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Australian National Preventive Health Agency

By email: alcoholadvertising@anpha.gov.au

Draft report: Alcohol advertising: The effectiveness of current regulatory codes in addressing community concern.

This response to ANPHA's draft report is supported by the McCusker Centre for Action on Alcohol and Youth, Cancer Council Western Australia and the Public Health Association of Australia (PHAA).

The McCusker Centre and the PHAA (in collaboration with the Alcohol and other Drugs Council of Australia) each provided a comprehensive submission in response to ANPHA's Alcohol Advertising Issues Paper in March 2013. We do not seek to repeat the detail of either of the original submissions here; however, the evidence, concerns and recommendations outlined in our original submissions should be considered current.

General response to ANPHA's draft report and recommendations

Overall, we consider that ANPHA's draft report competently summarises the evidence and concerns about alcohol-related harm to young people; the extent of young people's exposure to alcohol advertising and promotion; the changing advertising landscape; the influence of exposure to alcohol advertising on young people's alcohol-related attitudes and behaviours; and the failure of current codes and processes to protect young people from exposure to alcohol advertising (placement), including promotions which may appeal to young people (content).

We have considered ANPHA's draft recommendations and hold substantial reservations in regard to a number of them. Broadly, we consider there to be a large disparity between the evidence and concerns outlined in the report and the draft recommendations. The recommendations are at odds with the evidence detailed throughout the report and the submissions from health groups and researchers as to the failure of self-regulation. Most of ANPHA's recommendations are limited to modest amendments to a range of voluntary or

self-regulatory codes and processes that have demonstrably failed in protecting young people and the broader community from inappropriate alcohol advertising and promotion.

We do not support those recommendations that imply that the existing codes and processes are acceptable, whether described as voluntary, self-regulatory, co-regulatory or quasi-regulatory.

There is a clear and urgent need for a legislative approach at the Commonwealth level that covers all alcohol advertising and marketing communications, and which is adjudicated by an independent statutory body. Such a body should have the power to monitor, investigate and penalise breaches of the code.

Failure of current codes and processes

As expressed in the McCusker Centre's original submission, simply modifying or expanding the current self-regulatory system in Australia is not sufficient due to its extensive failings.

The McCusker Centre's original submission clearly outlined the many deficiencies of the current codes and processes related to alcohol advertising in Australia. We will not repeat these in full; however, we summarise here some key failings of the existing codes and processes to underscore why a continuation of these codes and processes in any form would be totally inappropriate.

Self-regulation by the alcohol industry and its supporting organisations is a dismal failure – as it is no doubt intended to be. The failings of the ABAC scheme include:

- The ABAC Scheme has failed to ensure alcohol advertising is socially responsible and to prevent young people's exposure;
- Numerous peer-reviewed publications, reviews, reports, and submissions have drawn attention to the serious deficiencies of ABAC (e.g. its failure to cover major forms of promotion including sponsorships, branded merchandise, and others); we are not aware of any substantial action by ABAC to address these gaps;
- ABAC has been desperately slow to respond to the transition towards social media and digital marketing;
- The code provisions are weak, unclear and open to interpretation. We have no confidence in ABAC to produce appropriate code provisions that would protect young people;
- Pre-vetting against a weak and limited code is unhelpful in protecting the community;
- The scheme lacks any proactive monitoring role and is solely reliant on complaints from the community to identify potential advertisements that breach the code; however, community awareness of ABAC is low; and
- Contrary to the impression some may have gained, the scheme is controlled and dominated by the alcohol industry, and appears to have no interest in effective curbs on alcohol marketing or protecting young people from predatory promotions.

We have similarly strong concerns about the Outdoor Media Association's (OMA) Alcohol Advertising Guidelines; we summarise these in response to recommendations 4 and 5.

Community concern

The overwhelming evidence to justify independent regulation is complemented by strong community concern about alcohol and young people and support for action in key areas to prevent harm from alcohol (including the regulation of alcohol advertising).

