



c/- Cancer Council Victoria
615 St Kilda Road
MELBOURNE VIC 3004
Australia
Phone 03 9514 6452
Email naaa@cancervic.org.au
Web actiononalcohol.org.au

April 2014

Ms Louise Sylvan
Chief Executive Officer
Australian National Preventative Health Agency
GPO Box 462
CANBERRA ACT 2601
Email: alcoholadvertising@anpha.org.au

Dear Ms Sylvan

SUBMISSION TO DRAFT REPORT ON ALCOHOL ADVERTISING

On behalf of the National Alliance for Action on Alcohol (NAAA), please find attached our submission to ANPHA regarding the Draft Report *Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concern*.

The NAAA is a national coalition of more than 75 health and community organisations from across Australia that has formed with the goal of preventing and reducing harms caused by alcohol. Accordingly, the NAAA has developed a clear position on the issue of alcohol marketing and promotions, including the action we support being taken, which is presented below. In our attached submission, we provide comments that reflect the core principles of our below stated position.

The NAAA's position on alcohol marketing and promotions

Alcohol marketing and promotion contributes to young peoples' attitudes to drinking, starting drinking, and subsequently drinking at harmful levels. Much of this marketing has the effect of reinforcing the harmful drinking culture in Australia. We urgently need comprehensive reform of the alcohol advertising regulatory arrangements. The National Preventative Health Taskforce recommended that in a staged approach, alcohol promotions should be phased out from times and placements which have high exposure to young people aged up to 25 years.

The NAAA recommends the establishment of a comprehensive framework that will:

- *ensure effective regulation of advertising and promotions for alcohol, including a special focus on minimising the exposure of children and young people to alcohol marketing and promotions;*

- *include the phasing out of alcohol sponsorship of music events to which children and young people may be exposed, and the prohibition of alcohol sponsorship of junior sports teams, clubs or programs;*
- *cover all forms of alcohol marketing and promotions, including point-of-sale promotions, print and media advertising, packaging, labelling, sponsorship, viral and internet campaigns;*
- *ensure that standards in relation to advertising, promotion and labelling are stringently applied with penalties for significant breaches;*
- *ensure that the standards are monitored by an independent panel with membership including expertise in public health and health marketing; and,*
- *require alcohol companies to disclose their annual advertising and sponsorship expenditure.*

As a first step, the current exemption permitting alcohol advertising during live sporting broadcasts before 8:30 pm on commercial free-to-air television should be removed as a way of reducing children's exposure to alcohol marketing and promotions.

There is also a need for ongoing monitoring and evaluation of the impact of alcohol marketing and promotions in Australia, particularly on young people. This should focus on identifying and analysing new and emerging marketing and promotion trends and initiatives and recommending how laws and regulations should respond.

Overall comments on the ANPHA Draft Report

Overall, we concur with the conclusions in the draft report that:

- Current regulatory arrangements on the placement of alcohol advertising are failing to sufficiently protect children and adolescents and in many cases are facilitating their exposure to alcohol advertising; and,
- Current self-regulatory arrangements for the content of alcohol advertising are also failing to adequately protect children and adolescents from alcohol marketing which appeals to them.

We strongly support recommendations 1 and 2 to restrict direct advertising of alcohol before 8.30pm on any day on free-to-air television and on subscription television, respectively. This has been recommended by government-initiated and independent inquiries previously, and is the most obvious, practical and important action to take to reduce the harmful effects of alcohol advertising on young people.

However, we do not support recommendations 3 to 9 as these will do little to protect the community from alcohol advertising, and are at odds with the evidence, much of it cited in the ANPHA draft report, that the current voluntary, self-regulatory systems are failing, and are also at odds with the NAAA's longstanding publicly-stated position that an independent regulatory model is required.

Hence, our strong view is, with the exception of recommendations 1 and 2, that the majority of the recommendations in the ANPHA draft report will not meaningfully contribute to protecting the community from alcohol advertising because they persist with the ineffective voluntary, self-

regulatory model. The recommendations in the draft ANPHA report also largely fail to address key issues regarding placement controls for alcohol advertising which would more effectively protect children and young people from exposure to alcohol marketing through new forms of media and sponsorship.

Regulatory Models

With regards to the range of regulatory models considered in the draft report (Chapter 5.7), we note that ANPHA ultimately makes a recommendation which accords closely with the NAAA's position. The "Option D" recommendation, which is to legislate for a new regulatory regime to restrict alcohol advertising, acknowledges that "legislation would provide significant additional protection for Australian children and adolescents from a range of exposure-related risks of alcohol related harm" and "would provide clarity for all stakeholders regarding what forms of advertising are permissible where and when".

Notwithstanding these statements, ANPHA recommends that this approach be implemented pending a fixed time period to allow for action and responses from the media and alcohol industries in relation to the proposed regulatory model. However, in our view, this would undermine and weaken Option D and, therefore, we do not support this concession to allow industry more time than it has already had.

The report goes on to note that "[t]he 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". This again, in our view, stalls action and perpetuates the continuation of the failed self-regulatory model. The NAAA considers that ANPHA's recommendations have largely been proposed in the past; including in 2009 by the Ministerial Council on Drug Strategy¹ and the National Preventative Health Taskforce². Previous recommendations have included:

- "expanding the ABAC management committee to have a more balanced representation between industry, government and public health";
- "meaningful and effective sanctions for breaches of the Code";
- phasing "out alcohol promotions from times and placements which have high exposure to young people aged up to 25 years".

