and adolescents contributes to the major public health and social problem of harmful alcohol consumption.

Intervention is required to correct for the transactional asymmetry, for young people particularly, created by their exposures to alcohol promotion. The young are particularly susceptible to advertising messaging and exposure opportunities are created by their social and emotional needs. They are not in a position to respond rationally for their own health and wellbeing. Intervention is necessary to curb irrational intentions or behaviour regarding alcohol consumption influenced, although not solely, by industry promotions.

Effective self-regulation of marketing and advertising is preferable but government has the responsibility to ensure objectives are met. Once failures are recognised, reconsideration of alternative regulatory options is required.

The evidence of current regulatory system failure has been described earlier in this Report against intended objectives for protecting children and adolescents. There is evidence of incidental or targeted exposure of children and adolescents while the current system has been
operating; subsequent exposure of Australian children and adolescents to alcohol promotion; and evidence from complaints about advertising.

The Australian National Council on Drugs (ANCD) is the principal advisory body to the Australian Government on drug policy and reports directly to the Prime Minister. In November 2013, the ANCD released its Alcohol Action Plan in response to the significant costs and harms of alcohol consumption in Australia. The Action Plan identifies eight areas for action one of which is alcohol marketing - “regulate alcohol advertising, promotions and sponsorship”. The Plan notes: “Although ABAC aims to avoid exposing young people to alcohol advertising, a number of researchers and public health bodies have suggested that current rules do not achieve this aim.”

In reviewing approaches to regulating alcohol marketing Babor concludes:

“There is no evidence that voluntary self-regulation codes… have been successful in protecting vulnerable populations from exposure to alcohol advertising.”

Notwithstanding submissions from the Australian Association of National Advertisers, Diageo, the Brewers’ Association of Australia and New Zealand, Distilled Spirits Industry Council of Australia Inc and the Winemakers’ Federation of Australia to the Draft report that any changes are unnecessary, areas of the system amenable to improvement should be considered. Government intervention is required to recommend improvements taking broad stakeholder interests into account and to drive change where the industry is not improving under their own system of review.

Community expectations

The Moorabool Shire Council, Victoria, urging for Federal Government control to reduce demand, wrote in their submission on the Draft Report that whilst there are numerous programs providing [alcohol] treatment and education to the community, the most effective form of prevention is to reduce advertising of alcohol. The Council regards excessive consumption of alcohol by many ages in their area as a great concern because of the resulting poor health outcomes and high incidence of alcohol induced violence.

The Report of the Independent Review Committee reviewing Western Australia’s Liquor Control Act 1988 December 2013 report concluded that:

“The Committee recognises the liquor industry’s efforts to self-regulate the advertising and promotion of alcohol, but must also acknowledge it seems community expectations are not being met by self-regulation.”

In recent Australian surveys, the majority of survey respondents are dissatisfied with the effectiveness of current alcohol advertising regulation. See Appendix D.

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450 Moorabool Shire Council (2014) submission to the Agency on the Draft Report: Alcohol Advertising: the effectiveness of current regulatory codes in addressing community concern
Lack of complaining, lack of awareness
In contrast to this evidence of community concern about the effectiveness of the system, the low number of complaints related to alcohol advertising are interpreted and reported by the alcohol and advertising industries as evidence of the system’s effectiveness. However, neither the ABAC nor the ASB monitor levels of code compliance across the industry, and rely solely on receiving complaints from the public.

In fact, community awareness of the complaints process is low. ABAC’s 2012 research into community perceptions of the Scheme found a very low level of knowledge about alcohol advertising regulation (no unprompted awareness of the ABAC, and limited awareness of the ASB or its Board). When prompted, 69% of respondents were aware that complaints could be made to the ASB. In its submission to the Draft Report, the ASB also noted more recent research on public awareness of their complaints system – “spontaneous (unprompted) awareness of the Bureau as an organisation the general public could complain to …[was] 63%.”

Awareness is an essential ingredient in generating complaints. However, the majority of people who are surveyed are also not likely to lodge a complaint even where they find advertising offensive – see the ABAC research in this regard.

A 2005 Department of Health and Ageing study supported this finding, with only two per cent of respondents having made a formal complaint, despite 30% of respondents reporting concern about alcohol advertising. The reasons for not complaining included the belief that the complaint would not be upheld, not having time, and not knowing the procedure. Of those who did complain, the majority were not satisfied with the outcome of their complaint. In 2009, the National Preventative Health Taskforce report also found that public awareness of required alcohol advertising standards is low, and among those who report being concerned about any alcohol advertising, only a very small proportion tend to make a formal complaint.

The ABAC Scheme’s 2012 research also found that 34% of participants were concerned about the content of alcohol advertisements in general in Australia, and 31% believed their level of concern had increased in the past ten years. Concerns most commonly stemmed from a belief that alcohol advertising promotes alcohol consumption as the norm and/or can influence behaviour, and can promote irresponsible/dangerous drinking and behaviour. However, ABAC’s research did not ask participants to provide further details on their expectations about alcohol advertising regulation.

5.3 Policy options
The range of regulatory and non-regulatory options for alcohol marketing and advertising is discussed in order from the least to the most restrictive options:

<table>
<thead>
<tr>
<th>Option A</th>
<th>Deregulation of alcohol advertising in Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option B</td>
<td>Maintenance of the current self-regulatory system within the existing co-regulatory legislative framework</td>
</tr>
<tr>
<td>Option C</td>
<td>Stronger self-regulatory and co-regulatory models</td>
</tr>
<tr>
<td>Option D</td>
<td>Legislation for a new regulatory regime to restrict alcohol advertising</td>
</tr>
<tr>
<td>Option E</td>
<td>Legislation for a total ban on alcohol advertising</td>
</tr>
</tbody>
</table>

452 Advertising Standards Bureau, Submission to ANPHA Draft Report on Alcohol Advertising.
Two assessment criteria have been used to assess each of these five options:

i. **Does this option protect children and adolescents from alcohol-related harms?**

   *Minimum threshold for this criterion*
   
   Exposure (content and volume) to alcohol marketing and advertising contributes to an increased risk of a range of alcohol-related harms for children and adolescents.

   The regulatory framework for alcohol advertising should protect Australian children and adolescents from these exposure-related risks of alcohol-related harm.

ii. **Does this option meet community expectations?**

   *Minimum thresholds for this criterion*
   
   The Australian community has an expectation that children and adolescents will not be exposed to alcohol marketing and advertising (content and volume). The Australian community also has an expectation that alcohol marketing and advertising will not appeal to or be directly targeted at children and adolescents.
5.3.1 Option A

Deregulation of alcohol advertising in Australia

Since the 2013 Federal election, the Australian Government has a strong policy and programme focus on deregulation. The Office of Deregulation in the Department of Prime Minister and Cabinet provides the following programme description:

“The Abbott Government’s red tape reduction programme aims to reduce unnecessary red tape costs on individuals, businesses and community organisations. It applies to any mandatory obligations imposed by legislation, regulations, quasi regulations such as, statutory instruments, standards, codes of practice, or any other aspect of regulator behaviour that has a measurable cost burden on business or individuals.”

Therefore the no-regulation option should be considered.

In achieving public health protection where industry stakeholders are affected and perverse outcomes are possible, several factors and stakeholder perspectives have to be examined. Dr Margaret Chan, WHO’s Director-General at the 8th Global Conference on Health Promotion in Helsinki, Finland 10 June 2013, noted that public health goals are frequently at odds with the commercial interests of the alcohol industry:

“Efforts to prevent noncommunicable diseases go against the business interests of powerful economic operators. In my view, this is one of the biggest challenges facing health promotion.”

The World Health Organization acknowledges that regulatory restrictions on alcohol marketing for public health outcomes could lead to adverse market outcomes:

“Restricting the amount of alcohol advertising and other marketing is contrary to the commercial interests of the alcohol, advertising and media industries and the pressures of competition.”

Nonetheless, the OECD reports that “regulation of advertising is a well-established intervention” across OECD member countries. Public policy research indicates that “a national-level legislative and regulatory framework remains essential to … effective measures that curtail alcohol-related health and safety problems.”

Due to an increased focus by national governments on improved public health outcomes as a means of reducing the cost burden on the delivery of frontline health services, there is a global trend toward increased regulation of alcohol marketing and promotion. The WHO Global Survey on Alcohol and Health asks respondent WHO Member States to report on alcohol marketing restrictions. Between the 2002 and 2008 Surveys, across the seven survey categories of alcohol marketing, there was a statistically significant shift towards more restrictive measures.
In Norway, a country which has introduced several alcohol control policy measures, to a certain degree when people become more aware and more concerned about the harms caused by alcohol, they are more supportive of restrictive policy measures and more convinced that they will be useful and worthwhile.\textsuperscript{464}

The National Alcohol Strategy 2006-2011 (the most recent such Strategy), endorsed by all Australian governments through the then Ministerial Council on Drug Strategy (MCDS), identifies that “it is vital that alcohol promotions be regulated to ensure public health and safety interests are upheld.”\textsuperscript{465}

Unfettered alcohol advertising with no restrictions on content, placement, volume, appeal to or targeting of young people would result in increased exposure of Australian children and adolescents to alcohol marketing and advertising and therefore lead to increased risks of alcohol-related harm.

The existing ABAC provides a relatively moderate burden of compliance costs on industry in administering the Scheme, in using the pre-vetting services and in lost productivity when an advertisement is deemed not compliant. At the same time, the Australian alcohol industry has invested resources to establish, improve and extend the coverage of its quasi-regulatory Scheme. A non-regulatory regime that provides “no restrictions” on alcohol advertising and marketing would devalue industry investment, and undermine public confidence.

\textbf{Option Assessment}

1 Does this option protect children and adolescents from alcohol-related harms?

\textit{Exposure (content and volume) to alcohol marketing and advertising contributes to an increased risk of a range of alcohol-related harms for children and adolescents.}

\textit{The regulatory framework for alcohol advertising should protect Australian children and adolescents from these exposure-related risks of alcohol-related harm.}

A deregulated alcohol advertising market would be unable to protect Australian children and adolescents from a range of exposure-related risks of alcohol-related harm.

2 Does this option meet community expectations?

\textit{The Australian community has an expectation that children and adolescents will not be exposed to alcohol marketing and advertising (content and volume).}

\textit{The Australian community also has an expectation that alcohol marketing and advertising will not appeal to or be directly targeted at children and adolescents.}

A deregulated alcohol advertising market would not support these community expectations.

Option A is therefore not supported.


5.3.2 Option B

Maintain the current self-regulatory, quasi-regulatory, co-regulatory and legislative framework

An advantage of a status-quo option to maintain the current arrangements is that the compliance processes, timeframes and costs for industry are a known quantity. Some community and public health stakeholders are aware of complaint mechanisms and make use of these to alert ABAC and the ASB of potential code breaches. The ABAC Scheme has also undertaken a process of continuous improvement (refer Figure 6.1 in Chapter 6).

However, the current arrangements do not meet best practice guidelines in some cases and do not achieve adequate outcomes. For example, industry compliance is mixed and media coverage is limited.

Although the ABAC Scheme has undertaken a process of improvement, some key areas for reform have not been implemented, resulting in a less than optimal quasi-regulatory framework. Industry coverage of the ABAC Scheme has improved to include emerging media and point of sale promotions. As the regulatory arrangements are dependent on self-regulatory components, there are, however, no enforceable sanctions for breaches of product content codes (ABAC) or placement codes other than voluntary withdrawal or modification of the advertising (refer Chapter 4).

To recommend this option, the existing regulatory arrangements would be assessed as protecting children and adolescents from alcohol-related harms and meeting community expectations. The current mostly system does not appear to be adequately meeting this objective. In relation to protecting children and adolescents from alcohol-related harms, the existing regulatory arrangements:

- fail to prevent advertisements and products that appeal to Australian children and adolescents (refer Section 6.3.8)
- expose Australian children and adolescents to alcohol advertising on free-to-air television during live sport (refer Section 6.2.1)
- expose Australian children and adolescents to alcohol advertising through digital media (refer Section 6.2.3)
- expose Australian children and adolescents to alcohol advertising on subscription television, in cinemas, and outdoor advertising (refer Sections 6.2.2, 6.2.4, and 6.2.5)
- expose Australian children and adolescents to alcohol branded merchandise in a range of settings (refer Section 6.2.8)

The conclusion from discussion of Chapter 3 was that most alcohol marketing strategies currently used in Australia reach adolescents, and adolescents are exposed to about the same level of alcohol advertising as are young adults. The evidence of effectiveness of protections to date and on regulatory best practice indicates that continuation of the current arrangements alone is unlikely to be sufficient to protect Australian children and adolescents.

**Option Assessment**

1. Does this option protect children and adolescents from alcohol-related harms?
Exposure (content and volume) to alcohol marketing and advertising contributes to an increased risk of a range of alcohol-related harms for children and adolescents.

The regulatory framework for alcohol advertising should protect Australian children and adolescents from these exposure-related risks of alcohol-related harm.

The current regulatory regime provides only limited protection for Australian children and adolescents from a range of exposure-related risks of alcohol-related harm.

2 Does this option meet community expectations?

The Australian community has an expectation that children and adolescents will not be exposed to alcohol marketing and advertising (content and volume).

The Australian community also has an expectation that alcohol marketing and advertising will not appeal to or be directly targeted at children and adolescents.

The current regulatory regime does not adequately meet these community expectations to protect Australian children and adolescents.

Option B is therefore not supported.

5.3.3 Option C

Strengthen current regulatory arrangements

Some of the current regulatory arrangements are in many ways a legacy of the media industry structure from the 1970s and 1980s. Since that time the media landscape has grown, diversified and fragmented into a wide range of new channels and new media; many of these channels are highly segmented along demographic lines including age. Media can be accessed from multiple platforms including from a wide range of personal devices. Increasingly young Australians directly access media channels without parental supervision through televisions in their bedrooms, laptops and tablets at school and at home, and mobile phones in their pockets wherever they travel. Marketing strategies have become more sophisticated and aim to actively engage consumers across multiple platforms with promotion strategies that link interactive entertainment and games with brands and products.

A particular concern is that Australian children and adolescents are exposed to alcohol advertising on free-to-air television during daytime on weekends and public holidays through a regulatory exemption provided to live sports broadcasts on free to air television channels. This is despite the longstanding community view that alcohol advertising should not appear on Australian television before 8.30pm, when children are more likely to be present in the viewing audience. Australian children and adolescents are also exposed to alcohol advertising on subscription television and in cinemas.

Increasing access to digital and social media is leading to new exposure to alcohol advertising for many Australian children and adolescents. Alcohol producers have invested significant resources in developing an expanding range of digital media marketing strategies. Age restricted sites and filters are easily circumvented, and there are examples of alcohol advertising content appearing on sites primarily targeted at children.

Australia’s existing regulatory framework for alcohol advertising is a combination of self and quasi-regulatory, co-regulatory and legislative approaches (as described in Chapter 4). The World Health Organization recommends that

“to be effective, systems to regulate marketing need sufficient incentives to succeed; in general, regulatory frameworks:

- are most active where pressure from the government is greatest, and
can only work as long as there is provision for third party review of complaints about violations; [and]
- sanctions and the threat of sanctions are needed to ensure compliance. \(^{466}\)

As reported in Chapter 4, the key features of an effective regulatory system include: a supporting legal context, commitment of all stakeholders, transparency, a mandatory pre-screening system, an effective complaints system, independent advertising evaluation committee, effective sanctions, strong monitoring and coverage and flexibility.

As previously noted, the ABAC Scheme for content regulation has undertaken a process of continuous improvement (refer Figure 6.1 in Chapter 6) following Australian government reviews into alcohol advertising and marketing in Australia (refer Appendix F). However, Australian children and adolescents are currently exposed to alcohol marketing and advertising (content and volume) at levels that contribute to harm.

Industry codes may be authorised by the ACCC. The ACCC authorisation process enables industry to be granted immunity from the anti-competition provisions of the *Competition and Consumer Act* 2010 (previously the *Trade Practices Act* 1974) in the public interest. This is a means of incorporating sanctions without having to set up formal government oversight or structures, which may in itself have a positive influence on rates of compliance, and act as a deterrent to breaches by industry members.

Legislators and administrators have failed to establish an ongoing program of monitoring, review and research on the exposure of young Australians to alcohol marketing and advertising. When periodic regulatory reviews of alcohol marketing and advertising are undertaken, Australian Governments do not have immediate or direct access to the required range of information on regulatory performance and research evidence to ensure the protection of young Australians.

**Recommendations to address regulatory issues**
The Agency has considered and developed a suite of complementary recommendations to improve and strengthen the current self- and quasi-regulatory, co-regulatory and legislative model. These are summarised in the Executive Summary and the background and rationale for each recommendation appears in Chapter 6.

**Option Assessment**

1 Does this option protect children and adolescents from alcohol-related harms? 
*Exposure (content and volume) to alcohol marketing and advertising contributes to an increased risk of a range of alcohol-related harms for children and adolescents.*  
The regulatory framework for alcohol advertising should protect Australian children and adolescents from these exposure-related risks of alcohol-related harm.  
**The proposed changes to the current regulatory regime provide additional significant protection for children and adolescents from a range of exposure-related risks of alcohol-related harm.**

2 Does this option meet community expectations?  
The Australian community has an expectation that children and adolescents will not be exposed to alcohol marketing and advertising (content and volume).  
The Australian community also has an expectation that alcohol marketing and advertising will not appeal to or be directly targeted at children and adolescents.

These proposed improvements to the current regulatory regime are required to meet these community expectations.

5.3.4 Option D

Legislate for a new regulatory regime to restrict alcohol advertising

The significant number of non-industry submissions to the Issues Paper called for alcohol advertising to be regulated and monitored within a new legislative framework, in many cases by an independent single-purpose statutory authority. Several public health bodies indicate a preference for Option D immediately in their submissions to the Draft Report (e.g. Australian National Council on Drugs, Cancer Council NSW, VicHealth, ARACY, National Alliance for Action on Alcohol, joint submission of the McCusker Centre, Cancer Council WA and Public Health Association Australia) as do some of the submissions from individuals.

Legislation to regulate the advertising of alcohol has been enacted in a range of other national jurisdictions. Examples of different approaches include:

- France: French law (the ‘Loi Evin’) features a statutory Code of Conduct (Code de la Sante Publique) that imposes strict controls on the content, timing and place of alcohol advertising, including prohibiting it from television and cinema and restricting it in other media. Advertising that is allowed is subject to the self-regulatory controls, which include specific alcohol guidelines; 467 and

- Finland: Alcoholic beverages advertising is controlled by legislation under the Alcohol Act that prohibits advertising for products over 22% alcohol by volume (ABV) and constrains it for other products over 1.2% ABV. 468

- Ireland: has a system of mixed regulation and self-regulation. Voluntary codes incorporated into the General Communications Code mean the alcohol advertising control system in Ireland has become essentially legislatively based and co-regulatory. A separate self-regulatory organisation pre-vets alcohol advertisements. A monitoring body is established with access to a range of data.

The Australian Government’s regulatory approach to reducing the health harms from particular products does use specific legislation related to the marketing, advertising and promotion of some products. However, the Agency has not been able to identify an existing regulatory model for advertising for a specific industry or product sector in Australia that is governed by a stand-alone independent regulatory agency established solely for that purpose. For example, specific legislation to regulate the advertising and marketing of tobacco to reduce health harms is the Tobacco Advertising Prohibition Act 1992 and administered by the Department of Health. If this option were to be adopted, and specific legislation to regulate the advertising and marketing of alcohol in Australia was enacted, then most likely the administration of this legislation would be undertaken by the Department of Health. There would be options of retaining industry codes with self-regulatory and co-regulatory code administration within the overall legislative framework. The Commonwealth would bear the burden of administering and enforcing this legislation.


Option Assessment

1 Does this option protect children and adolescents from alcohol-related harms?
   Exposure (content and volume) to alcohol marketing and advertising contributes to an increased risk of a range of alcohol-related harms for children and adolescents. The regulatory framework for alcohol advertising should protect Australian children and adolescents from these exposure-related risks of alcohol-related harm.

When compared to the self- and quasi-regulatory, co-regulatory and limited legislative regime (i.e. option C above), legislation would provide significant additional protection for Australian children and adolescents from a range of exposure-related risks of alcohol-related harm.

2 Does this option meet community expectations?
   The Australian community has an expectation that children and adolescents will not be exposed to alcohol marketing and advertising (content and volume).
   The Australian community also has an expectation that alcohol marketing and advertising will not appeal to or be directly targeted at children and adolescents.

   Legislation would provide clarity for all stakeholders regarding what forms of advertising are permissible where and when. Legislation can be adjusted over time to address new forms of marketing (e.g. digital media).

Option D is recommended pending a fixed time period for media and alcohol industry response and action in reference to Option C above.

The option of legislating for better control of alcohol advertising and marketing should be taken up by governments in the event that the alcohol and media industries fail to respond to the recommendations contained in Option C.

5.3.5 Option E

Legislate for a ban on alcohol advertising

Legislation to ban the advertising of alcohol has been enacted in small number of comparable national jurisdictions. For example, Norway introduced legislation in 1989 (Law 1989-06-02 Number 27) that places a total ban on all alcohol advertising for beverages with more than 2.5% ABV (television, radio, outdoor, cinema, print, promotional items and sport sponsorship).

The option to legislate to reduce exposure completely from certain media or from all media would be the simplest and most cost-effective for government, with some minimal ongoing administration and enforcement costs of the legislative ban or bans. The Australian Government’s ban on tobacco advertising provides a template for a progressive ban on advertising and marketing over time.

A number of the submissions to the Issues Paper and published reports note that this option could restrict both the volume and content of alcohol advertising, and permit alcohol advertising only in places where young Australians are less likely to be exposed.

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The evidence for a ban on alcohol marketing and advertising from comparable jurisdictions is limited, as very few comprehensive bans have been introduced to date. However, it has been identified as a cost-effective option, when compared to other public policy options to reduce alcohol-related harm. However, it appears on the available evidence that the weight of public concern regarding alcohol-related harms would not currently translate into community support for a complete ban on alcohol advertising.

**Option Assessment**

1. **Does this option protect children and adolescents from alcohol-related harms?**
   
   Exposition (content and volume) to alcohol marketing and advertising contributes to an increased risk of a range of alcohol-related harms for children and adolescents.
   
   *The regulatory framework for alcohol advertising should protect Australian children and adolescents from these exposure-related risks of alcohol-related harm.*
   
   A legislative ban would protect Australian children and adolescents from alcohol marketing and a range of exposure-related risks of alcohol-related harm but not from all alcohol-related harms.

2. **Does this option meet community expectations?**
   
   *The Australian community has an expectation that children and adolescents will not be exposed to alcohol marketing and advertising (content and volume).*
   
   *The Australian community also has an expectation that alcohol marketing and advertising will not appeal to or be directly targeted at children and adolescents.*
   
   *A range of legislative options to restrict the exposure of Australian children and adolescents to alcohol advertising appears to have a level of community support, but a complete ban on all alcohol advertising would appear to exceed current community expectations.*

Option E is therefore not supported.

