



**Submission by
Free TV Australia Limited**

Australian National Preventative Health
Agency

*Draft Report on Alcohol Advertising: The
Effectiveness of Current Regulatory Codes
in Addressing Community Concern*

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1 Executive Summary

- There is already an extensive range of restrictions in place governing the content and scheduling of alcohol advertising on free-to-air television. These have been operating effectively and there is no evidence of policy failure in this area.
- Commercial free-to-air broadcasters successfully comply with these restrictions and there is very little evidence of community dissatisfaction, with viewer complaint levels relating to alcohol advertising consistently very low.
- The provision in relation to live sport broadcasts on public holidays and weekends is longstanding and recognises that the audience for sport is made up overwhelmingly of adults, and that those children that are viewing live sports are doing so predominantly in the company of an adult. For example, 2013 data shows that:
 - Less than 11.1% of audiences for live sporting events on weekends and public holidays are children;
 - the majority of the top 20 sporting events for 2013 attracted less than 10 per cent children; and
 - 85.7% of children aged 5-12 and 81.8% of children aged 13-17 watched the AFL Grand Final with an adult.
- Free-to-air television is the only medium subject to such stringent regulatory requirements. Commercial radio and pay TV broadcasters and online operators do not have to comply with any scheduling restrictions in relation to alcohol advertising. If further alcohol advertising restrictions were to be placed on free-to-air television 'regulatory bypass' is inevitable and advertisements will simply move to those platforms which are subject to less onerous regulation. Any alcohol advertising restrictions should apply equally across all media platforms. This would be consistent with a technologically neutral approach, but would also avoid the creation of artificial market distortions favouring less regulated platforms.

2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free-to-air television licensees. Free TV welcomes the opportunity to make a submission to the Standing Committee on Social Issues on its Draft Report into the effects of alcohol advertising on young people.

The commercial free-to-air television sector is committed to ensuring that television content aligns with community standards and expectations, particularly in regards to children and young audiences. Free TV members are cognisant of community concerns and sensitivities regarding the appropriate advertising of alcohol products.

Commercial free-to-air broadcasters are the only media platform subject to an extensive range of measures restricting alcohol advertising, especially in relation to child and youth exposure. These measures do not apply on other media platforms. In particular, Free TV members are bound by the Commercial Television Code of Practice (**Code**) and Children's Television Standards (**CTS**), as established through the *Broadcasting Services Act 1992 (BSA)*, and subject to the regulatory and enforcement powers of the ACMA. Compliance with the CTS is a statutory condition applicable only to broadcasting licensees¹.

There is little evidence of community dissatisfaction with the current restrictions regulating alcohol advertising on free-to-air television. Between 2009 and 2012, Free TV members received four viewer complaints relating to the alcohol advertising time zones compared to 7438 complaints under the Code overall². Less than 1% of all public submissions received by Free TV during our last Code Review in 2010 related to alcohol advertising time zones³. Furthermore, television viewing data suggests that children and adolescents make up a very small proportion of the viewing audience after 8.30 pm and during weekend live sports.

3 Regulation of Alcohol Advertising on Television

Commercial free-to-air television is subject to an extensive range of measures restricting alcohol advertising, especially in relation to child and youth exposure, which do not apply on other media platforms. These are set out in detail in our submission to the issues paper. These include:

- **The Commercial Television Industry Code of Practice**

The Code regulates the content and placement of advertisements designed to limit young peoples' exposure to alcohol advertisements.

Under the Code alcohol advertisements can only be broadcast after 8.30pm, between 12.00pm and 3.00pm on school days, and during live sporting events on weekends and public holidays. In addition, alcohol advertisements cannot be broadcast during any nominated children's programming periods.

¹ Section 7, Schedule 2 of the *Broadcasting Services Act 1992*.

² Free TV Australia Annual Code of Practice Complaints Reports 2009-2012.

³ Free TV Australia Code Review 2010.

Complaints about the Code can be made directly to the broadcaster who is obligated to respond substantively within 30 working days, and must advise complainants of their right to refer the matter to the ACMA for further investigation if they are unsatisfied with the broadcaster's response.

The ACMA is empowered under the BSA to enforce compliance with the Code and Free TV members face substantial penalties for a breach of the Code.

- **The Children's Television Standards**

The CTS prohibit the broadcasting of advertisements and sponsorship announcements that identify or refer to a company, person, or organisation that manufactures, distributes or sells alcoholic drinks, during a C program (a program classified by the ACMA as suitable for children other than preschool children) or a P program (a program classified by the ACMA as being suitable for preschool children).

Complaints about advertising perceived to conflict with the CTS can be made directly to the ACMA who can investigate.

In addition, advertising industry restrictions apply to all media including commercial free-to-air broadcasters, such as:

- **The Alcohol Beverages Advertising Code**

The Alcohol Beverages Advertising Code (**ABAC**) applies to advertisements on television, radio and the Internet, in print and also to outdoor advertising. In 2008, the ABAC was extended to cover naming and packaging of alcohol complaints. It is primarily concerned with regulating the content of alcohol advertisements in order to promote responsible use of alcohol.