An independent survey commissioned by the McCusker Centre and the Foundation for Alcohol Research and Education (FARE) of 1,114 Australian adults in June 2013 found¹:

- 94% of Australian adults are concerned about alcohol use among young people;
- 72% support legal controls to reduce young people's exposure to alcohol advertising (only 7% oppose).
- Only 17% think that governments are doing enough to prevent alcohol-related harm.

Independent regulation of all forms of alcohol advertising and promotion is needed

Expert health authorities have strongly cautioned against industry involvement in alcohol policy development and regulation. The World Health Organization's Director-General, Dr Margaret Chan, recently stated that "In WHO's view, the alcohol industry has no role in formulating policies, which must be protected from distortion by commercial or vested interests".² This position is supported by a recent paper published in *The Lancet* by Professor Rob Moodie and colleagues, on behalf of The Lancet Non-Communicable Disease (NCD) Action Group, which concluded that unhealthy commodity industries should have no role in the formation of national or international non-communicable diseases policy.³ Moodie and colleagues were firm in their conclusion that there is no evidence to support the effectiveness of self-regulation; public regulation and market intervention are the only evidence-based mechanisms to prevent harm caused by unhealthy commodity industries (including alcohol).

Independent, legislated controls on the content, placement and volume of all forms of alcohol advertising and promotion are urgently needed. Such a system would include comprehensive codes and enforceable decisions with sanctions that genuinely act as a deterrent.

Further delays while industry self- or quasi-regulation is allowed to continue will simply allow continuing exposure of children and young people to massive alcohol promotion.

Alcohol Advertising Review Board

The McCusker Centre's submission to ANPHA in March 2013 briefly reported on the Alcohol Advertising Review Board (AARB) – an initiative of the McCusker Centre and Cancer Council WA – in terms of its approach

¹ Independent market research commissioned by the McCusker Centre for Action on Alcohol and Youth and the Foundation for Alcohol Research and Education, June 2013. Available from <http://mcaay.org.au/publications.aspx>

² Chan M. WHO's response to article on doctors and the alcohol industry. *BMJ*. 2013;346.

³ Moodie R, Stuckler D, Monteiro C, Sheron N, Neal B, Thamarangsi T, et al. Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries. *The Lancet*. 2013;381 (9867):670-9.

and impact to date. The AARB's first Annual Report⁴ was released in June 2013; a brief summary is provided here.

During its first year of operation, the AARB received 200 complaints and produced 145 determination reports; 104 determinations upheld complaints in full, and 32 upheld complaints in part. The AARB's level of activity contrasts sharply with that of the ABAC Scheme; in 2012, the ABAC Scheme received 98 complaints and produced 36 determination reports, of which only 7 upheld complaints. Even in its first year, the number of determinations made by the AARB clearly exceeded those made through the alcohol industry's voluntary processes in a similar time frame. This is likely to reflect both the level of community concern about alcohol advertising and support for an independent system of complaint review.

The AARB's Annual Report listed the "Top 10 alcohol advertising shockers of 2012-13", a list of particularly concerning examples of complaints received by the AARB which illustrate the types of alcohol advertisements that cause concern in the community. The 'shockers' included examples of:

- Exposure to young people through sports sponsorship;
- Outdoor alcohol advertisements near a primary school;
- Alcohol-branded clothing for children;
- Targeting of young people through music festivals;
- Promotions by liquor retailers for alcohol products at very low prices;
- Product packaging likely to appeal to young people;
- Disguised alcohol advertising within commentary in a sports broadcast; and
- Promotion of excessive alcohol consumption by liquor retailers on social media.

In the AARB's first year, online advertisements were the most common form of advertisement to receive complaints. Online advertisements included those within popular mobile phone applications, status updates and photos on alcohol brand or retailer Facebook pages, email marketing content, websites, and those placed before popular YouTube videos. A substantial number of complaints were also received regarding alcohol sponsorship of sporting and music events.

As ANPHA noted in its draft report, the AARB Annual Report provided a hypothetical example of how many times an average 15 year old Australian child could be exposed to alcohol advertising over one weekend, based on complaints received by the AARB. This example highlights that it is inevitable that children and young people will be regularly exposed to alcohol advertising given the amount of alcohol advertising and promotion currently present in the community.

