

## Additional questions on notice

### 1. What are the loopholes in the co-regulatory Commercial Television Industry Code of Practice?

The Commercial Television Industry Code of Practice (CTICP Code) is a co-regulatory code developed by the commercial television broadcasting industry in consultation with the Australian Communications and Media Authority pursuant to the *Broadcasting Services Act 1992*.<sup>1</sup>

The CTICP Code prevents alcohol advertisements on commercial free-to-air television between 5:00am and 8:30pm (other than between 12pm and 3pm on school days).<sup>2</sup> However, it has the following major gaps or loopholes which allow alcohol advertisements to reach children and young people under the age of 18:

1. It does not apply to catch-up or subscription (pay) television.<sup>3</sup>
2. It permits alcohol advertisements during sports programs or live sporting events on weekends (commencing at 6:00pm on Fridays)<sup>4</sup> and public holidays, which are watched by high numbers of children and adolescents.
3. It permits product placement of alcohol products in programs at any time.<sup>5</sup>
4. It allows alcohol program sponsorship announcements at any time.<sup>6</sup>

In addition, data show that very high numbers of children and young people under 18 watch television later than 8:30pm at night.<sup>7</sup>

The exemption in the CTICP Code allowing alcohol advertisements during sports programs and live sporting events in children's television viewing hours means that millions of children are exposed to alcohol advertising. The exemption is heavily exploited by the alcohol industry, with 49.5 per cent of all alcohol advertising shown during the broadcast of live sporting events.<sup>8</sup> An estimated cumulative audience of 26.9 million Australian children and adolescents watching Australia's major televised sporting codes, AFL, Cricket and NRL, are exposed to 51 million instances of alcohol advertising, with

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<sup>1</sup> The *Broadcasting Services Act 1992* provides that it is Parliament's intention that sections of the broadcasting industry should develop broadcasting codes of practice in consultation with the Australian Communications and Media Authority (s 123(1)), and that community attitudes to the portrayal of drugs in programs, including tobacco and alcohol, are to be taken into account (s 123(3)(d)).

<sup>2</sup> Clause 6.2 of the CTICP Code permits Commercials for Alcoholic Drinks during M and MA15+ classification zones (except between 5:00am and 6:00am and 7:30pm and 8:30pm).

<sup>3</sup> The co-regulatory *Australian Subscription Television and Radio Association Codes of Practice 2013*, which applies to subscription television, does not regulate alcohol advertising. It provides only that "The Licensee must take into account the intellectual and emotional maturity of the intended audience of the channel when scheduling advertisements".

<sup>4</sup> An amendment was introduced by the commercial television broadcasting industry in 2015 to extend the definition of Weekends in the CTICP Code, allowing alcohol advertisements to be shown during sports programs and events from 6:00pm on Fridays.

<sup>5</sup> The definition of 'Commercial' in clause 8 of the CTICP Code, 'Commercial means any advertising for a product, service, belief or course of action which is scheduled within a Program break or between Programs...', does not include product placement within programs.

<sup>6</sup> The definition of 'Commercials for Alcoholic Drinks' in clause 8 of the CTICP Code excludes 'Program sponsorship announcements which make no direct reference to the price of goods or services.'

<sup>7</sup> Australian Communications and Media Authority (2017). Children's television viewing and multi-screen behaviour. Analysis of 2015-16 OzTAM data and 2017 survey of parents, carers and guardians. Canberra: Australian Communications and Media Authority.

<sup>8</sup> VicHealth (2014). Alcohol and junk food advertising and promotion through sport: Research highlights. Melbourne: VicHealth

nearly half (47 per cent) of these broadcast during daytime programming between 6am and 8.30pm.<sup>9</sup>

Online and digital alcohol marketing is not regulated under legislation but is subject only to the industry-developed Alcohol Beverages Advertising (and Packaging) Code (ABAC Code). The ABAC Code includes some rules in relation to the content and placement of alcohol advertisements. However, it has been found to be ineffective for the following key reasons: the ABAC Code's provisions are narrow and exclude certain forms of advertising including sponsorship; not all alcohol advertisers subscribe to the ABAC scheme; the scheme is voluntary and there are no sanctions for non-compliance; and the scheme lacks independence, with the adjudicator heavily represented by the alcohol industry.<sup>10</sup>

## **2. What aspects of alcohol advertising need to be regulated?**

A new approach to regulating alcohol advertising is needed to ensure the protection of young people and other vulnerable groups, and to help create a broader environment and culture that supports women to have alcohol free pregnancies. The World Health Organization recommends comprehensive statutory controls on the content, volume and placement of alcohol marketing as one of its recommended 'best buys' – interventions judged to be most effective for reducing harm from alcohol harm.<sup>11</sup>

Children and young people are highly vulnerable to alcohol advertising. The more alcohol advertising children are exposed to, the younger the age they start using alcohol, and the more often and more heavily they drink.<sup>12</sup> A systematic review of thirteen longitudinal studies found a dose-response relationship between the volume of exposure to advertising and alcohol consumption in young people.<sup>13</sup> These early and continuous influences to consume alcohol increase the chances of young women establishing risky patterns of alcohol use that continue into their childbearing years, and help to shape a culture that does not support women to have alcohol free pregnancies.

