



Foundation for Alcohol  
Research & Education



**FARE's Submission on the Draft report:  
Alcohol advertising: the effectiveness of  
current regulatory codes in addressing  
community concerns**

For the  
Australian National Preventive Health Agency

April 2014



## About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent charitable organisation working to prevent the harmful use of alcohol in Australia. Our mission is to help Australia change the way it drinks by:

- helping communities to prevent and reduce alcohol-related harms;
- building the case for alcohol policy reform; and
- engaging Australians in conversations about our drinking culture.

FARE is guided by the [World Health Organisation's Global Strategy to Reduce the Harmful Use of Alcohol](#)<sup>[1]</sup> for addressing alcohol-related harms through population-based strategies, problem-directed policies, and direct interventions.

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<sup>[1]</sup> World Health Organisation (2010). *Global strategy to reduce the harmful use of alcohol*. Geneva: World Health Organization.



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## Summary

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to respond to the Australian National Preventive Health Agency's (ANPHA) *Alcohol advertising: The effectiveness of current regulatory codes in addressing community concern, Draft report* (Draft report).


FARE commends ANPHA for acknowledging that the current regulatory framework for alcohol advertising in Australia is failing to protect children and adolescents from alcohol advertising. Several Government reviews<sup>1,2</sup> have highlighted the deficiencies of the current self-regulated scheme, the Alcohol Beverages Advertising (and Packaging) Code (ABAC). These reviews have concluded that regulation by Government should be sought if the alcohol industry fails to address the shortcomings of the current system. The evidence presented in the Draft report demonstrates that this threshold has been well and truly reached and further regulatory action is required.

The Draft report finds children and adolescents are exposed to significant amounts of alcohol advertising and that this exposure influences young people's drinking intentions and behaviours.<sup>3,4,5</sup> Put simply, the more alcohol advertising that young people are exposed to, the earlier they will start to consume alcohol, and the more they will consume if they already drink.

The Draft report also recognises that the ABAC was established over twenty years ago when the media structure was less diverse and sophisticated than it is today. Australians are now subject to alcohol advertising through television, radio, newspapers, magazines, billboards, merchandising and sponsorship of sporting and cultural events. They also receive alcohol marketing through the internet, on mobile phones and on social media platforms such as Facebook, YouTube and Twitter. This deluge is overwhelming and unrelenting.

The regulation of advertising in Australia occurs through a myriad of industry codes with the ABAC having responsibility for the 'content' of alcohol advertisements. Other industry codes attempt to cover the 'placement' of alcohol advertising through specific provisions or rules that advertisers must comply with when advertising alcohol. These codes include the:

- Advertising Standards Bureau's (ASB) Code of Practice;
- Australian Association of National Advertisers' (AANA) Code of Ethics;
- AANA's Code for Advertising to Children;
- AANA's Food and Beverages Advertising and Marketing Communications Code;
- Outdoor Media Association's (OMA) Code of Ethics - Alcohol Advertising Code;
- Australian Television and Radio Association's (ASTRA) Code of Practice;
- ASTRA's Commercial Radio Code of Practice;
- Australian Communications and Media Authority (ACMA), which administers the *Broadcasting Services Act 1992* as well as the *Telecommunications Act 1997*, the *Radio Communications Act 1992*; and
- Australian Competition and Consumer Commission (ACCC), which administers the *Competition and Consumer Act 2010*.



This complex arrangement of regulatory codes means that there is no one central body with responsibility for the content and placement of alcohol advertising. This is a significant flaw in the current system and has been highlighted by previous reviews. These failings are noted in the Draft report and ANPHA has proposed changes to the ABAC, including seeking authorisation for the code from the ACCC.

FARE commends ANPHA for proposing revisions to the way that the ABAC is regulated and for examining multiple options for improving regulation. However when examining the proposal to have the ABAC authorised by the ACCC, several policy questions remain unanswered, including whether the ABAC will be improved enough before authorisation to create a Code that will result in improvements in alcohol advertising regulation. One flaw of this proposed model is that the alcohol industry would be required to implement significant changes to their existing Code before authorisation, as this is something they have been unable and unwilling to do since the Code's commencement in 1998.


Further investigation from ANPHA is required to determine the feasibility of this approach. If this investigation does not conclude that the ACCC authorised Code will improve regulation and better protect children and young people from alcohol advertising, independent regulation of alcohol advertising is the only other alternative.

This submission responds to recommendations in the Draft report and includes information on policies that were not included in the Draft report for consideration by ANPHA.

# Recommendations

1. That ANPHA further examines the option to have the ABAC authorised by the ACCC as specified in [Recommendation 9](#) of the Draft report.
2. That ANPHA's examination of the option to have the ABAC authorised by the ACCC include an assessment of the feasibility of the ABAC being substantially improved prior to seeking authorisation by the ACCC. These improvements should include:
  - Coverage of all alcohol advertisements regardless of the advertiser or type of advertisement;
  - Coverage of the placement, timing and context of alcohol advertisements;
  - The addition of meaningful sanctions for breaches of the ABAC; and
  - The enforcement of sanctions for breaches of the ABAC.
3. That ANPHA's final report recommends that independent regulation of alcohol advertising be introduced if ANPHA cannot conclude that the option to have the ABAC authorised by the ACCC will adequately address the issues raised in [Recommendation 9](#) of the Draft report.
4. That ANPHA's final report recommends that independent regulation be introduced if the ABAC fails to meet the ACCC authorisation standards.
5. That ANPHA's final report includes [Recommendations 9.1, 9.2, 9.8 and 9.10](#) from the Draft report. A one year timeframe should also be specified for the introduction of these changes to the ABAC.
6. That ANPHA's final report recommends that independent regulation be sought if the governance conditions specified in [Recommendations 9.1, 9.2, 9.8 and 9.10](#) of the Draft report are not met.
7. That ANPHA's final report include a recommendation that the alcohol marketing regulatory code explicitly address the volume, timing and targeting of alcohol advertisements.
8. That ANPHA's final report include a recommendation that alcohol advertising controls include all forms of advertising, including television, radio, print, and cinemas, and product placement in movies and music videos, on sporting team uniforms, and sporting grounds, at cultural events, in branded merchandise and point of sale promotions in retail spaces and pub/bars.
9. That ANPHA's final report includes specifications on the kinds of information alcohol brands can collect on consumers.
10. That ANPHA's final report includes guidance on alcohol-branded merchandise as per [Recommendation 6](#) of the Draft report.
11. That ANPHA's final report include a recommendation on an appeals process as part of the regulatory code for alcohol advertising as part of [Recommendation 9.6](#) of the Draft report.
12. That ANPHA's final report provide guidance, as per [Recommendation 9.8 and 9.9](#) of the Draft report on the ABAC adjudication process to ensure the advertisements comply with the spirit of the Code and advertisements with strong or evident appeal to children or adolescents be found to be in breach of the Code, irrespective of whether the marketing has appeal to adults, or deemed not to be directed to children.
13. That ANPHA's final report outlines the new provisions, as per [Recommendation 9.11](#) of the Draft report on matters that appeal to children, particularly heroes; cartoon characters, animations and use of childhood motifs or themes; and prohibits naming and packaging that could be confused with confectionary or soft drinks.
14. That ANPHA's final report includes a recommendation to remove the exemption for free-to-air television that allows alcohol advertising before 8.30pm as an accompaniment to live sport broadcasts on public holidays and weekends, as outlined in [Recommendation 1](#) of the Draft report.
15. That ANPHA's final report amends [Recommendation 1](#) of the Draft report to specify that ACMA be instructed to remove the exemption that allows the broadcasting of alcohol advertising on weekdays from 12noon to 3pm on weekdays.

16. That ANPHA's final report amends Recommendation 2 of the Draft report to specify that ACMA be instructed to amend the Australian Subscription Television Broadcast Code of Practice to restrict advertising of alcohol products on subscription television before 8.30pm and after 5.00am.
17. That ANPHA's final report amends Recommendation 3 of the Draft report to restrict alcohol advertising in cinemas before 8.30pm and after 5.00am and this recommendation be extended to restrict alcohol advertising in movies that are rated G or PG.
18. That ANPHA's final report amends Recommendation 3 of the Draft report to remove references to voluntary arrangements being established.
19. That ANPHA further explores the regulatory options available for cinema advertising within the ACMA and/or the ACCC as outlined in Recommendation 3 of the Draft report, to determine the likelihood of these models being effective.
20. That ANPHA propose independent regulation of all alcohol advertising under one regulatory structure if it cannot confidently recommend that other regulatory models will result in effective regulation.
21. That ANPHA's final report further examines the proposal of ACCC authorisation of the OMA as outlined in Recommendation 4 of the Draft report to determine the likelihood of this model being effective.
22. That ANPHA proposes independent regulation of all alcohol advertising under one regulatory structure if it cannot confidently show that other regulatory models will result in effective regulation.
23. That ANPHA's final report includes a recommendation that the ACCC and ASB conduct and publish compliance surveys of outdoor alcohol advertising on an annual basis, as per the recommendation from the House of Representatives Social Policy and Legal Affairs Inquiry into the regulation of billboard and outdoor media (Outdoor Advertising Inquiry) in 2011.
24. That ANPHA's final report amends Recommendation 5 of the Draft report to increase the distance which alcohol advertising is allowed near schools from 150m to 500m and that any reference to the 'sight line of a primary or secondary school' be removed from the regulatory standards.
25. That ANPHA's final report recommends a phase out of alcohol sponsorship of sport and cultural events.
26. That ANPHA's final report includes a recommendation that ANPHA's Community Sponsorship Fund be extended through an increase in alcohol taxation to enable the phasing out of alcohol sponsorship at sporting and cultural events.
27. That ANPHA's final report amend Recommendations 9.3 and 9.7 of the Draft report to compel the alcohol industry to report their advertising practices under a reporting framework to be established by the Government.
28. That ANPHA's final report in Recommendation 9.4 of the Draft report specifies how increased awareness of ABAC will be undertaken and the mechanisms for research.
29. That ANPHA in its final report include a recommendation to introduce counter-advertising policies to ensure that the community receives clear and consistent messaging about risk associated with alcohol consumption from an independent source.
30. That ANPHA's final report recommends that State and Territory Liquor Licensing legislation prohibit and restrict the harmful and irresponsible promotion of liquor in their jurisdictions, where these legislative arrangements do not currently exist.
31. That ANPHA's final report recommends that State and Territory Liquor Acts (where these do not currently exist), introduce criteria for promotions that are considered 'harmful' or 'irresponsible'. The criteria should cover the nature of the promotion and how it may encourage liquor consumption,



promotional price of the alcohol product, duration of the promotion, implications of the promotion for public safety and amenity and the exposure of children to the promotion.

