



**SUBMISSION TO AUSTRALIAN NATIONAL PREVENTIVE HEALTH AGENCY
ISSUES PAPER:**

**“Alcohol advertising: The effectiveness of current regulatory codes in
addressing community concerns”**

Submission from the National Alliance for Action on Alcohol

The National Alliance for Action on Alcohol (NAAA) is a national coalition of health and community organisations from across Australia. It has been formed with the goal of reducing alcohol-related harm and currently has 75 member organisations with a focus on public health and alcohol.

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Executive Summary

The National Alliance for Action on Alcohol (NAAA) welcomes the opportunity to respond to the Australian National Preventive Health Agency (ANPHA) issues paper 'Alcohol advertising: The effectiveness of current regulatory codes in addressing community concerns' (hereafter referred to as 'the issues paper'). Briefly, our submission makes the following points:

1. There is a compelling case for regulatory reform, underpinned by evidence of the harm to young people from exposure to alcohol advertising, and supported by evidence for effective interventions to improve regulations and prevent this harm.
2. A reform agenda requires critical evaluation of the position of industry and industry supported organisations, and their interest in undermining the effectiveness of interventions to reduce alcohol-related harm.
3. The current regulatory framework for alcohol advertising in Australia, in the form of the Alcohol Beverages Advertising Code and media-specific codes, is biased towards the alcohol industry, lacks a public health protection focus, and is ineffective at regulating the behaviour of the industry it claims to control.

Alcohol advertising is well-funded and pervasive. Complex marketing strategies embed alcohol messages in young people's everyday lives, in order to instil an overtly positive association with alcohol and recruit new consumers.

To protect children and young people from the effects of alcohol advertising, the NAAA supports a comprehensive approach to the minimisation of alcohol-related harm, and the introduction of independent regulation of alcohol advertising as a fundamental aspect of this approach.

Specifically the NAAA recommends a legislative framework for regulating alcohol advertising in Australia that:

1. covers all forms of alcohol marketing, and is flexible enough to adapt and respond to changing environments;
2. establishes clear public policy goals for the regulation of advertising, primarily, the protection of vulnerable groups including children and young people;
3. creates an independent regulatory body for administering the framework, with the powers to formally investigate and penalise breaches of alcohol advertising rules; and
4. introduces meaningful sanctions for serious or persistent non-compliance by advertisers.

The framework above should clearly articulate:

- A prohibition on alcohol advertising in all media that appeals to people under the age of 25, including but not limited to, advertising, promotion and sponsorship, whether in traditional media, on digital platforms and in new and emerging social media; and
- Restrictions on the sponsorship of sporting and cultural events, organisations or participants (such as sports teams or athletes), by alcohol companies, where those events, organisations or participants are of high appeal to people under the age of 25.

Introduction

The NAAA welcomes the opportunity to present the case for improving the regulation of alcohol advertising in Australia. However we question the need to establish the case again. The rationale for protecting children and young people from the harmful effects of alcohol marketing exposure is well accepted, in research literature, in legislation,¹ and by the alcohol industry. That the Australian alcohol advertising regulatory framework fails to protect children and young people from the harmful effects of alcohol marketing exposure has also been established, as is the need for improved regulation. This case has been made previously by our members and other groups.

The issues paper suffers from some significant flaws, in that rather than immediately addressing the substantive issue of the effectiveness of current regulatory codes in addressing community concerns (which it has been directed to do), the paper diverts into a discussion about the impact of alcohol marketing, drawing on alcohol industry-funded material that is not subject to independent scientific peer review and is inherently biased. This approach only serves to take a potentially productive discussion backwards several years, rehash old debates, and cast doubts about the need for any regulation of advertising at all. We wish to express our frustration and disappointment in the way the issues paper has undermined and ignored substantial efforts and progress by government and non-government organisations to protect young people from alcohol advertising. In particular, we highlight the following reports:

In 2006, the National Alcohol Strategy reported that:

Advertising in mainstream media, especially print and television advertising is particularly influential, especially upon young and impressionable groups in the community.²

In 2009, the National Preventative Health Taskforce concluded that:

In summary, the Taskforce has reviewed the arguments regarding the links between advertising and alcohol consumption and alcohol-related harm, and has also taken into account submissions which disagree with this association. Having considered all the evidence to hand, the Taskforce is of the strong view that reducing the exposure of young people to alcohol promotions is an essential element in reducing alcohol-related harm in Australia. This is further reinforced by evidence that young people are highly vulnerable to the effects of alcohol up to the age of 25.

The Taskforce is particularly concerned about the high levels of alcohol advertising and promotion to which adolescents and young Australians are exposed during live sport broadcasts, during other high adolescent/child viewing times, through sponsorship of sport and cultural events, such as sponsorship of professional sporting codes, and through youth-oriented print media and internet-based promotions.

On this basis, the Taskforce made a series of recommendations:

In a staged approach phase out alcohol promotions from times and placements which have high exposure to young people aged up to 25 years.

Introduce enforceable codes of conduct requiring national sporting codes to take greater responsibility for individuals' alcohol-related player behaviour.

Require health advisory information labelling on containers and packaging of all alcohol products to communicate key information that promotes safer consumption of alcohol.

Require counter-advertising (health advisory information) that is prescribed content by an independent body within all alcohol advertising at a minimum level of 25% of the advertisement broadcast time or physical space.

¹ Broadcasting Standards Act

² Ministerial Council on Drug Strategy, 'National Alcohol Strategy 2006-2011. Towards Safer Drinking Cultures' (Commonwealth of Australia) 26

<[http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/\\$File/nas-06-09.pdf](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/$File/nas-06-09.pdf)>

The NAAA is extremely disappointed that little action has been taken by governments to progress these recommendations, and that the issues paper virtually ignores the conclusions and recommendations of the Taskforce.

Submission outline and definitions

Our response to the issues paper is in three parts.

1. The case for change: comments regarding the pervasiveness of alcohol advertising in Australia and evidence of the link between alcohol advertising and harmful consumption;
2. The importance of evidence-based policy: critique of the inclusion in the issues paper of industry opinion alongside peer-reviewed data; and
3. Regulation of alcohol advertising: analysis of the regulatory framework for all alcohol advertising in Australia, followed by a discussion about how the ABAC and related codes fall short of best practice regulation.

Focus on children and young people

The NAAA is committed to reducing harmful drinking across the Australian population. However, we also acknowledge that the risk of harm for children and young people who drink alcohol is greater. For example, childhood and adolescence are critical times for brain development, and the brain is more sensitive to alcohol-induced damage at this time.³ Additionally, research into lifelong alcohol consumption demonstrates that early initiation of alcohol drinking and heavy drinking in adolescence and young adulthood can have long-term adverse health impacts, including increased risks for a range of diseases.⁴

The NAAA supports the National Preventative Health Taskforce's recommendation that advertising should be phased out from places and times that have high exposure to young people aged up to 25 years. Therefore, where this submission makes reference to 'children and young people' the intention is that this term refers to all people up to the age of 25 years.

Definition of alcohol marketing and promotion

Alcohol marketing can be roughly split into above-the-line (television, print, radio and outdoor) and below-the-line (point-of-sale and sponsorship) media, although in reality, alcohol marketing utilizes a sophisticated combination of above- and below-the-line techniques, linking alcohol brands to sports and cultural activities, sponsorships and product placements, and new marketing techniques such as e-mails, SMS and podcasting, social media and other communication techniques.

