

7 August 2018

Review of the Liquor Promotion Guidelines
Liquor & Gaming NSW

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We welcome the opportunity to comment on the Review of the Liquor Promotion Guidelines. Strong restrictions on alcohol promotion are an important part of the comprehensive approach needed to reduce alcohol-related harms. Our submission highlights the importance of the NSW Government implementing strong guidelines to ensure responsible promotion of alcohol by NSW licensees.

The McCusker Centre for Action on Alcohol and Youth is an independent organisation based at Curtin University committed to reducing harms from alcohol among young people. The McCusker Centre has been actively involved in work over a number of years to draw attention to the need for effective alcohol marketing regulation. With strong concerns about the ineffectiveness of alcohol marketing regulation under the current self-regulatory system, the McCusker Centre, in conjunction with Cancer Council WA, established the Alcohol Advertising Review Board (AARB). The AARB accepts and reviews complaints from the Australian community, free of industry influence.

Alcohol marketing in NSW

Alcohol marketers use a wide range of promotional media including television, cinema, radio, print (including magazines, newspapers and catalogues), outdoor (including billboards, sporting grounds, bus shelters and on public transport), online (including social media, YouTube, mobile phones and websites), sponsorship of sport and music events, and branded merchandise. There is community concern regarding the alcohol advertising in NSW, reflected in complaints submitted to the AARB. Complaints submitted to the AARB about alcohol promotions by NSW liquor licensees include:

- An ad for The Bavarian on a Sydney school bus (July 2018)
- Liquorland ad on Sydney radio station (January 2018)
- A BWS billboard near Sydney airport promoting its 'Click and Collect' service (May 2017)
- Cellarbrations Facebook ad promoting a competition for a child to lead the Sydney Swans onto the field before an AFL game (July 2015)
- 'Duff Beer' available exclusively at Woolloomooloo Bay Hotel (June 2014)
- Facebook promotions by Thirsty Camel NSW with statements such as "It's Friday. The only two who aren't excited are my bank account And my liver" (March 2014) and "I'm factoring a hangover into tomorrow's workload" (May 2013).
- Shopper docket promotions (September 2013 and October 2012).

In addition, the AARB has received numerous complaints about alcohol brand promotions in NSW. Details about complaints are available in determination reports published on the AARB website (www.alcoholadreview.com.au).

Ineffectiveness of current system of alcohol advertising self-regulation in Australia

We recognise that the review does not seek to examine broader issues around alcohol advertising or the related national framework. However, we believe it is relevant to highlight the substantial weaknesses in the current system of alcohol advertising regulation in Australia. The ineffectiveness of the current system provides further support for the need for strong regulation of alcohol promotions by state and territory governments, including through rules and guidelines such as the NSW Liquor Promotion Guidelines.

Alcohol advertising is largely self-regulated by the alcohol and advertising industries in Australia. The Advertising Standards Bureau (ASB) assesses complaints against the Australian Association of National Advertisers (AANA) Code of Ethics and the Code for Advertising and Marketing Communications to Children. Alcohol advertising complaints are also assessed by the Alcohol Beverages Advertising Code (ABAC) Scheme against an alcohol-specific code of practice.

Recognised weaknesses in the self-regulatory system include that code provisions are narrowly worded¹ and important forms of marketing are not covered, including sponsorship.² The system is voluntary (non-signatories go unregulated), there appear to be no sanctions for advertisers breaching codes, decisions by the ABAC Scheme and ASB are not directly enforceable, and there is no monitoring function. There is also a lack of independence in the ABAC Scheme. The three ABAC Scheme Directors represent the Brewers Association of Australia and New Zealand, the Distilled Spirits Industry Council of Australia and the Winemakers' Federation of Australia.³ These groups jointly fund the ABAC Scheme and form the majority of its Management Committee.⁴

In 2017, the ABAC Scheme announced they would cover the placement as well as the content of alcohol ads.⁵ The self-regulatory system's failure to adequately address placement has been a major criticism by health groups; however health experts publicly criticised the new "Placement Rules", as they are unlikely to reduce young people's exposure to alcohol promotion.⁶ The provisions use vague, undefined phrasing, such as "primarily aimed at young people", and rely on an audience threshold restriction that limits alcohol ads to places where the audience is "reasonably expected to comprise at least 75% adults". International research has suggested this type of restriction is