32. That ANPHA's final report recommends that State and Territory Ministers with responsibility for alcohol control are granted the power to have active promotions deemed to be harmful or irresponsible discontinued or removed at their discretion, where these do not currently exist.
33. That ANPHA's final report recommends that Liquor Promotion Regulations be introduced or strengthened under State and Territory Liquor Acts to address the following:
  - promotions conducted at on and off-licence premises with equal enforcement;
  - declare 'Shopper docket' (liquor promotion vouchers on the receipts for purchases) a prohibited promotional activity;
  - prohibit point of sale promotional materials for liquor (e.g. 'happy hours', free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) from being displayed on and around licensed premises where minors are likely to be present; and
  - prohibit alcohol promotions from being placed on State and Local Government property.



# Response to the Draft report recommendations

FARE has provided comment on all of the recommendations made in the Draft report. These comments include a brief response and recommendations for ANPHA in forming its final report. Further information and evidence to support FARE's response is also provided. The ANPHA recommendations included in the text below are verbatim.

## Alcohol advertising regulation

### **Recommendation 9:**

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

### **Recommendation 9.12**

As part of the code review, examine alternatives for an effective range and hierarchy of sanctions for enforcement of the ABAC Code decisions including the options of public lists of firms breaching the code and the nature of the breach, adverse publicity orders (published corrections), financial penalties, and recalls for any products found to be in breach of the packaging and naming provisions of the code.

### **FARE's response:**

FARE supports further examination by ANPHA of the proposal that the ABAC seek authorisation from the ACCC as specified in [Recommendation 9](#) of the Draft report. This support is qualified by a number significant concerns being satisfied including producing reasonable evidence that seeking authorisation from the ACCC will result in more effective regulation and greater protection of children and young people from alcohol advertising. If this cannot be demonstrated, independent regulation of alcohol advertising should be sought.

FARE supports the implementation effective range and hierarchy of sanctions to enforce the ABAC as specified in [Recommendation 9.12](#). FARE stresses that these sanctions need to be sufficient enough to dissuade the alcohol industry from breaching the code.

### **FARE's recommendations:**

1. That ANPHA further examines the option to have the ABAC authorised by the ACCC as specified in [Recommendation 9](#) of the Draft report.
2. That ANPHA's examination of the option to have the ABAC authorised by the ACCC include an assessment of the feasibility of the ABAC being substantially improved prior to seeking authorisation by the ACCC. These improvements should include:
  - Coverage of all alcohol advertisements regardless of the advertiser or type of advertisement;
  - Coverage of the placement, timing and context of alcohol advertisements;
  - The addition of meaningful sanctions for breaches of the ABAC; and
  - The enforcement of sanctions for breaches of the ABAC.
3. That ANPHA's final report recommends that independent regulation of alcohol advertising be introduced if ANPHA cannot conclude that the option to have the ABAC authorised by the ACCC will adequately address the issues raised in [Recommendation 9](#) of the Draft report.
4. That ANPHA's final report recommends that independent regulation be introduced if the ABAC fails to meet the ACCC authorisation standards.

## Current situation

Alcohol advertising in Australia is predominantly 'regulated' under the Alcohol Beverages Advertising (and Packaging) Code (ABAC). The ABAC has existed since 1998 and has not been changed or updated apart from slight modifications in 2004 following a review by the National Committee for the Review of Alcohol Advertising (NCRAA)<sup>6</sup> and subsequent review by the Ministerial Council on Drug Strategy (MCDS) in 2009.<sup>7</sup>

The Draft report recommends seeking authorisation from the Australian Competition and Consumer Commission (ACCC) for the ABAC. Authorisation by the ACCC allows signatories of voluntary codes to impose standards of behaviour that reduce competition between them. Authorisation also provides statutory protection from legal action for those not complying with the *Competition and Consumer Act 2010*.<sup>9</sup> The process of authorisation includes a public consultation on the voluntary code and testing of the public benefit. Public benefit recognises that in certain circumstances it is in the public's interest to restrict competition between signatories in order to enhance the welfare of the population.<sup>9</sup> However if a voluntary code fails to meet the standards of authorisation there are no sanctions and there is no impetus to implement any changes to the code.


The ABAC currently has no sanctions or repercussions if alcohol producers and distributors decide not to be part of the scheme or decide to not acknowledge the judgments passed down by the ABAC. This means that the ABAC has had little to no influence on the advertising behaviour of the alcohol industry.

## Evidence

There are many flaws in the current alcohol advertising 'regulation' system, namely:

- The ABAC does not cover the whole alcohol industry, as the system is voluntary;
- The ABAC does not have the authority to penalise code breaches;
- On the rare occasion that a complaint is upheld, the advertiser responsible has no legal imperative to modify or remove the advertisements;
- The ABAC only deals with the content of advertisements, not the placement. Placement issues are handled under other codes but not in a consistent manner;
- The ABAC fails to cover other avenues of alcohol advertising such as event sponsorship, or product placement (e.g. in music videos);
- The ABAC does not effectively address new forms of media, most notably social media, which is a rapidly growing and highly accessible avenue for alcohol advertising;<sup>10</sup>
- The ABAC process is entirely contingent on members of the general public making a complaint. This is problematic because many may not have the sufficient motivation, confidence and awareness required to engage with the complaints system;<sup>11</sup> and
- The ABAC pre-vetting system is not compulsory.<sup>12</sup>

FARE has provided comment on all of the recommendations made in the Draft report. These comments include a brief response and recommendations for ANPHA in forming its final report. Further information and evidence to support FARE's response is also provided. The ANPHA recommendations included in the text below are included verbatim.



In 2003 the ACCC outlined essential elements for voluntary industry codes to be effective (outlined in full in Appendix A).<sup>13</sup> When the ABAC is mapped against these key elements it is clear that the code fails to meet these standards. In particular the ABAC fails to meet the following elements:

- Having clear administration;
- Being transparent;
- Having adequate industry coverage;
- Having an effective complaints procedures;
- Having sanctions for non-compliance; and
- Low awareness of the code.

In addition the alcohol industry<sup>1</sup> has previously sought authorisation of the packaging and naming parts of the ABAC in 2007. In this case the ACCC authorised the industry applicants to operate a Retailer Alert Scheme. This scheme would have allowed retailers with legal protection avoid ordering products that did not comply with the packaging and naming provisions in the ABAC. However the authorisation was conditional on the alcohol industry applying these conditions to all brands including older brands that might also breach the ABAC, not just brands 'new' to the market.<sup>14</sup> Due to this condition, the alcohol industry has never implemented the Retailer Alert Scheme and has not applied for authorisation since.

## FARE position

FARE in its previous submission to ANPHA outlined five principles, based on the existing evidence-base for effective alcohol advertising and sponsorship policies. These are:


1. Alcohol marketing control policies must aim to reduce the overall volume of alcohol advertising.
2. Alcohol marketing control policies must ensure that activities are not targeted at young people and are not in places where children and young people are present.
3. Alcohol marketing control policies must cover all communication formats including advertising, sponsorship, and print and digital, including social media.
4. Alcohol marketing must be independently regulated as self-regulation has consistently been found to be ineffective.
5. The alcohol industry should be required to report their annual expenditure on alcohol marketing activities to Government to inform future policy directions.

The Draft report does not adequately demonstrate how seeking authorisation from the ACCC for the ABAC will result in improvements in the current regulatory environment. As the option is currently presented, FARE is also not convinced that the ACCC authorisation of the ABAC will result in improvements in regulation and in the protection of young people from alcohol advertising.

In particular FARE is concerned that ACCC authorisation may result in a perverse situation whereby the ABAC code is 'condoned' but recommendations are not necessarily implemented (as evidenced by the Retailer Alert Scheme).

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<sup>1</sup> This included the Australian Associated Brewers Inc, Australian Hotels Association, Australian Liquor Stores Association, Clubs Australia, Distilled Spirits Industry Council of Australia Inc, Lion Nathan Limited, Liquor Merchants Association of Australia and Winemakers' Federation of Australia.



FARE recommends that ANPHA further examine the option of authorisation from the ACCC for the ABAC and ensure that this regulatory model results in:

- Coverage of all alcohol advertisements regardless of the advertiser or type of advertisement;
- Coverage of the placement, timing and context of alcohol advertisements;
- The addition of meaningful sanctions for breaches of the ABAC; and
- The enforcement of sanctions for breaches of the ABAC.

An alternative approach to seeking ACCC authorisation is to independently regulate alcohol advertising in Australia. In order to achieve this, a new Commonwealth Act could be introduced that outlines the standards for alcohol advertising that adequately protects children and adolescents. The Department of Health could administer this Act, with enforcement to be undertaken by the ACCC, in collaboration with the State and Territory Fair Trading agencies.

## Governance of alcohol advertising regulation

### **Recommendation 9.1**

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

### **Recommendation 9.2**

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

### **Recommendation 9.5**

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

### **Recommendation 9.8**

Review and revise the ABAC Code adjudication processes to enable any Adjudication Panel Member to raise any potential breach of the Code when examining a complaint irrespective of whether that matter was directly raised by the complainant.