The NAAA acknowledges the complex and persistent nature of advertising, and for the purposes of this submission, adopts the definition of alcohol marketing as outlined in the WHO Global Alcohol Strategy, which considers alcohol marketing and promotion to be 'any form of commercial communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services. It could comprise anything that acts to advertise or otherwise promote a product or service.'⁵ References to marketing and promotion in this submission are, unless otherwise indicated, intended to refer to the broad marketing mix as outlined in the WHO's definition.

³ Alcohol Working Group (for the National Preventative Health Taskforce), *Australia: The Healthiest Country by 2020. Technical Report 3 Preventing alcohol-related harm in Australia* (2009), 16

⁴ Amy Fan, et al 'Association of Lifetime Alcohol Drinking Trajectories with Cardiometabolic Risk' (2008) 93 (1) *Journal of Clinical Endocrinology and Metabolism*, 154.

⁵ World Health Organisation, *Global strategy to reduce the harmful use of alcohol* (2010) 10
<http://www.who.int/substance_abuse/alcstrategyaftereb.pdf>

The case for change

There is a strong case for the better regulation of alcohol advertising in Australia, based on the heavy promotion of alcohol to young people, the link between advertising and consumption, and the level of community concern with advertising that targets children and young people.

Exposure to alcohol marketing and promotions among young people in Australia is widespread and prolific. Young people are exposed to alcohol advertising through traditional media such as advertising on television, outdoor signage, print media, as well as through sponsorship of sports and events, and increasingly sophisticated means such as social media, and public relations activities.

There is international and Australian scientific evidence which consistently shows that exposure to alcohol marketing and promotions are associated with more positive attitudes to alcohol use, more positive expectations about alcohol use, intentions to drink and in some cases greater risk of heavy drinking.

There are significant negative consequences from early and heavy drinking by young people, ranging from violence and injury, to alcohol-attributable diseases and death.

Marketing and promotion of alcohol to young people

Alcohol use in young people is associated with significant health impacts, many of which are canvassed in the issues paper. For some of the groups making this submission, there is additional concern related to the impact of early initiation to drinking, and development of patterns of harmful behaviour in relation to alcohol use, which prevail into adulthood and are implicated in serious and long term chronic health conditions.

Alcohol advertising is ubiquitous. In addition to the traditional mix of television, radio and print advertisements and point of sale marketing, alcohol advertising is prominent in new media and in campaigns that combine multiple technologies, for example, personalised emails or texts that promote specific alcohol-related incentives and viral marketing campaigns associated with social networking sites, in which young people share marketing material.

The dynamic nature of the internet makes it a particularly powerful promotional medium and many alcohol marketers have created engaging online environments with content and promotions especially designed to appeal to young people. Marketing strategies are complex and innovative, utilising product design, placement and price promotion.

Alcohol companies are also heavily involved in sponsorship of sporting teams and individuals, sporting and cultural events. In 2008, the U.S. Federal Trade Commission reported that alcohol manufacturers spent 44% of their marketing dollars on television, radio, print and outdoor marketing; the remainder was spent on point-of-sale advertising and promotions and sponsorship of sporting events, sports teams or individuals.⁶ 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.⁷

While the pervasive and varied nature of alcohol promotion makes measuring exposure difficult, we know that young people are heavy users of new media, and adept navigators of multiple media; meanwhile the measured media is known to be an underestimation of the marketing effort by a factor of two to four.⁸

⁶ David H. Jernigan, 'The extent of global alcohol marketing and its impact on youth' (2010) *Contemporary Drug Problems* 37, 68

⁷ Julian Lee 'Alcohol empire strikes back' *Sydney Morning Herald* (online) 15 March 2008

<<http://www.smh.com.au/news/national/alcohol-empire-strikes-back/2008/03/14/1205472088601.html?page=fullpage#contentSwap1>>

⁸ Thomas Babor et al *Alcohol No Ordinary Commodity* (Oxford University Press, 2nd ed, 2010) 185, citing Peter Anderson et al 'Impact of alcohol advertising and media exposure on adolescent alcohol use: A systematic review of longitudinal studies' (2009) *Alcohol and Alcoholism* 44

The impact of marketing on consumption

There is substantial evidence available to show that young people are (1) frequently exposed to alcohol marketing and promotions (this holds especially true in Australia) and (2) are affected by alcohol marketing and promotions in terms of their attitudes to drinking and their drinking behaviours, which can have harmful consequences for their health in the short- and long-term.

A report published in 2009 by the Monitoring of Alcohol Advertising Committee (MAAC)⁹, a sub-committee of Intergovernmental Committee on Drugs (IGCD), found that over the 2005-2007 period:

- \$125 million was spent on alcohol advertising (in 2007) and this amount increased from year to year. This figure related only to certain forms of advertising, and excluded sponsorship and associated expenditure, and bottle shop advertising—and so is likely to be a vast underestimate of the actual spend.
- Alcohol advertising activity is highly seasonal, with almost half of all beer advertising occurring in the last three months of each year. This raises concerns about the intensity of alcohol advertising exposure among young people at these times of the year, particular in settings (e.g. sport) where such advertising is prominent.
- Outdoor advertising grew in significance from 21% of all alcohol advertising expenditure in 2005 to 32% in 2007
- For the vast majority of the alcohol beverage brands with the greatest estimated metropolitan television expenditure in 2007, a greater weight of exposure was generated with those aged 18-29 years compared with those aged 13-17 years. However, in Melbourne four of the thirty top spend brands generated similar or greater exposure with 13-17 year olds compared with those aged 18-29 years. Three of the four were beer brands.
- From January to December 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. During this period 44% of the alcohol advertisements shown at weekends and weekday public holidays were shown in the day i.e. between 5.01am to 8.29pm, reflecting the impact of the exemption to the Commercial Television Industry Code of Practice discussed below.

A study of the extent and nature of alcohol advertising in Australia found that children and adults are regularly exposed to advertisements that depict alcohol consumption as fun, social and inexpensive.¹⁰ The study found that a total of 2,810 alcohol advertisements were aired on Australian television in 5 major cities over a two-month period, representing one in 10 beverage advertisements, at a total expenditure value of \$15.8 million.¹¹ Around half of all alcohol advertisements appeared during children's popular viewing times. The most common themes used were humour, friendship/mateship and value for money.

The issues paper presents a review of studies into the effects of exposure to alcohol marketing on drinking behaviour among young people, and at [40] states '[t]he alcohol industry has also argued that the evidence linking alcohol promotion and consumption remains inconclusive and that alcohol advertising is not intended to target youth or increase alcohol consumption.'

Our concerns with this statement are twofold: firstly, it is well known that the alcohol industry uses deliberate strategies to target youth and increase consumption; and secondly, we are concerned that this paper gives the impression that the evidence of a link between advertising and consumption is insufficient to support greater restrictions on alcohol advertising, which is not the case. Our concerns with the presentation of industry opinion alongside peer-reviewed research data are outlined in detail below.

⁹ Monitoring of Alcohol Advertising Committee, 'Alcohol beverage advertising in mainstream Australian media 2005 to 2007: expenditure and exposure' (Department of Health and Ageing, 2009)

<<http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/alcohol-advert>>

¹⁰ Simone Pettigrew et al 'The extent and nature of alcohol advertising on Australian television' (2012) 31(6) *Drug and Alcohol Review* 797

¹¹ Ibid.