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CHAPTER 6: DETAILED ASSESSMENT OF CURRENT REGULATION OF ALCOHOL ADVERTISING AND RECOMMENDATIONS TO IMPROVE EFFECTIVENESS

Key Points

- Detailed recommendations to improve regulatory performance are made to:
  - the media industries on placement issues in their co-regulatory codes;
  - the alcohol industry quasi-regulatory Scheme, ABAC, on content issues; and
  - the Australian and state/territory governments on monitoring, research, and review of, and reporting on, the effectiveness of regulatory performance in protecting Australian children and adolescents.

- The recommendations intended to reduce exposure through placements include a recommendation to remove the exemption for free-to-air television to allow alcohol advertising before 8.30 pm during live sports broadcasts.

- Recommendations 2-8 cover placements on subscription channels, the cinema, outdoor and billboard advertising, branded merchandise and sport, music and other events.

- Recommendation 9 is to the states and territories regarding triennial reporting to COAG.

- Recommendation 10 has sub-parts to improve the range and hierarchy of sanctions, governance, reporting and research and coverage, to increase effectiveness of the quasi-regulatory ABAC Scheme for content.

- Additional parts of Recommendation 10 are about the interpretation of the ABAC and its enforcement.

- Finally, recommendations are made about monitoring, research and regular review, including responsiveness to the authorisation recommendation and the reporting of analyses to COAG through the Standing Council on Health.

6.1 Introduction

Chapter 5 established that regulation of alcohol advertising is required and that strengthening the current quasi and co-regulation system as the preferred option in addressing observed failings (as distinct from banning alcohol advertising or replacement with a fully legislated system).
The community is firmly of the view that young Australians should be protected from alcohol-related harms, and supports measures to protect Australian children and adolescents from exposure to alcohol advertising and forms of alcohol advertising that appeal to young Australians. The community expects that a regulatory system with this task would be effective.

This chapter offers recommendations to increase the effectiveness of the current system with respect to placement and content of alcohol advertising. Current regulatory arrangements on the placement of alcohol advertising are failing to protect Australian children and adolescents adequately and in some cases are facilitating their exposure to alcohol advertising. Current regulatory arrangements on the content of alcohol advertising are also failing to protect young Australians adequately and regulatory performance can be improved significantly.

At the same time, the Agency acknowledges that young Australians currently experience a significant level of exposure to alcohol advertising on digital and social media which will remain an ongoing challenge for regulatory and other responses.

6.2 Effectiveness of controls on the placement of alcohol advertising

The Agency has found that the marketing of alcoholic beverages in Australia is strategic and multifaceted, with products being marketed through a wide combination of traditional media (TV, print, radio, outdoor billboards), websites and social media, sponsorship of sport and social events, alcohol-branded merchandise, mobile phone applications, product placement, and point-of-sale promotions (gift with purchase, competitions, price discounts for bulk purchases) (see Chapter 2).

The placement (location and time of day) of alcohol advertising relates to when and where young Australians are exposed to alcohol advertising.

While all of the media-specific codes contain provisions regarding abiding by other relevant codes, currently only three media-specific instruments restrict the placement of alcohol advertising:

- for free-to-air television, the Children’s Television Standards (CTS) and the Commercial Television Industry Code of Practice (CTICP);
- for outdoor and billboard advertising, the Outdoor Media Association (OMA) Code of Ethics: Alcohol Advertising Guidelines.

In the absence of placement restrictions for other media, there are currently few mechanisms to limit children’s and adolescents’ cumulative exposure to the volume of alcohol advertising that occurs frequently across different media channels.

The lack of restrictions on the volume of alcohol advertising in any medium or across media can amount to a high frequency of alcohol advertisements in a short time period, and to multiple avenues of exposure across media. For example, alcohol advertising amounted to 23 minutes of television broadcast time over a one day cricket match, and 35 minutes of broadcast for the Bathurst 1000 V8 car race, both of which are broadcast under the exemption for alcohol

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advertising on free-to-air television during live sports broadcasts on weekends and public holidays.

In their 2012-13 Annual Report, the Alcohol Advertising Review Board points out that over the course of a 15 year old Australian adolescent’s weekend, alcohol advertising could be embedded across each activity they undertake, including watching a music video on television (product placement) and the Internet (advertising on YouTube), visiting a shopping centre (parking lot billboards, liquor retailer shopfronts, alcohol purchase docket deals), using a smart phone application (unrestricted advertising), watching a live sporting event (alcohol branding visible on around the field, on uniforms, in change rooms), listening to the radio (alcohol sponsored competition), catching a bus (outdoor billboard on bus stop), reading the newspaper and going to the cinema.\(^\text{475}\)

The Agency finds that existing controls on the placement of alcohol advertising are currently not adequately achieving the aim of limiting Australian children’s and adolescents’ exposure to alcohol advertising.

The \textit{Broadcasting Services Act 1992} is administered by ACMA, regulates free to air television channels, and includes as one of its objects:

\[
1 \text{(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them}^{\text{476}}
\]

Included in ‘harmful material’ is alcohol advertising. While the current legislative, co-regulatory, and self-regulatory mechanisms are segmented across the different media sectors, the industry and industry bodies could in most cases immediately move to voluntarily limit children’s and adolescents’ exposure to alcohol advertising, and seek co-regulatory support from government on enforcement and sanctions.

A number of recommendations are provided below in relation to the placement of alcohol advertising in specific media.

The World Health Organization in its \textit{Global strategy to reduce the harmful use of alcohol}, as noted earlier, highlights that policy options and interventions in relation to marketing of alcoholic beverages include “regulating the content and the volume of marketing.”\(^\text{477}\) A range of the public health organisation submissions to the Draft Report requested additional emphasis on ‘volume’ restrictions. The Agency believes that the recommendations to reduce exposure – by limiting times of allowed broadcast, eliminating exemptions to time restrictions, or reducing the extent of locations available – will by definition result in reductions in overall volume of alcohol advertising on relevant media. However, this does not address the volume of content which Carah and Brodmerkel highlight in their submission to the Draft Report as part of an “ongoing exchange” with a target market. To actually evaluate the extent of targeting and overall volume of marketing, especially through social media, would require significant information-disclosure requirements on firms, reporting of which is not currently sought in Australia.


6.2.1 Television – free-to-air channels

Regulatory instruments and intent

As outlined in Chapter 4, there are two instruments that operate within the regulatory framework to restrict the placement of alcohol advertising on free-to-air television in Australia.

i. the Children’s Television Standards 2009 (CTS) developed by ACMA; and
ii. the co-regulatory Commercial Television Industry Code of Practice (CTICP) developed by industry in consultation with the regulator and registered with ACMA.

A report on Television Advertising to Children prepared for ACMA in 2007 describes the CTS objectives in relation to the protection of children and advertising:

The objectives of the CTS are to provide for children to be specifically catered for in programming, including Australian programming, and to provide for the protection of children from the possible harmful effects of television.

The advertising provisions are a subset of the CTS and regulate the amount, content and presentation of commercial advertising material directed to children.

These provisions were designed to address concerns about advertising directed to children.478

Television advertising for alcohol products is restricted under:

1. The protection provisions of the CTS (Part 3), which aim to protect children from unsuitable and potentially harmful program and advertising material on television; and

2. Section 6 of the CTICP, which aims to ensure that commercials (advertisements) are classified and broadcast appropriately, in the light of current community attitudes and the need to limit the exposure of children to material intended for adult viewing.

In essence, these provisions operate to protect children from possible harmful effects of alcohol advertising on television. As outlined in Chapter 4, alcohol advertising is generally restricted until after 8.30pm and before 5.00am to limit children’s and adolescents’ exposure. There are two exceptions.

The CTICP provides an exception to the time restrictions on alcohol advertising allowing broadcast at any time of the day on weekends and public holidays during live sport broadcasts (under specific conditions outlined in Clauses 6.7.2, 6.3.1, 6.3.2). In effect, this exemption removes the protections that are in place to minimise children’s and adolescents’ exposure to television alcohol advertising through time of day restrictions.

Regulatory performance

As a result of this exemption, approximately half of all television alcohol advertising occurs during daytime live sport broadcasts (i.e. before 8.30pm) on weekends and public holidays. The last major government-funded review into television alcohol advertising, conducted for the Monitoring of Alcohol Advertising Committee, found that 55% of alcohol advertisements aired during the day on weekends and public holidays, as an accompaniment to a live sport broadcast between January and March 2007. The report noted that this was an increase from previous levels of 42%.

in 2005. While up to date figures are unavailable, a range of submissions for this Report indicated that this percentage was unlikely to be less in 2014 than it was in 2007.

In the United States, where significant detail about alcohol marketing expenditure is provided to the Federal Trade Commission for its reviews, just over 25% of expenditure in 2011 was on national or regional/local TV; and in terms of cross-category expenditures, just under 30% of alcohol marketing dollars involved sports or sporting events.

As noted in Chapter 3, available figures indicate that a significant number of children and adolescents watch live sport on free-to-air television. While many of the industry submissions provided detail about the percentage of children and adolescents watching during these broadcasts, and additional statistics were provided by public health groups, the Australian system of regulation of alcohol advertising is not based on audience share – it is based on time restrictions. The Agency does not recommend an audience share based system. Such a system requires, as one can see from the US FTC regulatory reviews, a significantly higher level of regulatory complexity to administer with a further large ‘red tape’ reporting burden on industry. The point of the regulatory system in Australia is to reduce children’s exposure, and the live sports exemption is one of the few elements of the regulatory landscape which actually serves to increase this exposure.

There is considerable public support for restricting television alcohol advertising. A number of national surveys also specifically indicate public support for a ban on television alcohol advertising before 8.30pm. For example:

- In 2012, 64% of respondents supported a ban on alcohol advertising on weekday and weekends before 8.30pm.
- In 2010, 71.2% of adults supported limiting television alcohol advertising until after 9.30pm.

In its submission, the Coalition of Major Professional & Participation Sports (COMPPS) – excluding its Football Federation Australia and Netball Australia members – indicates that there is no need to restrict alcohol advertising on sports programs on two key grounds. On the first, the submission states that “the link between alcohol advertising on sports programs and increases in underage drinking has not been proved ... [with] an abundance of other factors involved.” The links between advertising, increased adolescent awareness of alcohol, influences on favourable attitudes to drinking and subsequent alcohol consumption are strong. Sports programs can be an important source of exposure to advertising for adolescents because of the sponsorships-related ground advertising and television in-program advertising. Whether the advertising is contained within a sports program or otherwise, the reason that alcohol advertising is considered potentially harmful to children and curtailed in government standards and industry codes is because of the influences that are demonstrated in the research. It is important to note that establishing such links and proving direct causality are two different matters. The clear links do not rule out that there are other important influences on young people as well such as peer pressure, parental example and so on. The establishment of the links is sufficient for regulatory attention.

The Agency is familiar with the sports sponsorship arena being, between 2012 – 2014 through the Be the Influence Campaign (part of the National Binge Drinking Strategy) a major sports sponsor in its own right. These sponsorships had a twofold purpose – to block any alcohol advertising in the participating sports and to utilise the major pull of sporting stars’ influence on young people (participating or viewing the games of the 17 National Sporting Organisation

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481 AIHW (2011) 2010 National Drug Strategy Household Survey report (p.174); Canberra; Cat. no. PHE 145.
participants) to carry a strong anti-binge drinking message. Sports stars, like entertainment stars, are proven key influencers of younger Australians, a fact that many National Sporting Organisations were at pains to emphasise to the Agency in negotiating these sponsorships. That is one of the reasons why sponsors are interested in investing funds in this form of marketing.

The second major COMPPS point, an economic one, is that the “major source of revenue for the COMPPS sports (with the exception of Netball) is from the sale of media rights … [and that] a significant amount of advertising revenue … would be denied to broadcasters with a corresponding negative impact on sports’ rights fees.” COMPPS believes that its ability to fund local and grassroots participation in sports, amongst other activities, would be adversely affected.

While the Agency acknowledges the views of COMPPS and their concerns regarding a possible decline in the quantum of sports sponsorship, it does not accept the trade-off argument being proposed. Most unfortunately, these precise arguments were also made by sports bodies at the time of the banning of tobacco advertising. While the context of alcohol advertising is different, and there is no recommendation by the Agency to ban alcohol advertising or sponsorships, there are nevertheless clear influences on young people through sports and advertising of alcohol within sports broadcasts (linked as well to other promotional activity). Time has shown that despite the grave concerns of sports bodies that they could not survive without their tobacco dollars, it appears that they are thriving. It is the public who pay ultimately for sport but the route by which this is achieved should avoid the risk of unintended social harm.

It is instructive as well to examine the Western Australian sports situation where Healthway has created a very different sports environment at local and regional level through its sponsorships and blocking of alcohol promotions.

The COMPPS submission also notes a number of initiatives in which it is involved and the Agency commends a range of this work such as the pilot partnership with Redfrogs (offering water etc. to fans), the ‘Know When to Declare” promotion, and other responsible drinking initiatives.

The submission from Free TV Australia indicates that there is no policy failure in need of rectification and “little evidence of community dissatisfaction” due to low viewer complaint levels on alcohol advertising. Additionally, the free-to-air TV peak industry peak body also notes that “the audience for sport is made up overwhelmingly of adults, and that those children that are viewing live sports are doing so predominantly in the company of an adult.” ALSA makes the same points in their submission.

As noted earlier in this section, Australia does not have an audience-based alcohol advertising control system (i.e. a regulatory apparatus that determines whether alcohol marketing is sufficiently restricted based on the extent to which a program reaches minors or whether children are viewing with adults); nor does the Agency recommend such an approach. Australia determined that a more effective system was to prohibit inappropriate content through a time constraint – as a generality, no harmful material such as alcohol advertising before 8:30pm. Though one can debate the merits of various regimes, viewer-based regulatory frameworks such as that operating in the United States enable alcohol advertising to reach a far greater proportion of minors than occurs in Australia (note that in the US, minors also refers to those under 21 years of age); the March 2014 FTC analysis, noted earlier in Chapter 2, reports on a regime that permits about 30% of a TV audience viewing alcohol marketing to be minors under the industries’

self-regulatory codes. Even under Australia’s more stringent regime, 10+% of audiences during live sports broadcast time exemptions are children – for example 260,000 children viewed the AFL Grand Final according to Free TV Australia in 2013.

A range of industry bodies, including Free TV Australia, also are comforted by the limited complaints regarding alcohol advertising. The ABAC’s market research, however, is not particularly comforting – accurately noting how few concerned individuals are likely to actually complain; and population surveys as noted above provide a strong counter to this - there is little public support for the current levels of alcohol advertising and marketing during live sports broadcasts.

Based on an assessment of the available evidence and the numerous submissions from a variety of stakeholders, the Agency’s view is that the CTICP, as a co-regulatory instrument, is not sufficiently effective in protecting children and adolescents from the potential harm of alcohol advertising, due primarily to the exemption for live sporting events.

The Agency recommends that Free TV Australia and the free-to-air television industry:

**Recommendation 1a** In consultation with ACMA, amend to the Commercial Television Industry Code of Practice (CTICP) to remove the exemption for free-to-air television that allows direct advertising of alcohol products before 8.30pm as an accompaniment to live sport broadcasts on public holidays and weekends;

There is also an exemption which provides that alcohol can be advertised on free-to-air television between 12 noon and 3 pm on school days. The Agency understands that the current volume of alcohol advertising during this time period is low. Nevertheless, it would appear anomalous to remove the exemption that currently allows alcohol advertising during the daytime on weekends and public holidays during live sport and leave this daytime provision in place for weekdays. There is no good rationale for this exemption and the Agency recommends that Free TV Australia and the free-to-air television industry:

**Recommendation 1b** In consultation with ACMA, remove the current provision whereby alcohol products may be advertised on school days between 12 noon and 3pm.

### 6.2.2 Television – subscription channels

*Regulatory instruments and intent*

The *Broadcasting Services Act 1992* regulates subscription television channels.

As noted in chapter 4, advertising on subscription television is regulated within a co-regulatory code developed by the Australian Subscription Television and Radio Association (ASTRA) under the ASTRA Subscription Broadcast Television Codes of Practice (ASTRA Codes).

ASTRA’s submission to the Draft Report is concerned that the full character of the co-regulatory framework is not sufficiently emphasised – i.e. the legislative context underpinning the media codes, regular reviews of the codes, and the investigative and enforcement powers available to ACMA to compel compliance. By definition, co-regulation as defined by the Australian Government includes legislative underpinning even when a code is formulated entirely by an industry body. And it is clear that ACMA can deal with complaints under the ASTRA Codes as is
outlined in the chart in Chapter 4 delineating the various regulatory, co-regulatory and self and quasi-regulatory elements pertaining to alcohol marketing.

Regulatory performance

ASTRA’s submission to the Issues Paper indicated that there are no time restrictions for alcohol advertising on subscription television, that parental controls allow parents to block content unsuitable for children and that dedicated children’s channels do not carry alcohol advertising. These would appear to provide protection for children, but are unlikely to provide protection for adolescents who are more likely to be watching a different set of programming to children.

Subscription television has a growing market share in Australia, including many children and adolescents. The same evidence and rationale for limiting the exposure of children and adolescents to alcohol advertising on free-to-air television is valid for subscription television. There is no rationale for allowing alcohol advertising at different times of day on different television channels. Australian parents should be confident on the times of day when both children and adolescents can safely watch television regardless of the broadcaster without being exposed to alcohol advertising. ASTRA maintains that subscription TV is different because it is a “discretionary service providing specialised channels to niche audiences” and that “commercial free-to-air (FTA) television, as an open-access service with near universal reach, is appropriately subject to different regulatory requirements.” While that may be the case in general, in relation to protection of children and adolescents from content which is acknowledged to be harmful – e.g. alcohol advertising – that argument holds much less weight. In regard to appropriate and proportionate regulation, the public interest is the primary consideration with outcomes sought in the most cost-effective manner. A simple time rule is easily administered, and ASTRA provided no evidence in regard to any financial burden.

The Agency is also mindful that a regulatory framework should provide competitive neutrality. Free TV Australia in their submission indicate that different regulatory requirements for different media, could result in ‘regulatory bypass’, and alcohol advertisements will simply to move to media not subject to regulation. While a ‘one size fits all’ approach is not a goal of the Agency, and ASTRA’s point that different broadcasting sectors should be regulated differently is noted, in the interests of protecting children and adolescents from harmful content, both types of broadcast media should be subject to similar rules in this instance.

The Agency recommends that the Australian Subscription Television and Radio Association (ASTRA) and the subscription television industry:

Recommendation 2 In consultation with ACMA, amend the Australian Subscription Television Broadcast Code of Practice to restrict direct advertising of alcohol products on subscription television before 8.30pm and after 5.00am.

6.2.3 Digital media

Regulatory instruments and intent

The Broadcasting Services Act 1992 administered by the ACMA, also regulates digital media, and includes as one of its objects:

484 Subscription Television Australia, Submission to the ANPHA Issues Paper on the Review of Alcohol Advertising.
"1 (m) to protect children from exposure to internet content that is unsuitable for children."

Regulating internet and social media content and placement faces a myriad range of complex challenges, from the size and scope and segmentation of different channels and platforms, to the location of sites in other jurisdictions and user-generated content. The integration of social media content with traditional advertising is especially important to monitor in this fast-developing area; in the United States, the Interactive Advertising Bureau has published research that online ads boost recall of TV ads by 33 percent.486

As noted in Chapter 4, the Advertising Standards Bureau made two significant determinations on 11 July 2012 in relation to a complaint about the official Facebook pages of Fosters Australia’s Victoria Bitter487 and Diageo Australia’s Smirnoff brands.488 These determinations relate to the content of alcohol advertising on digital media including advertiser responsibility for moderating inappropriate user generated content. These determinations have addressed some of the significant issues relating to digital media content, by bringing this content under the remit of the ABAC Scheme.

Regulatory performance
Alcohol producers have invested significant resources in developing an expanding range of digital media marketing strategies. Age restricted sites and filters are easily circumvented, some more easily than others, and there are examples of alcohol advertising content appearing on sites primarily targeted at children. The Federal Trade Commission, in its March 2014 analysis of compliance with the alcohol advertising self-regulatory codes in the United States, specifically addresses the issue of age-gating and makes formal recommendations to the industry. At minimum, age gates on company websites should require consumers to at least enter their date of birth rather than simply asking for a ‘tick’ to verify that the person is of legal drinking age. The Agency would agree that this is better practice.

The FTC also documents in its review the various restrictions to visitation of alcohol brand pages on Facebook, for YouTube ads and the practices of some other social media sites. Facebook has a general global policy (which requires a date of birth with its registration for the site) – however, in a small “shadow shopping” exercise for the Agency, ‘13-year olds’ were able to access YouTube Australian alcohol ads with no ‘gate’ in place from either their Facebook site (which was aware of their age) or directly by clicking on an advertisement on the YouTube site. Clearly the companies, including the global social media companies, are taking their community responsibilities in Australia less seriously than in the US. Some companies in both countries are side-stepping their responsibilities by simply indicating via a disclaimer that if a person watches their videos on YouTube, they are representing themselves to be of legal drinking age. The Agency recommends that alcohol companies and social media companies:

**Recommendation 3** Their policies for Australian residents to offer better protections to minors: specifically, that alcohol companies ensure their own websites require disclosure of date of birth (not just a tick-a-box claim to be of legal drinking age); that alcohol advertisements on YouTube (including accessible from other sites such as Facebook) be properly age-gated so that minors cannot easily access them; and that other social media providers examine their

practices to ensure that age-gating policies to protect minors are deployed as a matter of course.

The evidence also suggests that this area requires considerable further research, monitoring and continued adjustment of regulatory response. The Agency has made two recommendations for the Australian and State/Territory governments on these issues at Section 6.4 below.

6.2.4 Cinema

Regulatory instruments and intent

The Agency has been unable to locate a specific regulatory code for cinema advertising. According to the Communications Council, there is no formal clearance body for cinema advertising. It is evident that cinema advertising must adhere to the AANA codes and the ABAC, as the ASB and ABAC Scheme have adjudicated on complaints in relation to cinema advertising. However, no submissions were received from the cinema industry in the development of this Final Report.

It appears that there are no restrictions on the placement of alcohol advertising in cinemas. Alcohol advertising can screen in cinemas during the daytime and/or when large proportions of the cinema audience are teenagers under 18.

In the United Kingdom, the Committee of Advertising Practice Code sets out the rules for non-broadcast advertising including cinema. The Cinema Advertising Association is the Trade Association of cinema advertising contractors operating in the UK and monitors and maintains standards of advertising exhibition in the UK and the Republic of Ireland. The Cinema Advertising Association has a policy on ‘Alcohol Advertising in the cinema’ which is part of its industry self-regulatory arrangements to comply with the Committee of Advertising Practice Code, and restricts alcohol advertising for films that have strong appeal with younger audiences; and this has been in place for over twenty years. The policy has been modified in recent years to restrict alcohol advertisements from 2008 onwards at films with ‘super-hero comic book spin-offs’, and in 2010 this approach was widened to include ‘films on supernatural subjects’.

