



**Submission by
Free TV Australia Limited**

National Preventative Health Taskforce

Technical Report No 1
Obesity in Australia: a need for urgent
action

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1 Executive Summary

- Free TV does not support advertising bans on commercial free to air television as an appropriate regulatory response to concerns around obesity.
- Commercial free to air television is legislated for under the Commonwealth *Broadcasting Services Act 1992* (BSA) and is regulated by the Australian Communications and Media Authority (ACMA).
- The BSA sets up a system of Standards and Codes to regulate the industry and to ensure community safeguards are adhered to. Extensive public consultation, regulatory oversight and comprehensive complaints processes underpin the system.
- Content of advertisements and programs on commercial free to air television is regulated by the Commercial Television Industry Code of Practice (Code) and in the case of programs for children, the Children's Television Standard (CTS). In addition, advertising is regulated by various codes developed by the Australian Association of National Advertisers (the "AANA Codes").
- Advertising during programs specifically for children on commercial free to air television attracts scheduling and content restrictions designed to protect children from harmful material. The regulation is extended through the Commercial Television Industry Code of Practice to all advertising directed to children.
- The current food advertising regulatory system for commercial free to air television is extensive and more restrictive than for other media which attract children, such as pay TV and the Internet.
- ACMA's current review of the CTS found that there was no clear evidence of a causal link between advertising and obesity. As a result ACMA has determined that ad bans are not warranted. The review is ongoing and is the appropriate forum for addressing these issues.
- ACMA's review was extensive and based on agreed measures of audience adhesion. This is in contrast to oft quoted studies which use simplistic methods of "counting" advertisements usually resulting in overly inflated figures.
- Advertising bans will have a major impact on broadcaster revenues without any demonstrable benefit to viewers.
- Detrimental impacts on programming, which is provided free of charge to all Australians, are inevitable.



2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free to air television licensees.

Free TV welcomes the opportunity to comment on the National Preventative Health Taskforce Discussion Paper *Australia: The Healthiest Country by 2020*, and in particular, *Technical Report Number 1: Obesity in Australia, a Need for Urgent Action* (the "**Discussion Paper**").

Free TV does not support further restrictions on food and beverage advertising.

Children and others are already protected from inappropriate marketing of unhealthy foods and beverages on commercial free to television.

Content of advertisements and programs on commercial free to air television is regulated by the Commercial Television Industry Code of Practice (Code) and in the case of programs for children, the Children's Television Standard (CTS). In addition advertising is regulated by various codes developed by the Australian Association of National Advertisers (the "AANA Codes").

The existing regulatory framework is accountable to the community through in-built mechanisms for review and community consultation, and a legislative requirement that the Codes of Practice must always provide adequate community safeguards.

The appropriate mechanism through which to consider any concerns regarding the adequacy of the existing regulatory framework is through the comprehensive review, complaint and investigation mechanisms built-in to the broadcasting regulatory framework.

An ACMA review of the CTS is currently underway. Furthermore, the BSA requires a review of the Code every three years. The review includes an extensive public consultation period. The Code is only registered by ACMA if it is satisfied that it provides appropriate community safeguards. The Code is currently being reviewed and will be released for public comment in 2009. The last Code review concluded in 2004.

Free TV strongly endorses the current review processes as the appropriate means through which to ensure the ongoing adequacy of the existing regulatory framework.

As noted in the draft findings of ACMA's comprehensive, evidence based review of the CTS, there is no evidence that further advertising restrictions will have any impact on issues such as childhood obesity. The regulatory measures in place are working well and there is no evidence of a regulatory failure in relation to food advertising to children.

ACMA's draft CTS did not propose additional food and beverage advertising bans. ACMA's draft findings do recommend some modification of the existing regulations regarding food advertising to children, including in relation to premium offers and bans on the endorsement of commercial products by program characters, celebrities and licensed characters. ACMA is currently consulting on these proposed changes.



There is no evidence that ACMA's review of the CTS or the Code reviews have failed to take into account any relevant considerations, evidence or community feedback.

Any advertising restrictions on commercial free to air television must be weighed against the objective of delivering programming through an advertising-funded model. This model is already being affected by the fragmentation of audiences.