ANPHA's Draft Recommendations

We respond below to ANPHA's recommendations outlined within the draft report and note important areas that we are concerned are missing from the recommendations.

⁴ Alcohol Advertising Review Board. Annual report 2012-13. Perth: McCusker Centre for Action on Alcohol and Youth and Cancer Council Western Australia; 2013.

Recommendation 1: Amend the Commercial Television Industry Code of Practice 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.

SUPPORTED IN PRINCIPLE

We support immediate action to implement recommendation 1.

The National Preventative Health Taskforce recommended that alcohol promotions be phased out from times and placements which have high exposure to young people, including during live sport broadcasts.⁵ We are concerned that this and other recommendations of the National Preventative Health Taskforce have not been progressed to date, and support urgent action to remove all alcohol advertising and promotion in and around all sport broadcasts. The loophole in the Commercial Television Industry Code of Practice should be closed as part of a comprehensive strategy to reduce young peoples' exposure to alcohol promotion, in line with the recommendations of the National Preventative Health Taskforce.

The removal of direct alcohol advertising in live sport broadcasts should be supported by the removal of advertising and promotion related to alcohol company sponsorship of sporting associations, teams and events. This is discussed further below in our response to draft recommendation 7.

In addition, we support the removal of the current provision whereby alcohol products may be advertised on school days between 12 noon and 3pm.

Recommendation 2: Amend 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.

SUPPORTED IN PRINCIPLE

All television broadcast codes of practice should consistently protect young people from exposure to alcohol advertising and promotion – the same restrictions on alcohol advertising should apply to all television channels. Given the popularity of subscription television, it is important that time restrictions on alcohol advertising are applied as a matter of urgency, and that these be consistent with those of the Commercial Television Industry Code of Practice (with no exemptions for sport or other broadcast categories).

Recommendation 3: Restrict the direct advertising of alcohol products on-screen in cinemas before 8.30pm and after 5.00am.

SUPPORTED IN PRINCIPLE (WITH CAVEATS)

⁵ National Preventative Health Taskforce. Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia; 2009.

We support immediate action to restrict alcohol advertising in cinemas. It is appropriate for the time restriction on advertising in cinemas to be consistent with that for television (before 8.30pm and after 5.00am).

It is unacceptable that there are currently no restrictions on the placement of alcohol advertising in cinemas in Australia, given that cinemas are clearly locations where young people congregate. By way of example, the Alcohol Advertising Review Board received a complaint regarding the placement of an alcohol advertisement before a 10am screening of a children's movie at a Queensland cinema (AARB Ref 50/12).⁶

While immediate action to restrict alcohol advertising in cinemas is supported, this should not delay the development of comprehensive, legislated controls on all forms of alcohol advertising and promotion.

Recommendations 4 and 5: Apply effective sanctions to enforce decisions relating to the Outdoor Media Association's Alcohol Advertising Guidelines and increase the distance of advertising from schools from 150m to 500m.

NOT SUPPORTED AS INSUFFICIENT IN ITS CURRENT FORM

The Outdoor Media Association's (OMA) Alcohol Advertising Guidelines are poorly implemented and monitored; non-compliance is common; they refer only to "fixed signs" located within the "sight line" of a school; the policy does not apply to transit advertising on buses and taxis, or where the school is in the vicinity of any venue that sells alcohol products; and there are no meaningful sanctions. We are also seriously concerned about the OMA's apparent lack of interest in preventing breaches of its guidelines (as noted in the McCusker Centre's March 2013 submission), as well as its failure to play any role in monitoring and surveillance; rather, the OMA relies solely on reports from community members to a little known group.

There is further a need to ensure that the policy applies to outdoor advertising by alcohol retailers. The 2013 version of the OMA's Alcohol Advertising Guidelines includes definitions of 'alcohol products' and 'alcohol advertising' that did not appear to be in a previous version of the guidelines:

"In this Guideline, "alcohol advertising" includes advertisements for alcohol beverages. It does not include alcohol retailer advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale..."

Advertising by alcohol retailers should be subject to the same regulation as all other alcohol advertising.