Regulatory performance

Unlike the United Kingdom, there are no self-regulatory codes or restrictions on the placement of alcohol advertising in cinemas in Australia.

While there is no data available on the level of Australian children’s and adolescent’s exposure to cinema alcohol advertising, the Agency notes that the majority of complaints on cinema alcohol advertising that have been made to the ABAC Scheme have been in regards to advertising that depicts underage drinking and/or appeals to an underage audience.

In view of the recommendations made in relation to restricting the times when alcohol advertising is available on television to reduce the exposure of children and young people, the Agency recommends a consistent restriction for on-screen cinema advertising. This will give Australian parents the confidence that their children will not be exposed to alcohol advertising in cinemas before 8.30pm.

A number of submissions from industry stakeholders did not support a time restriction and suggested that a classification-based approach would be preferable. Other submissions, for example from the Australian Drug Foundation, supported the time restrictions but also

recommended that an additional classification restriction be employed along with the proposed
time restrictions, specifically that “alcohol advertising is not suitable for films that are rated P, G,
PG or M.” To have the necessary effect and consistency with the limitations placed on other
industries, Free to Air TV for example, an approach which utilises both time and classification
restrictions might well be more efficacious. For example, one would not want to see alcohol
advertising prior to a G-rated film which is likely to have a significant audience of children and
adolescents. In the absence of information on the precise effects of a more complex system,
however, the Agency has concluded that the time restriction, which should be applied
consistently across broadcast media in Australia, should also be the preferred approach for
cinema.

In the absence of a peak industry body and existing code, the recommendation is for the cinema
industry:

**Recommendation 4** Establish immediate voluntary arrangements and then work with
ACMA and/or the ACCC to establish a mechanism to introduce a
restriction on the direct advertising of alcohol products on-screen
in cinemas before 8.30pm and after 5.00am.

### 6.2.5 Outdoor and billboard advertising

**Regulatory instruments and intent**

The Outdoor Media Association (OMA) Code of Ethics: Alcohol Advertising Guidelines covers
forms of outdoor advertising such as billboards, on buses, taxis and so on and requires members
to adhere to both the AANA Code of Ethics and the Alcohol Beverages Advertising Code (ABAC).

The placement restriction in these Alcohol Advertising Guidelines “requires all members to limit
the advertising of “alcohol products” on fixed signs that are located within a 150 metre sight line
of a primary or secondary school” except where a school is in the vicinity of an establishment
selling alcohol products (e.g. clubs, pubs, bottle shops). Advertising must also be pre-vetted by
the ABAC Scheme (or written legal advice provided that the advertisement complies with ABAC
standards).

**Regulatory performance**

The alcohol industry is among the top ten spenders in outdoor advertising in Australia. Children
and young Australians are exposed to this advertising given that it is unrestricted in a wide range
of public spaces.

Outdoor advertising was recently subject to a parliamentary inquiry conducted by the
Commonwealth Standing Committee on Social Policy and Legal Affairs. The scope of this inquiry
included alcohol advertising. The Committee noted the following in regard to the Outdoor Media
Association’s Alcohol Advertising Guidelines:

“...when the loopholes are taken into account, the initiative seems to be little more than a
token gesture. A more significant and responsible action would be to limit alcohol
advertising in the outdoor medium, given its inevitable exposure to children.”

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regulatory codes in addressing community concern.
493 Senate Standing Committee on Community Affairs Inquiry into Alcohol Toll Reduction Bill 2007.
A number of submissions to the Issues Paper raised the proximity of outdoor and billboard advertising to schools and suggested increasing the limit from 150 m to 1 km. A range of further submissions to the Draft Report supported the draft recommendation to extend the line of sight limit to 500 m. The Outdoor Media Association in its submission to the Draft Report indicated a strong preference to keep the rule at 150 m citing in particular that an increase “is arbitrary and unnecessary, and that the evidence does not support a need for stricter regulation … and that the punitive effects of this recommendation do not take into account the genuine, substantial and effective efforts being taken”.

The Australia Liquor Stores Association Inc. (ALSA) in its submission to the Draft Report also indicated that they did not believe that there was any evidence “of the efficacy of 500 m over the existing 150 m or why 1km was rejected.” ALSA also provided a map of the Sydney Metropolitan area indicating the locations of primary and secondary schools and the effects of a 500m and a 1 km radius rule. On the issue of 1km, ALSA is correct that this approaches banning outdoor advertising as distinct from removing advertising in the vicinity of schools. The Agency has not recommended the banning of advertising on any medium.

A further point raised by OMA is that, in comparison with studies of television advertising for example, research on the influence of child and adolescent exposure to billboards and transit advertising is much more limited. It needs to be pointed out, however, that the public concern is with alcohol advertising as a whole – in particular, the cumulative effect of many different forms of advertising and the overall impact on children and adolescents. Outdoor advertising is a contributor and a not insignificant one in this regard. It would be an unreasonable hurdle to set, as the OMA suggests, that public health concerns need to show a direct correlation to a particular type of advertising ONLY in order to propose limitations on that advertising form; such an experiment is exceptionally difficult to carry out in any event and we would note that under such a test, there would likely be no advertising restrictions of any sort on any products of any kind.

The current 150 m rule already sets non-OMA members (e.g. on-premise advertisers) at some advantage in situations in proximity to schools. The less alcohol advertising young people are exposed to, in making their way to and from school for example, the less potential harm from that advertising. That is a reasonable rationale for extending the line of sight limits further in the proximity of school areas.

There are examples where the OMA has been made aware that an alcohol advertisement has been placed in proximity to a school in breach of its Code – and yet no effective action has been taken. For example, on 16 April 2014 the West Australian newspaper published a photograph of an alcohol advertisement on a bus stop outside a primary school. This raises two issues. There are no enforceable sanctions for breaches of this Code and some advertisements have remained in place despite advertisers being made aware of the breach. This is a key problem with self-regulation – that the Code has no method of enforcing its commitments to better practice except through voluntary willingness to comply. Having a code which cannot be enforced when there is non-compliance is problematical and brings the Code’s credibility and usefulness into question. The Australian Drug Foundation in its submission to the draft report was especially critical of this aspect of the OMA Code saying that “a code of practice is of no use when association members are able to breach the guidelines with impunity.”

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While the OMA indicates that having to seek authorisation “would be inequitable where non-Members will not be similarly sanctioned (for example, on-premise advertisers),” it is the case that its current Code already differentiates these two classes of advertisers. It is also the case that in an area of significant public health concern, an unenforceable code cannot deliver adequate public confidence about industry behaviour. The Agency has not commented on what sanctions would be appropriate for this code; no assumption should be made about ‘punitive sanctions’ – the point is to be enable the existing industry rules to command compliance. Authorisation enables an industry body to be fully effective in the pursuit of compliance with its code. The second issue is the OMA does not proactively monitor the market. As international best practice guidelines by industry make clear, self-regulatory schemes should not rely solely on complaints, which are an unreliable indicator of compliance. Proactive monitoring of compliance with a code is a necessary condition to a claim that self-regulation is working.

An additional issue was raised in a number submissions to the Draft Report and in particular by the Burnet Institute and the National Heart Foundation (WA Division) – that of transit advertising. The Institute and the Foundation noted that public transport advertising is a significant source of exposure of young people to alcohol advertising because of the extensive use by children and adolescents of public transport systems. While exposure to fixed advertising structures can be easily addressed by stricter code provisions, the problem of moving vehicles (buses and taxis primarily) is far more difficult to address. While the Agency examined a range of options, no obvious solution to exposure from moving vehicles is readily available short of prohibiting such advertising. The joint submission to the Draft Report from the McCusker Centre for Action on Alcohol and Youth, the Cancer Council of Western Australia and the Public Health Association Australia recommended that: “The placement of alcohol advertising should be prohibited where exposure to young people cannot be controlled, including on buses.” There is relatively little information or research on the quantum of exposure from advertising on vehicles. The Agency has made no recommendation on this subset of outdoor marketing activity and notes that through the OMA Code, the ABAC applies to the content of fixed and transit alcohol advertising.

A final issue arises in relation to the OMA Code. The guidelines issued by the industry body appear to exempt any advertisements by retailers under a particular set of nominated conditions (i.e. advertisements that contain the name of the retailer, prices, brand names, photographic reproductions of products, and other material necessary for identifying the retailer). This exemption is broader than the clause in the ABAC which exempts only “point of sale material produced by alcohol beverage retailers.” There is little rationale for having a definition in the OMA Guidelines which is not aligned to the ABAC – in fact, this undermines the alcohol industry’s attempts to ensure that retailers form part of the ABAC process. It further undermines the ICC position that all alcohol advertising should be within the remit of the regulatory process. Whether the advertising originates from a retailer or other firm, the same rules should be applicable.

To improve the effectiveness of this Code, the Agency recommends that the Outdoor Media Association (OMA) and the outdoor advertising industry:

**Recommendation 5a** Apply for ACCC authorisation of the Outdoor Media Association’s Code of Ethics: Alcohol Advertising Guidelines to enable effective...
sanctions for enforcement of code decisions, particularly in relation to the placement of advertising material near schools.

Recommendation 5b  Amend the Outdoor Media Association’s Code of Ethics: Alcohol Advertising Guidelines to: increase the distance of advertising from schools from 150 m to 500 m; align the Guideline coverage to that contained in the ABAC provisions.

Recommendation 5c  Begin a regular program of proactive monitoring of compliance with the Outdoor Media Association’s Alcohol Advertising Guidelines, either in conjunction with the recommended ABAC monitoring or separately, and report on this monitoring publicly.

The Department of Health and Human Services, Tasmania, also notes that there is a need for further guidance by the industry in relation to a 500 m rule, with particular reference to “guidelines to restrict ‘line of sight’, limit the size of display, and ban the use of youth and young adults in alcohol advertising in the vicinity of schools.”

6.2.6 Radio

Regulatory instruments and intent

The Commercial Radio Codes, a co-regulatory instrument registered by ACMA, requires compliance with all other codes of practice ‘so far as they are applicable’, and requires that a radio licensee must not broadcast programs (including advertisements) which in all the circumstances “present as desirable the misuse of alcohol” or associate betting or gambling with alcohol. The peak industry body responsible for the creation of the Codes, Commercial Radio Australia (CRA), has no direct role in complaints handling. Alcohol content complaints are handled by ABAC.

Regulatory performance

Alcohol advertising on radio makes up a relatively small proportion of the marketing effort for alcohol products, approximately 5-6%. Radio advertising was not raised as an area of concern by any of the submissions and CRA advises that its stations have received only 3 complaints about alcohol advertising over the last 4 years.

Given that the range of improvements to the ABAC that are recommended in Section 6.4 below would also apply to the content of alcohol advertising on radio, the Agency does not recommend changes to existing controls for alcohol advertising on radio.

6.2.7 Print

Regulatory instruments and intent

As detailed in Chapter 4, the Publishers’ Advertising Advisory Bureau membership comprises newspaper and magazine publishers. For print media, the PAAB Guiding Principle indicates that its members support adherence to the ABAC and contains further principles for the print advertising of licensed premises and brands.

Regulatory performance
While alcohol advertising commonly features in magazines that are read by audiences that include young people, print media was not raised as a particular area of concern by any of the submissions. Spending on alcohol advertising in print media represents a relatively small proportion of the marketing expenditure for alcohol products.\(^{502}\)

Given that the range of improvements to the ABAC that are recommended in Section 6.4 below would also apply to the content of alcohol advertising in print media, the Agency does not recommend changes to existing controls for alcohol advertising in print media.

### 6.2.8 Branded merchandise

#### Regulatory instruments and intent

As noted in Chapter 3, branded merchandise is a commonly used marketing strategy, and is also used by the alcohol industry. Branded merchandise can either be produced solely to advertise a brand or product, or in the sponsorship area may be promoting an athlete or team but also include sponsor’s logos and brands. Branded merchandise can take many forms including clothing, hats, posters, branded equipment including drink bottles, glasses, portable drink coolers, etc.

Chapter 3 also reported research showing that young people that own branded alcohol merchandise are more likely to initiate drinking at an earlier age and engage in harmful drinking\(^{503}\).

Submissions have identified four issues with alcohol branded merchandise:

- merchandise that is targeted at children – branded clothing in children’s sizes, or merchandise that has toy-like characteristics;
- merchandise that is supplied to children and/or young people;
- merchandise that is alcohol branded snacks or sweets; and
- merchandise that is inappropriate and dangerous.

In 2008, in the United Kingdom the Portman Group’s *Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks* was amended to add “that alcohol branding must not appear on children’s replica sports shirts under sponsorship agreements signed after 1 January 2008.”

#### Regulatory performance

Some examples of children’s and adolescents’ exposure to alcohol branded merchandise are at Box 9 below.

### Box 9: Examples of exposure to alcohol branded merchandise

**Alcohol-branded merchandise targeted at children**

from the Sydney Morning Herald February 2013 “Jim Beam-branded clothing is being sold to children as young as four, in what public health experts have said is one of the most shocking examples of alcohol advertising they have seen. A range of Jim Beam-branded V8 supercar...”

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promotional clothing, sold under the Jim Beam Racing “kids team” label, is available for sale online.\(^{504}\)

**Alcohol-branded merchandise that is supplied to children and/or young people**

From Mumbrella January 2009 – “Beer brand XXXX Gold has been accused of breaking the rules on the promotion of alcohol to children at its beach cricket event at the weekend. Nathan Bush said that about 30% of the crowd was children. He said: ‘We had free XXXX Gold hats for everyone as they walk through the gates, XXXX Gold showbags, XXXX Gold signage on every available surface, XXXX Gold dancers, XXXX Gold TVC’s and kids participating in catching competitions to win XXXX Gold cricket bats. This raises the question, is this promoting alcohol to children?’ \(^{505}\)

From the Sydney Morning Herald June 2012 – “Lion, makers of James Boag, has admitted that the bottles, carrying the slogan "Like it or not, there are times when you just can't have a beer, that's when you reach for the next best thing", have been given to children, but says it was an accident. Players aged around 13 were given the bottles at a junior league football match in Bulleen, Victoria. A Lion spokeswoman said the bottles had been made for events attended by people over the legal drinking age, including its Melbourne Cup marquee, and were never intended for children. But excess bottles were given to other sponsored events involving children and families. The spokeswoman said new procedures had been put in place to ensure it did not happen again.\(^{506}\)

**Alcohol-branded merchandise that is inappropriate and dangerous**

From the Sunday Times December 2011 – “Three men in Western Australia suffered horrific burns after branding themselves with novelty branding irons given away as part of a Jack Daniel's promotion. Jack Daniel's brand owner Brown-Forman Australia responded by claiming it has done nothing wrong because the product comes with a warning. "We are confident this promotional item was offered with the appropriate statement of warning and we are sorry to learn that a few individuals may have harmed themselves through use other than advised," Brown-Forman managing director Marshall Farrer.” \(^{507}\)

Based on the strong evidence showing that young people are more likely ownership of branded merchandise to initiate drinking at an earlier age and engage in harmful drinking as adolescents, there is need for both revised Code attention and enforceable sanctions on this issue. This recommendation is made in the context of the overall recommendations in relation to improving the Code and having it authorised to allow for sanctions to be enforced.

Submissions from health organisations varied in relation to whether branded merchandise should be included within the ABAC Scheme; those objecting do so on the basis that the Scheme has not been effective at reducing exposure of children and adolescents and, as a result, no additional areas of responsibility should be included.

The Agency recommends that the ABAC Scheme Ltd members:

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Recommendation 6
Review and revise the ABAC Code and Guidance documents to include, and provide specific guidance on, alcohol branded merchandise.

6.2.9 Sponsorship – sport

Regulatory instruments and intent
There are currently no restrictions on the sponsoring of sport by alcohol companies in Australia.

Sponsorship by the alcohol industry in Australian sport involves a wide range of advertising, marketing and promotion strategies; including
- links to broadcast deals for alcohol advertising using the live sports exemption on free-to-air television;
- at venue advertising (on-ground/court, fixed and digital signage, video advertisements, pa announcements, etc.);
- logo placement on uniforms;
- rights to use athletes for promotional appearances in advertising and at other events;
- access to the digital media platforms and audiences of the sport to promote the product using digital advertising, and promotions;
- at event promotions and give-aways; and
- linking sponsorship to in-stadium pourage rights.

While not a regulatory strategy, government health promotion sponsors have replaced alcohol sponsorship for some sports in some jurisdictions (Healthway in WA, and ANPHA at the national level with 16 national sporting organisation partners), replicating earlier tobacco sponsorship buyout strategies pioneered by VicHealth.

Some Australian sporting organisations and sporting media voluntarily do not accept alcohol sponsorship or advertising.

In the United Kingdom, the alcohol industry Portman Group’s self-regulatory Code of Practice on Alcohol Sponsorship came into force 31 January 2014 and “applies to all alcohol sponsorship agreements activated in the UK and provides a procedural framework for influencing, regulating and controlling industry practice.”

Regulatory performance
There is no doubt that the integrated nature of alcohol sponsorship in many sporting environments exposes children and adolescents attending sporting events and/or watching sport on television and/or engaging on sporting digital platforms to the same level of alcohol advertising as seen by adults.

For example, at the annual Bathurst 1000 V8 Supercar event in 2012, noted earlier, featured racing cars sponsored by spirits brands (Jack Daniels and Jim Beam), the event’s website advertised Jim Beam-sponsored merchandise, and alcohol advertisements would have been included on the live television broadcast during the daytime.

A number of national surveys indicate public support for restricting alcohol sponsorship of sporting events. For example:

In 2013, 72% of adults felt alcohol and sport have become too closely related in Australia, and 67% that alcohol sponsorship of sport should be phased out (Salvation Army survey of 1,001 Australians for Alcohol Awareness Week)\textsuperscript{509}.

In 2010, 48.3% of those surveyed supported banning alcohol sponsorship of sporting events (2010 National Drug Strategy Household Survey)\textsuperscript{510}.

Branded sponsorship presence has increased over recent years with the increasing size of logos on players’ uniforms and on-ground and on-court decals. The inability to isolate children and adolescent fans from this increasingly visible and integrated exposure of alcohol brands in sporting environments remains problematic from a public health perspective. This is particularly pertinent given the evidence that Australian children as young as 10 can recall which sponsors are associated with sporting teams\textsuperscript{511}; and that Australian marketers and parents both indicate that children and young people are influenced by sponsorships of athletes and teams\textsuperscript{512}.

In his 2011 report, the ABAC Chief Adjudicator noted

> “the issue of sponsorship was again raised in several complaints. Alcohol companies are major sponsors of various activities such as sports competitions and individual teams, as well as community and cultural events. Public complaints sometimes question if it is appropriate for alcohol as a product to be associated with sports and community / cultural events via named and branded sponsorship arrangements. The Panel believes it is a very legitimate question of public policy if sponsorship activity by alcohol companies should be permitted and, if it is to be permitted, then whether there should be applicable standards of good practice to govern the form and type of sponsorship.”\textsuperscript{513}

Submissions to the draft report from a number of industry bodies, for example COMPPS, supported the Agency’s draft position which did not recommend restrictions on alcohol sponsors in sport. Some of the other submissions, such as from Mr Rick Stevens, sought an end to the relationship between sport and alcohol while Cancer Council NSW proposed that sponsorship should be prohibited for children’s sport or for teams in amateur clubs where there are team members under 18 years of age; others, for example VicHealth, advocate further research into the effects of in-game advertising and further investigation of regulatory options to limit alcohol sponsorships. As noted earlier, the Agency has not recommended prohibition on sports sponsorship but, clearly, further attention and research are warranted in this area.

Submissions from stakeholders varied in relation to whether alcohol sponsorship material should be included within the ABAC Scheme; those objecting do so on the basis that the Scheme has not been effective in their view at reducing exposure of children and adolescents to alcohol marketing and, as a result, no additional areas of responsibility should be added to the Scheme.

Given the issues raised in terms of exposure of children and adolescents to alcohol advertising associated with sport sponsorship, the comments raised by the ABAC Chief Adjudicator in 2011, and the recent January 2014 extension of the UK self-regulatory code to apply to alcohol sponsorship of sports, the Agency recommends that it is timely for the ABAC to be extended to cover sport sponsorship:


\textsuperscript{510} AIHW (2011) 2010 National Drug Strategy Household Survey report (p 174); Canberra; Cat. no. PHE 145.


Recommendation 7  Review and revise the ABAC Code and Guidance documents to include, and provide specific guidance on, sponsorship of sporting events.

6.2.10 Sponsorship – music and other events

The alcohol industry in Australia is active at sponsoring and event activation at a range of music events, from large one day festival events, to smaller music events on university campuses and at other venues.

In the United Kingdom, the alcohol industry’s Portman Group’s self-regulatory Code of Practice on Alcohol Sponsorship\(^{514}\) applies to alcohol sponsorship of all events.

As with sports sponsorships above, submissions from health organisations varied in relation to whether alcohol sponsorship material for entertainment and other events should be included within the ABAC Scheme; those objecting did so on the same basis as noted earlier.

Given the draft recommendation on extending the ABAC Scheme to sport sponsorship, it is also recommended that code coverage be provided to all alcohol sponsorships in Australia:

Recommendation 8  Review and revise the ABAC Code and Guidance documents to include, and provide specific guidance on, sponsorship of music, cultural and all other events.

6.2.11 Product placement

Product placement of alcohol imagery and references in popular media including films and music videos was raised by a number of submissions.

While product placement does increase exposure to alcohol marketing for young Australians, given that these media products are often produced and distributed at the global level, the Agency is not aware of any current approaches to regulating product placement that are feasible in this context. Further, the recent Federal Trade Commission Report \textit{Self-Regulation in the Alcohol Industry}\(^{515}\) found that about one-tenth of one percent of alcohol marketing expenditures involved product placement in movies, television shows or other entertainment media.

6.2.12 Promotions

Promotions vary from those conducted at licensed premises (subject to State and Territory liquor licensing requirements), those at supermarkets and bottle shops (subject to State and Territory liquor licensing requirements), occurring through third party channels at events and via digital media (sport and music sponsorships) or directly from alcohol producers via packaging and traditional and digital media. States and territories have particular role in the area.

The Agency recommends to states and territories that:


Recommendation 9  States and territories include reporting on their regulation and enforcement issues for alcohol promotion in the proposed triennial reporting to COAG.

6.3 Effectiveness of controls on the content of alcohol advertising

The ABAC Scheme primarily oversees the content of alcohol advertising and focuses on compliance by those producing alcohol marketing and advertising, i.e. the brewers, distillers, winemakers and alcohol retailers.

Previous Reviews and Reports on ABAC

As noted in Chapter 4, the last independent major review of the ABAC Scheme occurred in 2003 by the National Committee for the Review of Alcohol Advertising instigated by the Ministerial Council on Drug Strategy (MCDS)\(^{516}\) and further reports on the regulation of alcohol advertising were prepared for the MCDS in 2009 as well. Both review processes essentially found that the system of self-regulation of alcohol advertising exhibited serious deficiencies and required much improvement.