Commercial free to air television is now one of many screen time choices available to Australian viewers. Viewers have access to over 100 pay TV channels, a vast array of information and entertainment sources available on the Internet, as well as DVDs, digital media players, computer games and increasingly video service through mobile phones.

None of the emerging platforms described above are subject to any of the advertising restrictions of the CTS or the Code. Any review of advertising directed to children or otherwise must apply across different platforms to ensure regulations remain relevant and do not disadvantage free to air broadcasters.

It is already clear from experience in the United Kingdom that food and beverage advertising restrictions will have severe adverse effects on commercial broadcasters and their capacity to provide children's programming.¹

This submission sets out the existing legislative and regulatory framework for advertising on commercial free to air television, before considering the likely impact of further restrictions on food advertising.

This submission addresses the following topics:

Section 3 examines children's viewing patterns, fragmenting audiences on commercial free to air and reducing numbers of advertisements for foods high in fat, salt or sugar;

Section 4 describes the current regulatory regime including the review and complaints processes underpinning the current system;

Section 5 discusses how the current regulatory framework provides appropriate community safeguards; and

Section 6 sets out the results of ACMA's review of the CTS.

3 Children's viewing patterns

As much of the debate around food advertising has focussed on protecting children, this section has been included to provide important information about children's viewing patterns, not only in terms of other media activities but also of commercial free to air television. This section shows that audiences across the viewing day are fragmenting and this is particularly in terms of the child audience.

¹ Following the introductions of ad bans in the UK, the regulator Ofcom has now been forced to undertake a review of children's programming and how it will be funded.

The section also contains information about the frequency of food advertisements and provides an important evidentiary context for arguments about whether the current level of regulation is appropriate.

3.1 Children’s television viewing habits are changing

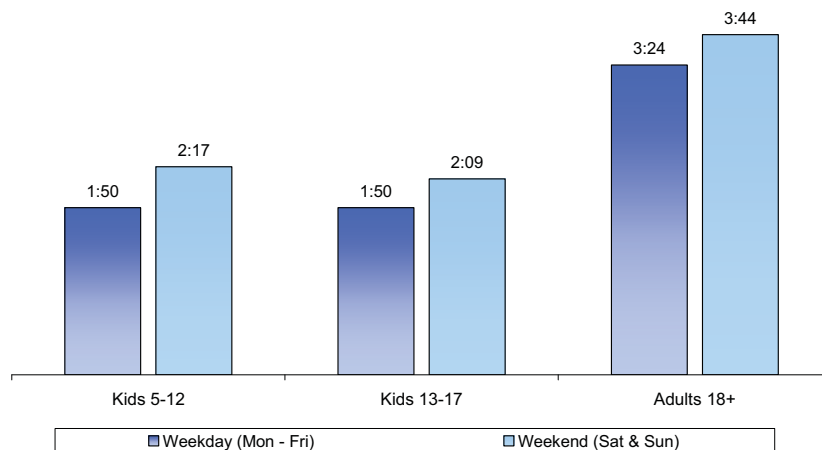
While television continues to account for the large proportion of time spent with media, in this highly competitive environment audiences are fragmenting and this is more evident amongst children than any other target or demographic.

These changes in viewing patterns are reflected in the OzTAM data outlined below which shows that the child audience on commercial free to air television is already fragmenting with declines in both the size of the audience and the amount of time children are spending watching television.

3.1.1 Children are watching an average of around two hours of TV a day

Children watch considerably less television than adults, who watch an average of over three hours of television a day. Children watch slightly more TV on a weekend than they do during the week – about an extra 10 to 20 minutes.

Average Time Viewed - Total TV - Children and Adults ²



The disparity between the viewing patterns of adult and child viewers is evident across all parts of the viewing day. The percentage of children watching peaks in the early morning, between 7 and 8am at 19.1% (in other words, 19.1% of the audience watching between 7 and 8am are children aged between 0 and 12 years). This is in contrast to audience numbers in other demographics. At this same

² Source: OzTAM; 5 cap cities; 01 January - 30 June 2007; 2am - 2am; total daily TV viewing

time, 27.7% of the audience are aged 55 and over and 24.3% of the audience are aged 40-54.

