

Submission to the Review of the Commercial Television Industry Code of Practice



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About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to stop the harm caused by alcohol.

Alcohol harm in Australia is significant. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventative health challenges.

For over a decade, FARE has been working with communities, governments, health professionals and police across the country to stop alcohol harms by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

In that time FARE has helped more than 750 communities and organisations, and backed over 1,400 projects around Australia.

FARE is guided by the World Health Organization's *Global Strategy to Reduce the Harmful Use of Alcohol** for stopping alcohol harms through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email info@fare.org.au.

* World Health Organization (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 provide comment on Free TV Australia's *Review of the Commercial Television Industry Code of Practice* (the Code).

The current systems that regulate alcohol advertising in Australia have failed to protect children and young people. This has been recognised by several Government reviews.^{1,2} This is despite the *Broadcasting Services Act 1992* (the Act) including within its objects the need "to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them."³

One of the limited regulatory instruments that exist to protect young people from exposure to alcohol advertising is the *Commercial Television Industry Code of Practice*, administered by Free TV Australia. The Code sits within a system of quasi- and self-regulatory codes that regulate alcohol advertising in Australia and is responsible for regulating the placement and volume of alcohol advertising on commercial free-to-air television. Currently the Code specifies, among other things, limitations on the hours in which alcohol advertising can be shown and the types of advertising permitted during sporting events. These protections for young people are important because international and Australian research studies have consistently demonstrated that the volume of alcohol advertising that children and young people are exposed to predicts future consumption patterns, including initiation of alcohol consumption and heavier consumption among people who already consume alcohol.⁴

Despite this significant evidence-base, Free TV Australia is proposing changes to the Code that will allow alcohol advertising to be shown at even greater levels during children's viewing times, by extending the time at which alcohol advertising can be shown and allowing for more advertising during sporting events. Some of the proposed changes include bringing the M classification zone forward one hour, removing the requirement for a sporting broadcast to be live in order to allow more alcohol advertising in sport, and making complaints processes less accessible to the community. This represents a regression from the current Code that is concerning and out of step with community sentiment.

The community is aware of and concerned about the impact of alcohol advertising on young people. The *2014 FARE Annual alcohol poll* found that 71 per cent of Australians believe that alcohol advertising and promotions influence the behaviour of people under 18 years, and 67 per cent majority support a ban on alcohol advertising on television before 8.30pm. The majority of Australians (55%) also believe that alcohol sponsorship should be banned at sporting events.⁵

FARE strongly recommends that Free TV Australia abandons its moves to further expose children and young people to alcohol advertising through the changes proposed to this Code. Furthermore, FARE recommends that Free TV Australia respond to strong community sentiment and tighten the provisions in the Code relating to alcohol advertising by ensuring that alcohol advertising is not shown on television before 8:30pm, with no exemptions.

This submission discusses the proposed changes to the Code that relate to the advertising of alcohol and is presented in two parts. The first discusses the need for a new approach to alcohol advertising regulation and the second addresses specific proposed changes. This submission makes eight recommendations on the proposed changes to the Code.

Recommendations

1. Clear policy objectives are needed for the regulation of alcohol advertising. FARE has developed five principles for the regulation of alcohol advertising and recommends that these principles be prioritised and adopted in alcohol advertising regulation in Australia:
 - I. Alcohol advertising regulation must aim to reduce the overall volume of alcohol advertising.
 - II. Alcohol advertising regulation must ensure that activities are not targeted at young people and are not in places where children and young people are present.
 - III. Alcohol advertising regulation must cover all communication formats including advertising, sponsorship, and print and digital, including social media.
 - IV. Alcohol advertising must be independently regulated and have clear and consistent penalties for non-compliance.
 - V. The alcohol industry should be required to report their annual expenditure on alcohol marketing activities to government to inform future policy directions.
2. That Free TV Australia remove the exclusions listed under the definition of *'commercial for alcoholic drinks'* in the *Commercial Television Code of Conduct*.
3. That Free TV Australia separate alcohol advertisement restrictions from classifications zones and introduce as a minimum the prohibition of alcohol advertisements between 8.30pm and 5am, with no exemptions.
4. That Free TV Australia close the loophole that allows for alcohol advertising outside the restricted times during sports broadcasts on weekends and public holidays.
5. That Free TV Australia continue to allow for complaints about advertisements to be made in any form, whether it be by phone, internet or letter.
6. That Free TV Australia continue to allow people who did not directly view the offending broadcast to make a complaint.
7. That Free TV Australia, at a minimum, retain the requirement that the Code is publicised across all viewing zones, including information on how to get a copy of the Code.
8. That Free TV Australia retain the current requirements for reporting complaints in the *Commercial Television Industry Code of Practice* and make reports to ACMA publicly available.

