



**Submission by
Free TV Australia Limited**

Senate Community Affairs Committee

Alcohol Toll Reduction Bill 2007

20 March 2008



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1	Executive Summary
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- 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.
- It is vital that any proposed further regulatory restriction on advertising is the most effective means of addressing a clearly identified problem.
- The Alcohol Toll Reduction Bill 2007 (the Bill) falls short in regards to this threshold issue.
- 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 9.00pm time slot and during weekend live sport.
- The proposed 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.
- The measures in the Bill are also predominantly focussed on free-to-air commercial television. This fails to recognise that the majority of alcohol advertising occurs outside of television and that young people have access to a broad range of entertainment platforms such as pay TV and the Internet, where advertising is significantly less regulated.
- The Bill's failure to take a consistent approach across media platforms makes it an ineffective means of targeting young people's exposure to alcohol advertising.

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 Alcohol Toll Reduction Bill 2007 (the Bill).

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.

However, it is vital that any proposed additional regulation of content on commercial free-to-air television, particularly if it relates to advertising content:

- is the most effective means of addressing a clearly identified problem; and
- is no more onerous than is necessary to address that problem and does not unfairly target the sector.

The Bill falls short in regards to both of these threshold issues.

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 2007, there were only four viewer complaints to broadcasters regarding the alcohol advertising timezone restrictions in the Commercial Television Industry Code of Practice, compared to 5932 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.

Before the current suite of regulatory restrictions is amended or expanded, 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.

In order to target children's exposure to alcohol advertising, the Bill proposes an extension of the existing time zone restrictions on alcohol advertising from the current 8.30pm to 5.00am limits, to an 9.00pm to 5.00am limit. The Bill would also remove the current exemption for live sport. However, television viewing data suggests that

¹ Source: FACTS/CTVA/Free TV Australia Annual Code of Practice Complaints Reports 2000-2007

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.

The measures in the Bill are also 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.

The Bill's proposed requirement for ACMA pre-approval of all alcohol advertisements prior to broadcast is also of significant concern. Alcohol advertisements are already subject to pre-approval against a significantly more detailed and extensive set of considerations than that provided for in the Bill. Pre-approval is undertaken by an expert committee with significant expertise and experience in this field. This in contrast to ACMA, who have no experience in pre-vetting advertisements. The most likely consequence of moving this process within government is to add an unnecessary level of bureaucratic intervention in the commercial broadcast media market, while ignoring other forms of media.

This Submission addresses these points in more detail and also provides comment on the drafting of the Bill and its impact on free-to-air television broadcasters. Free TV does not wish to comment on the proposed amendments to the *Food Standards Australia New Zealand Act 1991* to set requirements in relation to labelling of alcohol products.

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 peoples' 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*² (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.

² [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.³

- Out of 936 advertisements submitted for pre-vetting in 2006⁴, 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.⁵

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.⁶

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.⁷

³ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

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

⁵ Source: ABAC Adjudication Decisions 2006 - <http://www.abac.org.au/publications/adjudication-decisions/>

⁶ Source: ABAC Scheme Annual Report 2005

⁷ 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 The need for evidence of regulatory failure

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 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.

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 5932 Code of Practice complaints received by broadcasters between July 2000 and September 2007, only four related to a perceived error in the scheduling of alcohol advertisements.⁸ In each of these four 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 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

⁸ Source: FACTS/CTVA/Free TV Australia Annual Code of Practice Complaints Reports 2000-2007

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.⁹

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 2006¹⁰, only nine, or 2.7%, were complained against for reasons relating to appropriate promotion of alcohol.

⁹ Victorian Government Drugs and Crime Prevention Committee Inquiry into Strategies to Reduce Harmful Alcohol Consumption Final Report March 2006 page xxxi

¹⁰ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

5 The inefficiency of the proposed measures

As already discussed, an evidence-based case has not been established for any extension or amendment of the existing restrictions on alcohol advertising. Nevertheless, Free TV wishes to comment on the proposed measures in the Bill as currently drafted.

The provisions of the Bill which would impact directly on free-to-air television broadcasters are those relating to the extension of existing timezone restrictions for alcohol advertising, prohibiting alcohol advertising in weekend live sport and the requirement for ACMA to vet all advertisements prior to broadcast.

A review of available audience and demographic data suggests that the provisions in the Bill 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

Clause 2 of the Bill would amend the *Broadcasting Services Act 1992* to require ACMA to make program standards for commercial television broadcasting licensees in relation to alcohol advertising.

