



**Submission by
Free TV Australia Limited**

National Preventative Health Taskforce

Technical Report No 3
Preventing Alcohol-related Harm in Australia

24 December 2008

TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	1
2	INTRODUCTION.....	2
3	BACKGROUND.....	4
	3.1 REGULATION OF ALCOHOL ADVERTISING ON TELEVISION	4
	3.1.1 Commercial Television Industry Code of Practice.....	4
	3.1.2 Children's Television Standard	4
	3.1.3 Complaints Process	5
	3.2 ALCOHOL BEVERAGES ADVERTISING CODE	5
	3.2.1 Pre-vetting of advertisements	6
	3.2.2 Complaints under the ABAC scheme	6
	3.3 OTHER RELEVANT REGULATION.....	8
	3.3.1 Australian Association of National Advertisers Code of Ethics	8
4	ADEQUACY OF THE EXISTING FRAMEWORK	9
	4.1 ADEQUACY OF THE COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE	9
	4.2 ADEQUACY OF THE ABAC SCHEME	11
	4.2.1 The Report's comments on the ABAC Scheme	11
5	THE EFFECTIVENESS OF FURTHER RESTRICTIONS	13
	5.1 EXTENSION OF EXISTING TIMEZONE RESTRICTIONS	13
	5.2 WEEKEND LIVE SPORT	15
	5.3 INEQUITABLE AND INEFFICIENT FOCUS ON FREE-TO-AIR COMMERCIAL TELEVISION	17
	5.3.1 Inequitable and inefficient focus on free-to-air commercial television	17
	5.3.2 Audience behaviour trends	19



1 Executive Summary

- Australia's commercial free-to-air television broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.
- Accordingly, there is an extensive range of restrictions already in place governing both the content and scheduling of advertising for alcohol products.
- Broadcasters comply with these requirements and there is very little evidence of community dissatisfaction, with viewer complaint levels consistently very low.
- There is no evidence of regulatory failure and no link proved between the existing content and pattern of alcohol advertisements and excessive alcohol consumption.
- The existing provisions of the Commercial Television Industry Code of Practice which restrict the scheduling of alcohol advertisements continue to reflect child and adult television viewing patterns.
- Adolescents make up a very small proportion of the overall viewing audience in both the 8.30pm to 9.30pm time slot and during weekend live sport.
- Additional scheduling restrictions would do little to reduce young people's exposure to alcohol advertising and yet the impact on broadcasters, advertisers and sporting groups would be significant.
- Any further regulatory restrictions must not unduly focus on free-to-air commercial television. The majority of alcohol advertising occurs outside of television and young people have access to a broad range of entertainment platforms such as pay TV and the Internet, where advertising is significantly less regulated.



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 comment on the National Preventative Health Taskforce's Technical Report No 3, Preventing Alcohol-related Harm in Australia ('the Report'). Free TV would like to comment primarily on those aspects of the Report which consider the appropriate regulatory framework for alcohol advertising on television.

The commercial free-to-air television sector takes very seriously the need to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.

In particular, the commercial free-to-air television sector is mindful of community expectations regarding appropriate advertising of alcohol products. Accordingly, there is an extensive range of restrictions already in place, particularly as regards to restricting children's exposure to alcohol advertising.

Broadcasters comply with these requirements and there is little evidence of community dissatisfaction. Between 2000 and 2008, there were only six viewer complaints to broadcasters regarding the alcohol advertising timezone restrictions in the Commercial Television Industry Code of Practice, compared to 6685 complaints under the Code overall.¹

If broadcasters are found to be in breach of these requirements, there is a strong range of enforcement mechanisms open to the regulator, the Australian Communications and Media Authority (ACMA).

Free TV supports the existing Alcohol Beverages Advertising Code (ABAC) Scheme, which governs the content of alcohol advertising. The Scheme was recently the subject of extensive review and important enhancements have been made to address community concerns and emerging trends in the advertising market.

Television advertising of alcohol was also recently considered by the Senate Community Affairs Committee, which recommended against the passage of a Bill containing further restrictions on alcohol advertising on commercial free-to-air television.²

Before any changes are made to the current regulatory restrictions, there should be clear evidence that the current patterns and content of alcohol advertising on television are contributing to the misuse of alcohol. No such evidence has been put forward and furthermore, there is no evidence of significant community concern centred on alcohol advertising. The number of alcohol advertisements which are the subject of viewer complaint through the ABAC Scheme remains low.

Free TV is aware of proposals to extend the existing timezone restrictions on alcohol advertising on commercial television from the current 5.00am to 8.30pm limit, and to

¹ Source: FACTS/CTVA/Free TV Australia Code of Practice Complaints Database 2000-2008

² Senate Community Affairs Committee report on the Inquiry into the Alcohol Toll Reduction Bill 2007, page 33



remove the current exemption for live sport, with the aim of further limiting children's exposure to alcohol advertising.

However, television viewing data suggests that adolescents make up a very small proportion of the viewing audience at these times. Ratings data also suggests that only a small proportion of that age group are watching Free TV at those times. It is apparent from this data that the target audience for alcohol advertisements screened after 8.30pm and during weekend live sport is adults.

Many of the calls for further regulatory restrictions are predominantly focussed on free-to-air commercial television. However, when beverage and retail advertising on alcohol products are considered, television advertising accounts for less than 25% of all annual advertising expenditure. Further, recent trends in advertising, whereby expenditure is being spread across a new range of entertainment platforms, suggests this would be an ineffective way to target young people's exposure to alcohol advertising. Any proposed regulatory action to address alcohol advertising must take a consistent approach across media platforms, and not unduly focus on free-to-air television. Experience shows that if advertising is restricted on one platform, the advertising expenditure redistributes to other, competing media. There would therefore be no overall reduction in alcohol advertising.