The need for a new approach to alcohol advertising regulation

The current regulatory environment

The current systems that regulate alcohol advertising in Australia have failed to protect children and young people from exposure to alcohol advertising. This has been recognised by several Government reviews,^{6,7} most recently by the Australian National Preventative Health Agency (ANPHA) in its report: *Alcohol advertising: The effectiveness of current regulatory codes in addressing community concern, Draft report*. This found that children and young people are exposed to significant amounts of alcohol advertising and that this exposure influences young people's drinking intentions and behaviours.^{8,9,10} Put simply, the current regulatory system that aims to protect children from exposure to alcohol advertising is failing to do so. This is partly due to the tangled quasi-regulatory system where no one single body has central regulatory responsibility for alcohol advertising.

In respect to what can be broadcast on our televisions, including advertising, the *Broadcasting Services Act 1992* provides the legislative foundation.^a The objects of the Act include:

- “to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
- to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
- to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.”¹¹

The *Broadcasting Services Act 1992* is administered by the Australian Communications and Media Authority (ACMA), which is an independent statutory authority with responsibility for monitoring and ensuring compliance with standards and codes of practice to ensure that they operate in the public interest.

Codes of practice are developed by industry groups in consultation with ACMA under Section 123 of the *Broadcasting Services Act 1992* and include: radio codes (such as the commercial radio codes of practice, ABC and SBS codes of practice) and television codes (commercial television, community television, ABC and SBS codes of practice as well as subscription broadcast television and subscription narrowcast television).

Once codes of practice have been developed, these are registered by ACMA if it:

- is satisfied that the code of practice provides appropriate community safeguards for the matters covered by the code;
- the code is endorsed by a majority of the providers of broadcasting services in that industry sector; *and*
- members of the public have been given an adequate opportunity to comment.¹²

^a The Act also regulates datacasting, online and commercial content services.

Registration of the code with ACMA means that signatories are bound by the matters in the code including (but not limited to): program content, commercials, advertising times on television and complaints handling.

ACMA maintains a register of the codes and as part of its obligations under the *Broadcasting Services Act 1992* is required to investigate complaints and take action where breaches to the Code of Practice occur.^{13,14} This action can include:

- giving infringement notices, accepting an enforceable undertaking, giving a remedial direction, and suspending or cancelling licenses – administrative action
- instituting civil proceedings to obtain injunctive relief, an order to cease, civil penalty orders, and orders to enforce compliance with an enforceable undertaking – civil litigation
- referral to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution of an offence – criminal.¹⁵

The Commercial Television Industry Code of Practice (the Code) is an example of one such industry code that is registered with ACMA and the subject of this review. The Code 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.¹⁶ It is also responsible for the placement and volume of alcohol advertising on commercial free-to-air television.

The Code is administered by Free TV Australia and operates alongside other regulatory codes, such as *Children's Television Standards 2009* (CTS). 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."¹⁷ All commercial television licensees must comply with the CTS and the Code.¹⁸

In addition to the CTS, the regulation of alcohol advertising is included in a number of quasi and self-regulatory codes that attempt to regulate the 'content' or the 'placement' of advertisements. These codes include the:

- Alcoholic Beverages Advertising (and Packaging) Code (ABAC)
- 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 Competition and Consumer Commission (ACCC), which administers the *Competition and Consumer Act 2010*.

Policy proposals

There is a clear financial incentive for Free TV Australia to permit as much alcohol advertising as possible, as highlighted by the proposed changes to the Code to make alcohol advertising more prevalent. However, this is not sound policy and is not in the public interest.