### **Recommendation 9.10**

Review and revise the ABAC Guidance documents to reflect to the alcohol industry and marketing communication stakeholders the appropriate guidance in relation to Code Part 1b) and clarify expectations for appropriate content.

### **FARE's response**

FARE supports [Recommendations 9.1, 9.2, 9.5, 9.8 and 9.10](#) to improve the governance of the ABAC. However, FARE's support is conditional on further investigation of the ACCC process being perused. If these improvements cannot be implemented within one year, then independent regulation of alcohol advertising should be sought.

## FARE's recommendations

These recommendations are dependent on ANPHA's assessment of the feasibility of the ABAC being substantially improved prior to seeking authorisation from the ACCC and if this is not possible independent regulation should be recommended.

5. That ANPHA's final report includes Recommendations 9.1, 9.2, 9.8 and 9.10 from the Draft report. A one year timeframe should also be specified for the introduction of these changes to the ABAC.
6. That ANPHA's final report recommends that independent regulation be sought if the governance conditions specified in Recommendations 9.1, 9.2, 9.8 and 9.10 of the Draft report are not met.

## Current situation

The ABAC is governed by a Board and a Management Committee, as well as a separate Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel (the Adjudication Panel).

The Management Committee is made up of members of the Brewers Association of Australia and New Zealand Incorporated (Brewers Association), the Distilled Spirits Industry Council of Australia Incorporated (DSICA) and the Winemakers Federation of Australia Ltd (WFA). The role of Chair of the Management Committee rotates among these three organisations. There is also a representative from the Communications Council Limited and a government representative.

The ABAC also has a separate Board. However it is unclear how the role of Board differs from the Management Committee. It is assumed that the board is made up of representatives from the industry bodies listed above. The current ABAC Rules and Procedures document outlines that "*an Independent chair may be appointed to the Management Committee by the Directors of the ABAC Scheme Ltd, who have been appointed by the members that fund the appointment.*"<sup>15</sup> The ability for the ABAC to have an independent chair was first introduced in 2010 but this option has yet to be taken up.

Complaints about alcohol advertisements or packaging are initially lodged with the Advertising Standards Bureau (ASB). If the complaint relates to the content<sup>2</sup> of the advert this is sent to the ABAC and then to the Chief Adjudicator. The Chief Adjudicator refers the complaint to the full ABAC Adjudication Panel for determination.

The Adjudication Panel which assesses the complaints is a three member panel; with one member having public health expertise. If the panel upholds the complaint, the advertiser in question is informed of the determination and must advise the panel within five business days as to whether they agree to modify the advertisement or discontinue its use.<sup>22</sup>

The ABAC also provides advertisers with a voluntary service to 'pre-vet' advertisements prior to public release. The advertisements are assessed by the ABAC Management Committee and funded on a user pays basis. However wine products are currently not subject to the same pre-vetting standards as other alcohol products.

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<sup>2</sup> If a complaint raises issues under both the ABAC and the AANA Code of Ethics, then the ABAC Adjudication Panel considers content issues and the ASB considers the issues under AANA's Code of Ethics.



## Evidence

The only major review of the ABAC that has occurred took place in 2003 by the National Committee for the Review of Alcohol Advertising (NCRAA), appointed by the Ministerial Council on Drug Strategy (MCDS). Until this review the alcohol industry had widely promoted that its self-regulation system was ‘world’s best practice’. However, the NCRAA review found substantial flaws with the ABAC, including that the:


- System did not address public health concerns about alcohol advertising and use;
- General public is largely unaware of the complaint resolution system and, in particular, how to make complaints;
- System lacked transparency, particularly in reporting of how complaints are adjudicated and the outcomes of those complaints;
- Current system does not apply to all forms of advertising; and
- Effectiveness of the current system is compromised by the amount of time taken to resolve complaints.<sup>1</sup>

Even though the NCRAA review was a damning account of industry failure, MCDS allowed the ABAC to continue by making 25 recommendations for its improvement. MCDS also warned that *“should industry fail to implement the recommendations contained in this report, other options such as regulation should be considered.”*<sup>16</sup> The recommendations made by MCDS included that:

- The ASB continue to increase the transparency of the complaints process to the general public, and to make clear that alcohol advertisements subject to complaints will also be considered under the ABAC Scheme;
- The Management Committee ensures that all smaller industry members become signatories to the ABAC;
- At least one member of the Adjudication Panel be a public health expert nominated by the MCDS; and that the Management Committee include one Government representative nominated by the MCDS;
- The Management Committee provide an annual report to the MCDS on the ABAC operations, adjudications and potential for improvement in the process; and
- All alcohol advertising in the broadcast media, billboards, other outdoor campaigns and Australian internet sites advertising alcohol products be subject to pre-vetting.<sup>17</sup>

However, public health experts describe the performance of the ABAC ‘post-review’ as ‘disappointing.’<sup>18</sup> For example the NCRAA review considered that public awareness of the ABAC was crucial, but advertising the ABAC through a media campaign was rejected by the industry. Instead a website was created to publicise the code and report on its processes. The website was not established until August 2007, three years after the NCRAA review. Only now in March 2014 has the ABAC decided to commence a television advertising campaign to raise awareness about the ABAC.<sup>19</sup> The extent of this campaign is unknown.





The current system has also been criticised for its lack of independence from the advertising industry and its byzantine structure with numerous bodies lacking clearly defined responsibilities. Recommendations from public health experts on how to improve the governance of alcohol advertising include:

1. An independent panel free from the influence of the alcohol and advertising industries;
2. More transparent processes as to how advertisements are assessed and judgements made;
3. A more easily understood, accessible and quick complaints system;
4. Independent and effective monitoring; and
5. Effective sanctions such as the temporary banning of advertising activities, revocation of brand or product licences, and heavy financial penalties to ensure the regulatory system has power and credibility.<sup>20</sup>

## FARE position

FARE supports the recommendations to improve the governance of the ABAC including the merging of the Management Committee and Board functions especially as the Draft report states that *“the dichotomous roles of the Board and the Management Committee do not appear to be best-practice from a regulatory governance perspective.”*<sup>21</sup>

However, FARE’s support for these recommendations is conditional on further investigation of the ACCC process for authorisation and concerns outlined in the previous section being addressed. In addition, strict timeframes for the implementation of these recommendations are needed; this should take place within one year of review. Also if the ABAC does not meet the ACCC’s standards for authorisation then independent regulation should be sought immediately.

## Coverage of alcohol advertising regulation

### **Recommendation 6:**

Review and revise the ABAC Code and Guidance documents to include and provide specific guidance on alcohol branded merchandise.

### **Recommendation 9.6**

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


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

### **Recommendation 9.9**

Revise the Code adjudication processes to ensure that the interpretation of the Code Part 1b) complies with the spirit of the Code and not a narrow interpretation of the wording: where an advertisement has strong or evident appeal to children or adolescents, then it should be found to be in breach of the Code irrespective of whether the marketing is also appealing to adults or the community generally or whether the advertisement is deemed not to be directed to children.

### **Recommendation 9.11**

Add new provisions to strengthen and improve clarity around the matter of appeal to children. At minimum, specific prohibitions are required in Part 1 in the areas of:

- 
- a) Identifiable heroes or heroines of the young;
  - b) cartoon characters and animations appealing to children;
  - c) use of childhood motifs or themes; and in Part 2, to prohibit naming and packaging which would lead to confusion with confectionary or soft drinks.

#### **FARE's response**

FARE supports with amendments to Recommendation 6, 9.6, 9.9 and 9.11 of the Draft report. Regulation needs to do more than just provide guidance on content, it also needs to seek to address the volume, timing and targeting of alcohol advertisements currently taking place. Regulation should also include all forms of advertising that are taking place.

FARE's support for Recommendations 6, 9.6, 9.9 and 9.11 is also dependent on further examination by ANPHA of the ACCC authorisation process and FARE's significant concerns outlined in the Advertising regulation section of this submission being satisfied. In particular it is critical that authorisation from the ACCC will result in more effective regulation and greater protection of children and young people from alcohol advertising. If this cannot be demonstrated, independent regulation of alcohol advertising should be sought.

In addition, the alcohol industry's activity on social media is extensive and continuous. While the Draft report has recognised that the ABAC is failing in this aspect it only recommends 'including user generated content where an advertiser is able to exercise some control.' This recommendation is weak and does not effectively address the volume of alcohol advertising that is taking place on social media and the sophisticated approaches taken to this advertising. Regulation of social media advertising should aim to control the volume, timing and targeting of alcohol advertising as a whole.

#### **FARE's recommendations:**

These recommendations are dependent on ANPHA's assessment of the feasibility of the ABAC being substantially improved prior to seeking authorisation from the ACCC and that if this is not possible, independent regulation is recommended.

7. That ANPHA's final report include a recommendation that the alcohol marketing regulatory code explicitly address the volume, timing and targeting of alcohol advertisements.
8. That ANPHA's final report include a recommendation that alcohol advertising controls include all forms of advertising, including television, radio, print, and cinemas, and product placement in movies and music videos, on sporting team uniforms, and sporting grounds, at cultural events, in branded merchandise and point of sale promotions in retail spaces and pub/bars.
9. That ANPHA's final report includes specifications on the kinds of information alcohol brands can collect on consumers.
10. That ANPHA's final report includes guidance on alcohol-branded merchandise as per Recommendation 6 of the Draft report.
11. That ANPHA's final report include a recommendation on an appeals process as part of the regulatory code for alcohol advertising as part of Recommendation 9.6 of the Draft report.
12. That ANPHA's final report provide guidance, as per Recommendation 9.8 and 9.9 of the Draft report on the ABAC adjudication process to ensure the advertisements comply with the spirit of the Code and advertisements with strong or evident appeal to children or adolescents be found to be in breach of the Code, irrespective of whether the marketing has appeal to adults, or deemed not to be directed to children.
13. That ANPHA's final report outlines the new provisions, as per Recommendation 9.11 of the Draft report on matters that appeal to children, particularly heroes; cartoon characters, animations and use



of childhood motifs or themes; and prohibits naming and packaging that could be confused with confectionary or soft drinks.