¹ Australian National Preventive Health Agency. Alcohol advertising: the effectiveness of current regulatory codes in addressing community concern. Canberra: Commonwealth of Australia; 2014. Available from: www.fare.org.au/wp-content/uploads/Alcohol-Advertising-Final-Report-30-April-2014.pdf

² Alcohol Beverages Advertising Code. ABAC Responsible Marketing Code. 2017. Available from: http://www.abac.org.au/wp-content/uploads/2017/07/ABAC_CodeofConduct_2017_web.pdf

³ Australian Securities & Investments Commission. Current and historical company extract: The ABAC Scheme Limited. Received 2015 Dec 17.

⁴ The ABAC Scheme Limited. Adelaide: The ABAC Scheme Limited. About the ABAC Scheme; 2016 [cited 2017 Nov 1]. Available from: <http://www.abac.org.au/about/management-committee/>

⁵ Alcohol Beverages Advertising Code. New restrictions on placement of alcohol marketing [media release]. 2017 Jul 19. Available from <http://www.abac.org.au/wp-content/uploads/2017/07/Final-ABAC-media-release-19-July-2017.pdf>

⁶ Alcohol Advertising Review Board and National Alliance for Action on Alcohol. New alcohol industry ad rules dismissed as window dressing [media release]. 2017 Jul 20. Available from: <https://www.alcoholadreview.com.au/resources/New-alcoholindustry-ad-rules-dismissed-as-window-dressing---NAAA-and-AARB-200717.pdf>.

ineffective in minimising young people's exposure^{7,8}; it is too lenient, difficult and expensive to monitor, and breaches occur.

The Discussion Paper notes other relevant Codes of Practices that address some forms of placement of alcohol marketing in Australia, however these controls are weak and do not adequately protect young people. The Commercial Television Industry Code of Practice restricts alcohol advertisements to 8.30 pm–5 am and 12 pm–3 pm on weekdays, and 8.30 pm–5 am on weekends and school holidays on free-to-air channels. An exemption allows alcohol advertisements during sports programs on weekends and public holidays.⁹ This loophole has been heavily criticised by health and community groups as it prioritises commercial interests over the wellbeing of children and young people. An Outdoor Media Association guideline limits outdoor alcohol advertising to outside a 150-m sight line of a school gate, except in the vicinity of a licensed venue. It does not apply to public transport vehicles or taxis. This guideline is narrow, breaches occur,¹⁰ and it is unlikely to significantly reduce children's exposure to alcohol marketing.

The World Health Organization, the Australian Medical Association, the National Preventative Health Taskforce and other expert groups have recommended restricting alcohol advertising during times and in places which have high exposure to children and young people as part of a comprehensive approach to reducing alcohol related harms.^{12,23,11} There is strong community support for effective regulation to protect young people from alcohol promotion; 71% of Australian adults support using legal controls to reduce children's exposure to alcohol promotion, with only 6% opposed.¹²

The Australian Government has overarching responsibility for the regulation of alcohol marketing, but to date, has not acted in the areas available to address concerns or strengthen regulation. With high levels of concern about alcohol and young people it is important and necessary for state governments to take action to reduce young people's exposure to alcohol promotion. The Liquor Promotion Guidelines are an important way the NSW Government can implement restrictions on alcohol promotions to ensure they are socially responsible.

NSW inquiry into the Alcoholic Beverages Advertising Prohibition Bill 2015

In September 2017, the NSW Legislative Counsel's Portfolio Committee No. 1 commenced an inquiry into the proposed Alcoholic Beverages Advertising Prohibition Bill 2015. The Bill proposed to prohibit alcohol advertising and other promotional activities across a range of media platforms in order to reduce the incentive for people to consume alcohol. The final report was released by the Committee

⁷ de Bruijn A, van den Wildenberg E, van den Broeck A. Commercial promotion of drinking in Europe - Key findings of independent monitoring of alcohol marketing in five European countries. Utrecht (Netherlands): Dutch Institute for Alcohol Policy (STAP); 2012. Available from: http://eucam.info/wp-content/uploads/2014/04/ammie-eu-rapport_final.pdf