In relation to the first issue, a review of self-regulation in alcohol advertising by the UK House of Commons Health Select Committee obtained a large number of internal marketing documents, which showed a concerted effort on the part of the alcohol industry to attract ‘the up and coming generation’.¹² There are numerous examples of alcohol advertising aimed at children and young people, and of alcohol advertising at times when, and in places where, children and young people may be exposed.¹³ And although the ABAC Code discourages alcohol advertising that has a ‘strong or evident appeal to children or adolescents’¹⁴ the National Preventative Health Strategy report noted that a ‘substantial amount of alcohol advertising is communicated to young people.’¹⁵

To perpetuate the view that the evidence linking alcohol promotion and consumption is ‘inconclusive’ is not accurate and potentially misleading. Rather, research has consistently demonstrated that exposure to repeated high-level alcohol promotion inculcates pro-drinking attitudes and alcohol advertising has been found to promote and reinforce perceptions of drinking as positive, glamorous and relatively risk-free.¹⁶

Hastings and Sheron are more definitive in their assessment of the available evidence:

The impact of alcohol marketing on young people has been the subject of 13 peer reviewed longitudinal studies, which were systematically scrutinised by the Science Group of the European Union Alcohol and Health Forum. The findings were clear cut: ‘alcohol marketing increases the likelihood that adolescents will start to use alcohol, and to drink more if they are already using alcohol.’¹⁷

Babor et al have concluded that ‘the extent and breadth of research [on the effects of exposure to young people to alcohol marketing] is considerable, utilizes a range of methodologies, and is consistent in showing effects with young people;’¹⁸ the National Alcohol Strategy 2006-2009 suggests that, ‘the wide-ranging ways in which alcohol is promoted is a major force behind Australia’s drinking culture.’¹⁹

The British Medical Association report *Under the influence—the damaging effect of alcohol marketing on young people* highlights the pervasive and ubiquitous nature of alcohol advertising, which comes in many forms, from traditional advertisements on television, to ambient advertising, in new media, social networking sights and via viral campaigns; the report further noted that the cumulative effect of such promotion is to reinforce and exaggerate strong pro-alcohol norms.²⁰

Likewise, the Australian Medical Association has called for an end to the exposure of children and young people to alcohol marketing, recommending—amongst other things—-independent regulation of alcohol marketing and promotion; regulation of all marketing, including point-of-sale, branded merchandise, digital and social media marketing, the use of data collection and behavioural profiling; and the compulsory disclosure of the annual marketing spend by alcohol companies.²¹

That the paper has not referenced the considerable work undertaken by the National Preventative Health Taskforce in reviewing the arguments regarding the links between advertising, alcohol consumption and

¹² Gerard Hastings ‘“They’ll drink bucket loads of the stuff”: an analysis of internal alcohol industry advertising documents’ (The Alcohol Education and Research Council (UK) 2009)

¹³ See Lyn Phillipson and Sandra Jones ‘Awareness of alcohol advertising among children who watch televised sports’ (Proceedings of the Australian and New Zealand Marketing Academy (ANZMAC) Conference, 2007), Lynda Fielder, Robert Donovan and Robyn Ouschan ‘Exposure of children and adolescents to alcohol advertising on Australian metropolitan free-to-air television’ (2009) 104 *Addiction* 1157

¹⁴ Part 1 (b) *Alcohol Beverages Advertising Code*.

[http://www.abac.org.au/uploads/File/ABAC%20Code%20\(at%20November%202009\)\(1\).pdf](http://www.abac.org.au/uploads/File/ABAC%20Code%20(at%20November%202009)(1).pdf) at 11 January 2010

¹⁵ Alcohol Working Group (for the National Preventative Health Taskforce), above note 3, 34.

¹⁶ Thomas Babor, et al. *Alcohol – No Ordinary Commodity* (1st ed. 2003), 180.

¹⁷ Gerard Hastings and Nick Sheron ‘Alcohol Marketing: grooming the next generation’ (2013) *British Medical Journal* 346,

¹⁸ Thomas Babor et al *Alcohol No Ordinary Commodity* (Oxford University Press, 2nd ed, 2010) 196

¹⁹ Ministerial Council on Drug Strategy ‘*National Alcohol Strategy 2006 – 2009: Towards safer drinking cultures*’ (Commonwealth of Australia 2006) 26

[http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/\\$File/nas-06-09.pdf](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/$File/nas-06-09.pdf)

²⁰ Gerard Hastings and Kathryn Angus ‘Under the influence: the damaging effect of alcohol marketing on young people’ (British Medical Association Board of Science, September 2009)

²¹ Corrine Dobson ‘Alcohol marketing and young people: Time for a new policy agenda’ (Australian Medical Association, 2012) 6

alcohol-related harm is surprising.²² The Taskforce expressed their view strongly, asserting that ‘reducing the exposure of young people to alcohol promotions is an essential element in reducing alcohol-related harm in Australia’,²³ and recommended, in a staged approach, to phase out alcohol promotions from times and placements which have high exposure to young people ages up to 25 years.²⁴

In the introduction to the issues paper, it is noted that ANPHA’s operational plan states ANPHA will ‘review alcohol industry’s voluntary code on advertising and the effectiveness of the code (the Alcohol Beverages Advertising Code) in addressing community concerns.’

This is not what this paper sets out to accomplish—and, in any event, the *ineffectiveness* of the alcohol industry’s voluntary code on advertising in addressing community concerns has already been demonstrated in a number of Australian reviews, and clearly identified in the National Preventative Health Taskforce report. In addition, the ineffectiveness of voluntary industry codes to address community concerns has been identified and articulated in international research, and emphasised by the WHO.²⁵

Community concerns about alcohol advertising

Community attitude surveys consistently show strong support for the restriction of alcohol advertising from times and in places where it is likely to reach a significant number of children and young people.

The Foundation for Alcohol Research and Evaluation’s (FARE) 2012 Alcohol Poll found that 68% Australians believe alcohol advertising and promotion influence the behaviour of people under the age of 18 years; and that 64% of Australians support a ban on alcohol advertising on television before 8.30pm.²⁶

The poll also asked Australians which organisation they should direct alcohol advertising complaints to and found that only 4% of Australians correctly identified the Advertising Standard Bureau, demonstrating limited accessibility to the complaints system that is purportedly the centrepiece of alcohol advertising regulation in Australia.

The 2010 National Drug Strategy Household Survey found that 71.2 per cent of people aged 14 or older supported a ban on alcohol advertisements before 9.30 p.m. and that 48.3 per cent of people supported banning alcohol company sponsorship of sporting events.²⁷

A VicHealth Community Attitudes to Alcohol Policy survey found that 82% of respondents agreed that alcohol advertisements should be restricted so that they are less likely to be seen by people under 18 years of age.²⁸ In relation to outdoor advertising, 77% of respondents from the same survey agreed that alcohol advertising on billboards should be banned within one kilometre of schools.²⁹

²² National Preventative Health Taskforce, *Australia: The Healthiest Country by 2020* (2009) 251

²³ Ibid.

²⁴ Ibid.

²⁵ World Health Organization ‘Global strategy to reduce the harmful use of alcohol’ (2010)

²⁶ Foundation for Alcohol Research and Evaluation ‘Annual Alcohol Poll 2012: Community attitudes and behaviours’(2012)

²⁷ Australian Institute of Health and Welfare ‘2010 National Drug Strategy Household Survey report’ (Drug statistics series no. 25, 2011)

²⁸ Victorian Health Promotion Foundation, *Community Attitudes to Alcohol Policy – Survey Results 2010* Unpublished

²⁹ Ibid.