The Bill sets down minimum requirements for those program standards which would limit the broadcasting of alcohol advertisements to the period between 9.00pm to 5.00am each day of the week.

The practical effect of this clause would be to extend the current restrictions (put in place by the Commercial Television Industry Code of Practice), which limit the broadcasting of alcohol advertisements to the period between 8.30pm to 5.00am each day of the week (with an exemption for live sport on weekends and public holidays – refer to discussion below at 5.2)

The proposed extension of the existing timezone restrictions 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 this proposed measure 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.

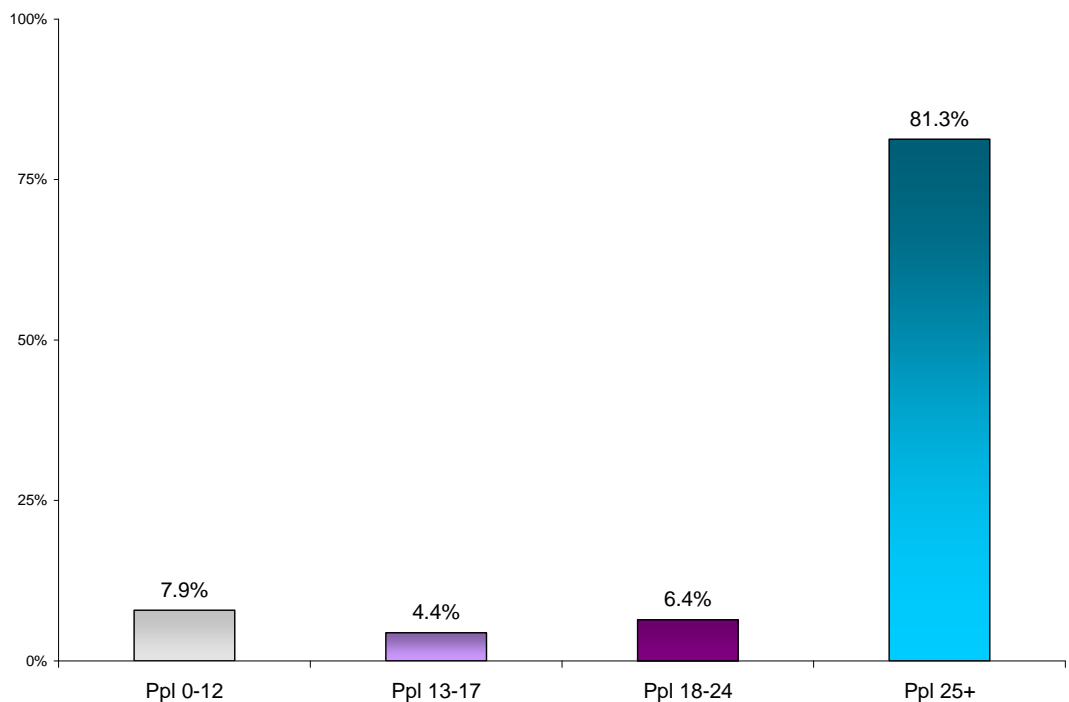
However, ratings and demographic data suggest that this is unlikely to be the case.

- 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 9.00pm, 13 to 17 year olds make up just 4.4 per cent of viewers.¹¹

¹¹ Source: OzTAM; 5 city metro; 2007 calendar year; total television; 8.30pm - 9.00pm; Ppl 13-17

- Viewers aged 18 to 24 only make up 6.4 per cent of viewers in this period.¹²
- Adults 25 and over make up the overwhelming majority of the viewing audience for this period at 81.3 per cent.¹³

Audience Composition - 8.30pm - 9.00pm



Source: OzTAM; 5 city metro; 2007 calendar year; total television; 8.30pm - 9.00pm

- 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.¹⁴
- Minute-by-minute viewing after 8.30pm shows that viewing by 13 to 17 year olds declines in the minutes after 8.30pm.¹⁵
- Of the small percentage of 13-17 year olds watching Free TV in this timeslot, 51.2% per cent are watching with an adult.¹⁶

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

¹² Source: OzTAM; 5 city metro; 2007 calendar year; total television; 8.30pm - 9.00pm; Ppl 18-24

¹³ Source: OzTAM; 5 city metro; 2007 calendar year; total television; 8.30pm - 9.00pm; Ppl 25+

¹⁴ Source: OzTAM; 5 city metro; based on 2007 calendar year.