The alcohol and advertising industries have had ample time to take actions that would effectively reduce the exposure of children and young people to the harmful effects of alcohol advertising. Only very limited action has been forthcoming and accordingly there is no justifiable basis for delaying any further the introduction of appropriate regulatory interventions. Accordingly, the NAAA does not believe that there should be any continuation with the current ineffective voluntary, self-regulatory model for a fixed time period. There is an abundance of evidence already, much of it cited in the ANPHA draft report, showing that this system has failed.

The NAAA instead supports the immediate implementation of the regulatory model Option D. However, if there is no move to legislative action, we believe it is vital that any advertising standards codes or co-regulatory systems are adjudicated by entities that are completely independent of the alcohol and advertising industries. Furthermore, our view is that they must be managed,

administered and overseen by entities that are representative of the broad Australian community and not controlled or dominated by industry.

In closing, we urge ANPHA to take heed of a recent statement by the Director-General of the World Health Organisation, Dr Margaret Chan, in formulating its final report and recommendations to Government on this important public health issue:

The development of alcohol policies is the sole prerogative of national authorities. In WHO's view, the alcohol industry has no role in formulating policies, which must be protected from distortion by commercial or vested interests³

Thank you for the opportunity to provide a submission. If you have any questions regarding our submission or require any additional information please do not hesitate to contact Brian Vandenberg, Executive Officer for the NAAA (naaa@cancervic.org.au).

Yours sincerely



Professor Mike Daube

Director, McCusker Centre for Action on Alcohol and Youth
Co-Chair, National Alliance for Action on Alcohol



Mr Todd Harper

Chief Executive Officer, Cancer Council Victoria
Co-Chair, National Alliance for Action on Alcohol

Introduction

The National Alliance for Action on Alcohol (NAAA) welcomes the review of alcohol advertising undertaken by ANPHA and is pleased to provide a submission on the draft report *Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concern*. The following submission is the second submission we have provided to ANPHA as part of the review process. Our previous submission⁴ included detailed comments on a range of issues relating to the impact of alcohol advertising in the community and the effectiveness of current regulatory codes. We have not repeated that level of detail in this second submission, as we trust ANPHA will refer to the relevant parts of our previous submission as required. We do, however, wish to repeat here our strong view that what is required is the establishment of a legislative framework for regulating alcohol advertising, overseen by an independent regulatory body. At a minimum, the regulatory framework should include the following elements:

- i. Coverage for all forms of alcohol marketing, including promotion of alcohol brands and be flexible enough to adapt and respond to changing environments including emerging forms of media and non-conventional marketing communications;
- ii. establish clear public policy goals for the regulation of advertising, primarily, the protection of vulnerable groups including children and young people;
- iii. create an independent regulatory body for administering the framework, with the power to formally investigate and penalise breaches of alcohol advertising rules independent of a complaint being received; and,
- iv. meaningful sanctions for serious or persistent non-compliance by advertisers.

Our submission below focuses primarily on the recommendations in the ANPHA draft report, and we have structured this submission around those. Part one of our submission provides comments on recommendations #1 and #2, which we strongly support and consider to be the highest priority for action. Part two provides comments on other recommendations in the draft report, most of which we do not support because they are predicated on the continuation of self-regulatory codes which have been shown to have failed. Part three provides comments on the recommendations to monitor and report on alcohol advertising and the regulation thereof (recommendations #10 and #11). In part 4, we highlight some issues that have not been addressed in the ANPHA report.

For brevity, we provide concise comments regarding each recommendation. Upon request, we would be pleased to elaborate further on any of our comments.

Part 1. Reducing exposure to alcohol advertising

Free TV Australia and the free-to-air television industry

1. *(a) Apply to ACMA for an amendment 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;*

The NAAA strongly supports this recommendation. There is ample evidence that the current 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) contributes significantly to the frequency and amount of alcohol advertising that young people are exposed to^{5,6,7}. Young people in Australia represent a large share of the audience for sport, and sport has been found to be the primary setting in Australia where alcohol advertising occurs^{8,9,10}. Hence, the NAAA believes removing the exemption for alcohol advertising during live sporting telecasts is a priority area for action.

Removing this exemption has been recommended previously, by the Preventative Health Taskforce¹¹ in its final report of 2009:

...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.

Action 3.1

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

Five years on, however, no action has been taken on this recommendation and, as a result, tens of thousands of Australian children continue to be exposed to alcohol advertising each year, and in some cases they see more alcohol advertising than adults¹². This exposure increases the risk that young people will take up drinking at a young age, and drink heavily as an adult^{13,14}.

A recent survey found that more than two thirds (67%) of the Australian population support limiting television advertising of alcohol until after 8.30pm, indicating strong public support for restricting alcohol advertising on television at times when children are likely to be watching¹⁵.

We call on ANPHA to urge the Australian Government to close this loophole in alcohol advertising restrictions in the interests of protecting the health and wellbeing of young people. We also strongly encourage ANPHA to recommend a timeline with key milestones for Government action on this matter.

It is our view that this recommendation, along with recommendation #2 pertaining to subscription television, are the key recommendations in the draft report, as they will have the most significant impact in protecting young people from the harmful effects of alcohol advertising. We urge ANPHA and the Australian government to give these recommendations priority for action over all others.