These reviews resulted in a range of improvements to the industry’s alcohol advertising regulatory Scheme, and an extract of these is outlined at Figure 6.1 below. In particular, the addition of the government representative has moved the Scheme into a quasi-regulatory frame.

Currently the ABAC Scheme has a number of useful features (these were described in detail in Chapter 4):

- the Adjudication Panel, which hears complaints, is separate from the Scheme’s Management Committee, and includes public health representation;
- the Chief Adjudicator presents a separate view in the annual report including his views regarding challenges with respect to the Scheme;
- the pre-vetting system appears to be widely used;
- the decisions of the Panel are made public; and
- the Scheme has sought to improve its coverage over time including over alcohol packaging and product naming and the recent inclusion of major retailers as Code signatories.

But, as also noted earlier, there remains significant community concern not only about the alcohol industry’s influence within the Scheme and in particular on the drafting of Code provisions, but regarding the effectiveness of the Scheme in protecting Australian children and adolescents from alcohol promotions which are appealing to them. Its effectiveness is also being brought sharply into focus by the widespread social and interactive digital media opportunities now available to alcohol advertisers as discussed in Chapter 3.

\(^{516}\) [Link](http://docs.health.vic.gov.au/docs/doc/2E4E141E5A719092CA2578A1000A1CB0/$FILE/ncraareport.pdf)
Figure 6.1: Timeline of ABAC changes\textsuperscript{517} (extracted highlights – full details including process improvements are available at the URL below)

\begin{center}
\includegraphics[width=\textwidth]{timeline.png}
\end{center}

\textsuperscript{517} Sourced from The development of Australia’s Alcohol Beverages Advertising (and Packaging) Code, the 2011 & 2012 ABAC Annual Reports and ABAC’s Website.
Generalist or Specialist Scheme?

Most of the submissions received on the Draft Report were in principle of the view that ABAC should continue as a separate adjudicator of complaints from the Australian Standards Bureau (ASB). This is was not the case in two submissions – from the Foundation for Advertising Research and The Newspaper Works (which has amalgamated with the Publishers’ Advertising Advisory Bureau). Both stakeholders recommend that the “Advertising Standards Bureau be solely responsible for determining complaints” – i.e. by implication, that the adjudication processes carried out independently of the ASB by the Alcohol Beverages Advertising Code be discontinued.

The Agency examined this suggestion in the interests particularly of regulatory simplicity and reduction of red tape by the private sector. However, when re-examining why a separate structure and adjudication process was created, it is reasonable to infer that too many stakeholders were not confident that the ASB at the time could carry out this function in a manner conducive to greater public confidence. In particular, the 2003 Review by the National Committee for the Review of Alcohol Advertising (see section below) reported that only 5% of alcohol complaints since 1998 had been forwarded to ABAC (a matter subsequently rectified) and that of the 361 complaints considered by the ASB, all had been dismissed.

While the matter of a specialist versus generalist regulator will continue to generate debate (as it does in many other regulatory areas as well), it would appear that in the case of alcohol advertising, where major community and public health concerns arise, some form of specialist consideration appears to be useful.

Self Regulation or Quasi-Regulation?

The ABAC Scheme has strongly requested that it not be characterised as ‘self regulation’ but that it be described as quasi-regulation based on the presence of a government representative on the Management Committee (who provides updates to the IGCD), that the consensus basis of the Management Committee allows strong input from each representative, and that the Federal Minister for Health (or their nominee) provides a shortlist of candidates for the appointment of Health Sector Panelists to the ABAC Adjudication Panel. The Scheme’s point is reasonable. Quasi-regulation is essentially self-regulation where a government takes an interest in a code and scheme, generally due to public concerns about the subject of the regulatory activity, and either influences or participates in some form in the process. The ABAC Scheme qualifies to be called quasi-regulatory. Some industry members characterise the Scheme as co-regulatory – which it is not; there is no legislative underpinning to the Scheme. By and large, the Agency refers to the Scheme in the Final Report as a quasi-regulatory one.

Nearly all submissions to the Draft Report responded to the various recommendations in relation to improvements to the ABAC Scheme. Industry bodies affirmed strong support for the Scheme, and most of the public health bodies were critical. In the latter category, a range of bodies did not support any of the recommendations to improve the Scheme; these included inter alia the Cancer Council Tasmania, National Heart Foundation (WA Division), the Australian Research Alliance for Children and Youth, and the Australian Health Promotion Association (WA Branch) and the joint submission of the McCusker Centre,
Cancer Council WA and Public Health Association Australia. The view of these bodies was that a quasi-regulatory Scheme is incapable of carrying out the task of effectively regulating alcohol marketing promotions.

The following additional specific recommendations are made by the Agency in relation to a range of improvements that are necessary for the ABAC Scheme to achieve more significant community acceptance and to comply more effectively with the spirit of the ABAC Code.

### 6.3.1 Improving the process of reviews of the ABAC Code by the ABAC Scheme

Despite improvements made since the last review, it is clear that the ABAC provisions are overdue for a comprehensive review (recommendations which follow in subsequent sections deal with key elements which the Agency recommends be addressed).

The ABAC Scheme has advised in its submission to the Draft Report that the Management Committee is nearing finalisation of the first part of a two part process reviewing the Scheme; the first part is a review of the Code provisions themselves which commenced in June 2013. Contributing to this process has been commissioned research which has provided information on:

- community perceptions of the acceptability of a selection of 12 alcohol advertisements before and after awareness of the ABAC contents;
- analysis on the degree of alignment between community perceptions and the Complaints Panel determinations on these ads; the alignment between the survey participants and the Complaints Panel was: on 50% of the ads (6 ads) there was alignment, 33% (4 ads) were non-aligned - and of these, in 3 cases the Panel's decision was more conservative than that in the survey - and in a further two 2 cases, the was no clear majority opinion from the survey results.
- acceptability of the ads based on age, gender and education of respondents;
- knowledge of alcohol advertising regulations;
- and general level of concern about alcohol advertising.520

Still to come is a review of the governance and Scheme operations.

The Scheme derives considerable credibility from the presence of a government representative on the Management Committee (see also Section 6.3.3 – Improvements to Governance). With this ‘imprimatur’ comes responsibility. The Agency notes that while the ABAC Scheme has proceeded with a review of the provisions of the Code, this has been conducted with no public transparency of the matters being considered, and no opportunity for public input into its consideration. Having a government person on a Management Committee does not substitute for proper public consultation; nor does reporting to the IGCD that the Code is being reviewed. Through its quasi-regulation process, the Scheme is effectively acting in the public interest – that is why the federal government is present. Reviews of important considerations of regulatory provisions are not normally conducted behind closed doors. Industries have been very critical of governments for any lack of consultation or lack of transparency of this kind. The Scheme cannot both claim the high

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ground of quasi-regulation and then conduct itself as a non-transparent industry body. The Agency thus strongly recommends that the ABAC Scheme

**Recommendation 10a** Submit the draft proposed changes to its Code provisions to public scrutiny by placing these proposed changes on its website and inviting public comment from interested stakeholders.

**Recommendation 10b** Ensure that transparent consultation and review processes are put into place for the upcoming review of ABAC Governance and Operations.

While the above recommendations go some way to rectifying certain aspects of the lack of transparency of the Scheme’s review processes, it is the Agency’s view that the Scheme’s Code and processes – given the important public interest matters which it regulates—should also be a matter for regular periodic independent public scrutiny from a regulatory authority. This process of public scrutiny by a regulator will also enable the Scheme to rectify one of its chief shortcomings – the lack of a hierarchy of sanctions and the lack of ‘teeth’ to enforce compliance with the Code.

### 6.3.2 Improvements in Code enforcement and sanctions

Industry submissions argue that being found in breach of an advertising code and being required to modify or withdraw a campaign is a sufficiently significant penalty, both financially and in terms of reputation and credibility. In the 2006 European Commission report which examined advertising self-regulation in Europe, it was noted that: “available evidence suggests that the business costs to companies of a withdrawal [of advertising] are real (reputation, share price). These market penalties can be a more effective source of good behavior than the imposition of specific financial penalties”.521 However, the report also notes that prompt withdrawal of advertising is only a minimum sanction in an effective scheme.522

The consensus in the non-industry submissions to the Issues Paper, and from a number of earlier publications,523,524,525,526 is that current sanctions are inadequate.

As expressed in NAAA’s submission to the Issues Paper:

“Advertisements which are the subject of a complaint are permitted to run until determination by the Panel. If a complaint is upheld, that advertisement may be modified or discontinued. This process can take some weeks …”

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ABAC’s 2012 Annual Report indicates that the adjudication process takes an average of 20 business days (four weeks) to be completed. In some cases at least, the marketing will have run its course.

While the withdrawal of an advertisement or marketing can be a significant sanction, this is the only sanction available within the ABAC Scheme; further, the sanction is voluntary – it relies on the co-operation of various industry groups. There is no system for enforcement of, or escalation of, sanctions, no method of ensuring compliance of non-signatories (even those who indicate that they will be co-operative), and no significant adverse publicity strategy to back up the Code.

The ABAC Scheme has always had the option of using a range of tools – some of which are fully self-regulatory – to improve enforcement and the ‘bite’ with which the Scheme can operate. For example, visibly publishing the list of firms and the breaches upheld (as distinct from the strategy of simply making determinations public which is also useful), especially in the new media marketing space, could be a useful deterrent. Getting agreement by signatories that they will abide by an adverse publicity order (i.e. correcting their advertisement publicly) is also a potential effective deterrent. Recall provisions as envisaged for packaging breaches would also provide an enforcement provision with teeth. Proactive compliance activity can include higher scrutiny of non-compliant firms and the ability to apply more significant sanctions to repeat offenders. No such interest in alternatives or attempts to improve the Code enforcement and sanction provisions with ‘teeth’ appear to have been pursued, even for the sanctions that do not require authorisation (see below).

Authorisation

Australia has a number of methods whereby the advantages of self or quasi-regulation can be preserved while providing both independent scrutiny of a code’s provisions as well as the potential for full coverage of the behaviour which is the subject of a code of conduct (irrespective of whether particular firms are members of the code scheme). The particular process available to the alcohol industry is the authorisation of the ABAC under the Australian Competition and Consumer Commission’s authorisation process. Providing that the ACCC is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment (the public benefit test), authorisation could provide for coverage for all of the alcohol marketing communications activity in Australia.

Authorisation not only resolves the problem of ensuring full coverage of the Scheme in the market (irrespective of membership in ABAC or agreement to comply), it would also allow the industry to correct a significant ongoing weakness of its processes – the lack of a hierarchy of sanctions and the ability to enforce its sanctions. Making provision for sanctions beyond the withdrawal of a promotion could be anti-competitive conduct and authorisation is given in the context of protection from legal action under the Competition and Consumer Act 2010. The authorisation process is described in more detail in Appendix J.

The Agency is of the view that the ABAC Scheme industry members have taken their current quasi-regulatory process to the point where only minor improvements can be made to matters such as coverage and sanctions – without utilising the more formal processes available in the regulatory landscape. The Scheme now needs to move forward in delivering the full benefits of an all-inclusive Scheme which can compel compliance with its Code, which can be described as a Scheme with real regulatory ‘teeth’, and which has the authorisation of its Code and activities from an independent regulator. The first step in this process is to seek such authorisation. This will enable the Scheme to be more effective in its task of alcohol advertising regulation, particularly in relation to the concerns of this Report, the regulation of advertising that influences children and adolescents. Authorisation would
also go a considerable way to addressing the serious concerns about the Scheme’s effectiveness as articulated by a range of submissions to this review.

The Agency has noted that the Scheme members are familiar with the authorisation process. In June 2007, the three peak alcohol industry bodies (along with Clubs Australia, the Australian Hotels Association and the Liquor Merchants Association of Australia) applied for ACCC authorisation of an ABAP Code (this was essentially Part 2 of the ABAC on packaging and naming of alcohol beverages and Section 4 of the associated Rules and Procedures). In this case, the industry applicants were authorised to operate a Retailer Alert Scheme - in effect a product found not to comply with the packaging and naming provisions of the ABAC would be the subject of a communication to retailers enabling retailers who were signatories to the Scheme to abide by a request that they not place further orders for non-compliant products. This would have been a significant sanction. The ACCC granted authorisation in October 2007 however this was conditional on the industry not being permitted to ‘grandfather’ products (the ACCC media release is at Appendix I). It appears that the Retailer Alert Scheme, which would have been an excellent initiative of the alcohol industry, was never implemented because of these conditions. The lack of acceptance at that time by alcohol producers that some ‘older’ products could breach the ABAC but should not be removed from the market raises a serious question about the industry’s commitment to outcomes from its Code process.

While the Retailer Alert Scheme authorisation was not implemented by the industry, the process exemplifies the opportunity for publicly transparent scrutiny by an independent regulator that the process provides, the ability to potentially extend coverage to all alcohol marketing communications, and the ability to have a range and hierarchy of sanctions available for enforcement of Code determinations.

From the public perspective, an authorisation process would subject the Code of a scheme to a public review process, outside the control of industry, which enables an independent authority to seek comment on the appropriateness of the Code provisions and the Code processes. Obtaining authorisation also has the advantage of delivering an industry sponsored regulatory scheme with higher transparency, with a hierarchy of effective sanctions, and potentially much improved public confidence – at little or no cost to government.

No industry submissions to the Draft Report exhibited significant interest in having the Code authorised at this point. The submissions from the health organisations varied in their comments. The FARE submission, as with the NAAA and others, were not convinced that authorisation would see improvements in the ABAC Scheme although the NAAA submission did acknowledge that authorisation would be necessary in order for an (independently adjudicated) code to incorporate sanctions that may otherwise be impermissible as anti-competitive. But many concerns continued to be expressed: Whether the ACCC would be able to ensure a more effective code would be evolved (e.g. complete coverage of all advertising and marketing, inclusion of a hierarchy of sanctions) if the industry itself had made no provision for such improvements in the Scheme. What would occur if the industry did seek authorisation and, as occurred with the Retailer Alert Scheme, the ACCC was not satisfied with the industry’s proposals – would the industry just walk away again when faced with a requirement for robust regulatory behaviour?

Such concerns are valid particularly in light of the industry’s reluctance to embrace the authorisation process – though it should be noted that the ABAC submission provided no view other than “this recommendation will be considered as part of the Scheme Operation and Governance Review.” It is clear that no guarantees can be provided in this area, and as a result, the Agency has also recommended a new legislative regime be implemented.
should the ABAC Scheme Ltd fail to seek authorisation in a reasonable timeframe (see section 6.4).

Given the evidence of risk associated with alcohol advertising and the expectation that industry deliver appropriate outcomes for the Australian society, the Agency recommends that the ABAC Scheme:

Recommendation 10c Seek authorisation for a revised Code and associated Rules and Procedures from the ACCC which include improvements to the Code provisions as outlined in the recommendations of this Review.

Recommendation 10d As part of the current Code review, examine alternatives for an effective range and hierarchy of sanctions for enforcement of ABAC Scheme decisions including the options of public lists of firms breaching the Code (along with the nature of the breach), adverse publicity orders (published corrections), financial penalties, and recalls for any products found to be in breach of the packaging and naming provisions of the Code. Re-consideration should also be given to mandatory pre-vetting of alcohol marketing which would be permissible (provided the public benefit test is met) under an authorised code.

6.3.3 Improvements in governance, reporting, and research

Management Committee structure
The nature of the governance structure of ABAC is an important signal to the public about the confidence they can have in the Scheme. Alcohol misuse remains an area of significant public concern and related to these types of concerns is the role that alcohol advertising plays.

While the complaints mechanism is adjudicated separately from the governing structure of the Scheme, the Management Committee structure remains very industry dominated. The ABAC submission notes that “the ABAC Management Committee … represents a wide range of stakeholders.”527 In fact, four of five of the Management Committee members are from the alcohol and marketing industries, the fifth is a government nominee, and industry holds the role of Chair (in a rotating fashion between the key three peak alcohol producer industry bodies). It is the Management Committee which drives things like publicity about the Code, new guidelines or advice, changes to the Code provisions and so on.

There is as well a Board of the ABAC Scheme Ltd whose role is not transparent from examination of the ABAC website; the Board is separate from the Management Committee and would hold the normal responsibilities of the Board of Directors for this company. The Board ensures the Scheme is funded but the exact relationship of the board structure to the Management Committee is unclear and was not clarified in the ABAC submission to the

Draft Report. The dichotomous roles of the Board and the Management Committee do not appear to be best practice from a governance perspective.

The ABAC Scheme has argued that it is much more than just a self-regulatory structure, and that it is in fact a quasi-regulatory Scheme with active government involvement. That is correct. As noted earlier, the Scheme derives considerable credibility from the fact that a government officer sits on its Management Committee. In fact, the question of conflict of interest arises when the Scheme is being reviewed from the same portfolio which provides a representative to the Management Committee; in this regard, the ABAC submission reported that the Department of Health on this occasion “asked that it be noted that they have abstained from being a signatory” to the ABAC submission to the Draft Report.528

In general, far more independence in the Management Committee/Board structure would provide better separation between the industry and the regulatory structure and lessen the dominance of the peak industry bodies on the Scheme. In the past, public health representatives have been added to the Adjudication Panel, and the Agency has been advised by ABAC that this has resulted in improved decision-making. An independent chair of the Management Committee is provided for in the ABAC Rules & Procedures but has not been taken up. A chair of clear independent stature would assist significantly in enhancing the credibility of the Scheme. Further, a better balance is required in the membership of the Management Committee - for a scheme of such importance to public health, the current Management Committee structure is inadequate and unbalanced.

**Recommendation 10e**  Rationalise the two separate governance entities responsible for the Scheme, by merging the Board and the Management Committee into a single Board of the ABAC Scheme Ltd.

**Recommendation 10f**  Appoint an independent chair of the Board, who is not associated with the alcohol or marketing communications industries.

**Recommendation 10g**  In addition to an independent Chair, ensure that the Board is appropriately balanced with three representatives of the alcohol industry peak bodies as well as three independent directors, selected from public health nominees nominated by the Commonwealth Minister for Health and representing both broad public health expertise and health/social marketing communications expertise. Additionally, retain a government appointee on the Board (as either a full Board member or an observer to represent the Health Department’s interests).

### 6.3.4 Improvements in coverage – industry

One of the critical features of the potential effectiveness of a self- or quasi-regulatory scheme is its coverage of the industry. In an area of significant public health and community concern such as the impact of alcohol advertising and marketing on Australian children and

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adolescents, the coverage of industry advertising conduct must be extensive if not complete.

The scheme is in the process of resolving one major gap in its coverage having persuaded the two major Australian grocery retailers to join as non-member signatories. Woolworths became a signatory to the scheme in June 2013 and Coles in November 2013. There still remain other liquor retailers and the Agency strongly encourages that these retailers also avail themselves of the opportunity to participate.

The Scheme advises that some 90% of alcohol advertising would be covered currently by industry members belonging to ABAC Scheme – which leaves a significant 10% of marketing communications uncovered. This is not counting current problems with areas where the Scheme adjudicators are not able to define a communication as an ‘advertisement’ and where the Scheme’s remit is thus not asserted. Further, several submissions point out that non-signatories to the ABAC Scheme contribute significantly to advertising breaches which promote excessive and underage alcohol consumption.

The extent of coverage of industry schemes can be a typical weakness of self- and quasi-regulation – industry bodies and the ABAC Scheme rely on the goodwill of industry to participate through their membership of the peak alcohol bodies or through becoming non-member signatories or simply by complying with determinations. So a major deficiency remains in Australia that non-members or non-signatories are not obliged to take any action if found in breach of the ABAC. This has occurred in a number of cases. For example, a complaint was made in December 2011 regarding the Bacchus Distillery Shot Bucket.

This complaint about naming and packaging (Part 2 of the Code) concerned a product which consisted of 28 individually packaged 30mL shots in bright colours (green, pink and yellow) with names and flavours such as ‘Pancake’, ‘Banana Split’, ‘Cowboy and Cowgirl’ shots and ‘Chocolate Éclair’. The Adjudication Panel did not find a breach in relation to the Shot Bucket encouraging excessive alcohol consumption: “The shot bucket is a multiple pack comparable to a carton of beer, which may be consumed over several weeks; and sweet confectionery flavours do not encourage or promote excessive consumption.” However, the Panel upheld the complaint about its appeal to children recommending modification of the product to minimise this appeal.

Bacchus Distillery has no formal obligation to comply with the Panel’s determination as it is not a signatory to the ABAC Scheme. The products remain for sale on the Australian market as at the date of finalising this Review.

In an area of significant community concern, it is feasible for the ABAC Scheme to seek virtually economy-wide coverage of alcohol marketing through an authorisation of its Code (see the earlier Recommendation 6.3.2 in this regard).

**Coverage of Wine Marketing Communications**

The Agency has noted the differences in the pre-vetting processes between distilled spirits and beer on the one hand and wine on the other. The Guidance Notes indicate, for example, that beer and spirits are required to have pre-vetting for most alcohol advertisements (exceptions include internet, point of sale and events promotions) while wine is apparently required to use the pre-vetting service only for cinema and outdoor advertising. There may be an excellent rationale for these different procedures for alcohol products but it is unclear why such a distinction should exist, particularly given the alcohol content of wines in comparison, with beer products. The Wine Federation of Australia, in its submission to the ANPHA Draft Report, has indicated that the purpose of “the current

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exemption in the Code principally relates to printed material …. such as winery newsletters and tasting notes. Rather than a general Guidance Note with little explanation, what is exempted should be much more clearly and transparently defined. The Agency accepts that tasting notes and like material were not particularly intended to be captured by the pre-vetting processes, but the current wording of the exemption suggests that it is much broader than the WFA indicates.

**Recommendation 10h** Clarify and specify what pre-vetting exemptions are intended for the marketing of wine products while ensuring that such exemptions do not provide a market advantage to one competitor in the market. In principle, like activities should be subject to the same marketing pre-vetting requirements for any alcohol product.

### 6.3.5 Improvements in coverage – marketing media

An additional critical element in the effectiveness of self- or quasi-regulatory schemes is their coverage of the various forms of marketing and promotion which are occurring in the marketplace. Much progress has been made by ABAC in seeking more extensive coverage of marketing communications such as the addition of Internet advertising.

As noted earlier in Chapter 4, the international best practice guidelines speak of comprehensive coverage of marketing communications. Further, the World Federation of Advertisers strongly backed the ASB’s 2012 decisions on coverage of user-generated content (in regard to a complaint about material on the Diageo Australia and Fosters Australia webpages), re-iterating the need for comprehensive coverage. Nevertheless, key problems remain in relation to digital media.

The expansion of alcohol marketing into non-traditional methods and new media is a major challenge and beyond the scope of current regulatory mechanisms, as was noted by the ABAC Chief Adjudicator in the 2012 Annual Report.