Further, a movement of advertising revenue to other platforms may impact on free-to-air television's ability to continue to provide quality Australian programming, including drama, news and current affairs, documentary, children's programming and live sport.

This submission provides background on the existing regulatory framework governing alcohol advertising and considers its ongoing effectiveness. This submission also considers the likely ineffectiveness of proposals for further regulatory restrictions.

3 Background

3.1 Regulation of alcohol advertising on television

3.1.1 *Commercial Television Industry Code of Practice*

The Commercial Television Industry Code of Practice sets down rules relating to the content and placement of advertisements designed to limit young people's exposure to alcohol advertisements.

Clause 2.9 of the Code states that advertisements to children must not be for, or relate in any way to, alcoholic drinks or draw any association with companies that supply drinks.

Clauses 6.7 to 6.13 also deal with advertising of alcohol and state that advertisements for alcohol drinks:

- May only be broadcast in M, MA or AV classification periods (ie, between 8.30pm and 5.00am on weekdays, and 12.00pm to 3.00pm on school days – exemptions apply for broadcasts of sporting events); and
- May not be broadcast during nominated children's programming periods.

The exemption for live sport, for weekends and public holidays allows alcohol advertising as an accompaniment to a "live" sporting broadcast, shown at any time of day.

The relevant provisions of the Code are extracted at Attachment A.

These restrictions have been in place for many years and originate from a Technical Program Standard originally issued by the former Australian Broadcasting Tribunal.

The ACMA is empowered under the *Broadcasting Services Act 1992* to enforce compliance with the Commercial Television Industry Code under a complaints-based scheme (see below). Penalties apply for a breach of an industry code of practice.

3.1.2 *Children's Television Standard*

In addition to the requirements of the Commercial Television Industry Code of Practice, Children's Television Standard 23 states that advertisements for alcoholic drinks may not be broadcast during C or P periods. The restrictions extend to C or P programs broadcast outside C or P periods, and breaks immediately before and after C and P programs.

The relevant provisions of the Standard are extracted at Attachment B.

A C period is defined in the Standard as a period nominated by, or on behalf of, a licensee under during which the licensee will

broadcast C programs. A P period is defined in the Standard as a period nominated by, or on behalf of, a licensee under during which the licensee will broadcast P programs.

No advertisement or sponsorship announcement broadcast during a C or P period may identify or refer to a company, person, or organisation that manufactures or distribute alcoholic drinks.

The restrictions extend to advertisements and sponsorship announcements during C or P programs broadcast outside of C or P periods, and breaks immediately before and after C and P programs.

3.1.3 *Complaints Process*

It is important to note that in relation to the Code of Practice and the Children's Television Standard, the regulation is open and accessible to viewers through a well-managed complaints process. Complaints about advertising perceived to conflict with the Children's Television Standard can be made directly to the regulator who can investigate. Complaints about the Commercial Television Code of Practice can be made directly to the broadcaster who is obligated to respond substantively within 30 working days, and must advise the complainant of their right to refer the matter to ACMA for investigation.

3.2 **Alcohol Beverages Advertising Code**

The *Alcohol Beverages Advertising Code*³ (ABAC) is the advertising code of the alcohol industry and is primarily concerned with regulating the content of alcohol advertisements in order to promote responsible use of alcohol.

It has been in operation since 1 July 1998 and was prepared in agreement with the Australian Associated Brewers Inc (AAB), and the Distilled Spirits Industry Council of Australia Inc (DSICA). In April 2004, these bodies and the Winemakers' Federation of Australia and the Liquor Merchants Association of Australia Ltd agreed to abide by an updated Code. These alcohol industry bodies recommend that all of their members comply with the Code.

The requirements set out in the Code relate primarily to responsible advertising of alcohol, as opposed to issues of taste, decency or community standards (which are addressed under the Australian Association of National Advertisers (AANA) Code of Ethics).

The Code applies to advertisements on television, radio and the Internet, in print and also to outdoor advertising.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage people.

³ [http://www.abac.org.au/uploads/File/ABAC%20Code%20\(October%202007\).pdf](http://www.abac.org.au/uploads/File/ABAC%20Code%20(October%202007).pdf)

The Code requires that advertisements:

- must not encourage excessive alcohol consumption or abuse of alcohol;
- must not encourage under-age drinking;
- must not have a strong or evident appeal to children (there are specific rules relating to the inclusion of children in advertisements);
- must not suggest that alcohol can contribute to personal, business, social, sporting, sexual or other success;
- must not depict alcohol consumption in relation to the operation of machinery or vehicles;
- must not challenge or dare people to consume alcohol;
- must not promote a beverage on the basis of its higher alcohol content; and
- must not encourage consumption that is in excess of Australian Alcohol Guidelines.

The Code is set out at Attachment C.

The Code also includes provisions relating to the promotion of alcohol at events.

3.2.1 Pre-vetting of advertisements

The Alcohol Advertising Pre-Vetting Scheme (AAPS) was established in 1992 and is part of the ABAC Scheme.

Proposed advertisements are assessed against the Alcohol Beverages Advertising Code at an early stage of campaign development.

In 2006, 936 advertisements were submitted through the pre-vetting system.

3.2.2 Complaints under the ABAC scheme

The ABAC scheme is administered by a management committee which includes industry, advertising and government representatives.