⁸ Jernigan D et al. Youth Exposure to Alcohol Advertising on Television — 25 Markets, United States, 2010. Atlanta (USA): Centers for Disease Control and Prevention; 2013. Available from: <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6244a3.htm>

⁹ Free TV Australia. Commercial Television Industry Code of Practice. 2015. Available from: http://www.freetv.com.au/content_common/pg-code-of-practice.seo

¹⁰ Alcohol Advertising Review Board. No way to ignore it: The case for removing alcohol ads from public transport. McCusker Centre for Action on Alcohol and Youth and Cancer Council WA. 2016. Available from <https://www.alcoholadreview.com.au/resources/AARB-Public-transport-report-FINAL.pdf>

¹¹ National Preventative Health Taskforce. Australia; The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia; 2009.

¹² Independent market research commissioned by the McCusker Centre for Action on Alcohol and Youth, July 2017. Available from: www.mcaay.org.au

on 29 March 2018, and while the Committee recommended that the Bill not be passed as they did not believe that in its current form it was the appropriate way to meet the challenges posed by alcohol and its advertising, they did find “that the strict regulation of alcohol advertising has an integral role to play in addressing the significant health and social costs that alcohol-related harm causes in our society, and in encouraging a healthier lifestyle among all Australians.”

Two of the Committee’s recommendations are relevant to this review of the NSW Liquor Promotion Guidelines:

Recommendation 5

That Liquor & Gaming NSW complete the review and finalisation of the updated NSW Liquor Promotion Guidelines by the end of 2018.

Recommendation 6

That the NSW Government consider the issue of discounting promotions for alcoholic beverages on shopper docketts.

The Committee acknowledged concerns about the current Liquor Promotion Guidelines, including in relation to point of sale promotions and promotions found on shopper docketts for heavily discounted alcohol. The Final Report noted “The committee is deeply troubled by the heavy promotion of cheap alcohol in this way, which the committee believes contributes both to the normalisation of alcohol and the encouragement of excessive alcohol consumption.”

The review of the Liquor Promotion Guidelines is an opportunity for these recommendations to be progressed.

[Children and young people’s exposure to alcohol marketing](#)

The current Guidelines appropriately recognise the impacts of alcohol harm on those under the age of 18. However, it would be appropriate for the Guidelines to also acknowledge the impact of alcohol marketing on children and young people. The evidence for the impact of alcohol advertising on young people is consistent and comprehensive. Exposure to alcohol advertising influences young people’s beliefs and attitudes about drinking, and increases the likelihood that adolescents will start to use alcohol and will drink more if they are already using alcohol.^{13,14} Research shows strong associations between exposure to alcohol advertising and young people’s early initiation to alcohol use and/or increased alcohol consumption.^{15,16}

Given this evidence, the use of phrases such as “primarily appeal to minors” and “predominantly targeted to minors” in Principle 1 is too narrow. These phrases echo wording used in the ABAC Scheme’s Responsible Alcohol Marketing Code, which has been found to be too narrow to

¹³ Jernigan D, Noel J, Landon J, et al. Alcohol marketing and youth alcohol consumption: a systematic review of longitudinal studies published since 2008. *Addiction*. 2016; 112(Suppl. 1):7-20.

¹⁴ Anderson P, de Bruijn A, Angus K, Gordon R, Hastings G. Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies. *Alcohol & Alcoholism*. 2009; 44(3):229–243.

¹⁵ Snyder LB, Fleming-Milici F, Slater M, Sun H, Strizhakova Y. Effects of Alcohol Advertising Exposure on Drinking Among Youth. *Archives of Pediatrics & Adolescent Medicine*. 2006; 160:18-24.

¹⁶ Smith L, & Foxcroft, D. The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: systematic review of prospective cohort studies. *BMC Public Health*. 2009; 9(51).

effectively protect children and young people.¹⁷ The weaknesses in both the content and the narrow interpretation of the ABAC Scheme's Code render it an inappropriate regulatory tool to use to inform the Guidelines.