## Current situation

The 'content' of alcohol advertisements is regulated by the ABAC, whose stated aim is to *"ensure that alcohol advertising, naming and packaging 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."*<sup>22</sup>


The ABAC requires that alcohol advertisements must:

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment;
- 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;
- 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;
- 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; and
- h) not refer to the ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.<sup>22</sup>

In addition, the ABAC has sections on internet and retail advertising as well as the promotion of alcohol at events.<sup>22</sup> In 2014 the ABAC released advice on *'Best practice for the Responsible Marketing of Alcohol Beverages in Digital Marketing.'*<sup>23</sup> This includes responsible drinking messages, age affirmation processes and user generated content. However, this guidance does not take into account the timing or the targeting of these messages on social media. The ABAC is also failing to keep up with the increasing volume of alcohol advertising that is taking place and the current system does not take into account how alcohol advertising is being interwoven and embedded into consumers' everyday lives.

## Evidence

The ABAC has been found in several reviews, including the Draft report, to be failing to adequately protect children and young people from exposure to alcohol advertising. Not only does it not protect them from advertising, an Australian study found that the majority of young people (aged 15-24 years) believe that alcohol advertisements are designed to appeal to them. They imply from the existing advertisements that the consumption of alcohol confers more confidence, greater sociability, and better success with the opposite sex, among other things.<sup>24</sup> This is in direct violation of the ABAC's own code, which states that advertisements should not have evident appeal to children or adolescents, and should not convey that consumption of the product will contribute to personal, social or professional success.<sup>15</sup>



There are three areas that regulation needs to examine to effectively regulate alcohol advertising on social media: volume, timing and targeting of advertising. These are outlined below.

### **Volume**

Studies consistently demonstrate that the volume of alcohol advertising exposure is the strongest predictor of future consumption patterns in young people, including initiation of alcohol consumption, and heavier consumption among people who already drink.<sup>25</sup> Therefore advertising regulation must seek to reduce the overall volume of alcohol advertising in Australia.

Most notable is the rapid expansion and volume of advertising that is taking place online and on social media.<sup>26</sup> Social media sites such as Facebook have different types of advertising, including direct advertising, and in addition brands produce 'content' (such as photos, videos, memes and comments) from their own pages. This content then appears directly an individual's 'news feed' alongside other updates from family and friends. As individuals and their friends 'like' or share that content, the 'messages' spill out into the 'news feed' of others. Advertisements are no longer just sent to audiences, they are part of the daily conversation and life of an individual.<sup>27</sup>

It can be estimated that approximately 20,000 people are being reached on each and every alcohol brand post on Facebook alone. This is from data in 2012 that showed that the top twenty alcohol brands on Facebook in Australia produced 4,500 posts collectively and had 2.3 million interactions with fans. From these figures it is possible to begin to understand the potential reach of this type of advertising. In 2012 the top twenty alcohol industry brands on Facebook in Australia garnered 2.3 million interactions with fans.<sup>3</sup>

However, this doesn't take into account the viral reach generated by fans who 'like,' 'comment' or 'share' the content. Researchers in Queensland have tried to estimate this 'reach' and found for that each piece of content that an alcohol brand had, there were 543 interactions with it ('likes', 'comments' or 'shares'). The average Facebook user has 245 friends, so the potential viral reach of each post (in addition to the 20,000 people who view it directly) is up to 132,545 additional impressions.<sup>27</sup> This gives some indication of the truly staggering volume of social media advertising that is being undertaken by the alcohol industry.

### **Timing**

Timing of advertisements is particularly relevant to the online and social media environment. Currently the ABAC doesn't take into account the timing of the 'content' which is critical to how alcohol brands are able to attain interaction with followers and embed themselves into the lives of everyday people.

Online alcohol brands do this by posting content that relates to popular culture, cultural pastimes and current events to stimulate ongoing interaction with consumers. This connects the brand to a particular time or event in the user's life, such as Friday afternoon or a national celebration such as Australia Day. Posts that relate to drinking times (Friday afternoon) or drinking events (Australia Day) are 1.7 times more likely to generate interaction with fans than posts that are not related to these.<sup>27</sup> Therefore the alcohol industry posts are carefully timed to engage consumers in their everyday lives and contributes to the idea that alcohol consumption, and by association a particular alcohol brand, are a normal part of everyday life, part of Australia's cultural norms and part of our individual identity.

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<sup>3</sup> Facebook is the only social media site in which research has been undertaken.<sup>27</sup>

### Targeting

Regulation also needs to consider how alcohol brands target specific types of people and how this can be regulated. Many alcohol advertisements aim to normalise drinking by implying that it is fun and brings confidence, success and sexual attractiveness. This is despite such messages being explicitly prohibited by the ABAC.

Alcohol marketing strategies are also diverse. The ABAC does not cover point of sale advertising, in-store promotions, sponsorship agreements, viral and emerging media. In fact the ABAC has been seen as being so ineffective that two public health organisations, the McCusker Centre for Action on Alcohol and Youth and Cancer Council West Australia, developed an advertising regulatory scheme the Alcohol Advertising Review Board (AARB) in 2012.

How alcohol advertisers are targeting users of social media is particularly concerning. Currently the top 10 alcohol brands with a dedicated Australian presence on Facebook have more than 100,000 followers each. These pages are closely watched by the brand and users' comments and interactions are responded to in real-time. These interactions generate extensive data and insight into the lives of followers which includes demographics, their location, their likes and dislikes. The brands then use this information to refine and target their messages accordingly.

Increasingly data is being used to target messages that are available only to specific kinds of users (i.e. males aged 25-35 years old). These messages become invisible to everyone else, including regulators, policy makers and researchers who do not fall into these specific categories. This is completely unregulated. Researchers in the field recommend that the alcohol industry be compelled to disclose information on these practices to allow for public scrutiny.

### FARE position

Until now the regulation of alcohol advertising has relied on restricting the content of alcohol advertisements as to what can and cannot be said, rather than where and where it can be said and who it can be said to. It is critical that to adequately protect children and adolescents from alcohol advertising that all forms of advertising be subject to public scrutiny and inspection. This includes activity online, on the internet and on social media platforms such as Facebook.

In the digital marketing sphere the ACMA has recognised that regulations will be ignored by those they seek to regulate if they are unable to keep pace with rapidly changing developments online.<sup>28</sup> This is clearly the situation that is taking place online for alcohol advertising in Australia.

Therefore regulation needs to address the volume, timing and targeting of alcohol advertisements currently taking place. This is a fundamental shift away from content or placement and should include all forms of advertising, whether on television, radio, print, in cinemas, in movies and music videos through product placement, on sporting team uniforms, on sporting grounds, at cultural events, in branded merchandise and point of sale promotions in retail spaces and pub/bars.

## Alcohol advertising on television

### **Recommendation 1:**

Apply to ACMA [Australian Communications and Media Authority] for an amendment to the Commercial Television Industry Code of Practice (CTICP) to remove the exemption for free-to-air television that allows direct advertising of alcohol products before 8.30pm as an accompaniment to live sport broadcasts on public holidays and weekends;

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

### **Recommendation 2:**

Apply to ACMA for an amendment to the Australian Subscription Television Broadcast Code of Practice to restrict direct advertising of alcohol products on subscription television before 8.30pm and after 5.00am.

### **FARE's Response**

FARE supports part one of [Recommendation 1](#) that the exemption that allows the direct advertising of alcohol products before 8.30pm during a live sporting broadcast be removed. However, FARE rejects the second part of the recommendation which specifies that the current provision which allows for alcohol to be advertised between 12noon and 3pm be retained.

FARE supports [Recommendation 2](#) that direct advertising of alcohol products on subscription television be restricted before 8.30pm and after 5.00am.

### **FARE's recommendations:**


14. That ANPHA's final report includes a recommendation to remove the exemption for free-to-air television that allows alcohol advertising before 8.30pm as an accompaniment to live sport broadcasts on public holidays and weekends, as outlined in [Recommendation 1](#) of the Draft report.
15. That ANPHA's final report amends [Recommendation 1](#) of the Draft report to specify that ACMA be instructed to remove the exemption that allows the broadcasting of alcohol advertising on weekdays from 12noon to 3pm on weekdays.
16. That ANPHA's final report amends [Recommendation 2](#) of the Draft report to specify that ACMA be instructed to amend the Australian Subscription Television Broadcast Code of Practice to restrict advertising of alcohol products on subscription television before 8.30pm and after 5.00am.

## Current situation

In Australia advertising to children through free-to-air television is regulated under the *Broadcasting Services Act 1992*, through both the *Children's Television Standards 2009* (CTS) and the *Commercial Television Industry Code of Practice 2010* (CTICP).

The CTS covers both the quantity and content of advertisements that can be aired during children's television viewing times and aims to safeguard children from the "possible harmful effects of television."<sup>29</sup> The CTS is managed by direct government regulation through the Australia Communications and Media Authority (ACMA).

The CTICP extends the application of the CTS to advertisements that are shown outside of children's viewing periods and covers program classifications, complaints and the placement of commercials. The



CTICP requires that food and beverage advertisements directed to children should not encourage or promote unhealthy eating or drinking habits, and must not contain any misleading or incorrect information about the nutritional value of the product. CTICP is overseen by Free TV Australia and is a form of co-regulation, with the code being registered with ACMA. All commercial television licensees must comply with the CTS and CTICP.<sup>30</sup>

The CTICP restricts the times when alcohol advertising can be shown to between 12pm and 3pm on weekdays and between 8.30pm and 5am on weekdays and weekends. However exemptions apply that allow alcohol advertising during the broadcast of live sporting events on weekends and public holidays.