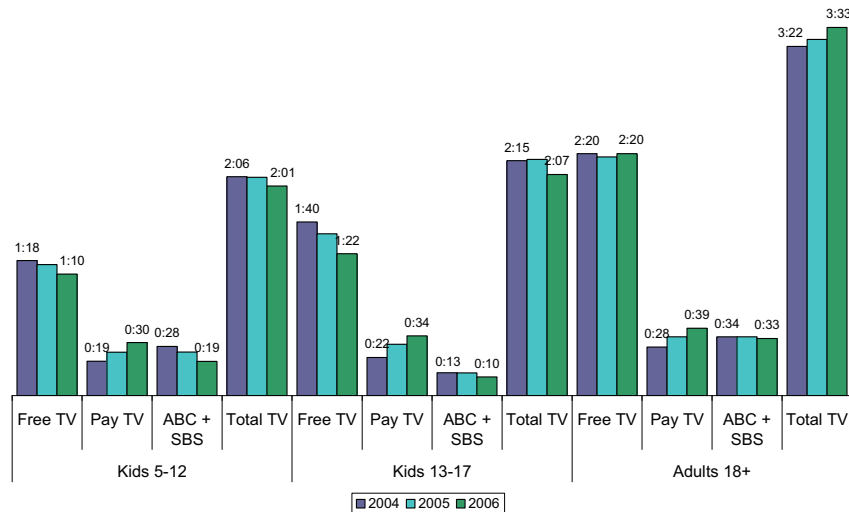
These audience composition percentages are also typical of viewing patterns in prime time. In prime time the highest percentage of children aged 0 – 12 watching is 12.5% between 7 – 8pm. Teenagers aged between 13 – 17 make up only 5.2% of the viewing audience. The balance, or 82.3%, of the audience are adults aged 18 and over. Of that 82.3% the age group watching in the greatest numbers are people 55 years and over (making up 30.0% of the viewing audience).

These figures show very clearly that the majority of the viewing audience are adults, with the highest percentages being people aged 40-54 and 55 and over.

3.1.2 Children are watching less television than they used to

Younger children and teens are all watching considerably less television than they did several years ago. Even with the advent of dedicated children’s channels on pay TV, the average time spent viewing television overall is down among children, while the average time spent viewing among adults has increased.

Average Time Spent Viewing TV – 2004 to 2006 ³



3.1.3 Children are viewing with their parents

Although there are low numbers of children viewing in the evenings, figures show that the majority of these children are watching with an adult.

³ Source: OzTAM; 5 cap cities; weeks 1-52 2004, 2006 and Weeks 1-53 2005; Variable - Average Time Viewed

On weekday evenings (6pm to 9pm), 60 per cent of children are watching Free TV with an adult. This is slightly higher on weekends, where 65 per cent of nightly viewing is with an adult.⁴

3.1.4 Reducing numbers of advertisements for fast food

Over recent years there have been significant changes in the kinds of advertising directed to children.

All advertisements that appear on television are cleared through Commercials Advice. A Free TV review of commercials submitted for approval to Commercials Advice in 2007/08 reveals that food ads represented just 10.1 per cent of 'C' classified ads. Food ads represented just 11.1 per cent of all 'G' classified ads and the majority of these ads were for supermarkets (7.1 per cent).

Recently, the Australian Food and Grocery Council (AFGC) launched *The Responsible Children's Marketing Initiative* to demonstrate its commitment to responsible marketing of foods and beverages to children. Under the initiative only products representing healthy dietary choices will be advertised to children under 12.

The AFGC initiative applies across all media.

4 Current Regulatory Framework – robust and transparent

4.1 Overview

In any consideration of television advertising regulation, it must be acknowledged that Australia has chosen to deliver a range of social and cultural objectives through an advertiser funded model for commercial free to air television.

However, there is a need to protect consumers from inaccurate information and, in particular, to ensure that children are protected from possible harmful effects of television. Accordingly, there is already a comprehensive and sophisticated framework of legislation and regulation governing television content, and in particular advertising, on free to air commercial television.

Advertising across all platforms (pay TV, print, outdoor etc) is regulated primarily through the Commonwealth *Trade Practices Act 1974* (TPA). A number of other regulations also apply, including State Food Acts and the self regulatory codes of the AANA.

In addition to this regulatory framework, all advertising on commercial free to air television is regulated through the BSA, by the Commercial Television Code of Practice and by the CTS in the case of children's programming.