The current Guidelines permit alcohol advertisements that appeal to young people, but are not necessarily targeted at them. For the Guidelines to reflect public health objectives of reducing harm from alcohol, the examples of unacceptable promotions in Principle 1 should to be expanded to include promotions that appeal more broadly to young people, irrespective of whether the marketing is also appealing to or is targeted at adults.

The current Guidelines do not address the issue of placement. Research demonstrates young people are heavily exposed to alcohol marketing via a broad range of media, including outdoor billboards and on social media.¹⁸ Of concern, almost 40% of 16 to 17 year olds report exposure to alcohol advertising in licenced venues.¹⁹ Given the identified weaknesses in the ABAC Scheme's Placement Rules and other relevant Codes of Practices, the NSW Government should not rely on them to effectively protect children and young people. To adequately reduce children and young people's exposure to alcohol marketing, the Guidelines should introduce placement restrictions that cover alcohol marketing placed where children and young people are likely to be.

Recommendations

1. Expand the Guidelines to prohibit alcohol advertisements that are likely to appeal to young people, irrespective of whether they are also appealing to or targeted at adults.
2. The Guidelines should restrict the placement of alcohol promotions where children and young people are likely to be exposed.

Responsible promotion of liquor at takeaway liquor stores in NSW

The current Guidelines note that they "apply to ALL licensed premises under the *Liquor Act 2007* that run liquor promotions". It is crucial that the Guidelines apply equally to on-licence and off-licence premises. Eighty percent of alcohol in Australia is now purchased from off-licence premises²⁰, yet the wording in the current Guidelines allows off-licence premises to participate in promotional activities such as extreme discounting which have the potential to cause harm in the community.

Principle 5 notes that a promotion "should not involve the provision of free drinks or extreme discounts, or discounts for a limited duration that creates an incentive for patrons to consumer liquor more rapidly than they otherwise might." The Guidelines do not define an 'extreme discount', but rather contain vague wording around the influence of a discount depending on "a range of things".

Alcohol is regularly promoted in NSW through off-licence premises for very cheap prices. For example, the Woolworths catalogue offering specials valid between 25 July and 31 July 2018 offered two De Bortoli Premium 4 Litre Casks for \$28. This was as much as 82 standard drinks for \$28, or 34 cents a standard drink. Similarly, the Coles catalogue offering specials for the same week promoted

¹⁷ Australian National Preventive Health Agency. Alcohol advertising: the effectiveness of current regulatory codes in addressing community concern. Canberra: Commonwealth of Australia; 2014. Available from: www.fare.org.au/wp-content/uploads/Alcohol-Advertising-Final-Report-30-April-2014.pdf

¹⁸ Aiken A et al. Youth perceptions of alcohol advertising: are current advertising regulations working? Aust NZ J Publ Heal. 2018; 42(3):234-239.

¹⁹ Aiken A et al. Youth perceptions of alcohol advertising: are current advertising regulations working? Aust NZ J Publ Heal. 2018; 42(3):234-239.

²⁰ Euromonitor International. Passport – Alcoholic drinks in Australia. June 2017.

any three Berri Estate 5 Litre Casks for \$37. This was as much as 153 standard drinks for \$37, or 24 cents a standard drink.

Promoting and selling large volumes of cask wine for absurdly low prices does not reflect responsible liquor retailing and should be considered as an extreme discount. To qualify for the discounted price, the customer must buy 10 or 15 litres of wine. The Coles promotion would cost less than a dollar to exceed the NHMRC Alcohol Guideline for reducing the risk of injury on a single occasion of drinking.

Shopper docket are another way off-premise licences use price discounting to promote alcohol. In 2013, a report was prepared for the NSW Office of Liquor, Gaming and Racing on the use of “shopper docket” alcohol promotions.²¹ The report noted that alcohol point-of-sale promotions may encourage people to buy a greater quantity of alcohol, and that there is an association between reduced price and increased consumption of alcohol, particularly among young people. The report also noted that even if purchase limits on quantities on shopper dockets are applied, it would be very easy for shoppers to redeem more than the specified quantity.