The most recently 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.¹⁹ 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.²⁰ This is problematic because increased alcohol consumption is one of the main risk factors for poor health globally. The World Health Organization (WHO) states that alcohol can “ruin the lives of individuals, devastate families and damage the fabric of communities.”²¹

It is clear that the current regulatory system for alcohol advertising has failed and continues to fail. This is partly due to there being no clear policy objectives for alcohol advertising regulation in Australia and no strong regulatory and enforcement mechanisms. Policy objectives need to be articulated to provide clear guidance for policy makers on the intent of alcohol advertising regulation.

These policy principles should be based on the evidence of effective alcohol advertising and sponsorship control. FARE has proposed five policy principles which are outlined below.

1. Alcohol advertising regulation must aim to reduce the overall volume of alcohol advertising.

Longitudinal studies on the relationship between alcohol advertising and alcohol consumption 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.²² It is therefore vital that policies seek to decrease the overall volume of alcohol advertising in Australia, rather than increase it as in the proposed changes to the Code. Currently the Code is the only measure in Australia that restricts the volume of alcohol advertising on our free-to-air television stations and the protections within the Code for exposure to alcohol advertising must be built upon, not regressed.

2. Alcohol advertising regulation must ensure that activities are not targeted at young people and are not in places where children and young people are present.

Young people are regularly exposed to alcohol advertising which impacts on their perceptions of alcohol, drinking intentions and attitudes. A long term plan for an alcohol advertising regulation must include the phasing out of alcohol marketing from times and placements which have high exposure to young people, including broadcasting times known to have high numbers of children and adolescents in the audience, such as at earlier viewing times and during sporting events.

3. Alcohol advertising regulation must cover all communication formats including advertising, sponsorship, and print and digital, including social media.

The current regulatory system does not cover all forms of advertising available to alcohol advertisers, representing a fundamental flaw with the system. Alcohol advertising takes places on television, radio, in newspapers, magazines, billboards, on bus stops, in cinemas, on merchandise, through the internet, and on social media such as Facebook, YouTube and Twitter. Advertising also takes place at the point of sale, through in-store promotions as well as through sponsorship of sporting and cultural events.

To be effective, regulation policies need to cover all advertising formats. Only once this is achieved, there will be resultant reductions in harms. Definitions of alcohol advertising within regulatory instruments must also be broad enough to ensure that all forms of marketing are within the definitions, including new or emerging forms of marketing.

4. Alcohol advertising must be independently regulated and have clear and consistent penalties for non-compliance.

A key component to a good regulatory system is one that has clear and consistent penalties for breaches of regulatory codes. The current system is ineffective as it is convoluted and there are few, if any, penalties or sanctions for those who break the various provisions in the codes. In addition, the current system doesn't cover all forms of alcohol advertising or those who advertise alcohol. Therefore, there are no repercussions if alcohol producers and distributors decide not to participate. To be effective, alcohol advertising must be independently regulated by a government body that has full monitoring and enforcement powers, of which all alcohol advertisers and all forms of advertising are required to be part of.

5. The alcohol industry should be required to report their annual expenditure on alcohol marketing activities to government to inform future policy directions.

Analysis of alcohol advertising expenditure and exposure is needed across all forms of media and sponsorship, and a more detailed examination of the placement and timing, audience demographics, regional and seasonal variation of such promotions is required. As part of a clear regulatory framework alcohol producers should be mandated to publish their promotions expenditure and coverage in order to ensure compliance with regulation and inform the development of policy directions.

Recommendation

1. Clear policy objectives are needed for the regulation of alcohol advertising. FARE has developed five principles for the regulation of alcohol advertising and recommends that these principles be prioritised and adopted in alcohol advertising regulation in Australia:
 - VI. Alcohol advertising regulation must aim to reduce the overall volume of alcohol advertising.
 - VII. Alcohol advertising regulation must ensure that activities are not targeted at young people and are not in places where children and young people are present.
 - VIII. Alcohol advertising regulation must cover all communication formats including advertising, sponsorship, and print and digital, including social media.
 - IX. Alcohol advertising must be independently regulated and have clear and consistent penalties for non-compliance.
 - X. The alcohol industry should be required to report their annual expenditure on alcohol marketing activities to government to inform future policy directions.