¹⁵ Source: OzTAM; 5 city metro; 2030-2100; 2007 calendar year.

¹⁶ Source: OzTAM; 5 city metro; 2030-2100; 2007 calendar year.

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 9.00pm would be unduly restrictive on advertisers wanting to reach the large proportion of the audience that is adult viewers in prime time. Most 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.

5.2 Weekend live sport

Clause 2 of the Bill would amend the *Broadcasting Services Act 1992* to provide that a commercial television industry code of practice which is not consistent with the Bill would become void. The practical effect of this would be to remove the current provisions in the Commercial Television Industry Code of Practice which allow alcohol advertisements during live sport on weekends and public holidays, as an exemption to the restriction on alcohol advertising before 8.30pm.

Freely available coverage of sporting events is of great importance to audiences and to the ongoing viability of commercial free-to-air television broadcasters. The proposed restriction 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:

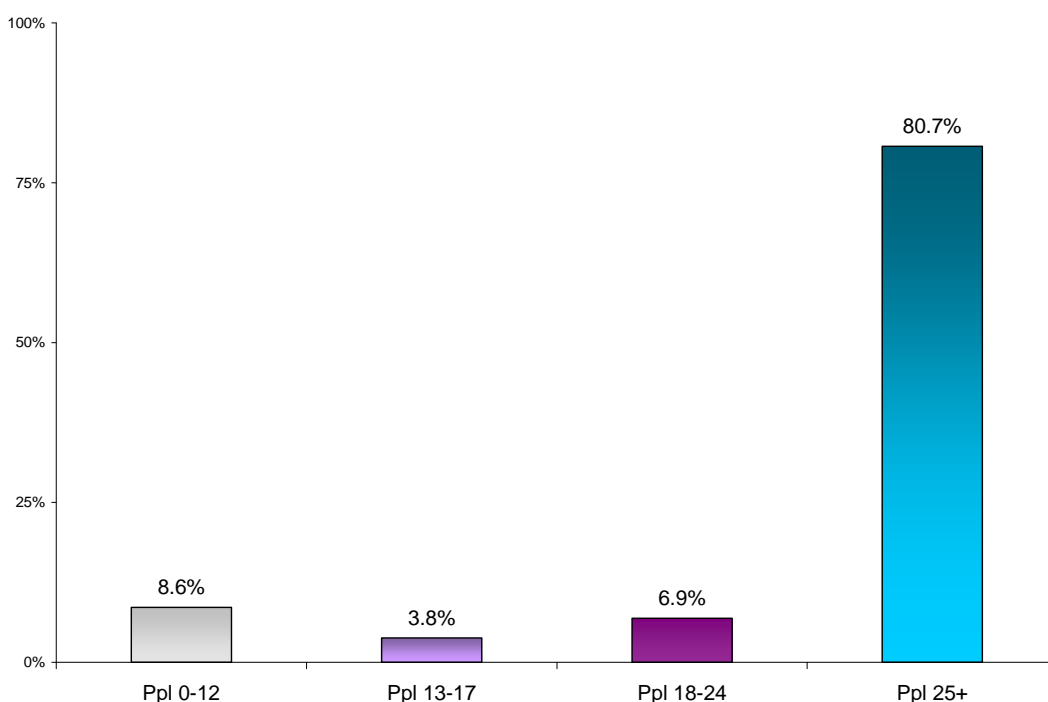
- Adolescents between the age of 13 and 17 make up just 3.8 per cent of the total viewing audience for weekend sport programs;¹⁷
- 18 to 24 year olds make up 6.9% of Free TV's audience for these programs.¹⁸
- Adults over 25 make up a clear majority of the audience at 80.7%.¹⁹

¹⁷ Source: OzTAM; 5 city metro; 2007 calendar year (Sat & Sun only); 05:30 – 20:30; based on all programs classified as sports

¹⁸ Source: OzTAM; 5 city metro; 2007 calendar year (Sat & Sun only); 05:30 – 20:30; Free TV channels only; based on all programs classified as sports.

¹⁹ Source: OzTAM; 5 city metro; 2007 calendar year (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; 2007 calendar year; Free TV 0530am - 0830pm

- 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 1.9 per cent.²⁰
- Only five of the top 50 programs for the 13 to 17 year old age group in 2007 were sporting events, and these were the marquee events of the AFL Grand Final and Rugby League State of Origin.²¹

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.