Subscription television is regulated through the Australian Subscription Television and Radio Association (ASTRA) which has responsibility for the *ASTRA Codes of Practice 2013: Subscription Television Broadcast* (ASTRA Code). Adherence to the ASTRA Code is a licence condition for subscription television broadcasters and covers content and classification, advertising, subscriber service obligations and complaints procedures.<sup>31</sup> The ASTRA Code recognises that advertisements must comply with the AANA's *Advertising to Children Code*, and the *Food and Beverages Advertising & Marketing Communications Code* when advertising to children. ASTRA has also adopted the ABAC in respect to the content of alcohol advertisements but does not restrict when alcohol advertising can be shown. ASTRA's Advertising Standards state that it "... does not believe that banning certain types of advertising is the appropriate way to deal with health and social concerns that arise in the community from time to time."<sup>32</sup> Most channels, apart from dedicated children's channels, place this impetus on consumer's discretion to block materials by using disabling technology such as parental lock-outs.

The loophole that allows for alcohol advertising in children's viewing times 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>33</sup> For example during the Bathurst 1000 in 2012, those who watched the whole race (from 10.35am until 5.05pm) were exposed to 35 minutes of alcohol advertising including in-break alcohol advertisements and sponsorship. This audience included an estimated 117,000 children and young people aged five to 17 years old.<sup>34</sup>

Studies have shown that there is a significant relationship between exposure to alcohol advertising, and young people's drinking intentions and behaviours.<sup>35,36,37</sup> The more alcohol advertising that young people are exposed to, the earlier they initiate alcohol consumption, and the more they will consume if they already drink.

Data on alcohol advertising during weekdays and not within live sporting broadcasts is, however, sparse. Information available from 2004-05 revealed that on weekdays there were 20,137 alcohol advertisements shown between 5am and 8.30pm. There were seasonal differences with a clear peak in advertisements occurring in the lead up to Christmas (October-December). Three per cent of all alcohol advertisements occurred between 12noon to 3pm but this increased to five per cent in the lead up to Christmas. This highlights that alcohol advertising does occur and increases at different times of the year. Between 12noon and 3pm children and young people are still exposed to alcohol advertising, including children who are not yet at school and children and young people who are at home during school holidays.

Data for alcohol advertising on subscription television is also hard to ascertain. A research report prepared for the Department of Health and Ageing in 2005 examined the ABAC as well as advertising on the internet and subscription television. This report, entitled: *Consistency of Alcohol Advertising and Promotion on the Internet with the Revised Alcohol Beverages Advertising Code of the ABAC* found that subscription television had a large and growing adolescent audience and that there were few restrictions on alcohol advertising.<sup>38</sup>

## FARE's position

The current loophole that allows for alcohol advertising to be broadcast before 8.30pm during live sporting broadcasts should be removed as it results in children and adolescents being exposed to alcohol advertising.

It is also anomalous that a loophole exists that allows alcohol advertising between 12noon and 3pm on free-to-air television on weekdays because young children who are not yet at school and children and young people who are on school holidays will be exposed to this advertising. There is no rationale for subscription television being subject to different restrictions to those applied to free-to-air television. Therefore the same restrictions should be applied.

## Alcohol advertising in cinemas

### **Recommendation 3:**

Establish immediate voluntary arrangements and then work with ACMA and/or the ACCC to establish a mechanism to introduce a restriction on the direct advertising of alcohol products on-screen in cinemas before 8.30pm and after 5.00am.

### **FARE's Response**

FARE supports, with amendments, [Recommendation 3](#). FARE recommends that direct advertising of alcohol products on-screen in cinemas is restricted before 8.30pm and after 5.00am and that this recommendation be extended to include movies that are rated G and PG.

Further examination is needed by ANPHA to determine the feasibility of introducing ACCC or ACMA mechanism to regulate alcohol advertising, including whether these mechanisms will protect children and young people from alcohol advertising. Furthermore, ANPHA needs to examine the feasibility of having multiple bodies regulating different forms of alcohol advertising, particularly in relation to creating greater confusion among the general population about who to contact to make a complaint.

It is important that consistent regulation is applied across different advertising mediums. This will prevent potential 'regulation bypass,' as evidenced in the tobacco control field, whereby advertisers shift from one form of advertising to another that is not subject to the same standards of regulation.

### **FARE's recommendation:**

17. That ANPHA's final report amends [Recommendation 3](#) of the Draft report to restrict alcohol advertising in cinemas before 8.30pm and after 5.00am and this recommendation be extended to restrict alcohol advertising in movies that are rated G or PG.
18. That ANPHA's final report amends [Recommendation 3](#) of the Draft report to remove references to voluntary arrangements being established.
19. That ANPHA further explores the regulatory options available for cinema advertising within the ACMA and/or the ACCC as outlined in [Recommendation 3](#) of the Draft report, to determine the likelihood of these models being effective.
20. That ANPHA propose independent regulation of all alcohol advertising under one regulatory structure if it cannot confidently recommend that other regulatory models will result in effective regulation.



## Current situation

ANPHA was unable to locate any specific regulatory code for cinema advertising in its Draft report. Cinema advertising must comply with AANA codes and the ABAC, but there are no restrictions on the timing or placement of alcohol advertising in cinemas. Alcohol advertisements can be screened in cinemas during the day, including when cinema audiences are likely to include children and young people.

ANPHA also notes that complaints on alcohol advertising in cinemas are currently forwarded to the ABAC. However, the ABAC is unable to consider alcohol advertising in cinemas as it only covers the content of advertisements, not their placement.

## Evidence

A pilot study of young adults aged 16 to 18 years old in America in 2011 found that exposure to alcohol advertising in cinemas prior to seeing a movie can directly influence the consumption of alcohol by young people. This was particularly prevalent among those young people who were consuming alcohol at high levels on a weekly basis.<sup>39</sup>

The Alcohol Advertising Review Board (AARB) was established in 2012 to independently review alcohol advertising. The AARB has noted several complaints for alcohol advertising in cinemas including advertisements occurring at inappropriate time slots and being screened prior to movies with large numbers of young people in the audience.

These instances include:

- Corona beer advertisement shown at 6.55pm prior to 'Rise of the Planet of the Apes' (rated M) in 2011.<sup>40</sup>
- Smirnoff Double Black Vodka advertisement shown at 7.30pm prior to 'The Hunger Games' in 2012 (rated M) in 2012.<sup>41</sup>
- Southern Comfort advertisement shown at 12.30pm prior to 'The Hobbit' (rated M) in 2012.<sup>42</sup>
- Heineken advertisement shown at 8pm prior to 'Skyfall' (rated M) in 2013.<sup>43</sup>
- Heineken advertisement shown at 10.20am prior to 'Skyfall' (rated M) in 2013.<sup>44</sup>
- Bulleit Bourbon advertisement shown at 8.30pm prior to 'The Dark Knight Rises' (rated M) in 2014.<sup>45</sup>

Even though the AARB found these advertisements to be inappropriately placed and paired with films that appeal to young people, the advertisers have either not responded to the complaint or stated that they do not recognise the AARB. Most are signatories to the ABAC, but as the ABAC has no jurisdiction over the placement of alcohol advertisements in cinemas, these complaints have been dismissed.

## FARE position

It is clear that the ABAC is failing to protect children and young people from exposure to alcohol advertising in cinemas. FARE supports this recommendation and agrees with ANPHA that there is no public health rationale for allowing young people to be exposed to alcohol advertising in cinemas before 8.30pm. Alcohol advertising in cinemas should be regulated to ensure that this exposure to young people does not continue to occur.

It is also appropriate that different forms of advertising are subject to the same restrictions (e.g. television and cinema). This helps to mitigate potential regulatory bypass where an advertiser moves from one form of advertising to another which is not subject to the same standards of regulation. This has been consistently seen in tobacco control where Governments have struggled to keep up with very determined



cigarette advertisers. For example, when outdoor media was restricted, tobacco advertisers responded by increasing their in-shop advertising and when magazine advertising was restricted, tobacco advertisers moved to sponsoring sporting events and music festivals instead.<sup>46</sup> It is critical that the Government learn from these examples and do not create unintentional loopholes or regulatory gaps for alcohol advertising.

## Alcohol advertising in outdoor media

### **Recommendation 4:**

Apply for ACCC authorisation of the Outdoor Media Association's (OMA) Code of Ethics: Alcohol Advertising Guidelines to enable effective sanctions for enforcement of code decisions, particularly in relation to the placement of advertising material near schools.

### **Recommendation 5:**

Amend the Outdoor Media Association's (OMA) Code of Ethics: Alcohol Advertising Guidelines to increase the distance of advertising from schools from 150m to 500m.

### **FARE's response**

FARE supports further examination by ANPHA of the option included in [Recommendation 4](#) that the ACCC authorise the Outdoor Media Association's (OMA) Alcohol Advertising Guidelines to enable effective sanctions for the enforcement of the code. However this support is condition on several policy questions that need to be answered before FARE would give full support.

These are outlined in FARE's response to the [Recommendation 9](#). A further concern by FARE is that the approach being taken by ANPHA to recommend the authorisation of multiple codes will lead to further confusion among the general public of the appropriate regulatory body to raise issues or concerns with.

FARE supports with amendments to [Recommendation 5](#) an increase in the distance from which alcohol advertising can occur near schools from 150m to 500m and that this should occur regardless of whether it is deemed to be in the 'line of sight,' which is a current provision in OMA's Alcohol Advertising Guidelines.