The importance of evidence based policy

To reduce the burden of alcohol-related harm in Australia we must reshape Australia's drinking culture to produce healthier outcomes for young Australians; this requires a concerted effort to change the environment within which drinking choices are made—this is the challenge for governments and policy makers Australia-wide. Critical to this effort is good evidence to support personal and political change; evidence that is valid, reliable and credible.

The NAAA is deeply concerned about the inclusion in the issues paper from opinions of groups that have a vested interest in the way alcohol marketing is regulated; and in particular, that the opinions of the alcohol industry and alcohol industry funded organisations have been presented alongside peer-reviewed research, with the implication that the former are given equivalent weight in the debate.

Our concern with this is that the arguments and positions taken by the alcohol industry are incongruous with the legitimate and evidence-based rationale for strict regulation of alcohol advertising. For example, in the section titled 'The impact of marketing on alcohol consumption', the following argument is presented:

[41]. It is difficult to determine whether alcohol marketing specifically causes people to drink. There is a complex combination of factors that have the potential to influence an individual's drinking. These include a person's upbringing, the drinking behaviours of their parents and peers and pricing and availability issues. This issue has been highlighted by the International Center for Alcohol Policy (ICAP).

The most powerful factors in shaping beliefs and attitudes about drinking are parental and peer influence. Alcohol advertising, on the other hand, plays only a small role. In fact, there is no compelling evidence of a correlation between advertising and either drinking patterns among young people, or rates of abuse. It is likely that other forces, especially parental and peer influences, play a more significant role and that drinking patterns among young people are much more likely to be influenced by the prevailing culture around alcohol, than by advertising.

This paragraph is preceded by a section outlining the views of the alcohol industry in relation to the effects of alcohol advertising, which are that;

- i. the evidence linking alcohol promotion and consumption remains inconclusive;
- ii. alcohol advertising is not intended to target youth or increase alcohol consumption; and
- iii. alcohol manufacturers advertise not to increase consumption, but to
 - a. increase market share of their product, and
 - b. move consumers onto higher quality products with higher returns.

These statements, which are often repeated by the alcohol industry, do not accurately reflect the state of available evidence about the link between alcohol promotion and consumption. Rather, Babor et al conclude that the evidence suggests that,

the exposure of young people to alcohol marketing speeds up the onset of drinking and increases the amount consumed by those already drinking, The extent and breadth of research available is considerable, utilizes a range of methodologies, and *is consistent in showing effects with young people*.³⁰ (emphasis added)

The claim that alcohol advertising is not intended to target youth or increase alcohol consumption, is also at odds with available evidence. As discussed above, a review of self-regulation in alcohol advertising by the UK House of Commons Health Select Committee found that advertisers deliberately targeted advertising to young people, despite self-regulatory codes of practice in the UK that purport to prohibit such practices. A recent analysis by the RAND Corporation for the European Commission showed that teenagers are more exposed to alcohol advertising than adults.³¹

³⁰ Babor, above note 17, 196

³¹ Eleanor Winpenny et al 'Assessment of young people's exposure to alcohol marketing in audiovisual and online media' (RAND Europe for the Health Programme of the European Union, September 2012)

We are very concerned about this section of the issues paper, in particular the presentation of independent peer reviewed data alongside alcohol industry derived data and opinion, without critical analysis of industry claims.

International Center for Alcohol Policy

At [41] the issues paper cites discussion from an ICAP report in relation to the evidence linking alcohol marketing with consumption, which suggests that '[i]t is difficult to determine whether alcohol marketing specifically causes people to drink.

Despite what its name might suggest, the ICAP is not an independent research or policy organization; it is part of the global alcohol industry. The ICAP is an organization established and funded by some of the world's largest alcohol producers, including Diageo (whose portfolio of companies and brands include Bacardi-Martini, Coors Brewing Company, Guinness, Johnnie Walker, Smirnoff, and Heineken) and SAB Miller (in which Philip Morris successor company Altira has a 20% interest³²).

Jernigan describes the work of the ICAP to undermine public health legislation, and avoid regulation, including by attempting to bias research findings.³³ ICAP has an extensive array of policy documents and reports, which have been described as 'incomplete, not subject to traditional peer review, and either supportive of industry positions or emphasizing high levels of disagreement among scientists.'³⁴ ICAP publications consistently exclude or attempt to refute evidence supporting the most effective alcohol harm reduction strategies.³⁵ It is inappropriate for the work of the ICAP, as part of the alcohol industry, to stand alongside peer-reviewed evidence in a paper intended about the effectiveness of regulation of alcohol advertising.

Alcohol industry and effective policy responses

The issues paper seeks to determine the effectiveness of current regulatory codes in addressing community concerns about alcohol marketing, children and young people; as such, the paper should have addressed the divide between alcohol policy options supported by evidence, compared with those proffered by the alcohol industry.

The alcohol industry is a global industry dominated by large, trans-national companies with immense resources and budgets. Marketing and promotion has been described as crucial for alcohol beverage producers to achieve their key objectives—gaining the greatest possible market share and maximising alcohol consumption.³⁶

Public health goals are opposite these objectives. Effective regulation should contain or reduce alcohol consumption, therefore, limiting advertising and promotion in order to protect a vulnerable group (such as young people) is consistent with public health goals to reduce alcohol-related harm, and inconsistent with the business goals of the alcohol industry. There is little incentive for the alcohol industry to develop, comply with or enforce effective advertising restrictions;⁷⁸ and much to be gained from opposing regulation that would hamper the recruitment of new drinkers.

Any attempt to marry industry and public health objectives is likely to only reduce or negate the effectiveness of regulation; and favour the interests of private multi-national companies over the health and well-being of children and young people. This is because the alcohol industry has traditionally been resistant to support strategies that have a strong evidence base, and advocates for policies that are least

³² David Jernigan 'Global Alcohol Producers, Science and Policy: The Case of the International Centre for Alcohol Policies' (2012) 102(1) *American Journal of Public Health* 80, 82

³³ Ibid.

³⁴ Rob Moodie et al 'Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries' (2013) 381 *The Lancet* 674

³⁵ Jernigan, above note 31, 83

³⁶ Geoffrey Munro and Johanna de Wever, 'Cultural clash: alcohol marketing and public health aspirations' (2008) 27 *Drug and Alcohol Review*, 205.

effective,³⁷ for example, education and social change campaigns.³⁸ The most effective policies have often been implemented amidst direct opposition from the alcohol industry.³⁹ In the 2009 *Handbook for action to reduce alcohol-related harm* published by the WHO Regional Office for Europe, this conflict is clearly highlighted: “The involvement of the alcohol industry can thus be a major barrier to the public health-oriented action on alcohol.”⁴⁰

In this regard, we strongly recommend that ANPHA carefully consider the position taken by the 2006 WHO expert committee on alcohol with regards to interacting with the alcohol industry:

The Committee recommends that WHO continue its practice of no collaboration with the various sectors of the alcohol industry. Any interaction should be confined to discussion of the contribution the alcohol industry can make to the reduction of alcohol-related harm only in the context of their roles as producers, distributors and marketers of alcohol, and not in terms of alcohol policy development or health promotion.⁴¹

Research has shown that in many jurisdictions where industry self-regulation codes operate, exposure targets and content guidelines are routinely and systematically violated.⁴² This pattern of non-adherence is replicated in Australia. While the alcohol industry lauds the effectiveness of self-regulation, the compliance record of Australia’s alcohol industry with alcohol advertising regulatory bodies is poor. This not the NAAA’s own conclusion, nor is this a new finding.