Recommendations 4 and 5 are unlikely to substantially change young people's current level of exposure to outdoor alcohol advertising as they do not address significant concerns about the OMA and its Alcohol Advertising Guidelines, including the absence of comprehensive monitoring strategies.

⁶ <http://www.alcoholadreview.com.au/articles/determination-reports/beer-advertisement-before-a-pg-film-in-townsville->

Advertising on buses is theoretically within the jurisdiction of the OMA; however, the OMA's only placement restriction on alcohol advertising – that its display is limited to outside a 150m sight line of a school gate - does not apply to advertising on buses. Outdoor advertising – including that on buses - is a medium to which all members of the community, including young people, are highly exposed. It is unacceptable that there are no placement regulations to prevent young people's exposure to alcohol advertising on buses and public transport. The placement of alcohol advertising should be prohibited where exposure to young people cannot be controlled, including on buses.

The 2011 report *'Reclaiming public space: Inquiry into the regulation of billboard and outdoor advertising'* noted the concerns of a number of groups regarding the need to regulate the volume and placement of outdoor alcohol advertising, in addition to the content.⁷ The House of Representatives Standing Committee on Social Policy and Legal Affairs concluded that: "when the loopholes [of the OMA's Alcohol Advertising Guidelines] are taken into account, the initiative seems 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" [4.150, page 88]. We support the Committee's conclusion.

Effective controls to prevent young people's exposure to outdoor alcohol advertising should be included within comprehensive, legislated controls on the content, placement and volume of all forms of alcohol advertising and promotion.

Recommendations 6-8: Revise the ABAC Code and Guidelines to include and provide specific guidance on alcohol branded merchandise and sponsorship of sporting, music, cultural and all other events.

NOT SUPPORTED

It is completely inappropriate and contrary to the evidence from within the ANPHA report as well as expert recommendations that there should be a proposal for the failed ABAC Scheme to be extended to cover these important areas of alcohol promotion. Rather, alcohol branded merchandise and sponsorship of sporting, music, cultural and all other events should be comprehensively addressed within independent, legislated controls on the content, placement and volume of all forms of alcohol advertising and promotion.

We support the recommendations of the National Preventative Health Taskforce⁸ in regard to alcohol advertising and promotion which we believe should be the starting point for alcohol policy:

In a staged approach, phase out alcohol promotions from times and placements which have high exposure to young people aged up to 25 years, including:

- Advertising during live sport broadcasts
- Advertising during high adolescent/child viewing
- Sponsorship of sport and cultural events

⁷ House of Representatives Standing Committee on Social Policy and Legal Affairs. *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*. Canberra: Commonwealth of Australia; 2011.

⁸ National Preventative Health Taskforce. *Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action*. Canberra: Commonwealth of Australia; 2009.

The removal of direct alcohol advertising in live sport broadcasts (recommendation 1) should be supported by the removal of advertising and promotion related to alcohol company sponsorship of sporting associations, teams and events, including amateur sporting clubs. The rationale supporting recommendation 1 extends to restricting alcohol advertising in sport related to sponsorship arrangements.

Recommendations 9-9.12: A range of amendments to the ABAC Code, Rules and Procedures.

NOT SUPPORTED

Recommendations 9-9.12 to amend the ABAC Code and processes would only serve to delay the necessary action to develop independent, legislated controls on alcohol advertising and promotion.

We are not persuaded by the proposals to amend the ABAC processes or to seek ACCC authorisation for ABAC codes. We have no confidence that the alcohol or advertising industries would pursue these appropriately or use them as anything other than strategies to delay or weaken the action that should be taken.

For the reasons set out on page 2, we do not support recommendations that accept the continuation of the existing voluntary codes and processes, such as ABAC.

We do not intend to respond to each suggested amendment to the ABAC Scheme as it is so flawed and discredited that amendments to its processes will make no substantial difference, and commenting in detail on proposals for meaningless amendments might be seen as lending credibility to a system that in our view should not be supported.

Recommendation 9.13: Remove the exemption for older packaging from the remit of the ABAC Code.

SUPPORTED IN PRINCIPLE

Regulations regarding the packaging and labelling of alcohol products should apply to all alcohol products, with no exceptions.