The increasing use of digital media as a marketing medium is a particular area of community concern, as lack of regulation on placement can result in advertisements for alcoholic beverages appearing on internet and social media sites that are readily accessible and frequently used by children and young people. For example, many of the alcohol-related fan, event and group pages on Facebook are accessible to users of any age. The video viewing site YouTube also allows alcohol companies to develop their own pages and there are seemingly no age restrictions on viewers. YouTube provides a platform for companies to display recent and previous television advertisements, which may include older advertisements that do not satisfy current codes.

In ABAC’s 2010 Annual Report, the Chief Adjudicator expressed the following concerns:

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...social media provides advertisers with the opportunity to build a direct relationship with an individual consumer in a much more effective manner than is possible by broadcast media such as television or print. It can facilitate an exchange between the advertiser and the product user by mechanisms such as user-generated content on advertisers’ websites, or through direct exchanges between consumers over mediums such as Facebook fansites.

...these developments and their use by alcohol companies raise obvious challenges. In part, these go to assessing whether a particular promotional activity is in fact “advertising” for ABAC purposes…the highly dynamic nature of the medium can make even a basic requirement, such as locating the actual images and text which has drawn a complaint, quite problematic…it would be desirable in the near future for a holistic examination of the scheme and its interaction with new media to be undertaken.538

An example of the ineffectiveness of the Code in dealing with new media is exemplified by a 30-second Crown lager advertisement which appeared on a ‘Bratz’ game website; the advertisement played before children could access the ‘My Little Pony’ game, which is aimed at 3-8 year old girls. The Panel’s decision was that the complaint be dismissed because ABAC only covers the content, not placement, of alcohol advertising.539 In February 2012, an advertisement for Hahn Super Dry appeared in the same location on the ‘Bratz’ game website.

A further public concern is articulated in the submission from Dr Nicholas Carah and Dr Sven Brodmerkel (Submission #11, p.2), which notes that:

“Current regulatory approaches assume that brands are planned and deliberate messages delivered via media texts like advertisements. Accordingly, they focus their attention on:

- Specific content and meanings in advertisements.
- Placement and accessibility of advertisements.
- Likely reception of meanings by particular audiences.

The current frameworks offer little scope for regulators to consider how brands incorporate the participation of consumers … Brand ‘messages’ and ‘content’ attain a new meaning in a social media environment. To understand what brands are doing we must look not only at ‘static’ and ‘particular’ messages, but instead at the dynamic cultural processes brands are stimulating and leveraging.”

Drs Carah and Brodmerkel elaborate in more detail on these points in their submission to the Draft Report, in particular, with regard to the targeting and iterative interaction strategies that form part of the marketing on social media sites. The Alcohol and Other Drugs Council of Australia and the Public Health Association of Australia also elaborate further on this point in their submissions:

Brands facilitate interactions, they don’t just convey messages … Interaction isn’t just about circulating messages, it is also about surveillance and profiling.

Currently, there is limited evidence relating to regulation and alcohol marketing in social and interactive media, although monitoring of alcohol advertising in new media is increasing, and the evidence base is improving. An audit (published in 2011) of alcohol brand websites

found that some website content would be in breach of current regulatory codes (those that cover traditional alcohol marketing).\(^{540}\) Similar findings were made early on by Carroll et al. (2005) when reviewing the 2004 changes to the ABAC Scheme. Carroll et al. reported that “the evidence from this preliminary study suggests that there is currently content on alcohol beverage websites which appears inconsistent with the content and spirit of the revised ABAC.”\(^{541}\)

In its 2014 monitoring of self-regulation in the alcohol industry in the US, the Federal Trade Commission noted that the spend on online and other digital media was now 7.9% of alcohol company expenditures – “four times as much as devoted to these media in 2005.”\(^{542}\) There is little reason to suppose given the global nature of this industry that Australian spending would not also have increased as significantly. As a result, it becomes increasingly important to achieve effective strategies for minimising the underage exposure to online and digital forms of alcohol marketing.

In its submission to the Draft Report, the ABAC Scheme notes that the “Adjudication Panel has made many determinations relating to digital advertisements, including company websites, banner advertisements, Facebook, Youtube (sic), a music streaming service and direct email advertisements. The ABAC Adjudication Panel confirmed that the ABAC standards extend to newer forms of digital advertising, including social media as early as 2009.” The Scheme further advises that decisions have also been taken about user-generated content on Facebook.\(^{543}\)

The Agency agrees with the ABAC Chief Adjudicator that despite coverage of the internet and the handling of complaints in the new media space, some new alcohol marketing methods raise major challenges, not the least because of cross-jurisdictional challenges, and the dynamic and rapidly changing nature of social media and other digital media platforms. This can be exacerbated when material exists on international websites (though the majority of major companies in the alcohol industry are multinationals which can be reached through their local legal entity). ABAC’s digital guidelines\(^{544}\) are a starting point to set standards for the alcohol industry’s participation in the social media environment; at this time, these guidelines are quite limited and address primarily age-affirmation practices (which have been found to be quite easy for children and adolescents to circumvent) and confirm the responsibility of alcohol companies for aspects of user generated content in addition to any content they generate.

The ABAC Scheme as noted above appears to be indicating that it clearly covers marketing communications about alcohol irrespective of the marketing medium, as recommended in the ICC Code. This is essential going forward - with converging technologies, the old definitions of advertising and marketing are increasingly problematic. Further, social media has changed the dynamic around ‘volume’ and interactivity of marketing at targeted markets; this raises questions of the effectiveness of a complaints scheme that treats an individual item of content as a separate entity as distinct from an ongoing marketing exchange.

This area will continue to be a major challenge; complaints with placement considerations - which were able largely to be referred to other Australian codes - will now need to be addressed in the digital media environment. In reviewing the Code, the significant

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\(^{543}\) ABAC Submission to ANPHA Draft Report on the Review of Alcohol Advertising.

weaknesses of age affirmation as a deterrent to young people accessing brand and other sites will also need to be addressed (see earlier recommendations) The Scheme has issued a guide on digital media as noted earlier. The Code itself however needs to assert its coverage in a revised code provision (not simply a separate guide which does not form part of the Code provisions).

**Recommendation 10i** Amend the Code to insert a provision which brings all forms of alcohol marketing communications under the Code’s remit irrespective of the marketing medium.

### 6.3.6 Improvements in complaints/adjudications processes

There have been improvements in the complaints and adjudication processes of the ABAC Scheme subsequent to the earlier reviews and reports instigated by the Ministerial Council on Drug Strategy.

There were few comments in submissions about processes as such, and on the evidence available to the Agency, the Scheme is easily accessible to complainants. One submission noted that there had been little evidence of ‘being kept informed’ about complaints, but that comment was not echoed elsewhere.

The ASB advises that the parallel process which is used to handle complaints allows these to be handled without significant delay.

**Appeal of Adjudications**

The matter of whether or not the Adjudication Panel’s decisions should be subject to an appeal mechanism is raised by the international best practice guidelines which, as noted in Chapter 4, recommend an appeal process.

Some submissions to the Draft Report were of the view that an appeal process was a necessary component to a best practice regulatory scheme. The Cancer Council NSW, for example, indicated that an independent appeal process should be implemented in accordance with the EASA Charter. The Agency is less persuaded on this issue. Appeals could be generated on the basis of a failure of the process – the complaint was dealt with tardily for example or all matters were not considered in the adjudication – but these issues are not the primary reason for criticism of the ABAC system. The key criticisms go to code interpretation which is unlikely to be resolved by the forms of appeal generally available in self- or quasi-regulation schemes. The ASB, for example, does provide an appeal mechanism – at a cost, presumably to deter vexatious prolonging of a complaint – but there is little evidence that this contributes significantly to the overall effectiveness of the ASB scheme. The complaint is dealt with by a single party who reviews the adjudication decision.

The Agency does not make a recommendation that an appeal process be instituted within the ABAC Scheme. Once more important governance and Code improvements are made to the Scheme, this matter can be revisited.
6.3.7 Proactive monitoring and proactive adjudication

As outlined in Chapter 4, one of the features of a best practice self-regulatory system as outlined by the International Chamber of Commerce and the European Advertising Standards Alliance is a proactive monitoring role.

A self- or quasi-regulatory system driven only by complaints will necessarily allow a potentially significant number of marketing communications which are in breach of the Code to continue to be presented in the market. This may be especially the case in Australia where the public is largely unaware of the ABAC. It is also well known that the proportion of the population who will actually make a complaint when offended by advertising, even where a regulator is very visible, is quite small. A variety of research by industry and others suggests that less than 15% of people concerned about an ad bother to complain.545

Therefore, an effective self- or quasi-regulation model necessarily incorporates a monitoring function which, on a regular periodic basis, assesses industry compliance with the industry’s Code. The Australian Scheme should attempt to raise itself to best international practice in this regard and.

**Recommendation 10j** Institute regular periodic monitoring of alcohol marketing, preferably yearly, and publicly report on this monitoring.

A proper monitoring role will help ensure that the limitations of the current system, driven solely by complaints, are mitigated and that more advertisements are carefully assessed for compliance, which should improve the industry’s compliance activity.

A further improvement in this regard should be made. Currently, the Adjudication Panel will only rule on a matter which is the specific subject of a complaint. Thus, a Panel member who is examining a marketing communication in the process of determining whether the promotion is a breach of the Code, is not permitted to raise other salient potential breaches if these have not been raised in the complaint. This in part defeats the whole point of the Scheme. The point of the Scheme is to rid Australia of marketing of alcohol which breaches the industry’s Code and to raise the standard of alcohol advertising by publicly educating the industry, through the ABAC Scheme determinations, on permissible communications. Enabling the expert views of the Panel’s adjudicators to examine a complaint fully – irrespective of whether the complainant has raised the specific matter – would be in the spirit of good regulatory process.

**Recommendation 10k** Review and revise ABAC adjudication processes to enable any Adjudication Panel Member to raise any potential breach of the Code when examining a complaint irrespective of whether that matter was directly raised by the complainant.

6.3.8 Interpretation of the Code

A number of published reviews of ABAC decisions over the years have raised doubts over the credibility of ABAC’s adjudication processes as a result of certain matters of interpretation of its Code. Some studies examining the ABAC adjudication process have

concluded that ABAC decisions are not in line with community standards.546 A range of submissions to the Agency in the development of this Final Report are of that view.

The most complained about aspects of the Code, raised in about half of the complaints made are that: advertisements encourage underage drinking and that the advertisements appeal to children and/or adolescents. This is followed by complaints about the lack of a mature, balanced and responsible approach to the consumption of alcohol.

As noted earlier, in recent commissioned survey research by the ABAC Scheme examining public alignment with the decisions on complaints on 12 decided cases, half of the decisions were aligned, four were unaligned, and in two instances the participants were evenly split on whether a breach existed. However, in 11 out of 12 cases, the participants’ decisions about the unacceptability of advertisements increased after the Code was provided to them (in both the case of upheld and dismissed complaints).547

Whether a form of marketing displays a responsible approach to alcohol consumption, whether it will encourage drinking by young people or excessive consumption, whether it appeals strongly or evidently to children are matters of opinion and interpretation. This is one rationale for the addition of the public health representation to the Adjudication Panel – to ensure that this perspective, by an individual well aware of the adverse effects of misuse of alcohol – was present in the Code adjudication process. Whether this addition has made a difference to Code adjudication outcomes is unclear – and differing views have been put to the Agency on this question.

**Appeal to children**

There is a matter of interpretation, however, which is a cause of considerable criticism of the Scheme. This is the element of the Code, Part 1 b), which goes to the question of whether the marketing has “strong or evident appeal to children or adolescents” – essentially, whether an advertisement has appeal to those under age 18.

An examination of the adjudications since 2004 (prior adjudications are not available on the ABAC website) reveal that the Scheme has interpreted this clause to mean that an advertisement should not have primary appeal or only appeal to children or adolescents. An example of this interpretation of the Code is at Box 10 below.

**Box 10: Evident or strong appeal to children – the ‘Section b’ Standard**

An example of a decision of the Adjudication Panel in the interpretation of the section b clause of the ABAC Code is illustrated by a decision of 11 February 2013 in the complaint against Carlton United Brewers Limited (Determination No: 96/12). The complaint was dismissed but with a minority comment.

The complainant objected to a promotional comment, spoken at about 6pm on a Saturday during a cricket match, which concerned the “VB hard earned player of the day”. The complaint was that the promotion of an alcoholic beverage was made by a former cricket captain and current commentator, was likely to be seen by children at that time – including the complainant’s children – and was by a person who is a role model (by implication a person who is appealing to adolescents watching the game).


Formally, this promotion during the game was a purchased ‘content integration spot’ which is in effect a form of ‘advertorial’ done by the commentators at the behest of a sports sponsor.

The Adjudication panel’s majority decision indicated that, *inter alia*:

“The style, tone, language, footage and individuals featured in the advertisement taken as a whole is not considered to have strong or evident appeal to children or adolescents, but rather would have a broad appeal to the community as a whole. This broad appeal could not be said to be targeting under 18 year olds or have strong or evident appeal to these groups in particular.”

The minority opinion on the other hand provided a different position:

“The advertisement as a whole with its featuring of the popular and well known Australian cricketer Michael Hussey and the reporting of a current Australian cricket game does have strong and evident appeal to under 18 year olds, particularly (but not limited to) adolescent males (especially 14 – 17 years). The fact that the advertisement may have evident appeal to age groups more generally does not mean that it does not breach the standard … The standard does not require an advertisement to have strong appeal only to under 18 year olds in order for a breach to be determined.”

A primary purpose of the ABAC Scheme, on behalf of the public, is to protect children and adolescents from alcohol advertising and in particular from alcohol advertising that might appeal to them. Whether an advertisement has evident appeal to other age groups, or whether it has evident appeal to under 18 year olds as a secondary or incidental matter to its appeal to others, is not material. The point of the Code, in relation to community expectations, is to prevent the use of marketing which actually does appeal evidently or strongly to children. Preventing such promotion is the relevant outcome for the society.

In the annual reports of the Scheme, the Chief Adjudicator has raised the issue of the interpretation of this section of the Code on numerous occasions, such as the comment in the 2012 report:

“A critical issue is whether the actual terms of the Code, as interpreted since the Panel commenced operation in 1998, continue to meet community expectations … Of particular note is the Code provisions relating to underage drinking and the requirement that advertisements not have strong or evident appeal to children or adolescents. A significant proportion of complaints … raise issues which enliven these provisions … This reflects a genuine concern in the community … A range of the Panel decisions in this area often raise matters of judgment upon which reasonable people might disagree. It is clearly problematic to assess that an advertisement is legitimately being marketed towards say a 20-something audience, while not having ‘strong or evident appeal’ to a 17-year-old. The Panel welcomes a careful consideration … to assess if the Code and the Panel is meeting policy aspirations in this area.”

The Agency is advised that there is a very early set of determinations, now the basis of precedent, which inform the interpretation of this clause. A number of overseas codes use the terminology of ‘appeal primarily to children’ or something similar. However, this is not the case in the Australian ABAC which is to its credit; it is also to the credit of the industry that they have not sought to amend their Code to weaken this provision by including a term such as ‘primary appeal’ in the Code language. It is far more likely that this Code could become a truly effective quasi-regulatory instrument if the failure of this aspect of interpretation is

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corrected. However, despite the strong recommendations of earlier reviews, as well as clear comment from its own Chief Adjudicator, the industry has not dealt effectively with this matter.

The failure to deal effectively with this important clause is compounded in Australia by the exemption for live sports broadcast in the CTICP Code. As noted earlier, the general rule in the CTICP Code is that alcohol advertising should not be shown before 8:30 pm, but a major exception is granted for the broadcast of live sports events. As a result, alcohol advertising – especially in sports which have an alcohol sponsorship agreement – is present at many times when children and adolescents are likely to be watching. When this advertising also is not subject to sufficient control in relation to its appeal to children and adolescents, the matter is a serious one for public policy.

More stringent interpretation and guidance is clearly needed in Australia where an overly flexible regime has now developed. Such change is required to enable the Scheme to engender the confidence of the public and to ensure that children and adolescents are appropriately protected from alcohol marketing which is appealing to them.

**Recommendation 10l** Revise the Code adjudication processes to ensure that the interpretation of the Code Part 1b) complies with the spirit of the Code and not a narrow interpretation of the wording: where an advertisement has strong or evident appeal to children or adolescents, then it should be found to be in breach of the Code irrespective of whether the marketing is also appealing to adults or the community generally or whether the advertisement is deemed not to be directed to children.

**Recommendation 10m** Review and revise ABAC Guidance documents to reflect to the alcohol industry and marketing communication stakeholders the appropriate guidance in relation to Code Part 1b) and clarify expectations for appropriate content.

A further set of matters arising from the examples of interpretation of the Code provisions around ‘appeal’ to children is noted numerous times by the ABAC Chief Adjudicator in the annual reports and in determinations (Appendices G and H). One example is in relation to express provisions which would assist in code interpretation, for example: “…the ABAC does not contain provisions which expressly deal with the identity of persons who are featured in alcohol advertising. This can be contrasted with other codes such as … in New Zealand.”

The New Zealand Code for Advertising Liquor has a ‘heroes or heroines of the young’ provision which provides that “…advertisements shall not use or refer to identifiable heroes or heroines of the young.” As a result, alcohol advertisements which allude to the All Blacks are breach of the clause of the NZ Code. Similar provisions would also be helpful in Australia.

**Recommendation 10n** Add new provisions to strengthen and improve clarity around the matter of appeal to children. At minimum, specific prohibitions are required in Part 1 in the areas of: a) identifiable heroes or heroines of the young; b) cartoon characters and animations appealing to children; c) use of childhood motifs or themes; and in Part 2, to prohibit naming

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and packaging which would lead to confusion with confectionary or soft drinks.

6.3.9 Improvements in the grandfathering provisions of Part 2 of the ABAC

Part 2 of the ABAC Standards to be applied to the naming and packaging of alcohol beverages largely mirrors the provisions of Part 1 in relation to advertisements for alcohol advertising. There is a provision, however, at clause 2 that exempts older packaging and labelling from the remit of the Code. Specifically, clause 2 states that this part applies to all alcohol beverages supplied in Australia “with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.”

It is an anomaly to suggest that a product which is packaged or named in such a way as to breach the industry’s Code becomes somehow exempt from appropriate community standards because the package or label has been around for a while. The Agency notes the comments of the ACCC Chairman, Graeme Samuel, when examining this matter:

“The ACCC considers that the objectives ... will only be met if retailers and suppliers are obliged to remove all non-compliant products from the market, regardless of when the products first entered the market. In a submission to the ACCC, the applicants have stated that there will be little or no industry buy-in if the ‘grandfather’ provisions are removed. The applicants are effectively arguing that industry may choose not to sign up to the scheme (which they contend, and the ACCC has agreed, is in the public interest) if the requirement for the ‘grandfather’ provisions to be removed is continued. The ‘grandfather’ provisions are entirely inconsistent with the ... Scheme, and the applicants have not put forward any persuasive arguments which support their inclusion in the scheme. The ACCC considers that if the applicants support the objective ... then they should be willing to allow the sanctions ... to apply to all non-compliant products.”

The Agency concurs with these sentiments. To be credible, code provisions need to operate fully in the market. Whether a label or packaging, or for that matter advertising material, is acceptable is not a function of the date on which it was created. Thus the Agency recommends that:

Recommendation 10o  Amend the Code to delete clause 2 of Part 2.

6.4 Monitoring, researching and reviewing the effectiveness of the regulation of alcohol marketing and advertising in Australia

This final area of the Agency’s assessment addresses the ongoing regulatory responsibility of the Australian and State/Territory governments to monitor, research and review the effectiveness of the regulation of alcohol marketing and advertising in Australia.

551 See Appendix J of this report.
6.4.1 Monitoring exposure and researching its impact

Governments invest significant resources in researching and developing social marketing campaigns including associated media-buys and campaign evaluations to educate Australians on alcohol-related harms.

However, currently, no Australian government routinely collects and analyses data on the levels of exposure of alcohol marketing and advertising on Australian children and adolescents. As identified earlier, the Australian and State/Territory governments have collectively previously funded and undertaken data collection and commissioned research in this area on an ad hoc basis. Both the 2003 review and 2009 recommendations by the Ministerial Council on Drug Strategy into alcohol advertising were informed by detailed quantitative and qualitative research into both the extent and nature of young Australians’ exposure to alcohol advertising.

Regulators and public health agencies in other countries also undertake research into the exposure of children and young people to alcohol advertising in their jurisdictions. Details of previous government-commissioned Australian and international research studies on exposure are provided at Appendix F.

The United States in particular has enabled the Federal Trade Commission (FTC) to examine, with its compulsory information-gathering powers, the efforts of industry to reduce marketing to underage audiences. The FTC formally required, through its Special Orders directed to alcohol companies for its 2014 study, that the companies provide inter alia:

- advertising and marketing expenditures in a given period over 34 categories;
- their placement practices, and audience composition data for both traditional media and online ad placements;
- substantial information about online and digital marketing practices;
- product placement information.

One of the limitations of previous research in Australia, unlike the United States, is that the bodies studying the question have no powers to acquire information from the alcohol industry other than what might be voluntarily provided. While some information can be bought in the market, there is currently no framework for acquiring fuller information to inform an ongoing comparative program of periodic monitoring of exposure of children and adolescents to alcohol marketing. While the extent of exposure to alcohol advertising is increasing, partly driven by the Internet and social media, establishing the quantum of that exposure is currently very difficult in this country. The first task is the establishment of an ongoing program of monitoring and research by Australian governments which would provide the necessary data to assist ongoing assessments into the effectiveness of the regulatory regime for alcohol marketing and advertising. Within that task is the need to determine what data needs to be collected over time to carry out monitoring effectively, and whether such information will be provided voluntarily by alcohol companies (and if not, whether a compulsory approach similar to that of the US regulatory authorities is required).

Although most submissions to the Draft Report supported the recommendations for ongoing monitoring, research and review, the Brewers Association of Australia and New Zealand raised the issue that a report every other year was too short a time frame. After further consideration of the matter, the Agency concurs that a review at least every 3 years may be more realistic given the resources and detailed evidence that such a review requires.

The Agency recommends to the Australian and state-territory governments and relevant bodies:
Recommendation 11a  Monitor, research and regularly review Australian children’s and adolescents’ continued exposure to alcohol advertising, particularly on digital media and the effectiveness of self-regulatory, co-regulatory, quasi-regulatory and legislative measures to limit this exposure and report at least every three years (with the first report due in 2017).

Recommendation 11b  In 2015, prior to the 2017 review report, IGCD undertakes an assessment of the progress in implementing this Review’s recommendations. If, for example, the ABAC Scheme’s responsiveness to the recommendation to have its Code and associated Rules and Procedures authorised are not progressed, or if little headway is made in removing the live sports broadcast exemption, then governments should proceed to legislate to control alcohol advertising and marketing.