Complaints under the ABAC Scheme are received through the Advertising Standards Bureau (ASB). The ASB refers any and all complaints involving alcohol products to ABAC, and an initial decision is made as to whether the complaint relates to matters addressed under the ABAC scheme, or matters (such as taste and decency) addressed under the AANA Code of Ethics.

Complaints addressing matters covered by the AANA Code are then referred back to the ASB for consideration. This system of referral from the ASB maintains a single point of contact for the public for complaints in relation to advertisements.

Complaints relating to the ABAC scheme are referred on to the full Alcohol Beverages Advertising Adjudication Panel. Where a complaint is upheld, the advertiser is asked to withdraw or modify the advertisement within five business days.

The number of public complaints received through the ABAC Scheme has been reasonably constant over recent years. The clear majority of complaints raise solely issues of taste, decency and sexism and are therefore dealt with under the AANA Code by the ASB.

In 2006, the ASB referred 53 complaints dealing with 26 alcohol advertisements to ABAC. Of these, 15 were considered to be taste and decency matters and referred back to the ASB.⁴

- Out of 936 advertisements submitted for pre-vetting in 2006⁵, only nine, or 2.7%, were complained against for reasons relating to appropriate promotion of alcohol.
- Of the nine advertisements considered under the ABAC scheme, seven complaints were dismissed and two were upheld.
- Of these nine complaints, five related to broadcast advertisements.⁶

In 2005, the ASB referred 105 complaints dealing with 29 advertisements (54 complaints were for one advertisement). Of these, 12 were considered to be taste and decency matters and were referred back to the ASB.

- Out of 761 advertisements submitted for pre-vetting in 2005, only 17, or 2.2%, were complained against for reasons relating to appropriate promotion of alcohol.
- Of the 17 advertisements considered under the ABAC scheme, 15 were dismissed and two upheld.⁷

In 2004, 212 complaints were received relating to 23 advertisements (180 were for one advertisement). Of these 15 were taste and decency matters and were referred back to the ASB.

- Of the 754 advertisements submitted for pre-vetting in 2004, only eight, or one per cent, were complained against for reasons relating to appropriate promotion of alcohol.
- Of the eight advertisements considered under the ABAC scheme, five were dismissed and three were upheld.⁸

⁴ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

⁵ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

⁶ Source: ABAC Adjudication Decisions 2006 - <http://www.abac.org.au/publications/adjudication-decisions/>

⁷ Source: ABAC Scheme Annual Report 2005

⁸ Source: ABAC Scheme Annual Report 2004

3.3 Other relevant regulation

3.3.1 Australian Association of National Advertisers Code of Ethics

All advertisements are covered under the AANA Code of Ethics. The Code sets out requirements for advertisements generally and does not regulate advertisements for alcohol products in any specific way.

The Code covers such matters as misleading and deceptive ads, advertisements which discriminate against or vilify particular members of particular groups, portrayal of violence, sex and nudity, obscene language and other community standards issues.

The AANA has also published a Code for Advertising to Children. Amongst other things, the Code states that advertisements must not relate in any way to alcohol drinks, or draw any association with companies that supply alcohol drinks.

4 Adequacy of the existing framework

Free TV is mindful of the Government's commitment to address the misuse of alcohol. Free-to-air television broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.

Accordingly, there is an extensive range of restrictions already in place for advertising of alcohol products. Before there is any further regulatory intervention in relation to advertising of alcohol products, there must be clear evidence of a causal link between the current regulatory treatment of alcohol advertising (ie, the existing content and pattern of advertisements), and the issues the Government seeks to address.

Reference to general research into alcohol advertising as a determinant of attitudes or consumption patterns will not be sufficient to build the case for further regulatory intervention. This research will not have considered the Australian commercial television regulatory environment, with its comprehensive suite of content and scheduling restrictions, as it stands in 2008.

The National Preventative Health Taskforce's Technical Report No 3 acknowledges the lack of definitive research supporting further advertising restrictions as an effective regulatory intervention.⁹ In particular, the Report notes the lack of consensus on the impact of alcohol advertising on young people.¹⁰

4.1 Adequacy of the Commercial Television Industry Code of Practice

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 current provisions of the Commercial Television Industry Code of Practice which restrict the scheduling of alcohol advertisements were implemented to reflect the viewing patterns of child and adult audiences. As discussed below in section 5.1 of this Submission, the existing Code of Practice timezone restrictions for alcohol advertisements continue to reflect child and adult viewing patterns.

Free-to-air broadcasters comply with these provisions and there has been very low levels of viewer complaint. As already noted, of the 6685 Code of Practice complaints received by broadcasters between July 2000 and September 2008, only six related to a perceived error in the scheduling of alcohol advertisements.¹¹ In each of these six cases, no breach of the Code's requirements was found to have occurred. This provides no evidence of widespread community concern regarding the scheduling of alcohol advertisements.

It should be noted that there is, built into the Code-based regulatory arrangements for broadcasting content, an existing process for ensuring the

⁹ National Preventative Health Taskforce Technical Report No 3; Preventing Alcohol Relation Harm in Australia: a window of Opportunity, page 19

¹⁰ Ibid., p 33

¹¹ Source: FACTS/CTVA/Free TV Australia Code of Practice Complaints Database 2000-2007

ongoing adequacy of the Code. Free TV supports this process as the most appropriate means of ensuring that community expectations regarding broadcasting content continue to be met.

This process provides for the Commercial Television Industry Code of Practice to be reviewed every three years. As part of each review, it is the role of the regulator, ACMA, to take an evidence-based approach to assessing the adequacy of the Code, including the provisions restricting the scheduling of alcohol advertisements.

The review process commences with a detailed discussion between broadcasters and the regulator on potential areas for review under the Code.