There have been numerous national, State and Territory reviews that have measured the compliance of alcohol advertising in different media with the provisions of the ABAC and other self-regulatory codes of practice. These reviews have found messages in alcohol advertising are inconsistent with the spirit, and sometimes the letter of the ABAC, and that alcohol advertising frequently contains themes and imagery known to appeal to children and young people.⁴³

The Alcohol Beverages Advertising Code discourages alcohol advertising that has a ‘strong or evident appeal to children or adolescents’⁴⁴; yet the National Preventative Health Taskforce report found that a ‘substantial amount of alcohol advertising is communicated to young people.’⁴⁵ In 2009 the Distilled Spirits Industry Council of Australia introduced a self-imposed moratorium on TV advertising of spirits before nine pm, to ‘address community concerns in relation to alcohol misuse’.⁴⁶ However, less than 4 months into the proposed 12-month ban, the voluntary initiative was breached on more than one occasion.⁴⁷

³⁷ Thomas Babor, above note 15

³⁸ See, eg ‘DrinkWise, ‘Programs’ <http://www.drinkwise.com.au/Corporate/Community-Resources/Programs.aspx> at 22 February 2010

³⁹ For example, the 2009 ‘alcopops tax’ see Wayne Hall W and Tanya Chikritzhs ‘The Australian alcopops tax revisited (2011) *The Lancet* 377

⁴⁰ World Health Organization Regional Office for Europe *Handbook for action to reduce alcohol-related harm* (2009) 8 <<http://www.euro.who.int/Document/E92820.pdf>>

⁴¹ World Health Organization ‘WHO expert committee on problems related to alcohol consumption’ (Report, no. 2, 2006) <http://www.who.int/entity/substance_abuse/expert_committee_alcohol_trs944.pdf>

⁴² See, Global Alcohol Policy Alliance ‘Statement of concern—the international public health community responds to the global alcohol producers’ attempts to implement the WHO Global Strategy on the Harmful Use of Alcohol’ 5 <http://www.globalgapa.org/pdfs/who-statement-of-concern-080213.pdf>; Babor, above note 17.

⁴³ See for e.g. Sandra Jones and Rob Donovan et al ‘Regulation of alcohol advertising in Australia: case study of failure’ (Proceedings of the Australian and New Zealand Marketing Academy Conference, 1-5 December 2001, Massey University, New Zealand); Tom Carroll et al ‘Consistency of Alcohol Advertising and Promotion on the Internet with the Revised Alcohol Beverages Advertising Code’ (Research report, Department of Health and Ageing, October 2005); Sandra Jones et al ‘How effective is the revised regulatory code for alcohol advertising in Australia?’ (2009) 27(1) *Drug & Alcohol Review* 29; Sandra Jones et al ‘Adolescent and young adult perceptions of Australian alcohol advertisements’ (2009) 14(6) *Journal of Substance Abuse* 335

⁴⁴ Part 1 (b) *Alcohol Beverages Advertising Code*. [http://www.abac.org.au/uploads/File/ABAC%20Code%20\(at%20November%202009\)\(1\).pdf](http://www.abac.org.au/uploads/File/ABAC%20Code%20(at%20November%202009)(1).pdf) at 11 January 2010

⁴⁵ Alcohol Working Group (for the National Preventative Health Taskforce), above note 3, 34.

⁴⁶ Melissa Jenkins, ‘Industry to phase out alcohol ads’ *AAP* 2 April 2009 <http://www.news.com.au/story/0,27574,25280670-421,00.html> at 11 January 2010

⁴⁷ Julian Lee ‘Blurred vision to blame for booze ads’ *The Age*, (Melbourne) 22 October 2009 <http://www.brisbanetimes.com.au/business/blurred-vision-to-blame-for-booze-ads-20091022-hbhi.html> at 11 January 2010

It is concerning that the preferred approach of industry—that is, for industry-operated, voluntary self-regulation—is also, frequently, the preferred approach of many governments.⁴⁸ These codes create an appearance of responsible conduct, while simultaneously failing to impose meaningful restrictions. As noted below, current alcohol advertising self-regulatory codes do not adequately address community concerns about the amount of alcohol advertising that children and young people are exposed to. The issues paper has failed to acknowledge the inherent conflict of interest between the commercial motives and interests of the alcohol industry in maintaining the current industry-controlled, self-regulatory approach to alcohol advertising, and public health priorities to address the drivers of harmful alcohol consumption, which include the marketing and promotion of alcohol.

⁴⁸ Moodie, above note 33.

The effectiveness of self-regulation to address community concerns about the exposure of children and young people to alcohol advertising

This section examines the effectiveness of self-regulation to reduce exposure of children and young people to alcohol advertising. The discussion is in two parts; part one analyses the effectiveness of the Alcohol Beverages Advertising Code (ABAC); part two examines the effectiveness of alcohol advertising provisions in other media codes of practice.

The main approaches for effective regulation of alcohol advertising are:

- Restrictions on the time and placement of alcohol advertisements (i.e. exposure or volume controls)
- Restrictions on the content (e.g. depictions, claims, imagery, etc.) of alcohol advertisement (i.e. content controls).

In Australia, neither approach is applied in an enforceable way, nor are they regulated in a manner independent of the alcohol industry or advertisers; hence the regulation of alcohol advertising in this country is, for all practical purposes, non-existent. There are various codes and guidelines for advertisers, but these have been designed to benefit alcohol producers and advertisers. As this submission will detail below, compliance with these codes is poor and there is no enforcement of breaches, nor penalties imposed, no matter how deliberate or severe the breach, nor how many times the same advertiser has been shown to breach.

Officially, the framework for regulation of alcohol beverage advertising in Australia is made up of various overlapping alcohol- and media-industry codes of practice. With the exception of the general prohibitions against misleading and deceptive conduct in Australian Consumer Law, there are no legislative restrictions upon the content or placement of alcohol advertising and promotion in any media.

Rather, alcohol beverage advertising is regulated primarily through the ABAC; supplementary rules about alcohol advertising may also be found in:

- (i) the Australian Association of National Advertisers (AANA) Code of Ethics;
- (ii) the AANA Code for Advertising and Marketing Communications to Children, which states that alcohol product advertising or marketing communications may not be directed to children;
- (iii) television broadcast codes of practice such as the Commercial Television Industry Code of Practice and the Subscription Broadcast Code of Practice;
- (iv) the Outdoor Media Association Code of Ethics;
- (v) the Publishers' Advertising Advisory Bureau's Guiding Principle for Alcohol Beverage Advertising; and
- (vi) the Commercial Radio Code of Practice

The provisions in these codes which apply to alcohol advertising are discussed in more detail below and in appendix B

Regulation of alcohol advertising by the ABAC

The ABAC has been in place since 1998, with significant structural changes in 2004. It is funded by three major Australian alcohol industry bodies: the Brewers Association of Australia and New Zealand Incorporated, the Distilled Spirits Industry Council of Australia Incorporated and the Winemakers Federation of Australia. The ABAC Management Committee is heavily weighted in favour of the alcohol industry, and comprises a representative from each of the three funding alcohol industry bodies, a representative of the Communications Council Limited,⁴⁹ and a government representative.⁵⁰

The ABAC binds organisations that are signatories to the scheme, and the three major alcohol industry bodies are signatories, which accordingly binds their members. According to the ABAC website, under this arrangement ‘the vast majority of Australia’s alcohol advertisers are committed to abide by the ABAC Code and Rules.’⁵¹ However, there is no ability to compel participation in the ABAC, and several major alcohol advertisers are not signatory to the ABAC, such as Woolworths, Coles and Thirsty Camel.