6.4.2 Good regulatory practice – responsive regulation

Responsive regulation refers to a continuum of regulation “rather than opting immediately for harder mechanisms of regulation, enforcement or fiscal sanctions, the results are measured and assessed, with action to follow if necessary”.552 The central principle of responsive regulation is that ‘regulators should be responsive to the culture conduct and context of those they seek to regulate’ by assessing how effectively consumers or industries are regulating their own behaviour before “deciding whether a more or less interventionist response is needed”.553

Reeve and Magnusson (2013) interpret responsive regulation for public health outcomes as “voluntary industry action…but with the potential for further intervention if public health goals are not achieved”. They advise regulators to hold “industry to account for its voluntary commitments…through official monitoring and public disclosure of industry performance, and by requiring registration and independent administration of voluntary codes.”554 This Final Report forms part of a responsive regulatory approach to assessing the effectiveness, outcomes and accountability of both industry and governments responsible for regulating alcohol advertising.

Both the Ministerial Council on Drug Strategy and the National Preventative Health Taskforce in their reviews of the effectiveness of the regulatory framework for alcohol advertising recommended a responsive regulation approach “with self-regulation, moving towards co-regulation as indicated by the [Ministerial Council on Drugs Strategy] and then to independent regulation if co-regulation is found to be ineffective.”555

However, the only current reporting to governments from the ABAC Scheme is informal:

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The Australian Government representative on the ABAC Management Committee reports to each ABAC meeting after consultation with a sub-committee of the Intergovernmental Committee on Drugs (IGCD) set up for that purpose and also reports to that sub-committee following each ABAC meeting” (source ABAC submission).

Note the Intergovernmental Committee on Drugs (IGCD) comprises Commonwealth and State/Territory health and law enforcement officials.

Currently the Standing Council on Health (SCoH) does not have an annual standing agenda item on alcohol marketing and advertising and last reviewed this issue in 2009. This recommendation is made to the Australian and state-territory governments:

**Recommendation 11c** Establish triennial reporting to the relevant COAG Ministerial Council (currently the Standing Council on Health) on Australian children’s and adolescents’ exposure to alcohol advertising and the effectiveness of self-regulatory, quasi-regulatory, co-regulatory and legislative measures to limit this exposure (with the initial report due in 2017).
### APPENDIX A

**Australian National Preventive Health Agency’s Expert Committee on Alcohol**

<table>
<thead>
<tr>
<th>Member</th>
<th>Expertise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prof Margaret Hamilton - Chair</td>
<td>Alcohol research, education and clinical work</td>
</tr>
<tr>
<td>Prof Tanya Chikritzhs</td>
<td>Alcohol research</td>
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<tr>
<td>Ms Sondra Davoren</td>
<td>Legal policy</td>
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<tr>
<td>Dr Steve Hambleton</td>
<td>Primary Care</td>
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<tr>
<td>Detective Superintendent Jim Migro</td>
<td>Law enforcement and alcohol research and education</td>
</tr>
<tr>
<td>Prof Rob Moodie</td>
<td>Public health promotion</td>
</tr>
<tr>
<td>Ms Louise Sylvan (CEO – ANPHA)</td>
<td>Ex officio</td>
</tr>
</tbody>
</table>
APPENDIX B

List of Submissions on the Draft Report

Note: available on www.anpha.gov.au

01 Ms Noni Walker
02 Australian National Council on Drugs (ANCD)
03 Department of Health and Human Services Tasmania
04 Mr Rick Stevens
05 Ballarat District Nursing and Healthcare
06 Foundation of Advertising Research
07 Cancer Council, New South Wales
08 Australian Drug Foundation (ADF)
09 The Newspaper Works
10 Advertising Standards Bureau
11 Burnet Institute
12 Lives Lived Well
13 Australian Association of National Advertisers
14 Mr Daniel Stewart
15 Russell Family Fetal Alcohol Disorders Association (RFFADA)
16 Australian Health Promotion Association - WA
17 Ms Sarah Yeates
18 Brewers’ Association of Australian and New Zealand
19 Australian Subscription Television and Radio Association (ASTRA)
20 Winemakers’ Federation of Australia (WFA)
21 Vic Health
22 Cancer Council, Tasmania
23 ABAC Management Committee
24 DIAGEO
25 Moorabool Shire Council
26 University of Queensland
27 Distilled Spirits Industry Council of Australia (DSICA)
28 Coalition of Major Professional and Participation Sports (COMPPS)
29 Free to Air TV
30 Ms Judy Fasher
31 Mr Bernard Carroll
32 ACT Government
33 National Heart Foundation (WA Division)
34 Australian Research Alliance for Children and Youth
35 Outdoor Media Association
36 Foundation for Alcohol Research and Education (FARE)
37 McCusker Centre
38 Australian Liquor Stores Association (ALSA)
39 National Alliance for Action on Alcohol
LIST OF SUBMISSIONS TO THE ISSUES PAPER

Note: available from http://www.anpha.gov.au

1. Mr Sarosh Mehta
2. Victorian Alcohol and Drug Association (VAADA)
3. Winemakers’ Federation of Australia (WFA)
4. Cancer Council NSW (no abbreviation provided on website)
5. Advertising Standards Bureau (ASB)
6. Commercial Radio Australia (no abbreviation provided on website)
7. Foundation for Advertising Research (FFAR)
8. Ms Sarah Yeates
9. Alcohol Beverages Advertising (and Packaging) Code Scheme (ABAC)
10. Lion (Pty Limited) (no abbreviation provided on website)
11. Dr Nicholas Carah, University of Queensland and Dr Sven Brodmerkel, Bond University
12. Diageo Australia (no abbreviation provided on website)
13. Brewers Association of Australia and New Zealand (no abbreviation provided on website: BAANZ = Ballooning not Brewers)
14. Publishers’ Advertising Advisory Bureau (PAAB)
15. CONFIDENTIAL
16. Australian Hotels Association (AHA)
17. Australian Association of National Advertisers (AANA)
18. CONFIDENTIAL
19. IAB Australia Limited (IAB)
20. Free TV Australia (FreeTV)
21. Outdoor Media Association (OMA) – letter of support for AANA submission
22. Murrumbidgee Local Health District (MLHD)
23. Australian Subscription Television and Radio Association (ASTRA)
24. Association for Data-driven Marketing and Advertising (ADMA)
25. Woolworths Limited
26. Australian Liquor Stores Association (ALSA)
27. Western Australian Police
28. Alcohol and other Drugs Council of Australia (ADCA)/Public Health Association of Australia (PHAA)
29. National Alliance for Action on Alcohol (NAAA)
30. Foundation for Alcohol Research and Education (FARE)
31. McCusker Centre for Action on Alcohol and Youth (MCAAY)
32. CONFIDENTIAL
33. Distilled Spirits Industry Council of Australia (DSICA)
34. Dr Adrian Reynolds
## APPENDIX C

### Liquor licensing regulatory structures
(as of December 2010)

<table>
<thead>
<tr>
<th>Legislation</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
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<th>TAS</th>
<th>VIC</th>
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<td>Yes</td>
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<td>Most recent amendment</td>
<td>Liquor Amendment Bill 2014</td>
<td>Most recent Amendments in October 2013</td>
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| Department | Justice and Community Safety Directorate | Office of Liquor, Gaming and Racing, Communities NSW | Department of Employment, Economic Development and Innovation | Attorney-General’s Department, Financial and Business Services Division | Department of Treasury and Finance | Department of Justice | Department of Racing, Gaming and Liquor (RGL) |

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558 http://www.treasury.tas.gov.au/dominodtf/dfsnisf/6044ee0c1cf95ba1ca256f25001d8ba/b4de20570a856ed7ca257346001b9b47OpenDocument#Review%20of%20the%20Liquor%20Licensing%20Act  
560 http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041c0ca256e610012de17/bb87f6864d9693c1ca257f16f0f07f6cfe?OpenDocument  
### Final Report

**Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concern**

<table>
<thead>
<tr>
<th><strong>Administrative authority</strong></th>
<th><strong>ACT</strong></th>
<th><strong>NSW</strong></th>
<th><strong>NT</strong></th>
<th><strong>QLD</strong></th>
<th><strong>SA</strong></th>
<th><strong>TAS</strong></th>
<th><strong>VIC</strong></th>
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<tr>
<td>Office of Regulatory Services</td>
<td>Casino Liquor and Gaming Control Authority (CLGCA); Office of Liquor Gaming and Racing</td>
<td>Director of Licensing, Licensing, Regulation and Alcohol Strategy Division</td>
<td>Office of Liquor, Gaming, and Racing (OLGR)</td>
<td>Office of the Liquor and Gambling Commissioner</td>
<td>Liquor and Gaming Branch, Revenue, Gaming and Licensing Division</td>
<td>Responsible Alcohol Victoria</td>
<td>Director- General, Department of Racing, Gaming and Liquor (RGL)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Decision-making authority</strong></th>
<th><strong>Commissioner for Fair Trading, Office of Regulatory Services</strong></th>
<th><strong>Casino Liquor and Gaming Control Authority (CLGCA)</strong></th>
<th><strong>Licensing Commission</strong></th>
<th><strong>Liquor Licensing Commissioner</strong></th>
<th><strong>Commissioner for Licensing/Licensing Board</strong></th>
<th><strong>Director of Liquor Licensing/Liquor Licensing Panel</strong></th>
<th><strong>Director of Liquor Licensing/ The Liquor Commission</strong></th>
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<td><strong>Review decisions/hear appeals from decisions</strong></td>
<td><strong>ACT Civil and Administration Tribunal (ACAT)</strong></td>
<td><strong>Communities NSW; Casino Liquor and Gaming Control Authority (CLGCA)</strong></td>
<td><strong>Licensing Commission</strong></td>
<td><strong>Liquor Licensing Commissioner</strong></td>
<td><strong>Commissioner for Licensing/Licensing Board</strong></td>
<td><strong>Director of Liquor Licensing/Liquor Licensing Panel</strong></td>
<td><strong>The Liquor Commission</strong></td>
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<td><strong>Breaches of conditions/offences/complaints</strong></td>
<td><strong>Commissioner (complaints) ACAT (occupational discipline) Magistrates’ Court/Infringement notices (offences)</strong></td>
<td><strong>Local Court (summary offences &amp; breach of conditions) Director-General, Communities NSW (complaints)</strong></td>
<td><strong>Magistrates’ Court (summary offences) Licensing Commission (complaints)</strong></td>
<td><strong>Magistrates’ Court (summary offences) Chief Executive (disciplinary action)</strong></td>
<td><strong>Liquor and Gaming Branch Magistrates’ Court (when prosecution for an offence is required)</strong></td>
<td><strong>VCAT (inquiries and disciplinary matters) Magistrates’ Court (summary offences)</strong></td>
<td><strong>Magistrates’ Court (summary offences) The Liquor Commission (disciplinary matters)</strong></td>
</tr>
</tbody>
</table>

i Please note that the Northern Territory was also subject to the provisions of the **Northern Territory National Emergency Response Act 2007** (Cth).

ii These bodies shared a dual administrative function.

iii **Liquor Licensing (Dry Areas—Long Term) Regulations 1997; Liquor Licensing (Dry Areas—Short Term) Regulations 1997.**

iv **Liquor Control (Bayulu Restricted Area) Regulations 2010; Liquor Control (Irrungadji Restricted Area) Regulations 2010; Liquor Control (Jigalong Restricted Area) Regulations 2009; Liquor Control (Juwurlinji Restricted Area) Regulations 2009; Liquor Control (Koongie Park Restricted Area) Regulations 2010; Liquor Control (Kundat Djaru Restricted Area) Regulations 2010; Liquor Control (Nicholson Block Restricted Area) Regulations 2009; Liquor Control (Oombulgurri Restricted Area) Regulations 2008; Liquor Control (Purmu Restricted Area) Regulations 2010; Liquor Control (Wangkatjungka Restricted Area) Regulations 2008; Liquor Control (Yakanarra Restricted Area) Regulations 2010.**

v The Licensing Court (SA) determined contested applications.

vi The Liquor Licensing Panel considered contested applications and reported its finding.
APPENDIX D

Evidence summary for alcohol promotion as a public health hazard

This evidence summary provides the key points justifying the Report’s conclusions and summary statements regarding harm from exposure to advertising and the performance of the current regulatory arrangements (Section 5.5) on which this Report is based. Further information on the research cited is provided in Chapters 1-3.

1. Young people’s misuse of alcohol and the associated harms connected with it continue to be a significant public health problem in Australia

   - NHMRC alcohol guidelines recommend that for people under 18 years of age, not drinking alcohol is the safest option to reduce the risk of injury and ill health in the short and long term.
   - The NHMRC guideline is based on “a range of epidemiological research that indicated that alcohol may adversely affect brain development and be linked to alcohol related problems later in life.”
   - Early alcohol initiation (before age 15) and high levels of consumption in adolescence are associated with a range of negative outcomes. In the short-term, negative outcomes include: violence, accidents, reckless driving, physical injury, depression, school absenteeism, decreased academic performance, initiation of drug use, suicide, risky sexual behaviour, sexual assault and unplanned pregnancies.
   - While some population level measures of alcohol-use among adolescents are showing slow downward trends over time, early and risky drinking remain at unacceptable levels.
   - While some promising trends are emerging, further and sustained efforts are required to drive up the age of alcohol initiation and drive down the misuse of alcohol among adolescents in Australia.
   - Reducing children’s and adolescents’ exposure to alcohol promotion is one part of an integrated strategy required.

2. There are concerns that early and cumulative exposure to alcohol advertising may contribute to both an earlier initiation of alcohol use (i.e. younger age of first drink) and more frequent and heavy drinking by adolescents

   - Children and adolescents are vulnerable to, and influenced by the persuasive and cumulative messages contained in alcohol advertising.
   - The impact of alcohol advertising on alcohol consumption has been studied over several decades through a variety of techniques including: econometric studies; cross-sectional observational studies; and longitudinal prospective studies.

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565 National Health and Medical Research Council (2009) Australian Guidelines to reduce health risks from drinking alcohol, Canberra, p 57. Commonwealth of Australia
566 National Health and Medical Research Council (2009) Australian Guidelines to reduce health risks from drinking alcohol, Canberra, p 57. Commonwealth of Australia
Econometric studies have looked for associations between country-level alcohol advertising expenditure and per capita consumption, and country-level alcohol advertising bans and per capita consumption. The results of these studies have been mixed with a few finding small positive associations but many finding no association. However, these studies often underestimate alcohol expenditure – in particular expenditure on below-the-line advertising – and ultimately focus on the whole population rather than just young people.

Studies specifically related to the impact of alcohol advertising on young people have utilised either a cross-sectional studies or a prospective cohort design, the latter providing more information about cause and effect, not just associations.

Taken overall, the consensus from many academic works and peer-reviewed systematic reviews, is that exposure to alcohol marketing and promotion is associated with a range of effects on adolescents. These range from increasing alcohol brand awareness; creating positive attitudes and expectations towards alcohol use and intentions to drink; engaging with the brand leads to early initiation of alcohol consumption; and a greater risk of harmful drinking in adolescence and beyond.

The effects of alcohol marketing on adolescents appear to be cumulative.

3. Given the available evidence, the current high level of exposure to alcohol advertising among children and adolescents is a cause for concern

Alcohol marketing is sophisticated, strategic and multifaceted. Products are marketed through a combination of traditional ‘above-the-line’ television, radio and print media as well as point-of-sale, product placement, merchandise, sponsorship and digital ‘below-the-line’ channels.

In Australia in 2007 - Television accounted for the largest proportion of alcohol adspend (44%) by media outlet (including radio, magazines and newspapers, cinema and outdoor advertising).

Digital media, in particular, social media and user-generated advertising, has become an increasingly significant marketing tool, and is reflected in the increased focus and investment in internet-based media advertising by the alcohol advertising industry globally.

As at June 2013, official Facebook pages for Australian alcohol brands (beer, wine, cider and spirits combined) attracted 3,867,303 fans. This is over a million more fans than for Australian non-alcoholic beverages (2,644,307) and automotive Facebook pages (2,100,867).

Alcohol advertising has increased over time, with advertising through television, radio and print continuing and advertising through digital media increasing rapidly.

There is some limited circumstantial evidence from government inquiries and international studies that some alcohol advertising is targeted to people below 574, 575, 576, 577.
Regardless, it is clear that children and adolescents are increasingly at risk of being exposed to alcohol advertising through multiple channels whether intentionally or unintentionally.

For example, evidence from Australian research shows that adolescents are exposed to similar levels of alcohol advertising on television as adults despite the Commercial Television Industry Code of Practice 2010 restrictions administered by Free TV Australia for the broadcast of direct advertising for alcohol drinks.580,581,582

One Australian study found that 50% of the 2,810 alcohol advertisements broadcasted on television over 2 months appeared during viewing times when children were regularly watching (7.00-9.00am and 3.30-10.30pm on weekdays and 7.30-10.30am and 3.30-10.30pm on weekends).583

Another study measuring exposure levels to 156 different alcohol advertisements over 12 months (March 2005 to February 2006) in Sydney showed that adolescents (13-17 years) were exposed to the same amount of alcohol advertising on free-to-air television as young adults (18–24 years); and children (0–12 years) were exposed to one-third of alcohol advertising seen by adults.584,585

A 2011 cross-sectional survey of 1,113 Australians aged 12-17 years noted a high level of exposure to alcohol advertising through a range of media channels, with television being the highest (94%), followed by 74% in magazines, 61% on a billboard or poster, 55% on the Internet, 53% in a newspaper and 51% as promotional material.586

Sport is one of the primary settings in Australia for the marketing of alcohol products.587,588,589 Adolescents are aware of and recall alcohol advertising during sport.

Internet access by children aged 5-14 years has steadily increased in recent years. Australian children are amongst the youngest to start using the Internet at just under 8 years of age.592

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579 Industry View on Beverage Alcohol Advertising and Marketing, With Special Reference to Young People, Prepared for the World Health Organization by the International Centre for Alcohol Policies (ICAP).
Ultimately, researchers have noted that the measured level of exposure among adolescents is known to be an underestimation of the combined marketing effort due to difficulties in accurately measuring total exposure. 593

4. Current regulatory arrangements are not only failing to protect young Australians from exposure to alcohol advertising, but in some cases may actually facilitate their exposure

- The current regulatory arrangements were largely developed more than twenty years ago when the media structure in Australia was much simpler and less diverse than today. The current system has several limitations responding to today’s trends in promotion.
- Many of the alcohol-related fan, event and group pages on Facebook are accessible to users of any age594.
- YouTube provides a platform for companies to display recent and previous television advertisements, which may include older advertisements that do not satisfy current codes595.
- There may be some uncertainty whether a particular promotional activity is in fact “advertising” for ABAC purposes. The highly dynamic nature of digital marketing and new media can make even a basic requirement, such as locating the actual images and text which has drawn a complaint, difficult596.
- Although the ABAC Scheme now covers internet advertising, it does not cover the issue of age verification. Recent (2014) Australian evidence noted that industry has poor filter systems which are insufficient in preventing entry of underage persons to alcohol brand websites. 597
- An audit of alcohol brand websites found that some website content would be in breach of current regulatory codes (those that cover traditional alcohol marketing)598.
- Almost half of all alcohol advertising airs during the day on weekends and public holidays as part of a live sport broadcast.599
- The lack of restrictions on the volume of alcohol advertising in any medium or across media can amount to a high frequency of alcohol advertisements, and to multiple avenues of exposure across media. For example, alcohol advertising amounted to 23 minutes of television broadcast time over a one day cricket match600, and 35 minutes of broadcast for the Bathurst 1000 V8 car race601, both of which are broadcast under the exemption during daytime television.
- Current regulation of advertising on television, and subscription television, facilitates exposure to alcohol advertising of children and adolescents during live sport broadcasts.

Cinema advertising and sponsorships are currently not covered by regulatory arrangements.

5. The community is firmly of the view that young Australians should be protected from exposure to alcohol advertising and there is therefore substantial support for effective regulation.

- Industry, health groups, governments and the general public all agree that children and adolescent should not be exposed to alcohol promotion.
- In 2005, 69% of 1,000 adults surveyed about their perceptions of issues of alcohol advertising in the mass media, on the Internet and as sponsorship or promotions at live events, believed advertising encourages underage people to drink alcohol and 60% stated that alcohol advertising should be either more restricted or entirely prohibited (Commonwealth Department of Health and Ageing survey)
- VicHealth surveyed 1,523 people in Victoria in 2009, of which 82% agreed that alcohol advertisements should be restricted so that they were less likely to be seen by adolescents, and 77% agreed that alcohol advertising on billboards should be banned within one kilometre of schools.
- Tobin et al (2011) cite evidence of high levels of public support for stronger advertising restrictions among different survey groups, with two-thirds of Australians supporting government regulation in alcohol advertising and marketing in one 2009 survey, and three-quarters supporting reducing adolescents’ exposure to alcohol advertising in several surveys run between 2007 and 2009.
- The majority of people surveyed by the Salvation Army for Alcohol Awareness Week in 2013: 1) disagreed that the alcohol industry should be allowed to continue to regulate itself with regard to the advertising and promotion of alcohol (72%); and 2) said the amount of alcohol advertising and promotion young people under 25 see these days encourages them to drink more (70%).
- The 2014 Alcohol Poll conducted by the Foundation for Alcohol Research and Education also highlight high levels of community support for policies to better manage alcohol in the community including: placing a ban on alcohol advertising on weekends and weekdays before 8.30pm (67%) and not allowing alcohol sponsorship at sporting events (55%).
- Research conducted by Colmar Brunton Social Research exploring the community’s knowledge and perceptions about alcohol advertising regulatory practices found that there were mixed reactions about the content of alcohol beverage advertising. A third (31%) of respondents surveyed were not concerned about the content of alcohol advertisements in general in Australia, a third were neither concerned nor unconcerned (35%) and a third (34%) were concerned. Among those respondents who were concerned about the content of alcohol advertising in Australia, the most common reason for the concern was ‘alcohol advertising promotes alcohol consumption as the norm/can influence behavior’ followed by ‘alcohol advertising promotes irresponsible/dangerous drinking behaviour’.