Specific comments on proposed changes to the Code

The following sections will discuss specific changes being proposed for the Code and make recommendations relating to these changes.

The definition of a ‘commercial for alcoholic drinks’

Current policy environment

The current Code defines *alcoholic drink* as “any beer, wine, spirits, cider, or other spirituous or fermented drinks of an intoxicating nature, and is generally understood to refer to drinks of 1.15 per cent or more alcohol by volume”, noting that drinks with less than 1.15 per cent alcohol by volume are classified as *very low alcohol* drinks by the Department of Health.

A Commercial is defined as a *direct advertisement for alcoholic drinks*, which in turn is defined as “a commercial broadcast by a licensee that draws the attention of the public, or a segment of it, to an alcoholic drink in a manner calculated to directly promote its purchase or use”.²³ Advertisements do not include the following, as long as they do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use:

- a program sponsorship announcement on behalf of a brewing company or other liquor industry company
- a commercial for a licensed restaurant or
- a commercial for a company whose activities include the manufacture, distribution or sale of alcoholic drinks.²⁴

The proposed Code defines *alcoholic drink* as “a beverage which at 20° Celsius contains more than 1.15 per cent alcohol by volume” and *commercial* as “any advertising for a product, service, belief or course of action which is scheduled within a program break or between programs, and for which a licensee receives payment or other valuable consideration.”²⁵

With respect to a *commercial for alcoholic drinks*, the proposed Code defines this as a “Commercial that directly promotes the use or purchase of one or more Alcoholic Drinks”.²⁶ A *commercial for alcoholic drinks* does not include:

- “program sponsorship announcements
- a Commercial which does not directly promote an alcoholic drink for an entity or company that participates in the manufacture, distribution or sale of alcoholic drinks
- a Commercial where alcohol or a brand associated with alcohol is incidental and any alcohol consumption responsibly depicted
- a Commercial for a licensed restaurant or club, entertainment venue, tourist attraction or dining establishment.”²⁷

Policy proposals

The proposed changes to the Code result in broadening the exclusions to the definition of a *commercial for alcoholic drinks*. This broader set of exclusions means that fewer advertisements would be defined as an alcohol advertisement, allowing them to be shown outside the restricted times. Furthermore the current exclusions which will be included in the proposed Code, such as program sponsorship announcements, should not be excluded from the definition, because these can represent clear and overt advertisements for alcohol advertising. Together these exclusions create a further loophole for alcohol advertisers to promote their products on commercial television.

One of the objectives of the Code is to regulate the content of commercial television in line with current community standards. These changes run counter to community sentiment. The majority of Australians (71%) believe that alcohol advertising and promotions influence the behaviour of people under 18 years, and 67 per cent support a ban on alcohol advertising before 8.30pm.²⁸

A *Review of the effectiveness of current regulatory codes on alcohol advertising in addressing community concerns* about harmful consumption of alcohol found that children and young people are exposed to significant amounts of alcohol advertising and that this exposure influences young people's drinking intentions and behaviours.²⁹ This means that 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. All advertising of alcohol products should be covered by the Code and tightly restricted, including the marketing of alcohol brands and products, licensed premises, and alcohol sponsorship of sport and events. The Code should remove exemptions to the definition of *commercial for alcoholic drinks* which may allow alcohol promotion outside the restricted hours.

Recommendation

2. That Free TV Australia remove the exclusions listed under the definition of '*commercial for alcoholic drinks*' in the *Commercial Television Code of Conduct*.

Controlling children's and young people's exposure to alcohol advertising

Current policy environment

The current Code does not permit alcohol advertisements during M classification zones. The M classification zones as stated in Section 2.10 of the current Code are:

- weekdays (school days) from 8.30pm to 5.00am and 12 noon to 3pm
- weekends and school holidays: 8.30pm to 5.00am.

The proposed Code is suggesting a change to the M classification zones, under Section 2.2.2. These are:

- weekdays (school days) from 7.30pm to 6.00am and 12 noon to 3pm
- weekends and school holidays and public holidays from 7.30pm to 6.00am.