The Alcohol Beverages Advertising (and Packaging) Code (‘ABAC code’)

The ABAC code sets out rules governing the content, and, partly, the placement, of alcohol advertisements. The stated purpose of the ABAC code is for ‘all advertisements for alcohol beverages produced for publication or broadcast in Australia [to]...comply with the spirit and intent of this Code’.⁵²

The ABAC code regulates the content of alcohol advertisements and does not, except to a very limited extent, cover the placement of alcohol advertising. While the ABAC states that advertisements must not have a strong or evident appeal to children or adolescents, it fails to acknowledge that marketing targeted at adults may be appealing to young audiences for the very fact that it is targeted at an older age bracket. An Alcohol Advisory Council of New Zealand submission on that country’s code for advertising liquor, noted evidence that showed that young people aspire to be approximately four years older than they are; and that young people commonly carry and pass on alcohol branded messages from alcohol companies that were apparently designed for an older audience.

The innate difficulty in trying to demark adult versus youth content means that a good deal of advertisements that are intended to be targeted to an adult audience, have an effect on children and young people; and as discussed above, the alcohol industry frequently and intentionally target young people. The ABAC Code is not well designed to prevent this.

Though ‘alcohol beverage advertisement’ is not defined in the ABAC code, it is apparent from ABAC adjudication decisions that it covers print media, billboard, cinema, television and radio advertising. In relation to online advertising, the ABAC code states that internet sites that are ‘primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia’ are covered by the ABAC code, as are banner advertisements on third party sites. It has been held by the ABAC Adjudication Panel that this extends to Facebook pages. Additionally, while not falling within the definition of ‘alcohol beverage advertisement’, the ABAC code provides some guidelines around the promotion of alcohol at events.

By omission, the ABAC Code does not cover other marketing techniques such as sponsorship agreements, in-store promotions, viral and emerging media.

⁴⁹ The Communications Council is a body that represents marketing agencies to media, government and the public. ‘About the Communications Council’ <http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=315>

⁵⁰ The ABAC Scheme Ltd *Rules and Procedures*, clause 1.1

<<http://www.abac.org.au/uploads/File/ABAC%20Rules%20and%20Procedures%20approved%205%20December%202012.pdf>

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⁵¹ ABAC, ‘Signatories to the Scheme (2013)’<<http://www.abac.org.au/about/signatories-to-the-scheme/>>

⁵² The ABAC Scheme Ltd *Alcohol Beverages Advertising (and Packaging) Code* <

<http://www.abac.org.au/uploads/File/ABAC%20Code%20at%201%20March%202012.pdf>>

Complaints about alcohol advertisements are assessed by the Advertising Standards Bureau (the ASB) and an ABAC adjudication panel concurrently. Under ABAC procedures, members of the ABAC adjudication panel are not permitted to be currently employed in the alcohol beverages industry, or to have been in the five years prior to appointment to the Adjudication Panel. One of the three regular members must have a professional background in public health, and this person must be chosen from a shortlist of three candidates to the Management Committee by the relevant Federal Minister.

A review commissioned by the MCDS in 2003 concluded that the ABAC system was ‘dysfunctional’.⁵³ It found too many advertisements violated the ABAC code, and that many complaints were not investigated and, in circumstances when they were, the process took too long and decisions were not reported accurately.⁵⁴ The ABAC code was amended in 2004 to include internet advertising, and a public health expert is now required to sit on the ABAC adjudication panel.

However, despite these changes, the ABAC code and administration of the code remains flawed and is an inadequate tool with which to regulate alcohol advertising. The failings of the ABAC Code are discussed in more detail below, and in appendix A

Effectiveness of the ABAC code

The ABAC website describes Australia’s regulatory system for alcohol advertising as ‘quasi-regulatory’. What is meant by this description is unclear. What is clear is that the ABAC is a voluntary code, and to this extent, suffers from the same flaws common in all self-regulatory advertising codes, which are that they seldom have any effect on the appeal and nature of alcohol advertising content, and are:

1. subject to under-interpretation and under-enforcement;
2. biased in favour of the signatory corporations; and
3. unable to respond to changing markets.⁵⁵

1. Under-interpretation and under-enforcement

a. Application of the ABAC is inconsistent

The manner in which the provisions of the ABAC are applied is inconsistent and out of step with community expectations. For example, the ABAC regularly rejects complaints made in respect to the Bundaberg rum mascot ‘Bundy Bear’, determining, on occasion, that a computer-generated bear does not have strong or evident appeal to children.⁵⁶

b. ABAC does not regulate the placement of advertisements

The ABAC receives many complaints in relation to the placement of alcohol advertisements, which the Panel are unable to determine, because the Code does not allow consideration of alcohol advertising placement. Most concerning about these advertisements is their placement in media and locations that are highly accessible to children and young people, including near schools, on public transport and in public spaces heavily used by children and young people.

The placement of advertisements is integral to the effectiveness of any advertising campaign, in order to ensure maximum exposure of target audience to the advertising message. That the current regulatory scheme does not impose placement restrictions on alcohol advertising is a significant flaw, and renders many of the content controls meaningless and ineffective at reducing the impact of alcohol advertising on young people.

c. ABAC lacks effective sanctions

The ABAC system has no sanctions for breaches of the code, and a poor record of enforcing determinations.

⁵³ Geoff Munro, ‘Advertising alcohol: when the best isn’t good enough’ (2006) 4 (2) *Of Substance* 12.

⁵⁴ *Ibid.*

⁵⁵ Babor, above n17, 191

⁵⁶ See Determination 37/10; Robert Donovan, Lynda Fielder and Geoffrey Jalleh ‘alcohol advertising advocacy research no match for corporate dollars: the case of Bundy R Bear’ (2011) 20 *Journal of Research for Consumers*

In 2009, the Victorian Alcohol Policy Coalition (APC) lodged a complaint in relation to a website for Skinny Blonde beer,⁵⁷ specifically, that the website breached section (c) of the ABAC by suggesting the presence and/or consumption of the product contributes to a change in mood and the achievement of sexual success. The complaint was upheld by the ABAC; however the APC were obliged to lodge a further complaint 6 months after the initial complaint, because the advertiser continued to advertise the product in a manner that had been found to breach section (c) of the ABAC.

Further examples of the lack of punitive power are highlighted in appendix X. As these examples demonstrate, the ABAC management committee and Panel are powerless to compel compliance with determinations in general, and more specifically, in relation to determinations about non-signatories—some of which are persistent offenders, and frequently use adverse decisions for publicity. For example, Thirsty Camel advertising has been the subject of numerous complaints.⁵⁸

The ongoing and evident non-compliance by advertisers with the ABAC contrasts with the picture of compliance painted by the industry. In 2011 Stephen Swift, Executive Director of Brewers Association of Australia and New Zealand gave evidence to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into outdoor advertising that, ‘...the alcohol industry is very effective at getting people to comply’... ‘in the end, people want to do the right thing [by complying]’, and ‘adverse adjudication has a tremendous risk to reputation for companies and to individuals within the companies, who, as I say, are expected to comply with all ABAC decisions as a term of their employment’.⁵⁹

To the contrary, adverse adjudications are used as a further marketing tool, with advertisers courting controversy in order to spotlight an advertisement. With advertising regulators powerless to enforce adverse adjudications, the current system is unable to counter the positive effect that controversy around an advertisement engenders.

2. Biased in favour of the signatory corporations

Controversial advertisements become popular and widely viewed, often as a result of their notoriety; this effect is compounded, and not prevented, by the often significant time lag between a complaint and determination; such delays favour alcohol advertisers.