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603 Alcohol CATI component of the 2009 VicHealth Community Attitudes Survey (unpublished data).
APPENDIX E1

Commercial Television Industry Code of Practice - January 2010

(incorporating amendments to July 2013)

The Commercial Television Code of Practice covers matters prescribed in Section 123 of the Broadcasting Services Act and other matters relating to program content that are of concern to the community. More information can be found here: http://www.freetv.com.au/content_common/pg-code-of-practice.seo

Commercials which Advertise Alcoholic Drinks
6.7 A commercial which is a “direct advertisement for alcoholic drinks” (as defined in Clause 6.11) may be broadcast:
6.7.1 only in M, MA or AV classification periods; or
6.7.2 as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.
6.8 Notwithstanding Clause 6.7, a commercial which is a “direct advertisement for alcoholic drinks” may be broadcast as an accompaniment to the live broadcast of a sporting event if:
6.8.1 the sporting event is broadcast simultaneously across a number of licence areas; and
6.8.2 Clause 6.7 permits direct advertisements for alcoholic drinks in the licence area in which the event is held or, if the event is held outside Australia, direct advertisements for alcoholic drinks are permitted in a majority of the metropolitan licence areas in which the event is simulcast.
6.9 A commercial which is a direct advertisement for an “alcoholic drink” or a “very low alcohol drink” (as both are defined in Clause 6.10) may not be broadcast during a C classification period, as defined in the Children’s Television Standards.
6.10 An “alcoholic drink” means any beer, wine, spirits, cider, or other spirituous or fermented drinks of an intoxicating nature, and is generally understood to refer to drinks of 1.15% or more alcohol by volume. The view of the Commonwealth Department of Health is that drinks of less than 1.15% alcohol by volume should be classified as “very low alcohol” drinks.
6.11 “Direct advertisement for alcoholic drinks” means a commercial broadcast by a licensee that draws the attention of the public, or a segment of it, to an alcoholic drink in a manner calculated to directly promote its purchase or use. This does not include the following, provided that their contents do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use:
6.11.1 a program sponsorship announcement on behalf of a brewing company or other liquor industry company;
6.11.2 a commercial for a licensed restaurant; or
6.11.3 a commercial for a company whose activities include the manufacture, distribution or sale of alcoholic drinks.
6.12 “Live sporting event” means:
6.12.1 live-to-air sporting broadcasts, including breaks immediately before and after the broadcast;
6.12.2 sporting broadcasts delayed for time zone reasons and broadcast as plausible “live”, without reformatting;
6.12.3 sporting broadcasts delayed in the licence area in which the event is being held pursuant to a requirement of the relevant sporting organisation (known in the industry as “delay against the gate”);
6.12.4 replay material where a scheduled live.

**Commercials or Community Service Announcements in G or PG Programs at 8.30pm**

6.27 In breaks within G or PG programs scheduled to start at 8.30pm, or in a station break preceding such programs, commercials and community service announcements must comply with the requirements of the PG viewing period.
6.27.1 This clause also applies to breaks at or after 8.30pm within a G or PG program which starts before 8.30pm.
6.27.2 This clause does not apply to breaks within G or PG programs which follow a program which starts at or continues past 8.30pm (e.g. a PG program starting at 9.00pm).
6.27.3 Where a program of the kind referred to in this clause continues beyond 10.30pm, these restrictions will cease to apply beyond that time.
6.28 For the purposes of Clause 6.27, all sporting coverage between 8.30pm and 10.30pm will be deemed to be PG.

Source: Free TV Australia 2013.
APPENDIX E2

INFORMATION SHEET - Producing a TVC promoting or including reference to Alcohol

Published by Free TV Australia (http://www.freetv.com.au/)

The following points need to be considered when producing a television commercial which either promotes or includes reference to alcohol, or which includes themes that have some connection with alcohol:


- The Alcohol Advertising Pre-vetting Service (AAPS) is available to pre-vet alcohol commercials for compliance with the ABAC Code. A copy of the AAPS application form is available from www.abac.org.au/for-advertisers or by contacting the AAPS duty pre-vetter on (08) 8411 2158.

- In addition to the ABAC/AAPS requirements, the Commercial Television Industry Code of Practice (the Code of Practice) and the Children’s Television Standards 2009 set out certain restrictions in relation to the scheduling of alcohol commercials. These are set out in CTS 36 and Clauses 6.7 – 6.13 of the Code of Practice.

- CTS 36 provides:
  - Advertisements for alcoholic drinks may not be broadcast during C programs.
  - No advertisement or sponsorship announcement during C programs may identify or refer to a company, person, or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This is in addition to the requirements of section 6.6 of the Commercial Television Industry Code of Practice.

- Clauses 6.7 – 6.13 of the Code of Practice set out further scheduling restrictions that apply to ‘direct advertisements for alcoholic drinks’. The term ‘direct advertisement for alcoholic drinks’ is defined in clause 6.11 of the Code. Commercials falling within this definition are classified ‘L’ by CAD and may only be broadcast during the following periods:
  - between 8.30pm and 5.00am on any day
  - between 12.00 noon and 3.00 pm on school days (but see clause 2.10.3 for time zone difference adjustment)
  - on weekends and public holidays as an accompaniment to the live broadcast of a sporting event: “live” defined in clause 6.12 (note that a sporting broadcast ‘delayed against the gate’ for contractual reasons, is now to be counted as ‘live’)
  - during the live broadcast of a sporting event, where the event is simulcast to a number of licence areas and a direct commercial for alcohol is permitted in
the area where the event is held (if the event is held outside Australia and commercials are permitted in a majority of metropolitan licence areas, then commercials are permitted in all broadcast areas).

- One of the main issues that arise for consideration under the Code of Practice restrictions is whether or not a commercial is a 'direct advertisement for alcoholic drinks'. Some of the questions that will often be relevant to consider are:
  
  o does the commercial contain visuals of alcohol
  
  o does the commercial contain references to alcohol
  
  o does the commercial contain branding/trademarks associated with alcohol
  
  o is the commercial encouraging people to purchase/drink alcohol
  
  o is the commercial promoting the purchase/use of alcohol.

- It is not only when dealing with obvious commercials that clauses 6.7 – 6.13 of the Code of Practice should be brought to mind, for example a commercial promoting a particular brand of beer. They should also be considered in relation to commercials promoting pubs/clubs, food and wine festivals, sporting/entertainment events with alcohol sponsors, and other similar commercials.

- Additionally, the NSW Director of Liquor and Gaming, under section 102 of the Liquor Act 2007 has published the Liquor Promotion Guidelines for the responsible promotion of liquor. The guide describes the circumstances upon which the Director may restrict or prohibit a licensee carrying on, or being involved in, activities or promotions involving the sale or supply of liquor. A copy of the guidelines is available from the NSW Office of Liquor, Gaming and Racing website www.olgr.nsw.gov.au. Advertisers should consult the relevant state or territory liquor licence authority and legislation for similar guidelines on liquor promotion.

Source: Free TV Australia 2013.
APPENDIX E3

The ABAC Scheme: ALCOHOL BEVERAGES ADVERTISING (AND PACKAGING) CODE

Preamble
Brewers Association of Australia and New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia, other than point of sale material produced by alcohol beverage retailers, and all naming and packaging of alcohol beverages comply with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising, naming and packaging 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, name or packaging 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 or product material is directed and other persons to whom the advertisement or product material 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 ‘Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)’ published by the National Health & Medical Research Council (‘NHMRC’) as at 1st January 2010.
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.

Standards to be applied
Part 1 – Standards to be applied to advertisements for alcohol beverages

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 (e.g., 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 (1)(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
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.

Part 2 – Standards to be applied to the naming and packaging of alcohol beverages
1. The naming or packaging of alcohol beverages (which is also referred to within these standards as “product material”) 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 product material must be over 25 years of age and be clearly depicted as adults;
      ii) children and adolescents may only appear in product material in natural situations (e.g. 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) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
   g) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the Scheme into disrepute.

2. These standards, (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a
trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.

Source: ABAC 2012.
## Government or Regulator-funded studies that monitor and research TV exposure

<table>
<thead>
<tr>
<th>Study</th>
<th>Key points</th>
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<tbody>
<tr>
<td><strong>Australia</strong>&lt;br&gt;Monitoring of Alcohol Advertising Committee (2009)&lt;br&gt;Alcohol beverage advertising in mainstream Australian media 2005 to 2007: Expenditure and Exposure</td>
<td>The report examined:&lt;br&gt;- Expenditure on alcohol advertising in Australia across eight mainstream media channels between January 2005 and December 2007;&lt;br&gt;- The potential exposure to alcohol advertising on free-to-air television for young people aged 13-17 years and 18-29 years during 2007;&lt;br&gt;- Alcohol advertisement placement by day of week and time of day.&lt;br&gt;It found:&lt;br&gt;- That the vast majority of the alcohol beverage brands with the greatest estimated metropolitan television expenditure in 2007 had a greater weight of exposure generated with those aged 18-29 years compared with those aged 13-17 years.&lt;br&gt;- However, in Melbourne four (three of which were for beer) of the top thirty spend brands generated similar or greater exposure with 13-17 year olds compared with those aged 18-29 years.&lt;br&gt;- In 2007 almost half (46%) of the alcohol advertisements screened in five metropolitan television markets (Adelaide, Brisbane, Melbourne, Perth, Sydney) were shown on weekends and public holidays.&lt;br&gt;- During this period 44% of the alcohol advertisements shown at weekends and weekday public holidays were shown in the day (i.e. between 5am to 8.29pm) due to the live sport exemption.</td>
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<tr>
<td><strong>Australia</strong>&lt;br&gt;Commonwealth Department of Health and Ageing (2005)&lt;br&gt;Australian Alcohol Beverage Advertising in Mainstream Australian Media 2003 to 2005: Expenditure, Exposure and Related Issues</td>
<td>The report examined (via looking at both Target Audience Rating Points and time of day alcohol advertising placement) the exposure young people (divided into those aged 13-17 years and those aged 18-29 years) had to alcohol advertising in mainstream Australian media (namely metropolitan free-to-air television) for the period 2004-05.&lt;br&gt;It found:&lt;br&gt;- The weight of potential alcohol advertising exposure to 13-17 year olds across all beverage categories in the Sydney and...</td>
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Melbourne metropolitan television market were similar to, but in most cases less than, the weight of exposure to 18 to 29 year olds.  
- However, examples of equal or greater exposure to 13-17 year olds than to 18 to 29 year olds were found across all alcohol beverage categories.  
- Two-fifths of alcohol advertising was placed in weekend and public holiday programming.  
- Of this, 38% of alcohol advertising broadcast on weekend and public holidays was shown in the day (i.e. between 5am to 8.29pm) due to the live sport exemption.

| Australia | The report examined advertising expenditure (TV, print and radio) and exposure through metropolitan television advertising (measured as Target Audience Rating Points) between 1991 and 1995. It found:  
- In the period 1991-95, those aged 13-17 years of age were exposed to alcohol advertising at 78% of the rate of adults (aged 18 years and over.  
- Some spirit brands had, at times, greater exposure to young people than for adults. |
| --- | --- |
| USA | The study was undertaken by the Johns Hopkins Bloomberg School of Public Health. It assessed the proportion of alcohol advertisements that appeared on television programs in 25 metropolitan television markets and the resulting youth exposure that exceeded the industry standard (i.e., greater than 30% of the audience aged 2–20 years) or an alternative proposed standard (i.e., greater than 15% aged 12–20 years). It found:  
- 23.7% of alcohol advertisements were placed during programs for which greater than 30% of the audience was aged 2–20 years;  
- 35.4% of alcohol advertisements were placed during programs for which greater than 15% of the audience was aged 12–20 years.  
- The results suggest “that the alcohol industry has not consistently met its 2003 self-regulatory standards to avoid airing alcohol advertising during programs where >30% of the audience is underage”.  
The article also notes that “from 2001 to 2009, youth exposure to alcohol advertising on television in the United States increased by 71%. This is largely |
attributable to increased alcohol advertising on cable television programs, particularly by distilled spirits companies. The increase in spirits advertising on cable television also coincides with an observed increase in consumption of spirits by high school students, particularly among those who binge drink (i.e., consume ≥5 drinks on an occasion for males and ≥4 drinks on an occasion for females)."

<table>
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<td></td>
<td>Self-Regulation in the Alcohol Industry</td>
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<td>The reports assess the effectiveness of the alcohol industry’s voluntary guidelines for advertising and marketing to underage audiences (under 21 years). Exposure data are primarily supplied by alcohol companies to the Commission: how industry members allocate marketing expenditures, compliance with its advertising placement standard, online and digital marketing, including privacy practices, product placements in entertainment media, and external review of complaints regarding self-regulatory compliance. They report improvements since findings of non-compliance in 1999. The 2014 report makes further recommendations mainly relating to placement for improvement in being able to target the agreed threshold for the child audience and for curbing children’s exposure through digital media through age-gating for example.</td>
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<thead>
<tr>
<th>United Kingdom</th>
<th>Ofcom (2013)</th>
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<tr>
<td>Children’s and young people’s exposure to alcohol advertising</td>
<td>Ofcom has a co-regulatory role regarding alcohol advertising in the United Kingdom, and therefore engages in periodic reviews in trends regarding advertising exposure for children aged 4-15 and adults aged 16-24. The most recent report looked at trends between 2007 and 2011 found:</td>
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<tr>
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<td>• More children are watching TV later into the evening during the period.</td>
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<td></td>
<td>• Children watch adult programmes in large numbers, but very rarely constitute a sufficient proportion of the audience to trigger rules excluding alcohol advertising.</td>
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<td>• Many of the programmes attracting the largest audiences among children are programmes aimed largely at adult audiences, and so may carry alcohol advertising.</td>
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<td>• Almost half of all alcohol spots were broadcast between 06:00-20:59 with this proportion remaining fairly stable over time.</td>
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<td>• In 2011, alcohol advertising accounted for 1.4% of all TV advertising seen by children aged 4-15 and 2.2% of all advertising seen by 16-24 year olds.</td>
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<td></td>
<td>• In 2011 a child aged 4-15 watched, on</td>
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average, 227 commercials each week and 3.2 of these were for alcohol products; in comparison, they watched 201 commercials a week in 2007, 2.7 of which were for alcohol.

- In general, between 2007 and 2011, exposure fluctuated but was lower than the overall level in 2006 (see below).

### United Kingdom

<table>
<thead>
<tr>
<th>Ofcom &amp; ASA (2007)</th>
<th>The report found:</th>
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</table>
| **Young People and Alcohol Advertising: An investigation of alcohol advertising following changes to the Advertising Code** | - Overall, children and young adults were being exposed to fewer alcohol advertisements on television between 2005 and 2006. There was a 6.0% decline in the alcohol advertising exposure for 16-24 year old adults between 2005 and 2006 and a 15.5% fall in exposure amongst children aged 10-15.  
- Compared with 2002, the decline in exposure to alcohol advertising on television was more marked. Between 2002-2006 there was a decline of 31.1% and 39.0% in 16-24 and 10-15 year olds being exposed respectively. |
## APPENDIX G

### ABAC Determinations

<table>
<thead>
<tr>
<th>Medium</th>
<th>Determination date</th>
<th>Year</th>
<th>Title</th>
<th>Determination number</th>
<th>Brand involved</th>
<th>Alcohol type</th>
<th>Producers or Retailers?</th>
<th>Key issues</th>
<th>Children appeal? (Y/N)</th>
<th>Code sections</th>
<th>Outcome</th>
</tr>
</thead>
</table>
## Final Report

**Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concern**

<table>
<thead>
<tr>
<th>Medium</th>
<th>Date</th>
<th>Year</th>
<th>Campaign Name</th>
<th>Code</th>
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# FINAL REPORT

## ALCOHOL ADVERTISING: THE EFFECTIVENESS OF CURRENT REGULATORY CODES IN ADDRESSING COMMUNITY CONCERN

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<td>Skinnygirl Spirit</td>
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<td>Bacchus Wine, Spirit</td>
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<td>Carlton Dry Outdoor Advertisement</td>
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### Print

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<td>Old Coast Road Brewery Print Advertisement</td>
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<td>underage drinking/appeal to underage</td>
<td>Y</td>
</tr>
</tbody>
</table>
## APPENDIX H

### Summary of Chief Adjudicator issues

<table>
<thead>
<tr>
<th>Year</th>
<th>Issues for consideration</th>
<th>Resulted in change?</th>
</tr>
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</table>
| 2012 | **1. Alcohol advertising by alcohol retailers**  
There has been a notable shift with alcohol retailers advertising more extensively and some alcohol retail outlets promoting their own branded alcohol products.  
In 2012, nearly a quarter of all Panel determinations came from advertisements by alcohol retailers. It’s been the longstanding view of the Adjudication Panel that the strength of the Scheme would be enhanced if retailers as a block joined into the governance arrangements for the Scheme and utilised pre-vetting mechanisms. It’s pleasing to note that discussions seeking to achieve this outcome have been progressing. | Yes, Coles and Woolworths have joined Scheme Retailers as a block have not joined |
| 2012 | **2. Non ‘Advertising’ forms of alcohol marketing**  
The ABAC Scheme is specifically targeted at alcohol advertising.  
Other marketing in the form of sponsorship, such as of sporting or community events or through the placement of products in mainstream entertainment, periodically come before the Panel following a public complaint.  
While the Panel applies a spirit and intent approach to the reach of the ABAC Scheme, it is unable to extend the Scheme into areas which are clearly not intended to be covered through the design of the Scheme. It would be highly desirable for the issues of alcohol marketing at its widest to be considered in the forthcoming review of the ABAC Scheme. | No |
| 2012 | **3. Code provisions**  
A critical issue is whether the actual terms of the Code, as interpreted since the Panel commenced operation in 1998, continue to meet community expectations of good alcohol advertising practice. Of particular note is the Code provisions relating to underage drinking and the requirement that advertisements not have strong or evident appeal to children or adolescents. A significant proportion of complaints received by the Panel raise issues which enliven these provisions within the Code. This reflects a genuine concern in the community that alcohol should only be available to adults and that under aged persons should not be targeted by alcohol advertisers.  
A range of the Panel decisions in this area often raise matters of judgment upon which reasonable people might disagree. The Panel welcomes a careful consideration of the current provisions and their application by the Panel in various decisions to assess if the Code and the Panel is meeting policy aspirations in this area. | No (see the community perception research in Colmar Brunton’s report May 2013, Review of ABAC Code Decisions) |
| 2011 | **1. Alcohol advertising by alcohol retailers**  
The trend of the Panel making an increasing number of determinations relating to advertising by alcohol retailers has continued in 2011. The Panel continues to receive generally good cooperation from most retailers in its processes; however, it would be highly desirable for retailers as a group to be covered by the Scheme and hence to run major advertising campaigns through the pre-vetting process. | Yes, Coles and Woolworths have joined Scheme Retailers as a block have not joined |
| 2011 | **2. Marketing v Advertising**  
The ABAC Scheme does not purport to apply to all forms of marketing activity undertaken by alcohol beverage producers and suppliers, but rather only extends to advertising. This means that ABAC will not capture activity which cannot be fairly said to be “advertising”. Over | No |
recent years, and again in 2011, the Panel has received complaints about wider marketing activity by alcohol companies. While the Panel adopts a 'spirit and intent' approach to its interpretation of the ABAC Code and the Scheme more broadly, it cannot unilaterally extend the reach of the Scheme into areas which it is plainly evident that the Scheme was not intended to capture.

**Sponsorship**
The Panel believes it is a very legitimate question of public policy if sponsorship activity by alcohol companies should be permitted and, if it is to be permitted, then whether there should be applicable standards of good practice to govern the form and type of sponsorship. These questions are for industry, health advocates and the Australian community, through their elected governments, to debate and resolve.

**Product placement**
In a case considered by the Panel, the alcohol product Midori was placed within a music film clip of an American pop band. The Panel concluded that product placement was not an 'ad' within the meaning of the ABAC Scheme and hence the Panel could not make a substantive decision as to whether the clip’s portrayal of the use of the alcohol product was consistent with ABAC Standards. The practice of product placement is worthy of serious consideration as to whether a regulatory approach should be adopted to control the practice in Australia.

**Gifts and giveaways with the sale of particular alcohol products.**
The actual practice of the giveaway is not an 'ad' as such and does not fall within the ABAC Scheme. Often the promotion of the giveaway will be 'advertised' and this advertisement does fall within the Scheme, but not the actual giveaway. The Panel believes the practice of gifts or giveaways should be considered by the Management Committee for inclusion in the ABAC Scheme or for some other form of review.

**3 Direct marketing**
The Panel received its first complaints about email newsletters that contained alcohol beverage advertisements. The Panel considered the specific advertisements contained within the newsletters but the complainant’s concerns extended to the availability of alcohol to minors via internet based sellers. The Panel referred to the Management Committee the policy question of whether direct marketing of alcohol via the internet should be subject to any further form of regulation to ensure that this method cannot be utilised to facilitate underage drinking. This was a matter for liquor licensing regulation.

**4 Placement**
In 2011 the Panel saw an increase in complaints about the placement of alcohol advertisements on the internet. There is no code that specifically restricts placement of alcohol advertisements on the internet. The ABAC does not prescribe the type of media within which an alcohol advertisement can be placed but, in assessing the standards as to the ad’s content, the likely audience of a particular advertisement is relevant. The Panel has referred to the Management Committee the question of whether the ABAC should cover placement of alcohol advertisements on the internet.

**5 Drink Responsibly messages**
Several complaints during 2011 raised concerns about an alcohol advertisement’s failure to include a ‘drink responsibly’ message within the body of the advertisement. There is no express provision within the ABAC requiring the inclusion of a responsibility message and a failure to contain such a message does not of itself constitute a breach of the Code. This pattern of complaints has been referred to the ABAC Management Committee.

**2010 Social media**
Social media provides advertisers with the opportunity to build a direct relationship with an individual consumer in a much more effective
Alcohol advertising by alcohol retailers
An increasing number of determinations have related to advertising by alcohol retailers. The ABAC Scheme does not have coverage of all alcohol retailers. In practice, the panel has gained good cooperation from most retailers in its processes; however, it would be highly desirable for retailers as a group to be covered by the scheme and hence to run major advertising campaigns through the pre-vetting process.

Appeal of alcohol advertising to children and adolescents
Substantive issues considered by the panel ranged across the various standards contained in the ABAC, with a number of determinations in 2010 going to section (a) (ii) and (b) relating to the appeal of alcohol advertising to children and adolescents. It is difficult to detect any discernable pattern in the types of issues raised in complaints from one year to another, given that a particular advertising campaign might attract a large number of complaints and, as a result, somewhat askew figures for comparative purposes. One thing that remains consistent is that invariably the panel is called upon to make difficult decisions concerning advertising which may attract quite different reactions from various audiences.

2009
1 Alcohol beverages and alcohol retailers
The ABAC model assume that alcohol advertising will be for a specific brand of alcohol beverage and, to some extent, the code sits uneasily with complaints about advertising which is promoting an alcohol retail outlet rather than a specific type of beverage. Examples of this encountered in 2009 were Determinations 6/09, 48/09 and 55/09.
An issue for the Scheme’s management committee is whether the scope of the ABAC should or could be widened to specifically include advertising by retail outlets that sell alcohol beverages which does not feature the promotion of a specific alcohol beverage brand.