Recommendation 10: Monitoring and research by Australian governments

There is an urgent need for action on alcohol advertising to develop effective and comprehensive legislated controls. Any monitoring, research and reviews on the self-regulatory (or similar) codes and processes should be carried out by groups completely independent of alcohol and advertising interests, and be designed to inform the development of independent, legislated controls. This should, however, not delay the urgent action needed to protect children and young people from alcohol advertising.

Recommendation 11: Reporting to the relevant COAG Ministerial Council

The evidence could not be clearer that public health goals have not been achieved through the current regulatory schemes and further intervention (independent regulation) is urgently needed. We believe a useful focus of the relevant COAG Ministerial Council or Councils would be to support the development of effective independent, legislated controls on all forms of alcohol advertising and promotion.

Areas not sufficiently covered in ANPHA's Draft Recommendations

1. Digital and social media

The report acknowledges that “age restricted sites and filters are easily circumvented” [p104]. It is concerning that regulation has failed to keep pace with the rapidly developing technologies available to alcohol advertisers. The sense of urgency we would expect in regard to minimising young people's exposure to alcohol advertising through digital media appears to be absent in the draft report. We are particularly concerned about the use of social media to normalise frequent alcohol consumption, thereby contributing to Australia's drinking culture. Approaches to preventing the exposure of children and young people to alcohol advertising through the internet and new media should be a focus of governmental activity in this area.

2. Advertising on buses and taxis

Alcohol advertising on buses and taxis is theoretically covered by the OMA's Alcohol Advertising Guidelines; however, in reality, there are no placement restrictions on alcohol advertising on buses and taxis. Given the high (and uncontrolled) exposure of this advertising medium to children and young people, alcohol advertising should be prohibited on all public transport to which young people may be exposed, such as buses and taxis.

3. Volume of alcohol advertising and promotion

The draft report does not sufficiently address the volume of alcohol advertising and promotion present within the community. Independent regulation should cover the content, placement and volume of all forms of alcohol advertising and promotion. This view is consistent with recommendations of the Australian Medical Association⁹ and the World Health Organization.¹⁰

4. Expenditure on alcohol advertising and promotion

Alcohol companies should be required to publicly disclose their annual marketing expenditure, as recommended by the Australian Medical Association.⁹

5. Tax deductibility of alcohol advertising

We recommend ending the tax deductibility of alcohol advertising, consistent with the recommendations of the National Preventative Health Taskforce in their submission to the Henry tax review.¹¹

⁹ Australian Medical Association. Alcohol Marketing and Young People: Time for a new policy agenda. Canberra: Australian Medical Association; 2012.

¹⁰ World Health Organization. Global strategy to reduce the harmful use of alcohol. Geneva: World Health Organization; 2010.

¹¹ National Preventative Health Taskforce. Australia's future tax system: Submission from the National Preventative Health Taskforce [Internet]. 2008 [updated 2008 Oct; cited 2013 Feb 27]. Available from: http://www.taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Moodie_Rob.pdf.

6. Additional approaches to support legislated controls

As outlined in the McCusker Centre’s original submission, we support the introduction of a system of corrective advertising, whereby alcohol producers and retailers are required to fund independent health organisations to run marketing campaigns (completely independent of any alcohol industry interests or involvement) about the harms of alcohol. This could be implemented through a levy on companies involved in alcohol promotion requiring that a sum equivalent to 25% of their marketing budgets be allocated for this purpose.

Conclusion

We are disappointed that most of the recommendations in this report fail to match the evidence provided in it or the recommendations from organisations such as the Australian Medical Association and the National Alliance for Action on Alcohol. We support action that will prevent alcohol companies from promoting their products to children and young people in association with sport. For the rest, we believe that – consistent with the evidence in this report and others – systems relying on working with the alcohol and advertising industries through voluntary codes should not be supported.

Independent, legislated controls on the content, placement and volume of all forms of alcohol advertising and promotion are urgently needed. Such a system would include comprehensive codes and enforceable decisions with sanctions that genuinely act as a deterrent.

Further delays while industry self- or quasi-regulation is allowed to continue will simply allow continuing exposure of children and young people to massive alcohol promotion.

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