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—more often, some months—and thus the effect of an adverse adjudication is nullified by the fact that discontinuing or modifying an advertisement at a late stage has long since lost any punitive effect. In the meantime, advertisers get to profit from the ‘buzz’ created by the advertisement and any controversy surrounding a complaint.

Additionally, because an advertisement continues to be broadcast pending the outcome of a complaint, or request for review and determination, the penalty of requiring an advertisement to be discontinued or modified has little or no deterrent effect, because the advertisement has generally run its cycle. Thus, there is little incentive for advertisers to comply with advertising standards, and much to be gained from creating a controversial advertisement.

3. Unable (or unwilling) to respond to changing markets

a. Events and team sponsorship

Sponsorship of sporting and cultural events, organisations and participants is commonplace in Australia. Event and team sponsorship offers alcohol marketers a receptive audience motivated

⁵⁷ See Determinations 63/09, 66/09 & 72/09

⁵⁸ See Determinations 22/11, 40/10, 87/09, 48/08

⁵⁹ Evidence to House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, Canberra, 12 May 2011, 5 (Stephen Swift, Executive director, Brewers Association of Australia and New Zealand Inc.)

to have a good time,⁶⁰ commercial opportunities such as exclusive stocking agreements, and the chance to embed their brands in the everyday activities of current and potential consumers.⁶¹

The ABAC contains standards for the promotion of alcohol at events, which acknowledges that alcohol beverage companies have ‘the right to promote their products at events together with the right to promote their association with events and event participation.’⁶² According to the ABAC this right must be balanced with certain responsibilities, for example not promoting alcohol products at events that are designed to clearly target people under the legal drinking age.⁶³

The ABAC Panel have described the ABAC’s role in relation to sponsorship regulation as follows:

The ABAC scheme covers the ‘advertising’ of alcohol beverages. It does not purport to provide a set of standards about the appropriate circumstances as to when, if ever, an alcohol company should be involved in sponsorship arrangements. Accordingly, the Panel cannot make a finding on the actual proposed sponsorship agreement.⁶⁴

The ABAC can only deal with individual alcohol beverage advertisements that flow from a sponsorship arrangement. The ABAC Panel has no jurisdiction to make decisions as to whether or not certain sponsorship arrangements are appropriate; appendix A includes examples of determinations that demonstrate how alcohol sponsorship arrangements target young people, and the inability of the ABAC to regulate such arrangements.

The manner in which sponsorship is addressed in the ABAC ignores the fact that the marketing of alcoholic beverages is generally a multi-media effort, incorporating a mix of strategies and campaigns across a variety of media, including in sponsorship arrangements. Alcohol marketing is rarely the single execution of an alcohol advertisement in traditional media such as television, radio, print or outdoor; meanwhile, the structure of the ABAC Code is intended to address single, stand-alone advertisements.

Given the significance of sponsorship in the overall marketing mix for alcohol advertisers, the fact that regulations in the ABAC do not extend to sponsorship of sporting and cultural events, organisations and participants is a significant omission from the alcohol advertising regulatory framework.

b. Alcohol marketing in new media

As noted above, the marketing of alcohol has moved substantially beyond traditional media and encompasses promotion through a multitude of technologies, including electronic and emerging media, product designs and product placement.

The ABAC states that its standards apply 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.⁶⁵

The ABAC Panel has recently made a number of decisions in relation to alcohol beverage Facebook pages, determining that Facebook pages may be considered ‘alcohol beverage advertisements’ in accordance with the ABAC.⁶⁶

⁶⁰ Ann M. Roche, et al. *Young People and Alcohol: The Role of Cultural Influences* (2007) National Centre for Education and Training on Addiction, 149

⁶¹ David R. Buchanan and Jane Lev, ‘Beer and fast cars: How brewers target blue-collar youth through motor sports sponsorship’ (1989) AAA Foundation for Traffic Safety

⁶² The ABAC Scheme, above note 51

⁶³ Ibid.

⁶⁴ See Determination 29/12 <<http://www.abac.org.au/uploads/File/29-12-%20Final%20Determination%20with%20addendum%20-Wild%20Turkey-%2016%20April%202012.pdf>>

⁶⁵ The ABAC Scheme, above note 51

⁶⁶ See Determination 59/12 <<http://www.abac.org.au/uploads/File/59-12-%20Final%20Determination-Smirnoff%20-%2016%20August%202012.pdf>>

However, the Panel has dismissed complaints relating to:

- **giveaways**, including the offer of a free lip gloss with the purchase of a bottle of SKKY vodka, noting that the Panel is not empowered to decide whether it is desirable or otherwise for alcohol products to be marketed by use of “giveaways” generally, or cosmetics giveaways in particular;⁶⁷
- **product placement**, including the promotion of Midori in a music video clip alongside persons under 25 years of age (contrary to the provisions of the ABAC)⁶⁸
- **co-branding**, including Jim Beam brand potato chips, noting that the ABAC is intended to regulate alcohol beverage advertisements and not the appropriateness of alcohol branded products;⁶⁹ and
- **placement** of alcohol advertising preceding YouTube clips;⁷⁰ and on websites such as Spotify.⁷¹

As is typical of voluntary codes of advertising regulation, the ability to address community concerns about alcohol advertising in non-traditional media is limited.

Regulation of alcohol advertising in other codes

The ABAC operates within a broader advertising regulatory framework that includes media-specific codes of practice. These codes of practice also address some aspects of alcohol advertising, albeit to a limited extent. A list of codes of practice that address alcohol advertising is included at Appendix B.

The effectiveness of alcohol advertising provisions in other regulatory codes

The rationale that vulnerable groups should be protected from exposure to alcohol advertising is articulated in the Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children, which prohibits ‘televised advertisements to children [that are] for, or relate in any way to, alcoholic drinks or draw any association with companies that supply alcoholic drinks.’⁷²

However, the manner in which codes of practice described in appendix X purport to regulate alcohol advertising, is indicative of the failure of self-regulation to adhere to this rationale and adequately control the content or limit the exposure of children and young people to alcohol advertising. Absent from the codes is any reference to alcohol advertising in cinemas, and the existing restrictions in outdoor, subscription and commercial television are inconsistent and limited in scope. The provisions of the codes are imprecise and subject to exceptions that undermine efforts to address common promotional strategies that are frequently used to target children.

The flaws in the ABAC code—articulated above—are compounded by loopholes and exemptions in media codes of practice in relation to alcohol. For example, although the Commercial Television Industry Code of Practice (CTICP) permits alcohol advertising only after 8:30pm, the effect of this prohibition precludes only the youngest of children from exposure. A recent survey indicated that 72% of Australians supported limiting television advertising of alcohol until after 9.30pm, indicating strong public support

⁶⁷ See Determination 91/11 <<http://www.abac.org.au/uploads/File/91-11-Final%20Determination%20SKKYVodka-ThirstyCamel-%2023%20December%202011.pdf>>

⁶⁸ See Determination 85/11 <<http://www.abac.org.au/uploads/File/85-11-%20Final%20Determination-%20Midori-%208%20November%202011.pdf>>

⁶⁹ See Determination 111/09 <[http://www.abac.org.au/uploads/File/Final%20Determination%20-%20Jim%20Beam%20Potato%20Chips%20-%2014%20Jan%202010\(1\).pdf](http://www.abac.org.au/uploads/File/Final%20Determination%20-%20Jim%20Beam%20Potato%20Chips%20-%2014%20Jan%202010(1).pdf)>