1. *(b) On balance, the Agency has not drafted a recommendation to remove the current provision where alcohol products may be advertised on school days between 12 noon and 3pm but welcomes public and industry views on this matter.*

The NAAA strongly supports the removal of the current exemption from advertising restrictions where alcohol products may be advertised on school days between 12 noon and 3pm.

There does not appear to be any sensible grounds for this current exemption, and we agree with the view expressed in the ANPHA draft report that it would be anomalous to remove the exemption that currently allows alcohol advertising during the daytime on weekends and public holidays during live sport but leave this provision in place for weekdays.

The Australian Subscription Television and Radio Association (ASTRA) and the subscription television industry

2. *Apply to ACMA for an amendment to 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 NAAA supports the view expressed in the ANPHA draft report that there is no rationale for allowing alcohol advertising on subscription television at times when it is prohibited on free-to-air television, such as before 8:30pm, and that there should be equal regulation of alcohol advertising on pay TV and free-to-air TV. That is, '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' (p.103). We also share ANPHA's view that the current lack of restrictions around advertising on subscription television may lead to a regulatory bypass, whereby alcohol advertisers may move from free-to-air television to subscription television, if there are relatively fewer advertising restrictions applicable to the latter.

The cinema industry

3. *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.*

The NAAA supports applying restrictions for on-screen cinema advertising that is consistent with the proposed restrictions for television advertising of alcohol. That is, we support the restriction of direct alcohol advertising of alcohol products on-screen in cinemas before 8:30pm and after 5:00am. We believe an 8:30pm restriction should apply to all classifications of films that can be viewed by persons aged under 18 years (i.e. films rated G, PG, M, and MA+). Additionally, we call for alcohol advertising in cinemas to be entirely restricted, regardless of the time of day, if the film being screened is rated G or PG. These ratings correspond approximately to the placement codes C and P for commercial television, during which alcohol advertising may not be shown.

However, we do not support a voluntary approach for the implementation of this action, as recommended in the ANPHA draft report. As stated in our previous submission, we support a

legislative framework that covers all forms of alcohol marketing and is administered by a body independent of the alcohol industry, and with which compliance is mandatory. This body should have powers to enforce regulations, and impose meaningful sanctions when required.

The Outdoor Media Association (OMA) and the outdoor advertising industry

4. *Apply for ACCC authorisation of the Outdoor Media Association's (OMA) 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.*
5. *Amend the Outdoor Media Association's (OMA) Code of Ethics: Alcohol Advertising Guidelines to increase the distance of advertising from schools from 150m to 500m.*

Given the compelling evidence and public concern regarding the negative impact of outdoor alcohol advertising, the NAAA is very disappointed that ANPHA has recommended very weak action in this area.

There is reliable evidence that outdoor advertising is now one of the fastest growing formats for alcohol advertising in Australia¹⁶, and there is a high level of community concern about the proliferation of this form of advertising and children's inevitable exposure to such advertising^{17,18}. A recent survey of community attitudes in Victoria to outdoor alcohol advertising found that 77% of respondents believed billboard advertising of alcohol should be banned within one kilometer of schools¹⁹. The insidious nature of outdoor alcohol advertising is well understood by the industry itself, and is even acknowledged in its own code of ethics:

Outdoor advertising is a medium that reaches almost every member of the community when they are travelling outside of their home. Outdoor advertising can be seen at any time of the day or night and cannot be turned off, fast-forwarded, put aside or be left unopened²⁰.

The NAAA supports strong and mandatory restrictions on the content and placement of outdoor alcohol advertising which should be set out in a legislative framework and administered and monitored by a body independent of the alcohol industry. We do not support the current approach of self-regulation of outdoor alcohol advertising where placement of advertisements is covered by the Outdoor Media Association's (OMA) Code of Ethics: Alcohol Advertising Guidelines and content restrictions are governed by the ABAC Scheme.

The NAAA believes that the current voluntary restrictions on the placement of outdoor alcohol advertising of 150m distance from schools should be extended, via a new legislative framework, to prevent fixed alcohol advertising being placed within at least 500m from schools in suburban and country areas.

The NAAA also calls for strict limits on the size of outdoor alcohol advertisements, and also for the inclusion of a health warning message as part of the individual advertisement, as recommended by the Preventative Health Taskforce. The latter should be of a considerable proportion (i.e. 25%) of the total advertisement size.

We also call for also outdoor advertising to be restricted from public transport vehicles and bus stops/train stations where large numbers of young people congregate.

On specific placement issues, for ABAC Scheme Ltd members

6. *Review and revise the ABAC Code and Guidance documents to include and provide specific guidance on alcohol branded merchandise.*
7. *Review and revise the ABAC Code and Guidance documents to include and provide specific guidance on sponsorship of sporting events.*
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.*

As stated in our previous submission, the NAAA's view is that alcohol marketing and promotions can be approximately divided into above-the-line (television, print, radio and outdoor) and below-the-line (point-of-sale and sponsorship) media. However, in reality, alcohol marketing utilizes a sophisticated mix of both 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 public relations activities.

To regulate the breadth of alcohol marketing and promotions we support a legislative framework that covers all forms of alcohol marketing and is administered by a body independent of the alcohol industry, and with which compliance is mandatory. This body should have powers to enforce regulations, and impose meaningful sanctions when required.