⁴ OzTAM; 5 cap cities; Jan to June 2007; children 5-12 years; co-viewing with an adult

The regulation of programming and advertising is a carefully constructed system to ensure that children are protected from harmful content while allowing adults the freedom to choose what they want to watch.

The regulation is further described in Appendix 1 to this Submission.

These rules and regulations are presented as a flow chart at Appendix 2. The regulation set out in Part A of the flowchart applies to all advertising. Advertising on commercial free to air television is also subject to the regulation in Part B.

This combination of regulation works well to deliver a range of regulatory measures that ensure children's interests are protected. In fact Australia has been at the forefront of developing this range of regulatory protections over the last twenty years.⁵

Australia is well ahead of the rest of the world in terms of the breadth and depth of the protections available for our child viewers. The UK has only recently introduced content, volume and scheduling restrictions – interestingly these restrictions are limited to advertising foods high in fat, salt or sugar (HFSS) only – they do not apply across the board to all advertising to children. The application of nutrition profiling of HFSS foods also leads to some interesting results. For example, if breast milk was a product it couldn't be advertised in programs with child appeal.

In the UK they now have to review how broadcasters are going to fund children's programs following the introduction of these restrictions. The main commercial channel ITV has announced its intention to cut back on children's programming.

Interestingly, in Quebec where all advertising to children has been banned for 25 years there is no difference in that province's obesity levels compared to the rest of Canada.⁶

Hence, children and others are already protected from inappropriate marketing of unhealthy foods and beverages on commercial free to air television.

4.2 Review process for Code and CTS

There is built into the regulatory arrangements for broadcasting content, an existing process for ensuring the ongoing adequacy of the Code. Free TV supports this process as the most appropriate means of ensuring that community expectations regarding broadcasting content continue to be met.

This process provides for the Code to be reviewed every three years. As part of each review, it is the role of the regulator, ACMA, to take an evidence-based approach to assessing the adequacy of the Code.

⁵ Baker & McKenzie, Comparative Review of the Regulation of Television Food Advertising to Children, 2007. For a copy of the report see Appendix 3.

⁶ Overweight Canadian Children and Adolescents 2004 <http://www.statcan.gc.ca/pub/82-620-m/2005001/article/child-enfant/8061-eng.htm>

The review process commences with a detailed discussion between broadcasters and the regulator on potential areas for review under the Code.

Free TV, on behalf of the broadcasters, then develops a draft in consultation with the regulator. The draft is then approved by the regulator for release to the public for comment. Following the public consultation phase, Free TV then provides copies of all submissions to the regulator for its consideration. Discussions then continue between the regulator and Free TV in relation to the issues raised by the public, which may result in further amendments to the Code. Following that process, the regulator then considers whether to register the Code.

There are important safeguards built into the Code review process, in which ACMA is only permitted to register a Code if it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.

During that last Code review none of the 1300 submissions recommended general food and beverage advertising bans. A number of submissions did raise concerns about advertising of food and beverages to children. In response to this community concern a restriction on the content of food and beverage advertisements directed to children was introduced.⁷

ACMA is also conducting a review of the CTS to ensure their continued relevance and effectiveness. The review is looking at whether the current CTS is meeting its objective of promoting quality children's viewing on free to air commercial television and providing appropriate safeguards during designated children's viewing times.

ACMA conducted research to inform the review. The research focussed on the children's viewing patterns, the importance of children's programming to the production sector and the impact of television advertising to children. The research demonstrated there was no causal link between television advertising and obesity.

The review included a public consultation period of 8 weeks and 76 submissions were received by ACMA.

ACMA has released proposed amendments to the CTS along with a report of their review. No additional food and beverage advertising scheduling bans were recommended. ACMA is currently considering public submissions on these draft amendments.

⁷ Clause 6.23 Commercial Television Industry Code of Practice 2004

4.3 Complaints Process

The regulation of television program content is open and accessible to viewers through a well-managed and well-understood complaints process.

Complaints about the Code are required to be made directly to the broadcaster who is obligated to respond substantively within 30 working days, and must advise the complainant of their right to refer the matter to ACMA for investigation.

In practice, broadcasters often respond in a far shorter period although the precise length of time depends on the complexity of the complaint. The response must advise the complainant that if they are not satisfied with the response they can take their complaint to ACMA. However, the vast majority of complaints are resolved between the broadcaster and the viewer.