Free TV, on behalf of the broadcasters, then develops a draft in consultation with the regulator. The draft is then approved by the regulator for release to the public for comment. Following the public consultation phase, Free TV then provides copies of all submissions to the regulator for its consideration. Discussions then continue between the regulator and Free TV in relation to the issues raised by the public, which may result in further amendments to the Code. Following that process, the regulator then considers whether to register the Code.

There are important safeguards built into the Code review process, in which ACMA is only permitted to register a Code if 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.

Under section 125 of the *Broadcasting Services Act 1992* ACMA is also empowered to make program standards in circumstances where it is satisfied that a Code of Practice has failed to provide adequate community safeguards. Compliance with an ACMA program standard is mandatory.

It should be noted that provisions to restrict the scheduling of advertisements for alcohol products have formed part of the Code of Practice since its inception in 1993. ACMA has not at any stage determined that the alcohol advertising provisions of the Code have failed or that a program standard is required.

The Code of Practice was last reviewed three years ago. The final Code as registered by ACMA included several concessions to respond to community concerns raised in these submissions.

This highlights the responsiveness of the existing co-regulatory arrangements, and in particular, the way the Code review process allows for community concerns to be expressed and addressed.

The next scheduled review of the Code is currently underway. Free TV endorses the existing processes of review, community consultation and

ACMA approval of the Code as the most appropriate means in which to address any community concerns regarding the scheduling of alcohol advertising.

4.2 Adequacy of the ABAC Scheme

Free TV also supports the approach taken in the ABAC Scheme for ensuring the content of alcohol advertisements is consistent with the need to ensure responsibility and moderation in alcohol consumption.

In March 2006, the Victorian Government received the report of the Inquiry into Strategies to Reduce Harmful Alcohol Consumption. This inquiry was conducted by the Drugs and Crime Prevention Committee and considered the regulation of alcohol advertising. The report noted the significant strengthening of the ABAC Scheme that had occurred in recent years and concluded that there was insufficient evidence at that time to suggest that any changes were necessary to the ABAC Scheme.¹²

It should also be noted that the level of complaints received under the Scheme has remained fairly constant over recent years. The very low proportion of alcohol advertisements complained against in relation to appropriate promotion of alcohol (ie, as distinct from complaints made in relation to taste and decency issues and dealt with under the AANA Code), suggests that the ABAC Scheme has kept pace with community standards on these issues. As already noted, out of 936 advertisements submitted for pre-vetting in 2006¹³, only nine, or 2.7%, were complained against for reasons relating to appropriate promotion of alcohol.

4.2.1 The Report's comments on the ABAC Scheme

Section 4.7 of the Report considers the adequacy of the ABAC Scheme and comments on the effectiveness of the Scheme's objective to discourage advertising with strong appeal to children and adolescents.

The National Preventative Health Taskforce's Report implies the ABAC Scheme has not prevented high exposure to alcohol advertising amongst young people (page 34), by referencing television advertising data from a 2005 study.

A closer examination of this data suggests it can not be used to support such commentary. The data referred to is now quite dated and audience viewing habits, particularly those of children, are changing quickly in light of new and competing entertainment choices. A reliance on data that is outdated may give a misleading impression.

Further, the study did not also consider retail advertising expenditure (that is, the advertisements for liquor outlets, which provide information on where to buy alcohol and where it can be bought most cheaply). When considering alcohol advertising, it is prudent to

¹² Victorian Government Drugs and Crime Prevention Committee Inquiry into Strategies to Reduce Harmful Alcohol Consumption Final Report March 2006 page xxxi

¹³ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

include all relevant advertising categories, to ensure an accurate impression of exposure is given.

Free TV also notes that Table 9, which summarises the study's findings, could give a misleading impression of the original research. The Table lists five brands as having comparative exposure levels between 13-17 year olds and 18-29 year olds in Melbourne in 2005. However the original research considered 30 brands, with only 8 brands generating greater exposure to 13-17 year olds, than 18-29 year olds.¹⁴

The original research also considered the same data for the Sydney market, which showed that of the 30 brands studied, only one brand had higher exposure in the 13-17 year old age group.¹⁵

It is also questionable whether the comparison between 13-17 year olds and 18-29 year olds is truly informative. The viewing behaviour of 13-17 year olds is roughly similar to that of 18-29 year olds, so it perhaps unsurprising that exposure levels are similar for these age groups.

Further, these age groups make up a very small proportion of audiences in times where alcohol advertising is allowed, suggesting a more useful comparison would be with the target audience for alcohol advertisements, which ratings figures show is the over 25 year-old age group.

Ratings figures show the adolescent and young adult (13-24 year old) group is not the target for television alcohol advertisements. The overwhelming majority of viewers watching weekend sport, for example, are over 25 (81.3%)¹⁶ and a very small proportion of 13-17 year olds watch at these times (only 2% of this group are watching weekend sport).¹⁷

A more informative picture of young people's exposure to alcohol advertising on television comes from a consideration of the proportion of advertisements young people are exposed to which are alcohol advertisements. Ratings figures show that in the 12 months to April 2008, of all advertisements seen by under-17s, only 1.5% were alcohol advertisements.¹⁸

¹⁴ King E, Taylor J and Carroll T, Australian alcohol beverage advertising in mainstream Australian media 2003 to 2005: expenditure, exposure and related issues, page 15.

¹⁵ Ibid., page 13

¹⁶ Source: OzTAM; 5 City Metro; 2008 Calendar year to date (1 Jan – 14 Dec); Sat & Sun only; 5:30 – 20:30

¹⁷ Source: OzTAM; 5 City Metro; 2008 Calendar year to date (1 Jan - 14 Dec); Sat & Sun only; 5:30 -20:30; Free TV channels only; based on all programs classified as sport events, special sport events and other sports.