We do not support coverage of alcohol branded merchandise (Rec #6), sponsorship of sporting events (Rec #7), or on sponsorship of music, cultural and all other events (Rec #8) through the current voluntary, self-regulatory system, ABAC, as evidence shows this system has been a failure. Further, the ABAC Scheme is set up to deal with content rather than placement restrictions. Alcohol branded merchandise and alcohol sponsorship arrangements raise broad public policy issues regarding the glamorisation of alcohol consumption as well as the problem of ubiquitous infiltration of alcohol marketing. These public policy issues are not the proper subject matter for self-regulatory regimes, particular those that are only directed to the content and not the placement or existence of such forms of marketing. Regulation of these forms of alcohol promotion should be governed by a legislative framework such as that described above and this should also cover promotions relating to licensed premises and their associated events, and point-of-sale promotions (e.g. gifts with purchase; in-store discounts; special offers).

Furthermore, we repeat our call for a complete phase-out of alcohol sponsorship of music events to which children and young people may be exposed, and the prohibition of alcohol sponsorship of junior sports teams, clubs or programs.

Part 2. Strengthening controls on the content of alcohol advertising

As set out in the NAAA's first submission to ANPHA and above, we consider there to be a compelling case for regulatory reform in relation to alcohol advertising. The NAAA regards a legislative framework for regulation of alcohol advertising as fundamental to such reforms. A legislative framework is essential because the current system for reviewing and moderating the content of alcohol advertising, namely the Alcohol Beverages Advertising (and Packaging) Scheme (ABAC Scheme) is inadequate. Our view is that the ABAC Scheme which administers the ABAC Code is inherently biased by significant industry involvement in the Management Committee that is responsible for the development and oversight of the ABAC Code and has been shown to be ineffective because it lacks a suite of effective sanctions to prevent and penalise inappropriate alcohol advertising. Further, the current ABAC Code is extremely limited in scope, dealing only with the content and not the placement of alcohol advertising. The effectiveness of the current ABAC Code is also nullified because its coverage is limited to a narrow definition of alcohol advertising, namely "advertisement for alcohol beverages" and therefore does not deal with sponsorship, general brand promotion (without a specific advertisement) and brand creep marketing (where alcohol brands are used on products other than alcoholic beverages)¹.

Therefore, we do not support the recommendations in the ANPHA draft report that amount to modifications of the ABAC Scheme, which we view as a failed self-regulatory model. The NAAA does not support the continuation of the ABAC Scheme.

Below, we provide some observations in relation to each of ANPHA's recommended modifications to the ABAC scheme, and we again wish to state strongly that the NAAA considers that the ABAC Scheme to be an inappropriate and ineffective model for regulating the content of alcohol advertising in Australia and fails altogether to deal with placement issues. This is supported by evidence, much of it cited in the ANPHA draft report.

ABAC Scheme Ltd members on ABAC Code, content and other matters:

- 9. Seek authorisation for a revised ABAC Code and associated Rules and Procedures from the ACCC which include improvements to the code provisions as outlined in draft recommendations below.*

The NAAA does not consider that the ABAC Scheme is the appropriate mechanism for regulating alcohol advertising in Australia. Further, the NAAA is concerned about the credibility that authorisation by the ACCC would give to the ABAC Code as it currently exists, given its many deficiencies.

As set out above, the NAAA considers that alcohol advertising should be effectively regulated by a legislative framework.

¹ One example was Jim Beam Potato Chips, see ABAC Determination 111/09; a complaint in relation to this product was dismissed on the

Notwithstanding this view, the NAAA accepts that ACCC authorisation of an appropriate alcohol advertising code, (a code that is comprehensive, is independently adjudicated and is not controlled by the alcohol industry) would be necessary in order for such a code to incorporate sanctions that may otherwise be impermissible as anti-competitive. The NAAA would support authorisation of a regime that appropriately regulated alcohol advertising, on the precondition that such a code, at a minimum, would:

- comprehensively cover alcohol advertising, including:
 - all forms of marketing and advertising including social media and user generated content over which advertisers have some control;
 - alcohol brand promotions including through sponsorship;
 - alcohol merchandise;
 - non-alcoholic products that use alcohol branding;
- regulate placement as well as the content of alcohol advertising;
- incorporate sanctions that are sufficient to have a deterrent effect, such as:
 - adverse publicity notices for non-compliant advertising and packaging;
 - published corrections;
 - Retailer Alerts for product recall (such as those proposed in 2007 when the ABAC Scheme previously sought authorisation);
 - financial penalties for repeat offenders or for blatant breaches of placement restrictions.
- not protect existing products that are on the market before the code comes into operation (this is sometimes referred to as grandfathering);
- include a timeframe for adjudications that does not undermine the purpose of the regime and would include the power to prevent the broadcast/publication of advertisements in certain circumstances;

If an alcohol advertising code is to have an appreciable effect in limiting the harmful impact of exposure to alcohol advertising it must comprehensively cover all forms of alcohol advertising, marketing and brand promotion. This includes alcohol brand promotions and sponsorships as well as advertising placements which are commonly the subject of complaint by the public but do not currently fall within the ambit of the ABAC Scheme²¹. ACCC authorisation of a code that deals only with a small subset of the issues surrounding alcohol advertising (such as the current ABAC Code) would only serve to give credibility to an ineffective regime.