The amended M classification zone will result in an additional hour of alcohol advertising to be permitted in the early evening, as well as an additional hour in the early morning.

Policy proposals

The proposed changes to the Code will result in greater exposure of alcohol advertising to young people, by having alcohol advertising start earlier in the weekday evenings (from 7:30pm, as opposed to 8:30pm) and finishing later in the mornings of weekends and public holiday (until 6am, as opposed to 5am). This will expose further children to alcohol advertising.

Tying alcohol advertising to classification zones is a crude measure that does not provide adequate protection against young people's exposure to alcohol advertising. The data shows that there are significant numbers of Australian children viewing commercial television within both the current and proposed M classification zones. The definition for material classified as M is "recommended for viewing only by persons aged 15 years or over".³⁰ This is despite the legal purchase age for alcohol in Australia is 18 years.

It makes little sense to allow alcohol advertising during M classification zones as this ignores the large numbers of young people who are not old enough to purchase alcohol, but are old enough to watch M rated programs. People aged 15 to 17 represent one of the prime grooming ages for the alcohol industry. A report titled *They'll drink bucket loads of the stuff, an analysis of internal alcohol industry marketing documents in the United Kingdom (UK)* revealed that alcohol producers and advertisers identified in the documents are keen to recruit new drinkers and establish their loyalty to certain brands. It was revealed that market research data on 15 and 16 year olds was often used to influence the development of promotional materials.³¹

Therefore, measures to protect children against alcohol advertising should consider all young people under the age of 18, not just 'children'.

Data indicates that on weekdays, the peak viewing hours for Australian children aged up to 14 years are from 7pm to 8pm,³² with tens of thousands of children still watching free-to-air commercial television at 9.30pm.³³ Australian researchers have also identified children's peak viewing times using commercial audience data showing that peak viewing times included 3.30pm to 10.30pm on weekdays and weekends.³⁴

These figures are a concern given our understanding of the impact of alcohol advertising on young people, influencing their perceptions, drinking intentions and behaviours.^{35,36,37} Young people bear a disproportionate level of harm from alcohol-related accidents and injury.³⁸

The volume of alcohol advertising young people are exposed to has also been demonstrated to impact on their future alcohol consumption behaviour. A review of twelve longitudinal studies of over 38,000 young people has shown that the volume of advertising they are exposed to influences the age that they start drinking as well as their consumption levels.³⁹ This review of longitudinal studies also showed a dose response relationship between volume of exposure to advertising and alcohol consumption in young people. This means that the more alcohol advertising that young people are exposed to, the earlier they will start to drink, and the more they will consume if they already drink.

A study undertaken in the United States showed that in 15 to 26 year olds, each additional advertisement seen increased the number of alcoholic drinks consumed by one per cent.⁴⁰ In the United States, each additional hour of television viewing per day among school children increased their risk of initiating drinking 18 months later by nine per cent.⁴¹ Similarly, a study in New Zealand showed that males who reported being aware of more alcohol advertisements at age 15 drank significantly more beer at age 18.⁴² It also showed that in beer drinkers aged 18 years, liking (preference) of alcohol advertising had a positive impact on beer consumed at age 21 years and they were more likely to be heavy drinkers at 26 years.

In the Australian context, one of the largest and most comprehensive studies of alcohol advertising exposure and alcohol consumption patterns among young people found associations between exposure to multiple different forms of alcohol advertising and alcohol consumption.⁴³ It studied 1,113 adolescents aged between 12 and 17 years and examined their exposure to advertising in television, magazines, billboards and posters, bars and clubs, bottle shops, on the internet and in promotional materials. The study found that nearly all (94.2 per cent) of the people surveyed had seen alcohol advertising on television.⁴⁴

These studies show that the relationship between alcohol advertising and alcohol consumption demonstrate that the volume of alcohol advertising exposure is a strong predictor of future consumption patterns in young people, including initiation of alcohol consumption, and heavier consumption among people who already consume alcohol.⁴⁵ It is therefore essential that alcohol advertising regulations aim to reduce the overall volume of alcohol advertising in Australia. Any decisions regarding the placement and volume of alcohol advertising on television must prioritise the reduction of exposure of alcohol advertisements to young people under 18 years. It must be recognised that alcohol is no ordinary commodity and the regulations around the advertising of alcohol should be treated differently to other products.