Effective regulation is needed to significantly reduce children's and young people's exposure to alcohol advertising on television in Australia. Legislation should prevent all forms of alcohol advertising on free-to-air, subscription and catch up television before 9pm or later when high numbers of children and young people are watching. There should not be any exemption allowing alcohol advertising during sports programs or sporting events in children's viewing hours.

In the interim or as an alternative to legislation, early opportunities for action to reduce children and young people's exposure to television alcohol advertising include removing the exemption in the CTICP Code that allows alcohol advertisements during sports programming in times that children

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<sup>9</sup> Carr S, O'Brien K, Ferris J, Room R, Livingston M, Vandenberg B, Donovan RJ, Lynott D. (2016) Child and adolescent exposure to alcohol advertising in Australia's major televised sports. *Drug and Alcohol Review*, 35(4), 406-11.

<sup>10</sup> Reeve B (2018) Regulation of Alcohol Advertising in Australia: Does the ABAC Scheme Adequately Protect Young People from Marketing of Alcoholic Beverages? *QUT Law Review*, 18(1), 96-123.

<sup>11</sup> World Health Organization (2017). 'Best Buys' and Other Recommended Interventions for the Prevention and Control of Noncommunicable Diseases: Updated (2017) Appendix 3 of the Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020.

<sup>12</sup> Jernigan D, Noel J, Landon J, Thornton N & Lobstein T (2016). Alcohol marketing and youth alcohol consumption: a systematic review of longitudinal studies published since 2008, *Addiction*, vol 112 (Suppl 1), pp. 7-20; Anderson P, de Bruijn A, Angus K, Gordon R & Hastings G (2009) Impact of alcohol advertising and media exposure on adolescent alcohol use: A systematic review of longitudinal studies. *Alcohol and Alcoholism*, 44(3), 229-43; Smith LA & Foxcroft DR (2009) The effect of alcohol advertising and marketing on drinking behaviour in young people: Systematic review of prospective cohort studies. *BMC Public Health* (online), 9(51).

<sup>13</sup> Jernigan D, Noel J, Landon J, Thornton N & Lobstein T (2016) Alcohol marketing and youth alcohol consumption: a systematic review of longitudinal studies published since 2008. *Addiction*, 112 (1), 7-20.

would otherwise be protected, and extending the free-to-air television restrictions for alcohol advertising to apply to subscription and catch-up television services. In addition, the definition of Commercials for Alcoholic Drinks should be revised to include program sponsorship announcements and product placement in television programs.

There is also a need for effective, independent regulation to prevent alcohol advertisers deliberately or inadvertently targeting young people aged under 18 (including young women) and other vulnerable groups, such as high-risk drinkers. (An example of inadvertent targeting may be when someone clicks on alcohol advertisements or buys a lot of alcohol (because they are a dependent drinker), and then receives an increased volume of targeted alcohol advertisements because algorithms have identified the person as interested in that content.) Regulation should also reduce children and young people's exposure to online alcohol advertising.

The Australian Government should introduce legislation regulating online alcohol advertising, including the following controls:

- Time-based controls preventing alcohol advertising on digital platforms before 9pm at night or later, when high numbers of people younger than 18 years are online.
- Controls restricting alcohol advertising through social media platforms such as Instagram, Snapchat, Facebook and Twitter to accounts that are age-gated to limit followers to people who are aged 18 years or older.
- Controls preventing targeted online alcohol advertising to people younger than 18 years.
- An opt-in only system for targeted online alcohol advertising for people older than 18 years. This should give consumers the ability to opt-in to different uses of data, such as location data, data from tracking cookies or personal information.

If such restrictions are ineffective to protect children and other vulnerable groups, a complete ban on online alcohol advertising online should be considered, as is in place for tobacco advertising under the *Tobacco Advertising Prohibition Act 1992* (Cth).<sup>14</sup>

As a first step, the Australian Government could undertake a review of the extent and impact of online and social media advertising of alcohol, as well as effective regulatory approaches in relation to online tobacco advertising and in international jurisdictions.

At the State/Territory level, regulation is needed to reduce children and young people's exposure to outdoor alcohol advertising. State/Territory legislation should prohibit outdoor alcohol advertising on all public transport and public transport infrastructure, in proximity to schools, and at sports facilities used by children and young people. Outdoor advertising restrictions have been introduced in some jurisdictions under legislation and public transport contracts. For example, in Victoria the *Liquor Control Reform Act 1998* prohibits static alcohol advertising within 150 metres of schools, subject to some exceptions. Alcohol advertising on trams and trains is prevented under the Victorian Government's public transport contracts.

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<sup>14</sup> Section 15 of the *Tobacco Advertising Prohibition Act 1992* (Cth) prohibits the publication of a tobacco advertisement. Section 10 defines to *publish* a tobacco advertisement to include disseminating a tobacco advertisement by means of the internet.