9.1 Appoint an independent chair to the ABAC Management Committee, who is not associated with the alcohol or marketing communications industries, thus exercising the existing option in the Scheme's rules and procedures.

The ABAC Scheme is fundamentally flawed because of alcohol industry domination in the administration and oversight of the Scheme. The appointment of an independent Chair to the ABAC Management Committee would not redress the imbalance of alcohol industry control of the ABAC Scheme.

A more critical flaw in the ABAC Scheme is the make-up of the Management Committee which is currently controlled by the alcohol industry. Given that the ABAC Management Committee is responsible for all aspects of the management and oversight of the ABAC Scheme, including

amendments to the ABAC Code. For some time, the NAAA and other health and community organisations have expressed concern about the lack of independent membership and public health representation on the ABAC Management Committee, with only a single Government nominee on the five member committee. The issue has been raised repeatedly since at least 2009, including by the Ministerial Council on Drug Strategy in its April 2009 communique to the Council of Australian Governments²². The industry domination of the Management Committee has left the ABAC Code out of step with community expectations and has led to a disconnect between the ABAC Management Committee (that is dominated by industry representation) and the ABAC Adjudication Panel (that includes public health representatives). This industry control means that the ABAC Scheme is ineffective at moderating and monitoring the content as well as the placement of alcohol advertising.

The disconnect between the ABAC Management Committee and the ABAC Adjudication Panel is evidenced by the deficiencies in the coverage of the ABAC Code that have been clearly identified by the Chief Adjudicator of the ABAC Scheme²³ and in various determinations by the ABAC Adjudication Panel². Complaints from the community are frequently dismissed by the ABAC Adjudication Panel because of the limitations of the ambit of the ABAC Code³. Determinations made by the adjudication panel of the ABAC Scheme have repeatedly called for policy reviews to consider the scope of the ABAC Code to address community concerns.

By way of example in a determination regarding Jim Beam branded Potato Chips the ABAC Panel, constituted by Professor The Honorable Michael Lavarach AO, Ms Jeanne Strachan and Professor Fran Baum made the following observation:

“In dismissing the complaint⁴, the Panel notes that surrogate marketing of this type does deserve to be considered at a policy level by government and the alcohol industry. There are very real policy questions to be debated as to whether surrogate marketing should be freely permitted or should be prohibited or should be subject to standards beyond those embodied in the ABAC scheme as it currently operates. Policy issues of this nature are beyond the role of the Panel.”⁵

As a result of the industry control of the ABAC Scheme the NAAA considers that the continuation of the ABAC Scheme, as the vehicle for “effectively” regulating alcohol advertising, is untenable. The ABAC Code does not accord with community expectations. Simply appointing an independent chair will not be sufficient to remedy the imbalance of industry influence in the ABAC Management Committee.

² See for example VB Cricket Ad 96/12; Carlton Draught Sponsorship 89/13 Jim Beam Chip Packaging 111/09

³ Ibid

⁴ The complaint was dismissed because the product fell outside the scope of the ABAC Code.

⁵ ABAC Complaints Panel Determination No: 111/09 (Product: Jim Beam Potato Chips).

9.2 Rationalise the two separate governance entities responsible for the Scheme, by merging the Board and the Management Committee.

The NAAA is not in a position to comment on a proposal related to the governance structure of the ABAC Scheme, because relevant information about the role and operations of the Board does not appear to be publicly available.

However, we would like to restate our strong view, as set out above in our response to #9.1, that the representation of industry on the Management Committee undermines the operation of the ABAC Scheme, given its functions in managing the ABAC Scheme and the content of the ABAC Code. Again, for reasons such as these, the NAAA does not consider the ABAC Scheme to be the appropriate mechanism for regulating alcohol advertising in Australia.

9.3 Revise ABAC Annual Report statistics to include an indication of whether advertisements that are subject to complaints and adjudication were or were not pre-vetted.

Notwithstanding our overarching rejection of the ABAC Scheme, the NAAA notes that this information is already collected in the ABAC determinations and therefore should be readily accessible for the Annual Report statistics.

9.4 Undertake significant effort to raise community awareness of the ABAC Scheme and report changes against the current baseline research through further independent research in 2015.

As set out above, the NAAA rejects the ability of the ABAC Scheme to appropriately and effectively regulate alcohol advertising in Australia and considers that a legislative framework with an independent regulator should be established. Accordingly, the NAAA opposes the promotion of an ineffective scheme. We recommend instead that Government invest in community education about the harmful effects of alcohol advertising on young people, as this would help to establish a deeper and broader base of community interest and engagement with the issue of alcohol advertising regulation and associated complaints processes.

Our strong view is that any public awareness programs regarding the impacts of alcohol advertising and the regulation of it should be undertaken by a body independent of ABAC and the alcohol and advertising industries.

The NAAA deplores the recently launched community service announcement (CSA) for TV that has been produced by ABAC, and claims to promote the ABAC scheme to the community, as it does not explain why the ABAC code exists, does not disclose who funds and operates it, nor acknowledge the potentially harmful effects of alcohol advertising on the community and hence the need for a regulatory code²⁴. The ad portrays the serious matters which ABAC covers in a comical style, and dedicates the last 4 seconds of the ad to advising the audience that they should visit either the ASB or ABAC websites for more information. In our view, this is a grossly inadequate and inappropriate attempt to raise community awareness about the ABAC scheme.