If a complaint is referred to ACMA, ACMA then conducts its own complaint review and determines independently whether or not there has been a breach of the Code.

Once a complaint is received by ACMA, the relevant licensee is provided with an opportunity to comment on the matter raised by the complainant and is often asked for a copy of the material broadcast.

ACMA is bound by the rules of procedural fairness in conducting broadcasting investigations and this largely determines the time in which investigations can be completed.

Affected licensees are provided an opportunity to comment on any proposed breach findings through the provision by ACMA of a preliminary report. Under section 180 of the BSA ACMA is obliged to allow a person whose interests may be adversely affected by publication of matter in a report to make representations in relation to the matter.

ACMA must provide a 'reasonable period, not exceeding 30 days', for comments prior to the publication of the report. Any comments received are taken into account by ACMA in deciding whether to publish the report in full.

In the event that ACMA finds a breach of the Code, any action taken will depend on the seriousness of the breach.

Each television station must advertise the Code and the complaints process 360 times a year. The advertisement must be rotated across viewing times so that it is seen in prime time, children's programming and in sport and news and current affairs.

Commercial broadcasters provide an electronic complaints form which is available on broadcasters' websites and allows viewers to download a complaints form to fax or mail to the broadcaster.

Free TV has also established a comprehensive and easily accessed website that takes people through the complaints process and assists them to identify the appropriate station to send their complaint to.

If a broadcaster receives a telephone call about a matter covered by the Code, the broadcaster must advise the caller of the Code complaints process. Switchboard staff are also required to record the content of complaints about matters covered by the Code, and ensure this record is circulated to key staff.

Free TV also provides a phone service to assist complainants and mails out copies of the Code to individuals and interested groups who cannot access the website.

Complaints under the CTS can be made directly to ACMA.

4.4 Enforcement

ACMA is empowered under the BSA to enforce the regulatory framework for broadcasting content through a comprehensive suite of enforcement measures. These provide for proportionate responses to breaches of the framework and act as a significant deterrent. Free TV endorses ACMA's role as the arbiter of broadcasters' compliance with community standards through enforcement of the Code.

The BSA also provides that the provisions of the CTS must be complied with as part of the licence condition for commercial television broadcasters.

In relation to individual breaches of the Code, ACMA may in the first instance, impose an additional licence condition on the broadcaster, mandating compliance with the Code. Penalties apply for a breach of an additional licence condition, including remedial directions, civil penalties, criminal prosecution, suspension or cancellation of the licence, and the acceptance of enforceable undertakings.

This range of enforcement powers allows AMCA to take a considered and proportionate response to a breach of the Code.

It is important to note that ACMA may also take informal action in relation to code breaches, such as working with licensees to put in place procedures and training to ensure the code breach is not repeated.

These enforcement mechanisms are designed to provide a response to individual breaches of the Code. The BSA also provides ACMA with a means of responding where it is satisfied there is evidence that a registered code of practice is not providing appropriate community safeguards, or where no code has been developed. In these circumstances, ACMA is empowered to make a program standard. Compliance with program standards is a mandatory licence condition for commercial free to air television broadcasters.

Compliance action undertaken by licensees

The actions of broadcasters to ensure compliance with the regulatory framework should also be considered in this context. Broadcasters are strongly committed to compliance and have instituted training and procedural requirements throughout their company organisations to minimise the potential for inadvertent breach of the Code and CTS and to ensure that complaints are handled appropriately.

Broadcasters conduct regular formal Code and CTS training sessions encompassing tailored guidance on the requirements of the Code and the complaints handling process. Switchboard staff are trained in Code issues, to ensure that callers are provided with uniform and correct advice on how to make a complaint.

Broadcasters provide their staff with copies of the Code, CTS and relevant training materials and ensure compliance issues are discussed with staff of all levels.

In the event ACMA makes a breach finding following an investigation, broadcasters will usually distribute those findings internally to relevant staff. The findings will also be used as an example during internal regulatory training sessions to ensure future compliance.

These proactive steps demonstrate broadcasters' commitment to compliance with the Code and CTS.

5 Current Regulatory Framework – providing appropriate community safeguards

5.1 Regulation across the viewing day

The regulation of commercial free to air television varies across the viewing day and reflects the audience composition at the time. Programs which are specifically designed for children such as C and P programs attract a greater level of regulation than those in prime time which are designed for general viewing. It is important to note that all advertising directed to children is subject to the content restrictions in relation to food advertising and use of premiums and characters.