Recommendation

3. That Free TV Australia separate alcohol advertisement restrictions from classifications zones and introduce as a minimum the prohibition of alcohol advertisements between 8.30pm and 5am, with no exemptions.

Alcohol advertising during sporting events

Current policy environment

In the current Code, in addition to M classification zones, alcohol advertising is also permitted “as an accompaniment to the live broadcast of a sporting event on weekends and public holidays”. (Section 6.7.2). This includes live-to-air sporting broadcasts and sporting broadcasts delayed for time zone reasons and broadcast as plausible ‘live’, without reformatting.

There are two key changes under the proposed Code. The first relates to the live nature of the broadcast and the second relates to the term ‘sporting broadcast’ rather than ‘sporting event’.

Alcohol advertising will continue to be permitted to be shown on weekends and public holidays as an accompaniment to a sports broadcast, regardless of the time of day under the proposed Code. However, the broadcast is no longer required to be associated with a live sporting event which means that alcohol advertisements will potentially be shown during pre-recorded events.

In addition to this change, the term ‘sporting event’ has now been replaced by the term ‘sports broadcast’. This term is not defined in the proposed Code and therefore could be interpreted to mean that any program about sport at any time on a weekend or public holiday could have alcohol advertising regardless of whether the broadcast is a sporting event and whether that event is live or not. This will increase the exposure of alcohol advertising to the community and particularly young people, in addition to the already unacceptably high amount of alcohol advertising that is permitted under the current Code.

Policy proposals

The current loophole allowing alcohol advertising during live sports on weekends and public holidays is heavily exploited by the alcohol industry, with 49.5 per cent of all alcohol advertising shown during the broadcast of live sporting events.⁴⁶ 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.⁴⁷

This refutes Free TV Australia’s claim that children “constitute a very small percentage of audience for sporting events” (proposed Code, Part A, p.5), which supposedly justifies the continuation of this loophole. Free TV Australia has also rationalised that the children who do watch sports do so “predominantly in the company of adults” (proposed Code, Part A, p.5). This infers that children are protected from the effects of alcohol advertising simply because they are in the presence of an adult and is erroneous as co-viewing does not reduce the amount of a child’s exposure to alcohol advertising, which is the factor that contributes to earlier and increased alcohol consumption.

Alcohol sponsorship of sporting events has been shown to result in children and young people associating alcohol with sport.^{48,49} A University of Wollongong study demonstrated that alcohol advertising during sport is extensive, has features that appeal to children and instils the idea that consumption of the alcohol product is associated with sport as well as positive personality traits and success.⁵⁰

The prolific alcohol advertising during sports further cement the intrinsic associations between alcohol, sports and ‘being Australian’.⁵¹ Sport is a health promotion activity and its association with an unhealthy product such as alcohol is counter-intuitive at best and harmful at worst. For example,

university students who play sports are more likely to drink at risky levels if they or their club or team receive alcohol industry sponsorship.⁵²

The general community is also concerned with alcohol promotions and its link with sport. According to a survey by the Salvation Army, 72 per cent of Australians believe that alcohol and sport in Australia are too closely related, and 67 per cent believe that alcohol and sports sponsorship should be phased out.⁵³ *FARE's 2014 Annual alcohol poll* shows that more than half of Australians (55%) believe that alcohol sponsorship should not be allowed at sporting events.⁵⁴

Given the growing community concern about alcohol's association with sport and its effects on children and adults, measures need to be taken to minimise alcohol promotions in sporting events. Free TV Australia has an important role in mitigating exposure to alcohol advertising through closing the loophole allowing alcohol advertising during sports broadcasts on weekends and public holidays.

Recommendation

4. That Free TV Australia close the loophole that allows for alcohol advertising outside the restricted times during sports broadcasts on weekends and public holidays.