9.5 Apply the same pre-vetting requirements to the marketing of wine products as for other alcohol products.

In our view there is no apparent distinction between alcoholic beverages that would warrant differential treatment with regard to restriction and oversight of alcohol advertisements. Under the legislative model of alcohol advertising regulation that we propose, all alcohol beverages would be subject to the same requirements.

9.6 (a) Amend the ABAC Code to insert a provision which brings all forms of alcohol marketing communications under the code's remit – including user generated content where an advertiser is able to exercise some control.

The NAAA rejects the ABAC Scheme as an appropriate mechanism for regulating alcohol advertising in Australia. It is so fundamentally flawed and has failed in so many areas that we have no confidence it can be modified to adequately regulate alcohol advertising, such as widening its scope to bring all forms of alcohol marketing communications under its remit.

As set out above the NAAA considers that alcohol advertising should be effectively regulated by a legislative framework, and that the associated alcohol advertising code, (a code that is comprehensive, is independently adjudicated and is not controlled by the alcohol industry) must at a minimum:

- cover all forms of marketing communications, including, advertising, packaging, marketing, social media promotions and user generated content, and should not be limited to “advertisements for alcohol beverages”;
- cover all forms of alcohol brand promotion including sponsorship and branded merchandise; and
- address the placement, as well as the content of, alcohol advertising, sponsorship, other marketing activities, packaging and promotions.

Extensive coverage of alcohol advertising and promotion, through an appropriate regulatory regime, is fundamental to ensure that the regime for regulating alcohol advertising can adequately respond to the dynamic marketing environment and emerging forms of advertising.

The NAAA observes that current controls fail to adequately deal with new and emerging forms of media. This creates a dichotomy between the ways in which conventional forms of alcohol advertising such as television advertisements are regulated as compared to emerging media platforms such as online marketing. For example, while the times at which alcohol advertising can be shown on television are regulated through licensing conditions, there are no equivalent time limitations on where or when online alcohol advertisements may appear. This issue has attracted community attention, and illustrated by the examples set out in ANPHA’s draft report at 6.3.5.

9.6 *(b) On balance, the Agency has not drafted a recommendation that an appeal process be instituted within the ABAC Scheme, but welcomes public and industry views on whether an independent appeal process should be established.*

The NAAA is reluctant to provide any detailed comments on proposed modifications to the ABAC scheme, such as instituting an appeals process, which could be construed as lending credibility to a system that in our view is critically flawed and has failed repeatedly as an effective regulatory model.

9.7 *Institute regular periodic monitoring of alcohol marketing, preferably yearly, and publicly report on this monitoring.*

The NAAA rejects the ABAC Scheme as an appropriate mechanism for regulating alcohol advertising in Australia, and hence we do not support instituting regular periodic reporting from a flawed regulatory model.

As set out above, the NAAA considers that alcohol advertising should be effectively regulated by a legislative framework, and as part of this, we call for periodic monitoring and reporting to be undertaken independently of the alcohol and advertising industries that should include:

- regular (preferably monthly) audits and random sampling of a significant volume of alcohol promotions, including new media promotions, for compliance with the relevant code;
- the ability to refer potentially non-compliant advertisements to an independent adjudication panel for review;
- the ability to notify advertisers of non-compliant advertisements with take down requests; and,
- published reports on the outcome of the audits including specific reporting of non-compliant advertisements and any responses to notification received from the advertiser.

9.8 *Review and revise ABAC Code 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.*

As stated above, the NAAA is reluctant to provide any detailed comments on proposed modifications to the ABAC scheme that could be construed as lending credibility to a system that in our view is critically flawed and has failed repeatedly as an effective regulatory model.

One of many faults in the ABAC Scheme is that the Adjudication Panel can only consider breaches of the ABAC Code that are identified by the complainant. This is a fundamental weakness given the extremely low public awareness of both the ABAC Scheme and the contents of the ABAC Code. This problem is compounded by the mechanisms through which members of the public can make a complaint to ABAC. Currently, complaints are most commonly lodged through the Advertising

Standards Board's online complaints portal. The portal simply asks respondents to "tell us the reasons why you object to, or were offended by, the advertisement". In these circumstances it is highly possible that complainants will not identify all of the potential breaches of the ABAC Code. In circumstances where an adjudication panel is well versed in what is a relatively short code, there is no justifiable reason why advertisements should not be assessed for full compliance once a complaint has been raised. This limitation is a further demonstration of the critical flaws in the ABAC Scheme and is among the many reasons for which the NAAA rejects the ABAC scheme.

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| <p>9.9 <i>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.</i></p> <p>9.10 <i>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.</i></p> <p>9.11 <i>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.</i></p> <p>9.12 <i>As part of the code review, examine alternatives for an effective range and hierarchy of sanctions for enforcement of ABAC Code decisions including the options of public lists of firms breaching the code and 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.</i></p> |
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As stated above, the NAAA is reluctant to provide any detailed comments on proposed modifications to the ABAC scheme that could be construed as lending credibility to a system that in our view is critically flawed and has failed repeatedly as an effective regulatory model.

The NAAA does not consider the ABAC Scheme to be an appropriate mechanism for regulating alcohol advertising in Australia and considers concepts such as "appeal to children" should be set out in a legislative framework governing alcohol advertising content and placement restrictions.