¹⁸ OzTAM; 29 April 2007 to 29 April 2008 – Ppl 0-17, TARPs Alcohol, TARPs all other; Sydney, Melbourne, Adelaide, Perth

5 The effectiveness of further restrictions

As already discussed, an evidence-based case has not been established for any extension or amendment of the existing restrictions on alcohol advertising. Indeed, the Report notes that this is an area “where there has been considerable research, but of somewhat poor quality, yielding conflicting results.”¹⁹

However, Free TV is aware of calls for further restrictions on the advertising of alcohol on television, including suggestions that the existing timezone restrictions be extended until 9.30pm and that the provision of alcohol advertising in weekend and public holiday live sport be removed.

Free TV notes that these proposals are put forward with the objective of reducing young people’s exposure to alcohol advertising. Free TV would like to comment on these proposals.

A review of available audience and demographic data suggests that such proposals would do little to reduce children’s exposure to alcohol advertising, yet impose substantial costs on the free-to-air television industry.

5.1 Extension of existing timezone restrictions

Proposed extensions of the existing timezone restrictions to 9.30pm would take place in prime time adult viewing hours. It therefore stands to impact on the most important component of the day for broadcasters in terms of advertising revenue.

For such measures to represent an efficient and equitable regulatory response, it is vital that the beneficial outcomes of the additional regulation clearly outweigh the cost to industry.

However, ratings and demographic data suggest that this is unlikely to be the case.

- Adolescents between the age of 13 and 17 make up a very small proportion of the nightly television viewing population.
- Indeed during the period of 8.30pm to 9.30pm, 13 to 17 year olds make up just 4.4 per cent of viewers.²⁰
- Viewers aged 18 to 24 only make up 5.9 per cent of viewers in this period.²¹
- Adults 25 and over make up the overwhelming majority of the viewing audience for this period at 82.7 per cent.²²

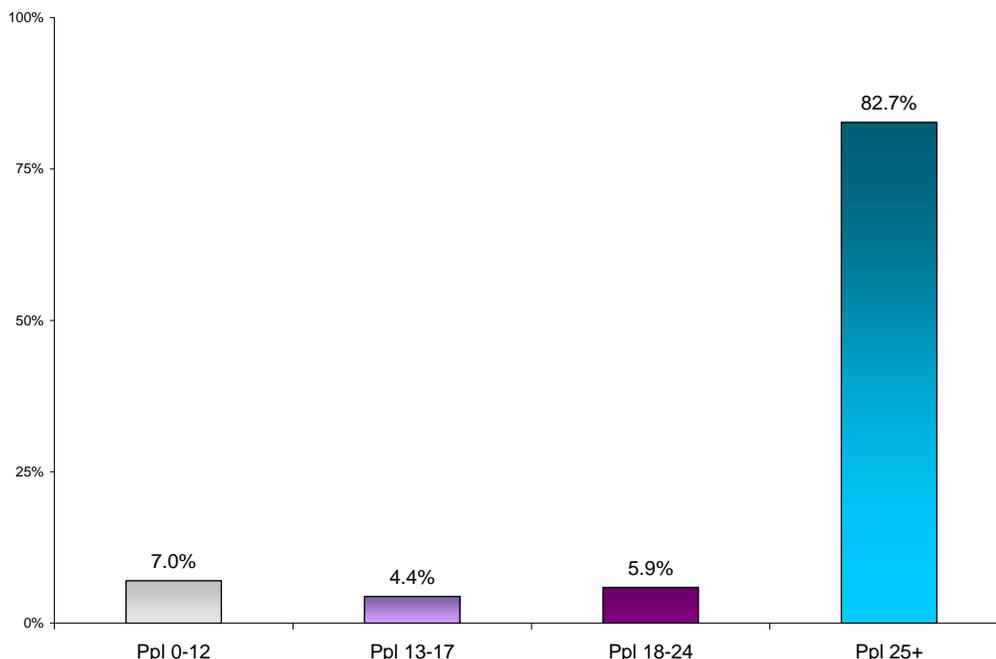
¹⁹ National Preventative Health Taskforce Technical Report No 3; Preventing Alcohol Relation Harm in Australia: a window of Opportunity, page 33

²⁰ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm; Ppl 13-17

²¹ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm; Ppl 18-24

²² Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm; Ppl 25+

Audience Composition - 8.30pm - 9.30pm



Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm

- Of the small proportion of the potential viewing audience in the 13 to 17 year old age group watching at this time, not all are watching Free TV.²³
- Minute-by-minute viewing after 8.30pm shows that viewing by 13 to 17 year olds declines in the minutes after 8.30pm.²⁴
- Of the small percentage of 13-17 year olds watching Free TV in this timeslot, 50% per cent are watching with an adult.²⁵

While it is impossible to ensure certain demographics will not be watching at any given time, the ratings data clearly show that the vast majority of viewers during these hours are adults.

It also shows that the existing timezone restrictions in the Code adequately reflect adult and children’s viewing patterns. Advertisements for alcohol products in this time period are targeted at the majority adult component of the audience.

Extending the ban on alcohol advertising from 8.30pm to 9.30pm would be unduly restrictive on advertisers wanting to reach the large proportion of the audience that is adult viewers in prime time. Most

²³ Source: OzTAM; 5 city metro; based on 2007 calendar year.

²⁴ Source: OzTAM; 5 city metro; 2030-2100; 2008 calendar year to date (1 Jan – 14 Dec).