### **FARE's recommendations:**

21. That ANPHA's final report further examines the proposal of ACCC authorisation of the OMA as outlined in [Recommendation 4](#) of the Draft report to determine the likelihood of this model being effective.
22. That ANPHA proposes independent regulation of all alcohol advertising under one regulatory structure if it cannot confidently show that other regulatory models will result in effective regulation.
23. That ANPHA's final report includes a recommendation that the ACCC and ASB conduct and publish compliance surveys of outdoor alcohol advertising on an annual basis, as per the recommendation from the House of Representatives Social Policy and Legal Affairs Inquiry into the regulation of billboard and outdoor media (Outdoor Advertising Inquiry) in 2011.
24. That ANPHA's final report amends [Recommendation 5](#) of the Draft report to increase the distance which alcohol advertising is allowed near schools from 150m to 500m and that any reference to the 'sight line of a primary or secondary school' be removed from the regulatory standards.



## Current situation

Outdoor advertising is a medium in which all members of society are exposed to, including children and young people. This advertising cannot be switched off or ignored and is visible to people on public transport, driving by and/or walking past.

The Outdoor Media Association (OMA) covers outdoor advertising such as billboards on roadsides, airports, at transport hubs as well as advertising on buses, taxis and bus shelters and at other public areas such as shopping centres and petrol stations. OMA has a Code of Ethics which requires members to adhere to both the AANA's Code of Ethics and its own Alcohol Advertising Guidelines which endorses the ABAC.

The Alcohol Guidelines state that members must only accept copy for alcohol advertising that has been approved by the ABAC's Alcohol Advertising Pre-vetting system<sup>4</sup> and to *"limit the advertising of alcohol products on fixed signs located within a 150 metre sight line of a primary or secondary school."*<sup>47</sup> However the OMA policy does not apply if the school is in the vicinity of an establishment selling alcohol products (e.g. clubs, pubs, bottle shops). OMA also does not undertake any monitoring or surveillance to identify advertisements that may breach the guidelines<sup>48</sup> and relies solely on the community to identify and report breaches.

## Evidence

In 2011 the House of Representatives Standing Committee on Social Policy and Legal Affairs undertook an Inquiry into the regulation of billboard and outdoor advertising (Outdoor Advertising Inquiry). Their final report *'Reclaiming the public space'* found OMA's Alcohol Advertising Guidelines initiative to be *"...little more than a token gesture. A more significant and responsible action would be to limit alcohol advertising in the outdoor medium, given its inevitable exposure to children."*<sup>49</sup>


The Outdoor Advertising Inquiry noted that children, and adolescents in particular, are likely to be exposed to outdoor advertising on their way to and from school. In 2008 a study undertaken in Sydney and Wollongong examined the advertising around 40 metropolitan and suburban primary schools. Alcohol advertisements made up 22 per cent (n = 416) of all of the advertising surrounding the schools. Alcohol advertising was also much closer to schools (less than 250 metres from a school) than all other products. The study found that there were 25 alcohol advertisements per square kilometre, compared to nine advertisements for chocolate or confectionary products per square kilometre and 16 advertisements for ice cream per square kilometre. There were also more alcohol advertisements closer to schools (less than 250 metres) than further way (25 advertisements versus 13 advertisements between 250m-500m from a school).<sup>50</sup>

The McCusker Centre has been reporting perceived alcohol advertising breaches to OMA since 2010 but are not aware of any action having been taken by OMA on these breaches (being described as a 'glitch in the system' if within 150 metres of a school).<sup>51</sup> For these reasons the Outdoor Advertising Inquiry recommended that the Advertising Standards Bureau conducts and publishes compliance surveys of outdoor advertising on an annual basis.<sup>52</sup> To date this has not occurred. FARE position

Children and young people need to be protected from the prolific exposure to alcohol advertising that currently takes place in Australia and outdoor advertising is one area where children are more highly

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<sup>4</sup> The OMA Alcohol Advertising Guidelines also state that: *"Alternatively if an alcohol advertiser does not wish to use the pre-vetting system members may accept copy where the advertiser has provided written advice from a law firm stating that the advertisement complies with the ABAC."*<sup>47</sup>



exposed. The current voluntary code, OMA's Alcohol Advertising Guidelines is failing to protect children and young people from alcohol advertising. They are poorly enforced and there are no penalties or sanctions for breaches.

FARE supports [Recommendation 5](#) with amendment; FARE supports increasing the area in which alcohol advertising can take place near schools from 150m to 500m but that any reference to advertisement needing to be in 'line of sight' of schools should be removed from regulatory standards.

## Alcohol sponsorship of sporting and cultural events

### **Recommendation 7:**

Review and revise the ABAC Code and Guidance documents to include and provide specific guidance on sponsorship of sporting events.

### **Recommendation 8:**

Review and revise the ABAC Code and Guidance documents to include and provide specific guidance on sponsorship of music, cultural and all other events.

### **FARE's response**

FARE rejects [recommendations 7 and 8](#). Young people are regularly exposed to alcohol advertising which impacts on their perceptions of alcohol, drinking intentions and attitudes. A long term plan for alcohol marketing must include the phasing out of alcohol marketing from time and placements which have high exposure to young people. The phase out should involve a staged approach that phases out alcohol promotions from times and placements which have high exposure to young people aged up to 25 years, as recommended by the Preventative Health Taskforce.

### **FARE's recommendations:**


25. That ANPHA's final report recommends a phase out of alcohol sponsorship of sport and cultural events.
26. That ANPHA's final report includes a recommendation that ANPHA's Community Sponsorship Fund be extended through an increase in alcohol taxation to enable the phasing out of alcohol sponsorship at sporting and cultural events.

## Current situation

Alcohol companies sponsor a large number of events ranging from the Winter Olympics coverage on television, local art exhibitions, music festivals, cultural events and both major and local community sporting events and teams. In particular event sponsorship provides advertisers with exclusive rights and opportunities such as 'pourage' rights, naming rights, branding through signage, and other products associated with specific events or teams.<sup>53</sup>

Since 2010 ANPHA has been working to replace alcohol sporting sponsorship through the *Be the Influence: Tackling Binge Drinking* initiative. This initiative enables 13 national sporting organisations to operate without alcohol promotion and seeks to reduce the exposure of young people to alcohol marketing.<sup>54</sup>

Currently there are no regulatory restrictions on the sponsorship of sporting or cultural events by the alcohol industry. The ABAC covers the content of alcohol advertising and not the placement of advertising or sponsorship arrangements. As such, advertising an alcohol product during a cricket broadcast at a



sporting ground or at a music festival is considered a permissible form of advertising by the alcohol and advertising industries.

## Evidence

Most sporting events in Australia are now sponsored by the alcohol industry including the cricket, the Bathurst 1000 'V8 Supercars' race, the National Rugby League and the Australian Open tennis championships. These sponsorship deals include field signage, jersey logos and naming rights to events or awards. For example, the National Rugby League receives sponsorship from Victoria Bitter. The State of Origin Rugby League series teams – New South Wales and Queensland – are sponsored by Victoria Bitter and XXXX Beer respectively.

The alcohol industry also sponsors local community sporting clubs by providing jerseys, club equipment, and offering free or discounted alcohol at local sporting clubs.<sup>53</sup> In 2011 a survey was undertaken with 103 children aged 10-14 years in Australia. The study aimed to ascertain the children's recall of sponsors and their attitudes towards sponsors and sponsorship activities. The majority of children said that they liked the sponsors because they provided support to their club or favourite team. A greater proportion of children said that they liked alcohol-related sponsors (59 per cent) compared to non-food (35 per cent) and food and beverage companies (36 per cent). Children did not recognise the sponsorship was advertising but they believed that the companies were motivated by philanthropic intentions for providing the support. Also most children said that they would return the favour to the sponsors by buying their products to reciprocate the support for their sport.<sup>55</sup>

Sponsorship also occurs at cultural events, such as music festivals, with minors being exposed to these promotions. The Big Day Out is attended by all age groups including minors. Even though minors are in attendance at the festival, it is heavily sponsored by the alcohol industry, including Carlton Dry (a beer brand), Strongbow (a cider brand), Vodka Cruiser (a ready-to-drink alcohol beverage brand), El Jimador (a tequila brand), and Smash (a frozen cocktail brand).<sup>56</sup> One of these sponsorship arrangements includes exclusive promotional tents in prime locations on the festival site for alcohol beverage sponsors, such as the El Jimador-sponsored 'Mexican Wrestling Bar' and a Vodka Cruiser-sponsored 'House Party' bar.<sup>57</sup>

Alcohol sponsorship and merchandising is sophisticated and targeted. Alcohol brands choose particular music festivals and sporting events to demonstrate to young people how well the brand understands and relates to them.<sup>58</sup> Of particular concern is the influence of this sponsorship on young people's perceptions of alcohol, their intentions towards drinking and their drinking behaviours. Alcohol sponsorship of sporting events has also been shown to result in children and young people associating alcohol with sport.<sup>59</sup>

## FARE's position

Alcohol sponsorship of sporting and cultural events is prolific and is often used as the platform for sophisticated and targeted marketing practices that are supported by other media.

This type of alcohol marketing is visible by children and young people as sporting events are often held or televised during times when young people are likely to be watching or in attendance at cultural event. Therefore alcohol sponsorship needs to be phased out and as the Preventative Health Taskforce recommended in 2009, that this occur in *"a staged approach phase out alcohol promotions from times and placements which have high exposure to young people aged up to 25 years."*<sup>60</sup>

The phasing out of sponsorship should be supported by the extension of the Community Sponsorship fund to support sports and cultural events transition away from alcohol industry funding.

## Monitoring and Data collection

### **Recommendation 9.3**

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

### **Recommendation 9.7**

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

### **Recommendation 10:**

The Australian and State and Territory Governments: Monitor, research and regularly review Australian children's and adolescents' continued exposure to alcohol advertising, particularly on digital media and the effectiveness of self-regulatory, co-regulatory and legislative measures to limit this exposure and report on this research every two years.