2 Surrogate marketing
The panel adopted a meaning of surrogate marketing in Determination 7/09 as “the indirect promotion of a product through the marketing of an associated product”. Determination 7/09 concerned a TV advertisement for Domino’s pizza featuring Jim Beam sauce. While the complaint was dismissed, the panel was obliged to consider if the ABAC standards on the advertising of specific alcohol beverages could be applied to an advertisement for an alcohol named but non-alcohol beverage product e.g. a pizza.
The Determination explains the circumstances where the ABAC could apply to such advertising. In reaching this conclusion, the panel noted that it was making decisions which the Scheme’s management committee, and potentially Australian governments, should review.

| manner than is possible by broadcast media such as television or print. It can facilitate an exchange between the advertiser and the product user by mechanisms such as user-generated content on advertisers’ websites, or through direct exchanges between consumers over mediums such as facebook fan sites. For the ABAC adjudication processes, these developments and their use by alcohol companies raise obvious challenges. In part, these go to assessing whether a particular promotional activity is in fact “advertising” for ABAC purposes. If the activity does fall within the scope of the ABAC Scheme, then the highly dynamic nature of the medium can make even basic requirements, such as locating the actual images and text which have drawn a complaint, quite problematic. In 2010 the panel approached these issues on a case-by-case basis with individual determinations raising various policy and practical issues. Where “whole-of-scheme” issues have been raised, the policy questions have been drawn to the attention of the Scheme’s management committee. While it is fair to say that the Scheme is coping with the challenges of new media, it would be desirable in the near future for an holistic examination of the Scheme and its interaction with new media to be undertaken. In operational terms, the adjudication process |
| guidelines for digital media marketing |
| Alcohol advertising by alcohol retailers | Yes, Coles and Woolworths have joined Scheme Retailers as a block have not joined |
| Appeal of alcohol advertising to children and adolescents | No |
| 2009 | Yes Retailer advertising is covered by the code |
| 1 Alcohol beverages and alcohol retailers | |
| 2 Surrogate marketing | No |
| 3 Sponsorship | A related issue to surrogate marketing is the sponsorship of various events or sports teams by alcohol companies. In 2009 the panel considered complaints about individual advertisements which flowed from wider sponsorship arrangements. As mentioned, the underlying model of the ABAC assumes direct advertising of a physical alcohol product and invariably complaints about alcohol company sponsorship test the ABAC framework. As with surrogate marketing, the policy issues raised by sponsorship are matters for the ABAC Management Committee and government to determine if either the ABAC Scheme requires some adjustment or some other policy response is called for. | No |
| 4 New media | During the year the panel, in Determination 38/09, considered a complaint which related to alcohol promotion on a Facebook fan site. The threshold issue for the panel was whether the fan site was ‘alcohol beverage advertising’ for the purposes of the ABAC. The panel concluded that promotional material for the alcohol product on the site was advertising and a decision on the substantive question of the consistency of the promotional material and the ABAC standards was made. In the Determination, the panel noted that it had made a policy decision about the application of the code to social networking media and that the policy issues involved should be considered by the management committee. | No |
| 5 Drink Responsibly messages and Age Verification steps | In Determination 43/09, the panel considered an argument raised by a complainant that a failure to contain such a message amounted to a breach of the ABAC. The panel concluded that there was no express provision within the ABAC requiring the inclusion of a responsibility message and that a failure to contain such a message did not constitute a breach of the code. A second issue raised in Determination 110/09 questioned if access to an alcohol promotion website should require a visitor to provide age verification. The ABAC contains no such requirement and the Panel found that the general code standards could not be interpreted to require an age verification procedure. The management committee may care to consider whether, in a subsequent review of the code, a positive requirement to contain a ‘drink responsibly’ message and age verification for website access might become code requirements. | No |
| 2008 Point-of-sale carve-out | The code does not however define point-of-sale advertising. The issue of whether a particular advertisement which has generated a complaint falls within the point-of-sale carve-out has come before the panel on several occasions over the life of the ABAC, but in 2008 the panel undertook a comprehensive review as to the scope of the point-of-sale carve-out. The outcome of this review is contained in Determination 18/08. The panel concluded that point-of-sale advertising would incorporate material which: • is displayed adjacent to the point at which the alcohol beverage is purchased • is a fixture or akin to a fixture i.e. is not intended to be taken away from the premises by a customer • has limited exposure to a wider audience beyond the clientele of the premises from which the alcohol beverage is purchased. This ‘definition’ of point-of-sale advertising has been accepted by the Scheme’s management committee. It is a matter of policy for the committee as to whether the point-of-sale carve-out continues to be justified in light of the Scheme’s aims. | No |
## Code Interpretation

The code as a whole was last subject to holistic review in 2003, leading to changes to the code which came into effect in 2004. The panel draws the management committee’s attention to several issues which have been the subject of internal debate by panel members in interpreting the code during 2008 and which might be reconsidered in any future review of the code.

In Determination 02/08, the panel considered the various descriptions used throughout the ABAC in terms of alcohol use. Section (a) speaks of “a responsible approach to the consumption of alcohol”. Section (c) speaks of the “consumption and presence” of alcohol, while section (d) deals only with the “consumption” of alcohol.

Use of these different expressions gives various provisions of the ABAC a wider or lesser scope. Whether these differing expressions are playing an appropriate role and fulfilling the policy intent of the Scheme should be included within the next holistic review of the code.

This review should also consider whether section (d), which in part is the code’s response to the public policy intent of combating drink driving, is sufficiently wide in its application to meet this policy goal. In Determinations 02/08, 01/08 and 82/07 the panel dealt with advertisements which raised alcohol and the use of vehicles. It is arguable that the provision could be recast slightly to capture the use of bicycles.

Section (d) also provides for an ‘exemption’ of a kind for advertisements promoting a “low alcohol beverage” from the general standard contained in the section. The scope and intent of this ‘exemption’ was discussed in Determination 76/08. Again, this provision could be examined in a future review of the ABAC to assess whether the policy intent is being fully achieved.

#### Sponsorship and the ABAC

The ABAC was designed to apply good practice standards to alcohol advertising. The design of the code does not work well when considering various promotions, naming rights etc which arise from the sponsorship of sporting teams by alcohol producers.

In Determination 26/08 the panel considered a complaint arising from the sponsorship by an alcohol producer of a motocross team competing in a national competition. The panel determined issues around advertising on a website and at a motocross event. The relationship between the ABAC and sponsorship more broadly raises policy issues which go beyond the role of the adjudication panel. It is apparent, however, that the ABAC Scheme, as it is currently configured, does not provide an adequate platform to assess sponsorship arrangements.

#### Naming and Packaging

During 2008 proposals were advanced for an extension of the ABAC Scheme to the naming of alcohol products and the labelling of products. It is envisaged that the panel and chief adjudicator will play particular roles in the extended Scheme. The chief adjudicator has been consulted about the proposed Scheme. The finalisation of the naming and packaging extension of the ABAC Scheme is a matter for the Scheme’s management committee.

#### 2007 Timeframes for decisions

The rules applying to the ABAC Adjudication Panel set down an objective for decisions to be finalised within 30 business days from the receipt of a complaint by the panel. Consistently meeting this objective when a determination is required has been problematic over the life of the ABAC Scheme.

In 2007 eight (8) complaints of the 87 complaints referred to the ABAC Panel took more than 30 days to be determined.
## Expanding the panel's membership

Expanding the panel's membership to add a second public health expert has also assisted on occasions in the securing of the available members to form a panel.

### Relationship between the ASB and the ABAC adjudication process

The working relationship between the ASB and the ABAC Panel is vital in the smooth operation of the ABAC Scheme. In the 2006 Annual Report it was noted that there had been some difficulties experienced in the processing of complaints from the ASB to the panel's administration officer. In 2007 the process has worked well and has been facilitated by a number of procedural changes and refinements.

The ASB has also extended the reach of its scheme to consider alcohol advertisements on the internet. A gap between the ASB and the ABAC Schemes on this point was identified in the 2006 Report and it is pleasing that this potential problem has been overcome. The panel records its appreciation to the staff of the ASB for their cooperation and support for the ABAC complaints management process.

### Governance of the complaints system

The ABAC Scheme is governed by a management committee consisting of representatives of the sponsoring alcohol industry peak bodies, the Advertising Federation of Australia and government.

The management committee plays no part in the panel's decision-making process. It does have a role in monitoring the performance of the ABAC Scheme as a whole and in reviewing the code itself to ensure it is meeting its objectives.

As chief adjudicator of the panel, I report to the committee any issues which arise from particular determinations on the operation of the complaints scheme. Issues arising from 2007 determinations and discussed with the management committee have included:

- the scope and meaning of 'point of sale' material
- the inclusion of retail outlets
- the interplay of the pre-vetting scheme and complaints process
- complaints raising matters regarding the naming and packaging of alcohol products.

### 2006 Interplay between the ASB and ABAC Schemes

Unfortunately some 29 alcohol complaints received in 2006 by the ASB were not subsequently received by the ABAC Executive Officer until 2007. In understanding how this problem arose, it appears that in some cases it occurred because of the changeover in the ABAC executive officer role and complaints being forwarded to an incorrect email address. In some other cases, it appears that the complaints were not referred on at all to the ABAC Executive Officer.

To ensure that this occurrence is never repeated, new measures have been instigated to cross-check the receipt of complaints by the ASB and the ABAC Executive Officer. These measures ensure that both bodies undertake monthly reconciliations of complaints received and referred.

A further issue with the interplay of the ASB and the ABAC Scheme is the varied coverage of the two schemes. The ASB does not extend to complaints about advertising on the internet; whereas the ABAC Scheme does include this medium. This means that a complaint about an alcohol internet advertisement which raises code of ethics issues will not be determined by the ASB.

The ABAC Management Committee has resolved that all alcohol advertisement complaints should be considered and not dismissed purely because a particular advertising medium is not within the scope of the ASB scheme. Accordingly, in the case of internet advertisements, this means that the ABAC Adjudication Panel can potentially be called upon to decide on code of ethics issues. This is...
## FINAL REPORT
### ALCOHOL ADVERTISING: THE EFFECTIVENESS OF CURRENT REGULATORY CODES IN ADDRESSING COMMUNITY CONCERN

| not particularly desirable, as it is the ASB which has the background and experience of applying the "community standards" which are the essence of assessing if an advertisement offends the code of ethics on matters of taste and decency. The ABAC Adjudication Panel is not generally called upon to make these particular assessments and it does not have the benefit of considering the large number of complaints which raise code of ethics issues and which are the staple of ASB determinations. This means that there is the potential for the ABAC Adjudication Panel to have a quite different sense of the prevailing "community standards" and reach quite different conclusions to those the ASB might reach. This would be overcome if the ABAC Adjudication Panel considered all complaints about alcohol advertisements, as it would deal with a sufficient number of code of ethics issues to develop a consistent and logical method of applying "community standards" in code of ethics matters. It is understood this course of action was considered, but not ultimately adopted, following the major review of the ABAC system in 2003–2004. The best course would seem to be that the ASB should extend its coverage to include internet advertising, at least as far as alcohol advertising is concerned. Given the growth in internet promotion of products and the common practice of an advertisement featuring both on the internet and through another medium, such as television or print, the potential for this divergence in the coverage of the two schemes to become a serious problem is very real. |

| 2. **Interplay between the ABAC pre-vetting process and the complaints process**
The ABAC Scheme consists of two separate elements, namely a pre-vetting process and the complaints process. The pre-vetting process and the complaints process are properly quite separate functions and are carried out by different people. The common theme between the two processes is that both are making judgments about the meaning of the ABAC provisions. Recognising the importance of a proper understanding of the approach adopted by the pre-vetting assessors in carrying out their role, the ABAC Adjudication Panel has moved to increase its engagement with the pre-vetting process. At first instance, this has involved a conference between the chief adjudicator and the Scheme pre-vetting assessors to consider panel decisions made in 2006, which have upheld complaints about advertisements which have been approved through the pre-vetting process. It is planned to expand this level of engagement so as to ensure both panel members and the pre-vetting assessors identify differences in code interpretation and discuss the methodology each adopt in making decisions. Clearly, it is important for the integrity of the ABAC Scheme that stakeholders, both from industry and the public, have confidence that the ABAC will be applied in a consistent, methodical manner, properly informed by the public policy aspiration of responsible alcohol promotion. It is hoped that the resources available to the Scheme will enable this level of engagement between the pre-vetting and the complaints process to deepen and expand over the next 12 months. |

| 3. **Sections (a) and (c) of the ABAC**
Section (a) provides in part that alcohol advertising must present a mature, balanced and responsible approach to the consumption of alcohol beverages and must not encourage excessive consumption, under-age drinking or misuse of alcohol. Section (c) deals with advertisements suggesting that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment. The ABAC will be breached if an advertisement does suggest that alcohol has created a change in mood and if the advertisement depicts the consumption or presence of alcohol being a cause or contributor to success in life, including business, social and/or sexual success. These two provisions have featured in panel determinations which invariably required quite difficult 'on balance' judgments. Measures are well advanced to assist understanding of the panel's decisions through the listing of all panel determinations on an ABAC website and through the development of guidelines to accompany the ABAC. These are welcome initiatives taken by the panel's management committee. It would also be valuable to periodically review the ABAC provisions to assess if the provisions are meeting the expectations. | Yes | No |
of the various stakeholders to the Scheme. For instance, if there was a concern about the use of sexual imagery in alcohol advertising, not the suggestion that alcohol is a contributor to sexual success, then section (c) could be amended to prohibit the use of sexual imagery, rather than the current provisions which allow sexual imagery.

The actual terms of the ABAC are not a responsibility of the panel. It is the panel’s role to fairly, impartially and to the best of its ability, apply the ABAC to the complaints and the advertisements which come before the panel. Review of the ABAC provisions is a matter for the management committee and key stakeholders from government, industry and the public.

<table>
<thead>
<tr>
<th>Year</th>
<th>Timeframes</th>
<th>Yes</th>
<th>No</th>
</tr>
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</table>
| 2005 | The ability of the adjudication process to always satisfy the 30-day resolution timeframe in cases of a full determination remains a challenge. The problem is essentially one of cost and benefit. The Adjudication Panel members undertake their roles on a part-time basis and are always able to attend to the determination processes immediately. This first combined with problems sometimes encountered in properly identifying advertisements and advertisers can sometimes lead to difficulties in meeting the 30-day timeframe. It is a matter for the Management Committee, in reviewing the operation of the Scheme, to weigh up the costs and benefits of adopting various strategies to improve the decision-making timeframe. For instance, procedural changes could be made to the decision-making process, e.g. to enable a decision to be made by the Adjudication Panel even before the complaint is considered, as well as other measures which might be considered, e.g. additional panel members, the appointment of a Deputy Chief Adjudicator to take on some determination drafting and the conduct of some panel hearings. Essentially, consideration of these matters requires a judgment to be taken on the competing policy objectives of the ABAC Scheme. The comprehensive coverage of the ABAC Scheme The ABAC Scheme cannot cover the field as it is not underpinned by legislative compulsion, but rather individual corporate commitment. By this it is meant that only legislation can compel, by force of law, compliance with a Code of Practice. Short of legislation, compliance is dependent on contractual commitments and goodwill. For the ABAC, ‘gaps’ in its coverage can arise from: alcohol advertisements from companies which are not members of an industry association committed to the ABAC the ABAC not applying directly to media outlets which run alcohol advertising occurring via a medium not captured by the ABAC a complaint raising an issue which does not fall within a provision contained within the ABAC or another code applying to advertising more generally. This observation is not raised as a criticism of co-regulation as it should be noted that ‘gaps’ also inevitably occur with legislative schemes, for instance, the Income Tax Act, fails to pick up new activities which then require subsequent amending legislation. In fact, as a general observation, an advantage of a co-regulatory system is its ability to react more quickly to ‘gaps’ than a legislative system. In 2005, an issue concerning the coverage of the ABAC emerged, arising from an advertisement for Cougar bourbon. The advertisement attracted complaints about alcohol advertising. The complaints revealed two ‘gaps’ in the ABAC system. Firstly, the issue raised was not on its face complain about alcohol advertising. The complaints about alcohol advertising.
## Final Report

### Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concern

Adjudication Panel had jurisdiction to determine the complaint. This ‘gap’ was resolved by the decision of the Panel, supported by the management committee, to deal with the complaint. This means that the ABAC and the Adjudication Panel will act as a safety net to ensure that all complaints have a home. This in turn revealed the second ‘gap’ in that, while the Panel considered the advertisement inappropriate, there was no section of the ABAC which could be fairly interpreted as actually prohibiting the advertising. In the event, the advertiser itself, upon receiving the complaints, withdrew the advertisement. The Panel, however, felt obliged to dismiss the complaint as the ABAC did not envisage a complaint of this nature. The Management Committee may care to consider if the ABAC needs amending to make clear that advertising must not discourage the making of complaints.

### The Use of Sexual Imagery in Alcohol Advertising

A consistent theme in complaints is the use of sexual imagery. Often the complaints go to issues of sexism which are dealt with under the AANA Code of Ethics and considered by the ASB. In other cases, the issue is whether the advertisement is breaching the standard laid out in section (c) of the ABAC.

Section (c) provides that advertisements for alcohol beverages must not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and accordingly:

1. Must not depict the consumption or presence of alcohol beverages as a cause of, or contribution to, the achievement of personal, business, social, sporting, sexual or other success.

This ABAC provision has been dealt with in a number of difficult decisions made by the Panel in 2005. While the Panel approaches its role mindful of the spirit and intent of the ABAC and the importance of securing responsible alcohol advertising, it can only apply the ABAC as it is drafted.

The management committee may wish to consider section (c) of the ABAC and assess if it is meeting community expectations in terms of the use of sexual imagery in alcohol advertising.

### Maintaining Timeframes

The ABAC Complaints Panel aims to determine complaints within 30 days of the receipt of the complaint from the ASB. It is often difficult to satisfy this goal because of:

- The need to properly identify the advertisement and advertiser the complaint is about.
- The need to await receipt of the advertisement to frame the questions to be directed to the advertiser to obtain a response to the complaint.
- The logistics of drawing together Panel members to hear the complaints when all members are part-time and have competing demands on their time.
- The desire of the Panel to produce detailed written determinations which fairly set out the issues raised in the complaints.

The Management Committee should consider if it would prefer much shorter written determinations (similar to the decisions of the ASB) in order to reduce timeframes in determining complaints.

### Multiple Complaints

While 212 complaints were received in 2004, only 23 advertisements were involved. At present the process for determining if a complaint is to be dealt with under the AANA Code of Ethics, the ABAC or both is as follows:

- All complaints are received by the ASB which forwards them to the Chief Adjudicator for assessment as to whether the issues raised are solely within the AANA Code of Ethics.
- The Chief Adjudicator examines the wording of the complaint only. No assessment of the advertisement is undertaken.
- As nearly all complaints are not framed with reference to either the ABAC or AANA Code of Ethics, the assessment of the complaint goes to judging the ‘sense’ or ‘essence’ of the complainant’s concern.

The vast majority of complaints do not raise issues about the responsible consumption of alcohol, but rather about the portrayal of...
women or issues of good taste. In this way, the product being advertised is less of a concern to the complainant than the way it is advertised.

Some advertisements attract a large number of complaints. The practice of the ASB appears to be that once a determination is made, all subsequent complaints about the same advertisement are considered and resolved by the single determination. In contrast, the practice of the ABAC Scheme is to review each complaint individually, even though the clear sense of previous complaints about the same advertisements is that it raises issues solely under the AANA Code of Ethics.

The Management Committee should consider if the current practice of confining assessments of complaints to the matters raised in the complaint should be retained. With multiple complaints, it is possible that this practice could lead to several determinations about the single advertisement being required.
ACCC Media Release

ACCC Grants Authorisation to Retailer Alert Scheme

2 November 2007

The Australian Competition and Consumer Commission has issued a final determination granting conditional authorisation to a Retailer Alert Scheme, which is designed to deal with inappropriately named or packaged alcohol products.

The Retailer Alert Scheme provides a national system for the removal of inappropriately named or packaged alcohol products from the market. If a complaint about the name or packaging of an alcohol beverage is made, and the product is found not to comply with the Alcohol Beverages Advertising (and Packaging) Code, then a Retailer Alert will be issued. Retailers who are signatories to the code have agreed not to place further orders for stock that is the subject of a Retailer Alert. Suppliers who are signatories to the code, and whose products are the subject of a Retailer Alert, have agreed to cease supplying non-compliant stock to the market, and to reimburse retailers for non-compliant stock returned to the supplier.

"The ACCC accepts that inappropriate naming and packaging of alcohol products may contribute to unsafe drinking patterns and underage drinking," ACCC Chairman, Mr Graeme Samuel, said today. "The ACCC considers that the Retailer Alert Scheme will deliver a benefit to the public by providing a national system for the removal of inappropriately named or packaged alcohol products from the market."

The ACCC has granted authorisation subject to three conditions. The first condition requires the applicants to remove the scheme's 'grandfather' provisions, which would have protected pre-existing products from the sanctions of the scheme.

"The ACCC considers that the objectives of the Retailer Alert Scheme will only be met if retailers and suppliers are obliged to remove all non-compliant products from the market, regardless of when the products first entered the market," Mr Samuel said.

In a submission to the ACCC, the applicants have stated that there will be little or no industry buy-in if the 'grandfather' provisions are removed. The applicants are effectively arguing that industry may choose not to sign up to the scheme (which they contend, and the ACCC has agreed, is in the public interest) if the requirement for the 'grandfather' provisions to be removed is continued.

"The ACCC has made its determination based on the tests set out in legislation and in the public interest," Mr Samuel said. "It will not allow the applicants to dissuade it from making the right decision based on claims that industry will walk away from the scheme. The 'grandfather' provisions are entirely inconsistent with the Retailer Alert Scheme, and the applicants have not put forward any persuasive arguments which support their inclusion in the scheme.

"The ACCC considers that if the applicants support the objective of the Retailer Alert Scheme, the contents of the ABAP code, and the process by which complaints will be
The second condition requires non-compliant products to be removed from the market within 30 days of a Retailer Alert being issued.

The third condition requires the applicants to provide the ACCC with a report, by no later than 31 March 2011, regarding the results of an independent review to be conducted into the effectiveness of the Retailer Alert Scheme. The report must include details regarding the education campaign conducted in relation to the scheme.

The final determination will be available from the ACCC website.

608 Related register records: The Distilled Spirits Industry Council of Australia and others – Authorisation – A91054 – A91055

608 Authorisation A91054 – A91055 http://registers.accc.gov.au/content/index.phtml/itemId/789886
The ACCC can 'authorise' businesses to engage in anti-competitive arrangements or conduct when it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment. Authorisation provides protection from legal action under the Competition and Consumer Act 2010.

The ACCC may, if the relevant public benefit test is met, authorise conduct that might constitute anti-competitive conduct (such as a cartel provision, an exclusionary provision (primary boycott), an anti-competitive agreement, and so on).

The ACCC will generally conduct a public consultation which invites submissions on the application from interested parties. All relevant submissions (unless a claim for confidentiality is granted) by the applicant and interested parties and the ACCC's draft and final determinations are placed on the authorisations public register. Before issuing its final decision the ACCC must issue a draft determination stating whether it proposes to grant or deny authorisation, whether any conditions are proposed and setting out the reasons for its proposed decision. The applicant for authorisation and interested parties are invited to respond to the draft determination, either by providing written submissions or by calling a pre-decision conference. A pre-decision conference gives the applicant or interested parties an opportunity to discuss the draft decision and to put their views directly to an ACCC commissioner. The ACCC then makes a final determination, which may grant authorisation, grant authorisation subject to conditions or deny authorisation.