²⁵ Source: OzTAM; 5 city metro; 2030-2130; 2008 calendar year to date (1 Jan – 14 Dec); % Ppl 13-17 co-viewing with Ppl 18+; Free TV channels only.

importantly, it is an inefficient method of reducing young people's exposure to alcohol advertising.

Given the potential impact on broadcasters of any additional restrictions on the scheduling of advertisements, the proposed timezone extension is not warranted.

Free TV notes that research showing public opinion in favour of such restrictions is often cited to support further regulatory intervention. For example, research undertaken by the Australian Institute of Health and Welfare showing over 70% of people support alcohol ad bans before 9.30pm, is often used to argue in favour of such restrictions. Indeed, this research is included in the Report, at Table 14. However, an examination of the questionnaire provided to respondents²⁶ reveals no context is given for the question on this point, and so it is unclear whether or not respondents were aware that significant restrictions are already in place.

Without such context, the results of the questionnaire may be best interpreted as support for restrictions which reflect adult and child viewing patterns. As demonstrated above, the current restrictions achieve that objective.

Free TV also notes the National Preventative Health Taskforce's Report distinguishes between the public popularity of regulatory measures and their effectiveness by noting that "in general, the measures that are most often called for by community members tend to be the least effective."²⁷

5.2 Weekend live sport

Free TV is also aware of calls to remove the current provision for alcohol advertising during live sport on weekends and public holidays.

Freely available coverage of sporting events is of great importance to audiences and to the ongoing viability of commercial free-to-air television broadcasters. Removing the provision for alcohol advertising in sport would impact strongly on the advertising and sponsorship revenue associated with sporting coverage. It is once again vital that the beneficial outcomes of this proposed additional regulation clearly outweigh the cost to industry.

However, ratings information shows that Free TV audiences for weekend sport are predominantly comprised of adult viewers:

- Adolescents between the age of 13 and 17 make up just 3.7 per cent of the total viewing audience for weekend sport programs;²⁸
- 18 to 24 year olds make up 6.0% of Free TV's audience for these programs.²⁹
- Adults over 25 make up a clear majority of the audience at 81.3%.³⁰

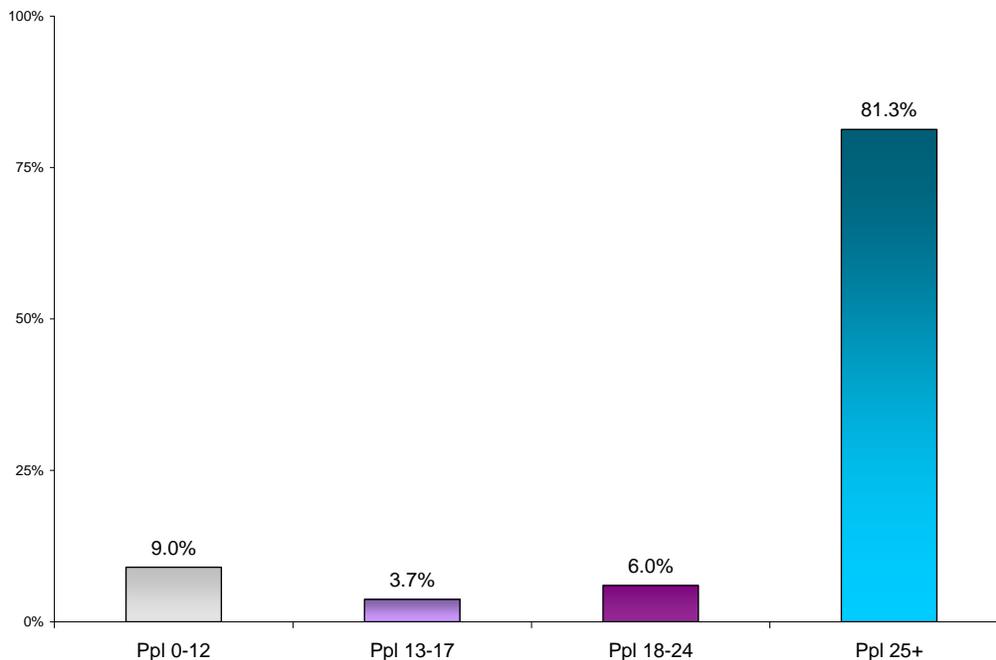
²⁶ Available at: <http://www.aihw.gov.au/publications/phe/ndshs07-fr/ndshs07-fr.pdf> (viewed 18 December 2008)

²⁷ National Preventative Health Taskforce Technical Report No 3; Preventing Alcohol Relation Harm in Australia: a window of Opportunity, page 17

²⁸ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec) (Sat & Sun only); 05:30 – 20:30; based on all programs classified as sports

²⁹ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); (Sat & Sun only); 05:30 – 20:30; Free TV channels only; based on all programs classified as sports.

Audience Composition - Weekend Sport (5.30am - 8.30pm)



Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); Sat & Sun only; 5:30 – 20:30

- More importantly, only a very small proportion of the potential viewing audience in the key 13 to 17 year old age group are watching these programs. The percentage of Australian children aged 13 to 17 years watching sport on television at the weekends is 2.0 per cent.³¹
- Only six of the top 50 programs for the 13 to 17 year old age group in 2008 were sporting events, and these were the marquee events of the Olympic Games and the Rugby League State of Origin.³²

This information strongly suggests that the proposed prohibition of alcohol advertising in live sport on weekends and public holidays would be an ineffective means of reducing young people’s exposure to alcohol advertising. Again, this would be unfair on advertisers wishing to target the overwhelming proportion of the audience that are adults.