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

Despite the objects of the Bill being to "limit the times at which alcohol products are advertised on radio and television", the Bill as currently drafted would only apply increased scheduling restrictions on commercial free-to-air television.

²⁰ Source: OzTAM; 5 city metro; 2007 calendar year (Sat & Sun only); 05:30 – 20:30; Free TV channels only.

²¹ Source: OzTAM; 5 city metro; 2007 calendar year.

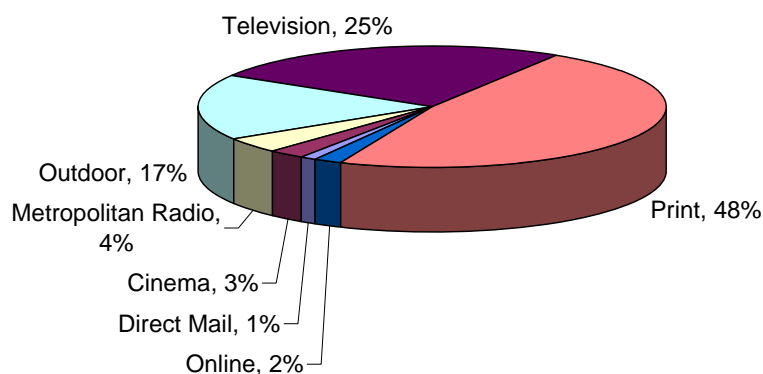
This is because proposed new section 122A of the *Broadcasting Services Act 1992*, the only part of the Bill which addresses scheduling restrictions, is worded to specifically apply to commercial television broadcasting licensees. There is no mention of program standards for commercial radio or pay TV.

An analysis of recent trends in advertising expenditure and audience behaviour suggests this is 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. Yet the Bill as drafted does not take into account print advertising at all despite it accounting for the majority of all alcohol advertising.

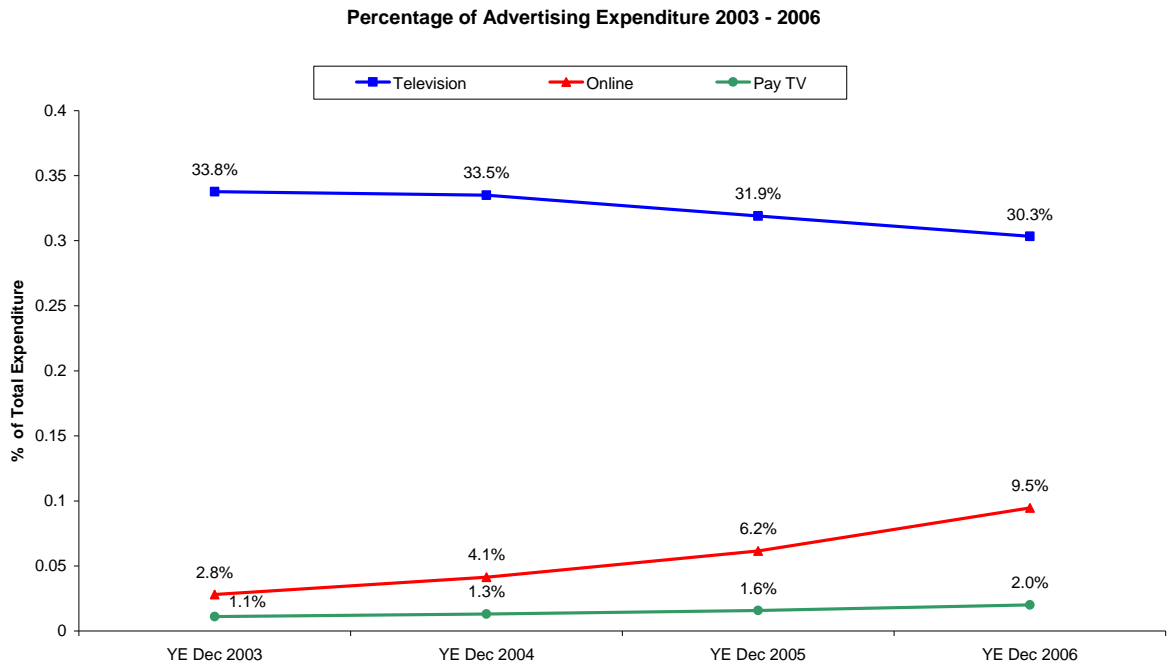
Combined Retail and Product Advertising



Source: Nielsen 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 billion in 2006, an increase of 324 per cent.