Documents obtained through Freedom of Information by the Foundation for Alcohol Research and Education in 2014 found that after an investigation into the use of shopper dockets, the NSW Office of Liquor, Gaming and Racing concluded that they were “likely to encourage the misuse and abuse of liquor” and recommended shopper dockets offering discounted alcohol be banned. This recommendation was not implemented.²² In addition, the final report from the inquiry into the proposed Alcoholic Beverages Advertising Prohibition Bill 2015 recommended the NSW Government consider the issue of discounting promotions for alcoholic beverages on shopper dockets.

The current Guidelines note that price discounting such as ‘buy one, get one free’ offers promoted through discount vouchers, or ‘shopper dockets’ or promotions involving discounts of greater than 50% off the normal retail price are “examples of promotions which require harm minimisation measures”. The Guidelines should be updated to list the practices as examples of “unacceptable promotions”.

Recommendations

3. Strengthen the Guidelines to prohibit the promotion of large quantities of alcohol for very low prices per standard drink. It would be appropriate to consider these promotions as not being in the public interest.
4. The Guidelines should ban the use of harmful price discounting including alcohol promotions on shopper dockets, ‘buy one, get one free’ offers or promotions involving discounts of greater than 50% off the normal retail price.

Limiting the influence of the alcohol industry

We note that the previous update of the Guidelines in 2013 was heavily influenced by members of the alcohol industry, resulting in much weaker restrictions than initially proposed by the NSW Office of Liquor, Gaming and Racing.²³ For example, the NSW Office for Liquor, Gaming and Racing initially

²¹ Jones S. Expert Report on “shopper docket” alcohol promotions – prepared for the NSW Office of Liquor, Gaming and Racing. Available from <http://drinktank.org.au/2014/05/shopper-dockets-the-olgr-investigation/>

²² Giorgi C. Shopper dockets – the OLGR investigation. Drink Tank. 2014. Available from: <http://drinktank.org.au/2014/05/shopper-dockets-the-olgr-investigation/>

²³ Kaye J. Paper trail shows O’Farrell Government rolling over to liquor industry. Drink Tank. 2013. Available from <http://drinktank.org.au/2013/07/paper-trail-shows-ofarrell-government-rolling-over-to-liquor-industry/>

proposed a ban on promotions involving discounts of greater than 50% off the normal retail price.²⁴ But following pressure from the packaged liquor sector²⁵, the final version of the Guidelines included this as a promotion requiring harm minimisation methods.

The WHO Global Strategy to Reduce the Harmful Use of Alcohol restricts the actions of “economic operators in alcohol production and trade” to their core roles as “developers, producers, distributors, marketers and sellers of alcoholic beverages”.²⁶ The former WHO Director General also established 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”.²⁷ Progress towards effective approaches to reducing harm from alcohol, including alcohol marketing regulation, has been hampered by fierce opposition from sections of the alcohol industry and related industries.

We strongly encourage the current review to remain committed to developing Guidelines that are focused on preventing harm from alcohol. The Guidelines should not be watered down due to pressures from the industry.

Recommendation

5. The Liquor Promotion Guidelines should prioritise the health and wellbeing of the NSW community over the alcohol industry, and the review process should not be unduly influenced by the industry.

We thank Liquor & Gaming NSW for the opportunity to comment on the Review of the Liquor Promotion Guidelines and hope you will consider our recommendations. We strongly support restrictions on alcohol promotions to protect children and young people, and implementing effective Liquor Promotion Guidelines are an important way the NSW Government can take action to ensure alcohol is promoted responsibly in NSW.

Yours sincerely,

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²⁴ Communications between Coles Liquor & Spirit Hotels and the NSW Office of Liquor, Gaming & Racing obtained through Freedom of Information. Available from <http://drinktank.org.au/wp-content/uploads/2013/07/b182.pdf>

²⁵ Communications between Liquor Stores Association NSW and the NSW Office of Liquor, Gaming & Racing obtained through Freedom of Information. Available from <http://drinktank.org.au/wp-content/uploads/2013/07/b25.pdf>

²⁶ World Health Organization. Global Strategy to Reduce the Harmful Use of Alcohol. WHO; 2010.

²⁷ Chan M. WHO’s response to article on doctors and the alcohol industry. BMJ. 2013; 346:f2647.