Complaints process

Current policy environment

The current Code does not require the complainant to have personally viewed the broadcast on television in order to make a formal Code complaint. Complaints can be made by mail, facsimile, or electronic form on the Free TV Australia website and complaints by telephone or audio cassette are permitted if the complainant has a disability. The Code specifies that there are to be 360 on-air spots each calendar year on the Code and its complaints process, across all viewing zones, including how to get a copy of the Code.

The Code also requires licensees to provide a quarterly report to Free TV Australia within 15 days of the end of the quarter which provides information on the number and substance of complaints including date received, date or dates of response and details of any complaints upheld and action taken by the licensee. Free TV Australia in turn is required to provide a summary of the information received in the quarterly reports to the ACMA within ten working days of receiving the reports from licensees. In addition, Free TV Australia is required to publish a report each year on the administration of the Code by licensees. This report contains the number and substance of Code complaints received by licensees, details of each complaint upheld and of action taken by the licensee in each case and will be publicly available.

The proposed Code is recommending a number of changes. The prominent changes to making a complaint include removing the ability for community members to complain by telephone or fax “recognising that most people now lodge complaints using the online complaints system”, a claim that is unsubstantiated by data.

A further change is the requirement for the complainant to have personally viewed the offending broadcast in order to make a formal complaint, except under special circumstances relating to aggrieved groups (due to material that is racist, sexist, homophobic or discriminatory in any other way) or an individual who has had their privacy intruded upon in a news or current affairs program.

Another key amendment relates to the publicising of the Code. Unlike the current Code, which sets out requirements for the number and placement of on-air spots to publicise the existence of the Code and advise how to make a complaint, the proposed Code does not provide detail other than: “a licensee must broadcast Community Service Announcements which provide viewers with information about the Code.”

The reporting requirements are substantially diminished in the proposed Code. Licensees are only required to provide information on the number and substance of the complaint. No information on the outcome of the complaint nor the action taken by the licensee is required and no timeframe for reporting is specified. The proposed Code also removes the requirement for Free TV Australia to provide a summary report of information received in quarterly reports from licensees to the ACMA. Free TV Australia’s only reporting requirement under the proposed Code is the annual reporting on Code administration by licensees which, in light of the limited information provided by licensees in their quarterly reports, only needs to include information on the number and substance of Code complaints received by licensees. There is no requirement to make this annual report publicly available.

Policy proposals

In order for the Code to successfully protect young people and reflect community standards, the ability for community members to voice their concerns in a range of formats is a vital process.

Community members are not sufficiently knowledgeable, confident or resourced to make complaints about alcohol advertising and follow them through. A 2005 Department of Health and Ageing report found that only two per cent of respondents had made a formal complaint about an alcohol advertisement, despite 30 per cent of respondents reporting concern about alcohol advertising. People did not complain because they did not believe that a complaint would be upheld, did not have time, or were unaware of the procedure.⁵⁵

Proposed changes to the Code will add further barriers to making a complaint about alcohol advertising. For example, the complainant is now required to have personally viewed the broadcast in order to make a formal complaint which means that policy and advocacy groups acting in the public interest will encounter more difficulty in making complaints.

The proposed Code does not specify the number and placement of on-air broadcasts communicating the existence of the Code and how to make complaints. This could result in broadcasters not publicising the Code and its complaints process a sufficient number of times to ensure that Australian viewers are informed of the Code and its processes.

These proposed changes make the complaints process more difficult, less accessible and less known to the community. Furthermore, reduced reporting requirements reduce transparency of the complaints process and actively work against the community having a greater understanding of the process and rationale for decision-making. Licensees should continue to provide detailed information to Free TV Australia and Free TV Australia should continue to provide a summary report to ACMA which includes the detailed information currently required. This information should be publicly available.

Recommendations

5. That Free TV Australia continue to allow for complaints about advertisements to be made in any form, whether it be by phone, internet or letter.
6. That Free TV Australia continue to allow people who did not directly view the offending broadcast to make a complaint.
7. That Free TV Australia, at a minimum, retain the requirement that the Code is publicised across all viewing zones, including information on how to get a copy of the Code.
8. That Free TV Australia retain the current requirements for reporting complaints in the *Commercial Television Industry Code of Practice* and make reports to ACMA publicly available.

References

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