In our view, an appropriate alcohol advertising code (a code that is comprehensive, is independently adjudicated and is not controlled by the alcohol industry), would include clarity around the factors that may be relevant in assessing appeal to children. At a minimum, such a code would prohibit (from alcohol advertising, packaging and branding) the use of:

- identifiable heroes or heroines of the young, including well-known sports identities;

- cartoon characters and animations that are appealing to children;
- childhood motifs or themes;
- music, melodies and tempos that are attractive to children;
- packaging that would be appealing to children or that could be confused with confectionary, soft drinks or other treat foods that are desirable to children.

The NAAA does not consider that the appropriate mechanism for regulating alcohol advertising in Australia would be managed under a legislative framework which would bind all advertisers and include appropriate sanctions, such as those set out under recommendation 9, namely:

- adverse publicity notices for non-compliant advertising and packaging;
- published corrections;
- Retailer Alerts for product recall (such as those proposed in 2007 when the ABAC Scheme previously sought authorisation);
- Financial penalties for repeat offenders or for blatant breaches of placement restrictions.

<p><i>9.13 Amend the ABAC to delete clause 2 of Part 2.</i></p>

Clause 2 of the Part of the ABAC illustrates the inherent bias of the ABAC Scheme and demonstrates that this self-regulatory system is not genuine in its intent to protect the public from inappropriate alcohol promotion through packaging. In our view, all products with inappropriate packaging should be removed or prevented from entering the market, without exception.

Part 3. Monitoring and reporting

State and Territory Governments:

The Agency is considering a recommendation that States and Territories should include reporting on their regulation and enforcement issues of alcohol promotion under liquor licensing legislation in the proposed biannual reporting to COAG. On balance, the Agency has not drafted a recommendation that biannual reporting on alcohol promotions be instituted, but welcomes public, industry and particularly State and Territory Government views on this matter.

The NAAA calls on all levels of government – Local, State, and Federal – to strengthen their regulation and enforcement of alcohol marketing and promotions, and report on this to the public and also to relevant government forums. We concur with the ANPHA draft report that State and Territory governments in Australia are well placed to potentially take action to regulate alcohol marketing and promotions through their liquor licensing laws. However, the regulatory and enforcement powers that exist at present through these laws vary significantly between jurisdictions, and overall the provisions in the laws for States and Territories to regulate alcohol marketing and promotions are extremely limited²⁵.

Nonetheless, we support a recommendation that States and Territories report to COAG on their regulation and enforcement activities relating to alcohol marketing and promotions under their respective liquor licensing legislation. This should also include a report on the areas of consistency and inconsistency between jurisdictions' regulations and enforcement, for the purposes of highlighting where there is a need for improvement and for developing best practice across jurisdictions in regulating alcohol marketing and promotions.

The Australian and State and Territory Governments:

10. *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 and legislative measures to limit this exposure and report on this research every two years.*

The NAAA supports ongoing monitoring of the impact of alcohol marketing and promotions in Australia, particularly on young people. This should also focus on identifying and analysing new and emerging marketing and promotion trends and initiatives and recommending how laws and regulations should respond.

As stated in our previous submission, the NAAA believes that the promotion of alcohol through the internet, social, digital and new media should be addressed as a matter of great urgency, both in terms of intensive monitoring of its impact on young people and developing regulatory responses to protect young people. Emerging research is clearly showing that alcohol advertising is proliferating rapidly through social media platforms that are popular with young people, including well established mainstream platforms such as Facebook and YouTube, as well as niche platforms and alcohol companies own proprietary digital communications platforms²⁶.

We note that ANPHA is well-placed to undertake the overall monitoring we call for, given its role and the resources available to it for such purposes. We strongly recommend that the monitoring,

research and reviewing of alcohol marketing and promotions activity, its impact on young people, and effectiveness of the regulatory models, be overseen by an expert monitoring committee that is independent of the alcohol and advertising industries and comprises individuals with expertise in public health, behavioral research, and consumer and communications law and regulation. This committee should release an annual report to the public each year, which should include recommendations for strengthening the regulation of alcohol marketing and promotions, as required.

To further support the monitoring of alcohol advertising activity, the NAAA urges Government to require alcohol companies to disclose their annual advertising and sponsorship expenditure.

11. *Establish biennial 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, co-regulatory and legislative measures to limit this exposure.*

The NAAA supports regular reporting to the relevant COAG Ministerial Council on Australian children's and adolescents' exposure to alcohol advertising and the effectiveness of measures to limit this exposure.

As detailed in our covering letter, our strong view is that the alcohol and advertising industries have already had ample time to take actions that would effectively reduce the exposure of children and young people to the harmful effects of alcohol advertising, and we do not believe that there should be any continuation with the current ineffective voluntary, self-regulatory model. The evidence shows that this system has failed, and the NAAA supports the immediate implementation of the regulatory model "Option D" which is to legislate for a new regulatory regime to restrict alcohol advertising.

Hence, our view is that the focus of reporting to COAG should be to detail the progress towards implementing a legislative regulatory model, rather than simply highlighting, again, the continuing failure of the current voluntary, self-regulatory model.