⁷⁰ See Determination 100/11 <<http://www.abac.org.au/uploads/File/100-11-Final%20Determination-Johnnie%20Walker%2015%20Dec11.pdf>>

⁷¹ See Determination 74/12A <<http://www.abac.org.au/uploads/File/74-12A-%20Determination-Carlton%20Dry%20-%2022%20Nov%2012.pdf>>

⁷² Australian Association of National Advertisers *AANA Code of Ethics* <http://www.aana.com.au/advertiser_ethics_code.html>

for reforming the CTICP and imposing stronger restrictions on placement of televised alcohol advertisements.⁷³

Additionally, the impact of the watershed requirement in the CTICP is undone by the live sport exemption. Research demonstrates the popularity of major sporting events among children⁷⁴ and further indicates that alcohol advertisements in sporting broadcasts are just as likely to be seen by children as adults.⁷⁵

And while the Outdoor Media Association has a policy of prohibiting alcohol advertising near schools, this is also subject to an exception where a school is in the vicinity of a licensed venue, undermining the effectiveness of this policy to reduce alcohol advertising exposure to children and young people. The limited regulation of alcohol advertising in the Outdoor Media Association's policy also does not apply to transit advertising on buses or taxis.⁷⁶

Prior submissions and complaints

Concerned by the inadequacy of the self-regulatory framework for alcohol advertising in Australia, in particular, about the ability for voluntary codes of practice to limit the exposure and regulate the content of alcohol advertisements in any meaningful way, the NAAA and member organisations have made numerous submissions to various reviews, including the:

1. Free TV Review of the Commercial Television Industry Code of Practice (2009);
2. Australian Association of National Advertisers 'Review of Code of Ethics' (2010);
3. Advertising Standard Bureau's inquiry into community perceptions of the Independent Reviewer process (2010);
4. House of Representatives Standing Committee on Social Policy and Legal Affairs' *Inquiry into the regulation of billboard and outdoor advertising* (2011);
5. Australian Subscription Television and Radio Association's Codes of Practice review (2012)

As a further response to the inadequacies of the current voluntary alcohol advertising regulation system, the McCusker Centre for Action on Alcohol and Youth and Cancer Council WA, in association with a wide range of other organisations, developed the Alcohol Advertising Review Board (AARB). The AARB reviews complaints from the Australian community about alcohol advertising and administers an alcohol advertising complaint review service to address inappropriate alcohol advertising and encourage effective regulation of alcohol advertising.

In the above reviews and via the AARB, the NAAA and other member organisations have proposed an evidenced-based approach to effective alcohol advertising regulation; the AARB code reflects that approach and includes volume restrictions, content restrictions and an effective procedural and structural arrangement to ensure enforcement and independence in alcohol advertising regulation.

⁷³ Australian Institute of Health and Welfare 'National Drug Strategy Household Survey: State and Territory Supplement 2007' (2008) 11 <<http://www.aihw.gov.au/publications/phe/ndshs07-sats/ndshs07-sats.pdf>>

⁷⁴ Australian Communications and Media Authority 'Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television: Reporting analysing audience and ratings data for 2001, 2005 and 2006' (2007) <http://www.acma.gov.au/webwr/_assets/main/lib310132/childrens_viewing_patterns.pdf>

⁷⁵ Elizabeth King, Jenny Taylor, and Tom Carroll, *Australian Alcohol Beverage Advertising in Mainstream Australian Media 2003 to 2005: Expenditure, Exposure and Related Issues*, (2005) Research and Marketing Group, Commonwealth Department of Health and Ageing [http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/resource-advertising-report/\\$FILE/aust-mainstream.pdf](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/resource-advertising-report/$FILE/aust-mainstream.pdf).

⁷⁶ Outdoor Media Association Inc 'OMA Alcohol Advertising Guidelines' <http://oma.org.au/_data/assets/pdf_file/0012/2460/OMA_Alcohol_Guidelines.pdf>

Options for reform

In order to protect children and young people from alcohol advertisements, the NAAA firmly supports the approach recommend by the National Preventive Health Taskforce, and is of the view that this approach should be the basis for any further recommendations.

As a preliminary step to achieving this recommendation, the NAAA recommends removing the exemption in the CTICP, to limit exposure to alcohol promotions in live sports, which are known to be popular with young people aged up to 25 years.

The NAAA further recommends a comprehensive legislative framework for regulating alcohol advertising in Australia that:

1. covers all forms of alcohol marketing, and is flexible enough to adapt and respond to changing environments;
2. establishes clear public policy goals for the regulation of advertising, namely, the protection of vulnerable groups like children and young people;
3. creates an independent regulatory body for administering the system with the powers to formally investigate and penalise breaches of the alcohol advertising rules; and
4. introduces meaningful sanctions for serious or persistent non-compliance by advertisers.

The NAAA supports an approach that restricts the content of alcohol advertisements, while also taking into account the makeup of the audience. Time restrictions are of limited value in preventing exposure of young people to televised advertising, and are also ineffective at preventing exposure through other media. Therefore volume restrictions should be introduced, to reduce the amount of alcohol advertising overall, and should be supported by strict limitations on advertising content, to reduce the appeal of alcohol advertising to children and young people.

The framework described above should prohibit alcohol advertising in all media that appeals to people under the age of 25; including but not limited to advertising, promotion and sponsorship, whether in traditional media, on digital platforms and in new and emerging social media.

The framework should also be clear about restricting the sponsorship of sporting and cultural events, organisations or participants (such as sports teams or athletes), by alcohol companies, where those events, organisations or participants are of high appeal to people under the age of 25.

Finally, controls on the promotion of alcohol through the internet, social, digital and new media should be addressed as a matter of great urgency.

Alcohol labels

The ABAC Code applies to naming and packaging of alcohol naming or packaging of alcohol beverages. It is timely, given the recent Review of Food Labelling Law and Policy, and ANPHA's current focus on alcohol advertising that greater consideration is given to the content of alcohol labels, including whether alcohol labels should continue to be regulated as a food product by Food Standards Australian and New Zealand. The NAAA position on labels, as on advertising, is that the alcohol industry should not be involved in policy development or decisions on implementation.

Conclusion

Despite numerous reviews, inquiries and expressions of community concern, little progress has been made to address the failings of the alcohol advertising regulatory framework in Australia. The ABAC and accompanying media codes of practice remain out of step with best practice policies to effectively reduce the impact of alcohol advertising on children and young people.

The link between alcohol consumption, alcohol promotion, and alcohol-related harm in young people underpins the NAAA's concerns about the effectiveness of current regulatory codes in addressing community concerns about alcohol advertising. There is evidence for effective regulatory principles to protect children and young people from the exposure to alcohol advertising, and these principles should be enshrined in law, rather than being voluntary.

Addressing alcohol-related harm in Australia requires a comprehensive approach to addressing the drivers of harmful alcohol consumption, which include the price, availability and promotion of alcohol. This review of alcohol advertising regulation in Australia presents an opportunity to address deficiencies in the regulation of alcohol promotion.

As discussed above, the case presented in the issues paper does not acknowledge the recent and significant work of the National Preventative Health Taskforce in reviewing the most current and readily available information on alcohol consumption and related harm; and the scientific literature on approaches to preventing and reducing alcohol-related harm.

The NAAA's position on regulation of alcohol advertising is consistent with the agreed approach of the Taskforce. Further, the NAAA does not believe that this approach needs revisiting or reconsidering; rather, the case for effective and improved regulation of alcohol advertising has been made. The critical question now, is how to implement the recommendations of the Taskforce.