### **Recommendation 11:**

Establish biennial reporting to the relevant COAG Ministerial Council (currently the Standing Council on Health) on Australian children's and adolescents' exposure to alcohol advertising and the effectiveness of self-regulatory, co-regulatory and legislative measures to limit this exposure.

### **FARE's response**

FARE supports [Recommendation 9.3](#), [9.7](#), [10](#) and [11](#) however this support is dependent on further examination by ANPHA of the ACCC authorisation process and FARE's significant concerns outlined in the Advertising regulation section of this submission being satisfied. It is critical that authorisation from the ACCC will result in more effective regulation and greater protection of children and young people from alcohol advertising. If these conditions cannot be met then independent regulation of alcohol advertising should be sought.

### **FARE's Recommendations**

These recommendations are dependent on ANPHA's assessment of the feasibility of the ABAC being substantially improved prior to seeking authorisation from the ACCC and that if this is not possible that independent regulation be recommended.

27. That ANPHA's final report amend [Recommendations 9.3](#) and [9.7](#) of the Draft report to compel the alcohol industry to report their advertising practices under a reporting framework to be established by the Government.

## Current situation

The Draft report highlights that last published estimates for alcohol advertising expenditure in Australia was in the Preventative Health Taskforce report with data from 2007 revealing that \$128 million was spent per year. However this figure is a significant underestimate as it only takes into account advertising of products and sponsorship, and not merchandising or internet advertising.<sup>60</sup>

The Draft report recognises the alcohol industry as being one of the biggest spenders on advertising in Australia using coordinated and *"....sophisticated, strategic and multifaceted marketing strategies, which focus on product, price, place and promotion, to produce a cohesive message, reach different target groups, in order to achieve brand loyalty and increased market share."*

## Evidence

Australian research from 2012 highlights that advertising through online mediums has skyrocketed in recent years with evidence suggesting expenditure has quadrupled from 2005 to 2009.<sup>61</sup> In addition there is evidence to suggest that increases in expenditure on alcohol advertising are associated with increases in expenditure on alcohol for consumption. Economic modelling undertaken at Sheffield University examining this association found that for every 10 per cent increase in advertising expenditure, expenditure on alcohol consumption increases by between 0.2 and 0.8 per cent depending on the beverage.<sup>62</sup>

The collection of data is important for evaluation purposes and to determine if various policy measures have been successful or not. Therefore regular monitoring data needs to be collected and publicly available to allow for transparent analysis.

## FARE position

It is critical that the advertising and marketing practices of the alcohol industry are open to public scrutiny. A key action area identified in the *National Alcohol Strategy 2006-2009* was to monitor and review alcohol promotions and indeed this was a key action from the MCDS prior to it being disbanded in 2011. Some actions from the MCDS that were not adopted included requesting that ANPHA's five-year strategic plan allocate a high priority to alcohol advertising, including monitoring and that ANPHA report to the Intergovernmental Committee on Drugs as to the monitoring of alcohol advertising.<sup>63</sup> It is noted that it has taken ANPHA three years to commence its review of alcohol advertising and there is no governmental process to monitor alcohol advertising.

The Government needs to immediately establish a reporting framework to facilitate the collection of alcohol advertising data. In addition, the alcohol industry should be required to report their annual expenditure on alcohol marketing activities to Government to inform future policy directions.

## Promoting the alcohol advertising regulations

### Recommendation 9.4

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

### FARE response


FARE supports [Recommendation 9.4](#). FARE supports raising the profile of the regulatory process and increasing the general public's awareness about how to make a complaint on alcohol advertising.

### FARE recommendation

28. That ANPHA's final report in [Recommendation 9.4](#) of the Draft report specifies how increased awareness of ABAC will be undertaken and the mechanisms for research.

## Current situation

Awareness of the ABAC continues to be low, despite reviews recommending that this be improved. In 2013 the ABAC also acknowledged that awareness is low, this followed the release of their own commissioned research examining if the ABAC decisions were in line with community standards.<sup>64</sup> This research undertaken by Colmar Bruntion Social Research found that when respondents were asked about



how to make a complaint of those that said that they would make a complaint only three per cent mentioned the ASB and no one mentioned the ABAC.<sup>65</sup>

This echoes results from FARE's 2012 Annual Alcohol Poll which found that the vast majority (83 per cent) of Australians did not know who to complaint to about alcohol advertising. Some (17 per cent) suggested that they did know but when asked who they would direct a complaint to only four per cent of Australians correctly identified the ASB.

The review by Colmar Brunton Social Research found that one third of respondents (34 per cent) had been concerned or offended by advertising in the previous 12 months. These concerns or offences were in relation to 'sex, sexuality and nudity' (16 per cent), 'irresponsible alcohol consumption' (16 per cent) and 'violence' (15 per cent) in the advertisement. However the vast majority of people (88 per cent) did not make a formal complaint.<sup>65</sup> This could be because people were unaware of who to submit a complaint to.

## Evidence

The Colmar Brunton Social Research survey found that the most common action people had to being offended or concerned about an advertisement was to 'change the channel/walk away/ignore the ad/not watch it again' (24 per cent), followed by 'do nothing' (19 per cent). Even though one third were concerned about the content of alcohol advertising finding that it '*...promotes alcohol consumption as the norm/can influence behaviour*' (25 per cent) and '*...promotes irresponsible/dangerous drinking and behaviour*' (24 per cent).

The ABAC's response to this report has been to say that it is "*assessing options available to improve the awareness of ABAC*" and that it "*...will utilise the research to assist in a review of the Code*" to commence later in 2013.<sup>64</sup> This is a classic technique used again and again by the alcohol industry to delay regulation by proposing to undertake a 'review' in an area in which community concern has been expressed.<sup>66</sup>

These recent findings are reminiscent of earlier reviews. A 2005 the Department of Health and Ageing report found that only two per cent of respondents had made a formal complaint, despite 30 per cent of respondents reporting concern about alcohol advertising. Complaints did not complain because they did not believe that a complaint would be upheld, have time, or know the procedure.<sup>67</sup> The 2009 National Preventative Health Taskforce report *Australia: the Healthiest Country by 2020* found that awareness of the ABAC continued to be low and that it is both the content and frequency of exposure to advertising that can have an impact on individuals' attitudes and behaviours, particularly young peoples, towards alcohol.<sup>60</sup>

## FARE position

Several reviews including the Draft report and the ABAC's own commissioned research have found that the community's awareness of how to make a complaint on alcohol advertising was extremely low. Awareness of both the regulatory process and how to make a complaint needs to be improved by both the alcohol industry and the Government.



## Counter-Advertising

The Draft report has not made any recommendations about counter-advertising measures. Currently the main messages that the community receives on alcohol-related harms are those developed and promoted by the alcohol industry. ANPHA's final report should include recommendations on counter-advertising measures.

### FARE's recommendation

29. That ANPHA in its final report include a recommendation to introduce counter-advertising policies to ensure that the community receives clear and consistent messaging about risk associated with alcohol consumption from an independent source.

### Current situation

In addition to low awareness of the ABAC there is low awareness of the harms associated with alcohol consumption in Australia. For example awareness of the National Health and Medical Research Council's *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Alcohol Guidelines) is extremely low, despite these being published in 2009.<sup>68</sup> In lieu of Government led public education campaigns the alcohol industry has produced their own and thus the only messages the Australian public are receiving about alcohol consumption are those produced entirely by the alcohol industry. This includes DrinkWise campaigns (an industry front body) like 'Kids absorb your drinking' and 'Drinking – do it properly.' In particular the 'Drinking – do it properly' campaign has been widely discredited by public health and advertising experts as encouraging consumption.<sup>69,70</sup>

### Evidence

The National Preventative Health Taskforce report also recommended that all alcohol advertising has health advisory information or counter-advertising of at least a minimum of 25 per cent of the advertisement broadcast time or physical space. This is to ensure that the community receives clear and consistent messaging about alcohol from an independent source, rather than just from the alcohol industry.<sup>60</sup> Several countries have adopted counter-advertising messages. Sweden for example requires newspaper advertisements on alcohol to include messages about the health consequences of alcohol consumption which occupy one-eighth of the advertisement. In Mexico, billboard advertisements for alcohol require general warnings to use alcohol with caution and in France all alcohol advertisements must include the warning that alcohol is bad for your health.<sup>71</sup> The recommendation by the National Preventative Health Taskforce has yet to be implemented and the main messages that community receives about alcohol-related harms are those produced by the alcohol industry.

### FARE position

Counter-advertising is needed and this should take up at least 25 per cent of the advertisement broadcast time or physical space, as recommended by the National Preventative Health Taskforce report.

Counter-advertising is the inclusion of public service announcements or warning messages on adverts to provide a counter point to the messages being promoted by advertisers. Counter-advertising has been used as a strategy to address tobacco advertising in America.<sup>60</sup>

## State and Territory Governments

### **Recommendation: State and Territory Governments**

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

### **FARE's response**

FARE supports the inclusion of a Recommendation on State and Territory Governments and on Point of Sale promotions. FARE also suggests further recommendations be made in ANPHA's final report to prohibit and restrict discounting and promotions through State and Territory Liquor Licensing Acts as well as the introduction of criteria to determine whether promotions are 'harmful' or 'irresponsible'.

FARE also supports the biannual reporting of alcohol promotions and recommends that these be reported alongside other monitoring and data collection recommendations to the COAG Ministerial Council.