Part 4. Other issues

Counter advertising

We are disappointed that counter-advertising is not discussed in the draft report, given the international evidence that it has some promise of limiting the impact of alcohol advertising, and also given the strong recommendations from prevention experts in Australia that such measures be adopted. In the Preventative Health Taskforce's final report, it noted that:

One of the most formidable obstacles to effective public education campaigns on alcohol is product advertising by the alcohol industry that intentionally promotes pro-drinking messages to the general population, much of which also reaches young people. In response, the governments of some countries have sponsored counter-advertising programs, which

provide health advice about alcohol. These might include public services announcements, or warning messages within actual product advertisements. Counter-advertising may be a more pragmatic option than banning advertising altogether, but it is important that its message not be compromised. Although rare, there are examples of well-planned and implemented counter-advertising programs that have had some success, particularly in building support for public health-oriented alcohol controls. There is also very strong evidence from other public health areas such as tobacco about the value of such approaches.

In light of this, the Preventative Health Taskforce made the following recommendation:

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.

We strongly encourage ANPHA to include a discussion of counter advertising in its final report, along with the above recommendation.

References

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- ¹ Ministerial Council on Drug Strategy, *24 April 2009 Communique*. Ministerial Council on Drug Strategy: Canberra. 2009 Available at <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mcdis-24apr09-communique>
 - ² National Preventative Health Taskforce. *Australia: the Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action*. Commonwealth of Australia. Canberra. 2009
 - ³ Chan M: WHO's response to article on doctors and the alcohol industry. *BMJ*;346doi: <http://dx.doi.org/10.1136/bmj.f2647>. 2013
 - ⁴ National Alliance for Action on Alcohol (NAAA) *Submission to ANPHA Issues Paper - Alcohol advertising: The effectiveness of current regulatory codes in addressing community concerns*. NAAA. Carlton. 2013
 - ⁵ Pettigrew S, Roberts M, Pescud M, Chapman K, Quester P, Miller C. The extent and nature of alcohol advertising on Australian television. *Drug and Alcohol Review* 31:797–802. 2012
 - ⁶ Victorian Department of Human Services. *Alcohol beverage advertising in mainstream Australian media 2005-2007: Expenditure and exposure*. State Government of Victoria. Melbourne. 2009
 - ⁷ Fielder L, Donovan RJ, Ouschan R. Exposure of children and adolescents to alcohol advertising on Australian metropolitan free-to-air television. *Addiction* 104(7):1157-65. 2009
 - ⁸ O'Brien K., Miller P., Kolt G., Martens M., Webber A. (2011) Alcohol industry and non-alcohol industry sponsorship of sportspeople and drinking, *Alcohol and Alcoholism*. 2011 Mar-Apr: 46(2):210-3

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- ⁹ Pettigrew S, Rosenberg M, Ferguson R. et al. Game on: do children absorb sports sponsorship messages? *Journal of Public Health Nutrition*, 2013
- ¹⁰ Jones S, Phillipson L, Barrie L. Most men drink... especially like when they play sports – alcohol advertising during sporting broadcasts and the potential impact on child audiences. *Journal of Public Affairs* 10(1-2):59-73. 2010
- ¹¹ Preventative Health Taskforce. *Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action*. Commonwealth of Australia. Canberra. 2009
- ¹² Fielder L, Donovan RJ, Ouschan R. Exposure of children and adolescents to alcohol advertising on Australian metropolitan free-to-air television. *Addiction* 104(7):1157-65. 2009
- ¹³ Smith, L.A and Foxcroft, D, R. The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: systematic review of prospective cohort studies. *BMC Public Health* 9:51. 2009
- ¹⁴ Anderson, P., Kochanek, K., and Murphy, R. Impact of alcohol advertising and other media exposure on adolescent alcohol use: a systematic review of longitudinal studies. *Alcohol and Alcoholism* 44(3): 229-243. 2009
- ¹⁵ Foundation for Alcohol Research and Education (FARE). *Annual Alcohol Poll 2014*. FARE. Canberra. 2014
- ¹⁶ Victorian Department of Human Services. *Alcohol beverage advertising in mainstream Australian media 2005-2007: Expenditure and exposure*. State Government of Victoria. Melbourne. 2009
- ¹⁷ Standing Committee on Community Affairs. *Committee Report: Alcohol Toll Reduction Bill 2007*. Canberra. Parliament of Australia. 2008
- ¹⁸ Alcohol Advertising Review Board (AARB). *Annual Report 2012-13*. McCusker Centre for Action on Alcohol and Youth and Cancer Council Western Australia. 2013
- ¹⁹ VicHealth. *Community Attitudes Survey on Alcohol Policy*. Carlton. Victorian Health Promotion Foundation. 2010
- ²⁰ Outdoor Media Association. Code of Ethics.
- ²¹ ABAC Annual Report 2012, Chief Adjudicator's Report p 7.
- ²² Ministerial Council on Drug Strategy, *24 April 2009 Communique*. Ministerial Council on Drug Strategy: Canberra. 2009. Available at <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mcdis-24apr09-communique>
- ²³ *ibid*
- ²⁴ The Alcohol Beverages Advertising Code Scheme (ABAC). *ABAC Community Service Announcement*. 2014. Available at: <http://www.abac.org.au/publications/media/>
- ²⁵ Trifonoff A, Andrew R, Steenson T, et al. *Liquor Licensing Legislation in Australia – Part 2: A Jurisdictional Breakdown*. Adelaide: National Centre for Education and Training on Addiction (NCETA). Flinders University. 2011
- ²⁶ Winpenny E, Marteau TM and Nolte E. Exposure of Children and Adolescents to Alcohol Marketing on Social Media Websites. *Alcohol and Alcoholism* 49 (2): 154-159. 2014.