³⁰ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); (Sat & Sun only); 05:30 – 20:30; Free TV channels only; based on all programs classified as sports.

³¹ Source: OzTAM; 5 City Metro; 2008 Calendar year to date (1 Jan - 14 Dec); Sat & Sun only; 5:30 -20:30; Free TV channels only; based on all programs classified as sport events, special sport events and other sports.

³² Source: OzTAM; 5 city metro; 2008; Ppl 13-17.

5.3 Inequitable and inefficient focus on free-to-air commercial television

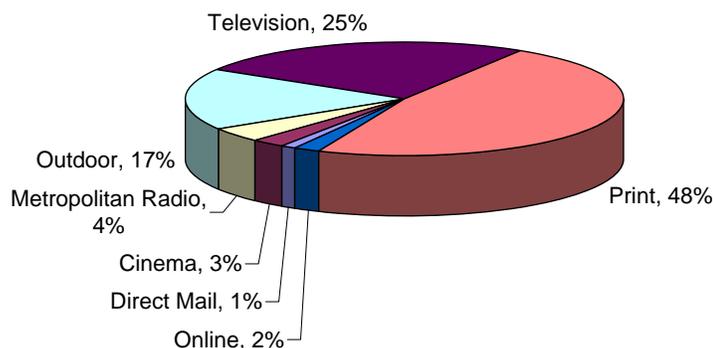
Many of the proposals for further regulatory restrictions on alcohol advertising focus solely on commercial free-to-air television.

An analysis of recent trends in advertising expenditure and audience behaviour suggests this would be an inequitable and inefficient means of reducing young people's exposure to alcohol advertising.

5.3.1 *Inequitable and inefficient focus on free-to-air commercial television*

Advertising of alcohol comprises both beverage or product advertisements and retailer advertisements. Any move to reduce alcohol advertising has to take into account the effects of both forms of advertising on the community, particularly when it is considered that retail advertisements often promote discounted alcohol products. When retail alcohol advertising spend is considered together with alcohol beverage advertising, television advertising accounts for less than 25% of the total spend.

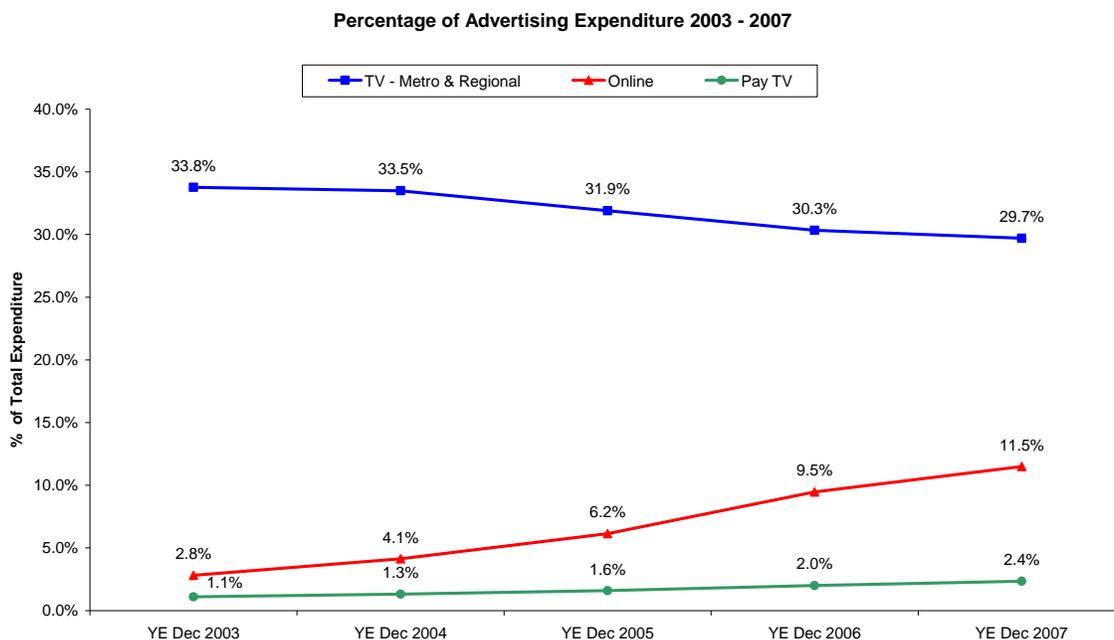
Combined Retail and Product Advertising



Source: Nielson Adex Data

Further, according to Commercial Economic Advisory Service Australia (CEASA) data, television's share of advertising has been gradually decreasing. Expenditure on broadcast media is not growing at the same rate as other media, particularly the Internet. Online

advertising expenditure has increased from \$236 million in 2003, to over \$1.346 billion in 2007, an increase of 470 per cent.³³



Source: The Ceasa Report - Advertising Expenditure in Main Media; year ended 31 December 2007.

Some alcohol beverage manufacturers are now targeting online, viral and cinema advertising as the starting point for major promotional campaigns, with a delayed release of advertisements onto television.³⁴

Indeed, the ABAC Scheme was recently expanded to include coverage of online alcohol advertising in recognition of these trends.

Yet many regulatory proposals do not address online advertising of alcohol or other forms of promotion.

Such an approach would not reduce children's exposure to alcohol advertisements on pay TV, SBS, in cinema, print or through outdoor advertising. Outdoor advertising can not be switched off at certain times of the day, guaranteeing continued exposure for 13 to 17 year olds.