### **FARE recommendation**

30. That ANPHA's final report recommends that State and Territory Liquor Licensing legislation prohibit and restrict the harmful and irresponsible promotion of liquor in their jurisdictions, where these legislative arrangements do not currently exist.
31. That ANPHA's final report recommends that State and Territory Liquor Acts (where these do not currently exist), introduce criteria for promotions that are considered 'harmful' or 'irresponsible'. The criteria should cover the nature of the promotion and how it may encourage liquor consumption, promotional price of the alcohol product, duration of the promotion, implications of the promotion for public safety and amenity and the exposure of children to the promotion.
32. That ANPHA's final report recommends that State and Territory Ministers with responsibility for alcohol control are granted the power to have active promotions deemed to be harmful or irresponsible discontinued or removed at their discretion, where these do not currently exist.
33. That ANPHA's final report recommends that Liquor Promotion Regulations be introduced or strengthened under State and Territory Liquor Acts to address the following:
  - promotions conducted at on and off-licence premises with equal enforcement;
  - declare 'Shopper docket' (liquor promotion vouchers on the receipts for purchases) a prohibited promotional activity;
  - prohibit point of sale promotional materials for liquor (e.g. 'happy hours', free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) from being displayed on and around licensed premises where minors are likely to be present; and
  - prohibit alcohol promotions from being placed on State and Local Government property.



## Current practice

The Draft report fails to address the regulatory and enforcement role of States and Territories to restrict harmful discounting and promotions under their respective liquor legislation. State and Territories have a role in regulating certain promotions, such as those at the point of sale. Point of sale marketing refers to promotional materials that are found within or on the exterior of a licensed store or venue at the point where an alcohol purchase will be made (e.g. happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices).

Point of sale promotions involve price or volume discounts and have been found to encourage the purchase of increased volumes of alcohol<sup>25,72</sup> and are likely to affect overall consumption patterns of underage, harmful, and regular drinkers.<sup>73</sup>

The Draft report outlines that the alcohol advertising restricted by State and Territory liquor licensing legislation is not the focus of this review given that *“they are limited in scope and generally focus on the actions of on-premises licenses, such as pubs and clubs.”*<sup>74</sup> But then goes on to consider *“... a recommendation that States and Territories should include reporting on their regulation and enforcement issues of alcohol promotion in the proposed biannual reporting to COAG.”*<sup>74</sup> The Draft report review should consider the role of State and Territories in restricting alcohol advertising if it is going to make recommendations in this area.

## Evidence

The promotion of alcohol influences the age at which young people begin drinking alcohol as well as their levels of consumption.<sup>75,25,76,77</sup> Of particular concern are price-based promotions, for which there is an inverse relationship between the price of alcoholic beverages and levels of consumption and harms.<sup>78</sup>

Point of sale promotions involving price or volume discounts and have been found to be particularly effective in encouraging the purchase of increased volumes of alcohol.<sup>77,72</sup> Point of sale liquor marketing is “ubiquitous” and “aggressive,”<sup>79</sup> this is highlighted by liquor outlets in Sydney hosting an average of 30.2 point of sale promotions per outlet.<sup>79</sup>

Point of sale promotions are likely to affect overall consumption of underage drinkers, as well as the consumption patterns of harmful drinkers, and regular drinkers.<sup>73</sup> This is partly because young people are capable of interpreting the messages and images of alcohol advertisements in the same way as adults do.<sup>80</sup> Consumer studies also reveal that exposing young people to alcohol advertising increases the likelihood of them starting to consume alcohol as well as increasing consumption in those already consuming alcohol.<sup>25,76,77</sup>



## FARE's position

The review being undertaken by ANPHA should address all contemporary alcohol promotions and advertising in Australia and this includes State and Territory liquor licensing legislation.

For example in NSW, alcohol promotions that may be restricted or prohibited under Section 102 of the NSW Liquor Act and under the Promotions Guidelines are those promotions that:

- a) Are likely to have a special appeal to minors;
- b) Are indecent or offensive;
- c) Involve the provision of liquor in non-standard measures or the use of emotive descriptions or advertising that encourages irresponsible drinking and is likely to result in intoxication;
- d) Involve the provision of free drinks, or extreme discounts, or discounts of a limited duration
- e) Encourage irresponsible, rapid or excessive consumption of liquor; or
- f) The restriction or prohibition is otherwise in the public interest.

However for those states and territories that have promotions guidelines, existing guidelines are often vague on definitions of what constitutes extreme discounting or harmful promotions with the judgment of these largely left to the licensee. As a result of extreme discounting promotions, alcohol can currently be purchased in NSW for as cheap as 22 cents a standard drink. This is problematic because lower prices are associated with increased consumption and harms.

Measures to limit harmful price discounting can be implemented at the state and territory level such as restrictions on discounting practices. Price-based promotions, such as bulk buying specials, are common practice by retailers. For example, Beer Wine Spirits (BWS) is currently selling three five litre casks of wine for \$33, this is the equivalent of 22 cents a standard drink. Price promotions can be regulated through the introduction of a minimum price for alcohol which specifies the lowest price per standard drink at which alcohol can be purchased.

Therefore State and Territory Liquor Licensing Acts should be amended to provide authorities with the power to prohibit or restrict irresponsible advertising and promotion of alcohol with strict guidelines on what is and isn't acceptable practice.

Further, Liquor Promotion Regulations should be introduced as subsets of the Acts and outline the criteria for promotions that are 'irresponsible', prohibited or restricted and address promotions conducted at on and off-licence premises. They should also prohibit point of sale promotional materials from being displayed on and around licensed premises where minors are likely to be present and all alcohol promotions from being placed on State and Local Government property.



## Conclusion

The ABAC has existed since 1998 and apart from slight modifications following the review by NCRAA and MCDS it has changed little.<sup>81</sup> The ABAC is failing to protect children and young people from exposure to alcohol advertising and it is likely that Australia will ultimately need to move to an independent regulation system for alcohol advertising. ANPHA has suggested that the ABAC undergo significant improvements as outlined in ANPHA's Draft report, then seek authorisation from the ACCC. FARE is supportive of this option being further investigated; however given the reluctance of the ABAC to adopt changes in the past, it is unlikely that this option will be feasible.

FARE has outlined below the steps towards improving the regulation of alcohol advertising:

1. ANPHA should undertake a comprehensive assessment of the likelihood of the ABAC being sufficiently improved voluntarily. These improvements include those identified in the Draft report and those further identified by FARE in this submission.
2. If the ABAC agrees to implement the significant improvements that are needed to create an effective alcohol marketing regulatory code, then this must occur within one year.
3. If the ABAC implements all of the improvements within the timeframe, authorisation should be sought from the ACCC.
4. If ANPHA does not determine that the ABAC can be sufficiently improved voluntarily independent regulation should be recommended in ANPHA's final report.
5. If the ABAC refuses to implement the comprehensive changes, or fails to implement the changes to the Code within one year, or fails to seek ACCC authorisation, or fails the ACCC authorisation process, independent regulation should be sought.

Independent regulation could be achieved by introducing a new Commonwealth Act that outlines the standards for alcohol advertising to adequately protect children and adolescents. The Department of Health could administer this Act, with enforcement to be undertaken by the ACCC, in collaboration with the State and Territory Fair Trading agencies. This would mirror current arrangements for tobacco advertising.

## Appendix A:

### ACCC's essential elements for effective voluntary industry codes of conduct:<sup>13</sup>

1	Addressing stakeholder concerns:	Set out clear reasons for establishing the code and outline its intended outcomes
2	Consultation:	Consult with the appropriate stakeholders, community, user groups and regulatory and government agencies to develop the code
3	Clarity:	Ensure the code is written in plain English without ambiguity and vagueness
4	Code administration:	Appoint a code administration body with clear operational documents and standards
5	Transparency:	Have appropriate stakeholder representation on the code administration committee and in complaints handling.
6	Coverage:	Effectiveness depends on the coverage of the code and relevant industry which it represents.
7	Effective complaints handling:	Have procedures and performance criteria for complaints as part of the code
8	In-house compliance:	Ensure that code participants have their own form of in-house compliance systems
9	Sanctions for non-compliance:	Have commercially significant sanctions to achieve both compliance by participants and stakeholder confidence in the industry code.
10	Independent review of complaints handling decisions:	Have mechanisms for review when people are dissatisfied with the outcome
11	Consumer awareness:	The Code will not achieve fair trading aims if consumers are unaware of the code and its contents and how to access it in cases of disputes or complaints
12	Industry awareness:	If employees or industry members are unaware of the code or fail to follow it in day-to-day dealings the code may fail
13	Data collection:	Report and to identify systemic and recurring problems which need addressing by industry members.
14	Monitoring:	Regularly monitoring for compliance to ensure that members complying with the code are not disadvantaged.
15	Accountability:	Publish annual reports on the operation of the code and allow for periodic assessment of its effectiveness.
16	Review:	Ensure the code is meeting identified objectives and current community expectations and that it is working effectively.
17	Performance indicators:	Implement performance indicators in order to measure the effectiveness of the code

# Appendix B:

## Acronyms

ASB	Advertising Standards Bureau
Adjudication Panel	Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel
AARB	Alcohol Advertising Review Board
THE ABAC	Alcohol Beverages Advertising (and Packaging) Code
AANA	Australian Association of National Advertisers
ACMA	Australian Communications and Media Authority
ACCC	Australian Competition and Consumer Commission
ANPHA	Australian National Preventive Health Agency
ASTRA	Australian Television and Radio Association
BWS	Beer Wine Spirits
Brewers Association	Brewers Association of Australia and New Zealand Incorporated,
CTS	<i>Children's Television Standards 2009</i>
CTICP	<i>Commercial Television Industry Code of Practice 2010</i>
COAG Ministerial Council	COAG Ministerial Council (currently the Standing Council on Health)
DSICA	Distilled Spirits Industry Council of Australia Incorporated
FARE	Foundation for Alcohol Research and Education
McCusker Centre	McCusker Centre for Action on Alcohol and Youth
MCDS	Ministerial Council on Drug Strategy
NCRAA	National Committee for the Review of Alcohol Advertising
NHMRC	National Health and Medical Research Council
Outdoor Advertising Inquiry	House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the regulation of billboard and outdoor advertising
OMA	Outdoor Media Association
WFA	Winemakers Federation of Australia Ltd

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