The ABAC requires that advertisements must not:

- encourage or promote the excessive alcohol consumption, offensive behaviour, misuse or abuse of alcohol;
- encourage under-age drinking;
- have a strong or evident appeal to children (there are specific rules relating to the inclusion of children in advertisements);
- suggest that alcohol can contribute to personal, business, social, sporting, sexual or other success;
- depict alcohol consumption in relation to the operation of machinery or vehicles;
- challenge or dare people to consume alcohol;
- promote a beverage on the basis of its higher alcohol content; and
- encourage consumption that is in excess of Australian Alcohol Guidelines.

4 No Evidence of Regulatory Failure regarding Free-To-Air Television

As indicated above, there is an extensive range of restrictions and placement rules already in place for advertising of alcohol products on free-to-air television. The

existing pre-vetting and complaints processes are well established, well known in the industry and provide for a robust and efficient complaints handling scheme.

Commercial free-to-air broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, aligns with community expectations, particularly in regards to children and young audiences.

4.1 Adequacy of the Code

There has long been recognition of the need to ensure that advertisements for alcohol products are not in any way directed at children and are scheduled to avoid peak children's viewing times.

The commercial free-to-air television placement restrictions prevent the broadcast of advertisements for alcohol products prior to 8.30pm.

As noted in our submission to the issues paper, there have been very low levels of viewer complaints relating to alcohol advertising under the Code.⁴ Between 2009 and 2012, Free TV members received four viewer complaints relating to the alcohol advertising time zones compared to 7438 complaints under the Code overall⁵. Additionally, there were no ACMA investigations in relation to alcohol advertising reported in the 2012 -13 ACMA Annual Report.⁶

4.2 Live Sport and Children's Viewing of Sport on Free-To-Air Television

The provision in relation to live sports broadcasts on public holidays and weekends is longstanding and recognises that the audience for sport is made up overwhelmingly of adults.

Ratings data shows that children constitute a very small percentage of overall commercial free-to-air television viewing and those children viewing are doing so predominantly in the company of an adult.⁷

Recent OzTAM data which specifically analyses children's viewing patterns of sports on television in 2013 further supports this:

- The majority of the top 20 sporting events for the 2013, attracted less than 10 per cent of children aged 5-12 and 13-17;
- The audiences for live sporting events on weekends and public holidays are overwhelmingly adult – children make up less than 11.1 per cent of the audience, even for the most popular sporting events;
- The top rating sporting events for 2013 was the AFL Grand Final: 2.6 million people tuned in, and children made up only 10.3 per cent of that total viewing audience

⁴ Free TV Submission to ANPHA Issues Paper, *Alcohol Advertising: The Effectiveness of current Regulatory Codes in Addressing Community Concern*.

⁵ Free TV Australia Annual Code of Practice Complaints Reports 2009-2012.

⁶ ACMA Annual Report, 2012-13, Appendix 6, at 197.

⁷ Free TV Submission to ANPHA Issues Paper, *Alcohol Advertising: The Effectiveness of current Regulatory Codes in Addressing Community Concern*, 7-8.

- An overwhelming amount of children aged 5-12 and 13-17 are watching these sporting events with an adult in the room, 85.7 per cent of children aged 5-12 and 81.8 per cent of children aged 13-17 watched the AFL Grand Final with an adult.⁸

Online advertising by comparison is not subject to the Code or the CTS, is not required to comply with time restrictions, and 2014 data released by PricewaterhouseCoopers has confirmed that online advertising expenditure surpassed free-to-air TV advertising revenue for the 2013 calendar year.⁹ Exposure to alcohol advertising via the internet can occur at any time in a daily 24 hour cycle, and under the current regulatory framework is permitted to be considerably more pervasive.

4.3 Ongoing Review of the Code and Responsiveness to Shifting Community Standards

The Code is reviewed every three years. As part of each review, it is the role of the regulator to register the Code after ensuring that it reflects community standards.

There are important safeguards built into the Code review process, in which the ACMA is only permitted to register a Code where it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.

As indicated in our previous submission to the issues paper, the Code was last reviewed three years ago. Only 10 of the 1543 submissions received from the public during this Review related to alcohol advertising time zones¹⁰.

The final Code as registered by the ACMA included several changes to respond to community concerns raised in these submissions.

The next scheduled review of the Code is imminent. Free TV endorses the existing process of review, community consultation and the ACMA registration of the Code as the most appropriate means in which to address any community concerns regarding the scheduling of alcohol advertising.

5 Changing Media Landscape and Avoiding Regulatory Bypass

Content can be accessed over a range of platforms and devices which are not subject to the kinds of regulations and restrictions that apply to Free TV

⁸ Source: OzTAM, 5 city metro, 01 January – 31 December 2013, commercial free-to-air channels, based on Live data.

⁹ See <http://www.iabastralia.com.au/news-and-blogs/iab-press-releases/item/1603-online-advertising-hits-4bn-expenditure-in-2013-grows-19-3-percent-year-on-year-with-general-display-the-biggest-growth-sector>

¹⁰ Free TV Australia Code Review 2010.

broadcasters. A single device (such as a connected or “smart” TV) can be used to view substantially similar content that is subject to very different levels of regulation.

Despite this, commercial free-to-air television is the only media platform subject to proscribed and enforceable time zone restrictions for the advertising of alcohol products. These restrictions do not apply to commercial radio, pay TV and online.

It is important that any alcohol advertising restrictions apply equally across all media platforms. If ‘regulatory bypass’ occurs, the relevant advertisements will simply move to those platforms that are subject to less onerous regulation.