³³ Source: The CEASA Report; Advertising Expenditure in Main Media; year ended 31 December 2007

³⁴ Source: 'Fosters goes skyward for Carlton ad' B&T Tuesday 26 February 2008

A focus on free-to-air commercial television would not only result in an inefficient targeting of young people's exposure to alcohol advertising, it would greatly exacerbate the financial impact of further regulatory intervention on commercial free-to-air broadcasters. Market dynamics dictate that as advertising is restricted on one medium, the advertising expenditure redistributes to other, competing media, putting Free TV at a further disadvantage.

This predicted redistribution of advertising expenditure to other media highlights a further inefficiency in a commercial television-focussed approach. As advertising expenditure for alcohol products moves away from the more heavily regulated free-to-air television sector, there would naturally be an increased level of alcohol advertising on other mediums. This would mean that despite the restrictive approach to advertising on free-to-air television, there would be minimal decrease in alcohol advertising (and young people's exposure to that advertising) overall.

5.3.2 *Audience behaviour trends*

A focus on free-to-air commercial television is not only inconsistent with trends in advertising expenditure, it is also inconsistent with trends in audience behaviour.

In 2008 a range of entertainment and information technologies competes for viewers' attention. As well as the traditional media of free-to-air television, radio, newspapers and magazines, consumers now have access to the Internet, pay TV, DVDs, computer games, digital media players and mobile phones.

Children in particular are availing themselves of a wide range of alternative screen time activities increasingly in less regulated environments.

Younger children and teens are all watching considerably less television than they did several years ago. Even with the advent of dedicated children's channels on pay TV, the average time spent viewing television overall is down among children, while the average time spent viewing among adults has increased.³⁵

³⁵ Source: OzTAM; 5 city metro; 2001-2007

Attachment A

Commercial Television Industry Code of Practice July 2004 (Extract)

Commercials which Advertise Alcoholic Drinks

- 6.7 A commercial which is a “direct advertisement for alcoholic drinks” (as defined in Clause 6.11) may be broadcast:
- 6.7.1 only in M, MA or AV classification periods; or
 - 6.7.2 as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.
- 6.8 Notwithstanding Clause 6.7, a commercial which is a “direct advertisement for alcoholic drinks” may be broadcast as an accompaniment to the live broadcast of a sporting event if:
- 6.8.1 the sporting event is broadcast simultaneously across a number of licence areas; and
 - 6.8.2 Clause 6.7 permits direct advertisements for alcoholic drinks in the licence area in which the event is held or, if the event is held outside Australia, direct advertisements for alcoholic drinks are permitted in a majority of the metropolitan licence areas in which the event is simulcast.
- 6.9 A commercial which is a direct advertisement for an “alcoholic drink” or a “very low alcohol drink” (as both are defined in Clause 6.10) may not be broadcast during a C classification period, as defined in the Children’s Television Standards.
- 6.10 An “**alcoholic drink**” means any beer, wine, spirits, cider, or other spirituous or fermented drinks of an intoxicating nature, and is generally understood to refer to drinks of 1.15% or more alcohol by volume. The view of the Commonwealth Department of Health is that drinks of less than 1.15% alcohol by volume should be classified as “**very low alcohol**” drinks.
- 6.11 “**Direct advertisement for alcoholic drinks**” means a commercial broadcast by a licensee that draws the attention of the public, or a segment of it, to an alcoholic drink in a manner calculated to directly promote its purchase or use. This does not include the following, provided that their contents do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use:
- 6.11.1 a program sponsorship announcement on behalf of a brewing company or other liquor industry company;
 - 6.11.2 a commercial for a licensed restaurant; or
 - 6.11.3 a commercial for a company whose activities include the manufacture, distribution or sale of alcoholic drinks.

6.12 **“Live sporting event”** means:

- 6.12.1 live-to-air sporting broadcasts, including breaks immediately before and after the broadcast;
- 6.12.2 sporting broadcasts delayed for time zone reasons and broadcast as plausible “live”, without reformatting;
- 6.12.3 sporting broadcasts delayed in the licence area in which the event is being held pursuant to a requirement of the relevant sporting organisation (known in the industry as “delay against the gate”);
- 6.12.4 replay material where a scheduled live-to-air sporting broadcast has been temporarily suspended (e.g. during rain breaks in cricket coverage), provided that normal or stand-by programs have not been resumed.

6.13 **“Public holidays”** are those days proclaimed, Gazetted, or nominated in a statute as public holidays under the relevant State or Territory legislation. These holidays generally affect either an entire State or Territory (such as the various Queen’s Birthday holidays) or a particular city or region (such as Melbourne Cup Day in Melbourne).

- 6.13.1 Where a licence area covers areas in which different public holidays are observed, the station should schedule according to the public holidays in the area which contains the majority of the licence area population.

Attachment B

Children's Television Standards 2005 (Extract)

CTS 23 Advertising of Alcoholic Drinks

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

ATTACHMENT C

ALCOHOL BEVERAGES ADVERTISING CODE (Extract)

Preamble

Australasian Associated Brewers Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

Definitions

For the purpose of this Code –

adult means a person who is at least 18 years of age;

alcohol beverage includes any particular brand of alcohol beverage;

adolescent means a person aged 14-17 years inclusive;

Australian Alcohol Guidelines means the electronic document ‘Guidelines for everyone (1-3)’ published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

child means a person under 14 years of age; and

low alcohol beverage means an alcohol beverage which contains less than 3.8% alcohol/volume.

Advertisements for alcohol beverages must –

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage under-age drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

- iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Internet advertisements

The required standard for advertisements outlined in (a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.

Retail Advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible

serving of alcohol (which preclude the serving of alcohol to underage persons); and

- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and
- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

Third Parties

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

Public Education

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.