Source: The Ceasa Report - Advertising Expenditure in Main Media; 2007 data yet to be released.

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.²²

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

Yet the Bill as drafted does not address online advertising of alcohol promotion at all. This represents a significant gap in the approach taken in the Bill.

The Bill will also 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.

Not only does the Bill's focus on free-to-air commercial television result in an inefficient targeting of young people's exposure to alcohol advertising, it would greatly exacerbate the financial impact of the Bill on Free TV. Market dynamics dictate that as advertising is restricted

²² Source: 'Fosters goes skyward for Carlton ad' B&T Tuesday 26 February 2008

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 the Bill's 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

The Bill's 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.²³

5.4 Pre-approval of advertisements by ACMA

Clause 1 of Schedule 1 of the Bill would amend the *Australian Communications and Media Authority Act 2005* to establish a new Division within ACMA. The role of the Division would be to approve the content of alcohol advertisements before they are broadcast. The Bill then creates obligations on radio and television broadcasters to not screen any advertisement for alcohol products unless the advertisements have been pre-approved by the proposed new Division within ACMA.

This proposal would result in an unreasonable burden on broadcasters that wouldn't apply to advertising on non-broadcast platforms.

The well-established and fully funded AAPS system has significant and extensive expertise in the consideration of advertisement content. ACMA, on the other hand, is primarily skilled in administering regulatory frameworks and lacks the particular expertise required for the pre-assessment of advertisements.

²³ Source: OzTAM; 5 city metro; 2001-2007

The existing processes for screening advertisements are working well. The proportion of alcohol advertisements which are the subject of complaints in relation to their alcohol content (ie, as opposed to issues of taste and decency), has been consistently low. The current pre-vetting system is operating effectively to ensure advertisements are consistent with the community safeguard provisions of the ABAC Scheme.

Commercials Advice (CAD), which provides classification services for television advertisements, will not clear an alcohol advertisement for broadcast unless it has first received clearance through the AAPS pre-vetting system. CAD also reviews the advertisements in terms of ensuring the scheduling of those advertisements is consistent with regulatory controls.

The Bill fails to set down any detailed criteria for ACMA to have regard to when considering advertisements. Clause 2 of Schedule 1 to the Bill would set down a few high-level considerations in relation to alcohol advertisements on commercial television.

Compared to the current, fairly detailed approach in the ABAC Scheme, this approach poses considerable uncertainty for advertisers and commercial television broadcasters. It should also be noted that the minimal guidance the Bill would provide ACMA (requiring that advertisements not have strong or evident appeal to children, and that advertisements not link alcohol to personal, business, social, sporting, sexual or other success in life), are already covered by the ABAC Scheme.

The coverage of these matters in the ABAC Scheme is far more comprehensive and detailed. The ABAC Scheme also goes on to address important content safeguards not mentioned in the Bill, such as:

- a requirement that advertisements not encourage excessive or underage drinking;
- a requirement that advertisements not promote offensive behaviour;
- a requirement that advertisements not suggest alcohol can contribute to a significant change in mood;
- a requirement that advertisements not depict alcohol consumption in connection with hazardous activities (including driving); and
- a requirement that advertisements not encourage consumption that is inconsistent with the Australia Alcohol Guidelines issued by the National Health and Medical Research Council (NHMRC).

There is no certainty as to the future of these important restrictions on the content of alcohol advertisements for broadcast on television.

More alarmingly, as currently drafted, the Bill only provides guidance for ACMA in assessing advertisements for broadcast on commercial free-to-air television (and as already noted, that guidance is fairly minimal).

Whilst the Bill sets down requirements for all broadcasters to have advertisements pre-approved by ACMA, the only mention of content criteria in the Bill is in proposed new section 122A, which as currently drafted would only apply to commercial television broadcasters.

The Bill provides no clarification of what advertisements would be approved by ACMA for broadcast on commercial radio, pay TV or narrowcast services. As already noted, there is a tendency for advertising expenditure to trend towards lesser regulated platforms. The lack of clear guidance in the Bill on advertising content for radio and pay TV could contribute further to this trend.

It is also not clear from the Bill whether there would be any provision for an advertiser or broadcaster to request a review of an ACMA pre-approval decision.

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.