5.2 Regulatory definitions

Any discussion of the regulation of children's programming on commercial free to air television must start with an understanding of the regulatory definitions under the CTS. The term "children's viewing time" does not have a regulatory meaning. The CTS defines the terms C and P bands and C and P periods.

[C and P Bands] Under the CTS, ACMA has designated times of the day during which broadcasters may elect to broadcast C (children's) and P (preschool) programs. These are known as the C band and P band respectively. The current C and P bands are:

C band – 6 – 8am and 4 – 8:30pm, Monday to Friday and 7 – 8:30pm Saturday, Sunday and Public Holidays

P band – 7am – 4:40pm Monday to Friday

[C and P periods] Broadcasters can nominate times during these bands in which they will broadcast C and P programs. These are called the C period and P period. Broadcasters must only show C and P programs during their nominated C and P periods.

5.3 Restrictions in C Periods and all ads directed to children

The C and P periods are the times during which programs specifically designed for children and regulated under the CTS are shown. Similarly, the advertising during C periods and on either side of a P program (ads are not permitted in P programs at all) must comply with the scheduling and content requirements of the CTS.

Advertising in C programs is limited to 5 minutes per half hour.⁸ Advertising in C programs is not only subject to scheduling restrictions, but are also subject to very strict content restrictions. For example, there are restrictions around the advertising of premiums and competitions and the use of popular personalities.

The Code extends the content regulations in the CTS to “all advertising directed to children”.

5.4 What are the prohibitions?

The combined effect of the CTS and the Code is that content rules for food advertisements and those using premiums, personalities and undue pressure for example, apply:

- to all ads in C and P periods (as nominated by the broadcasters)
- to all advertisements outside C and P periods if the ad is directed to children (irrespective of when the ad is broadcast).

These content rules are more fully described in Appendix 1.

5.5 What restrictions apply during prime time?

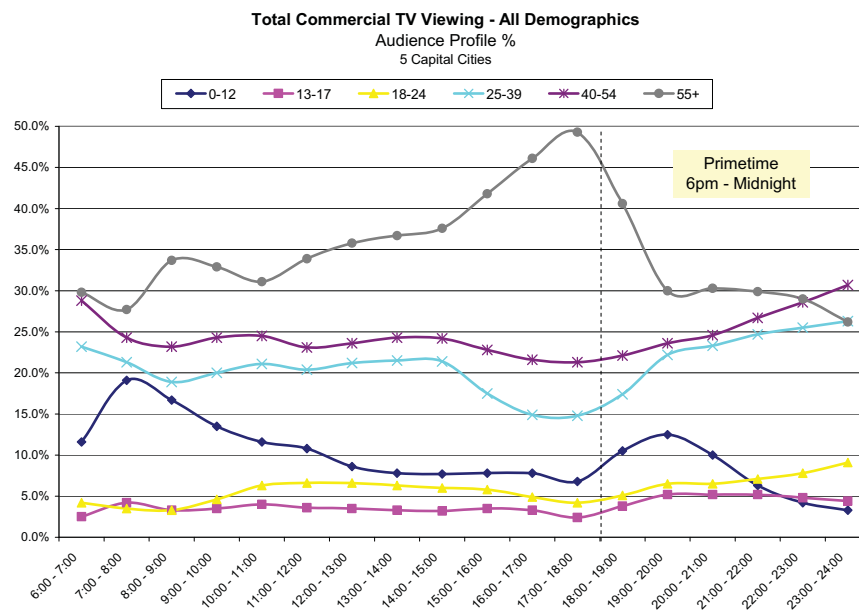
5.5.1 Audience composition in prime time

Prime time is defined for ratings purposes as 6pm – midnight. The programs which are broadcast at this time are classified under the Code and can be broadcast only in the appropriate time zones. Programs classified M can only be broadcast from 8:30pm and PG programs from 7pm.

⁸ Children's Television Standards, CTS 14.

The regulation during prime time reflects the audience composition at the time which is primarily adults.

The following chart shows the audience profile percentages throughout the viewing day. Adults, particularly those in the 55+ age group are the predominant viewing demographic.



Children aged 0 – 12 do not make up a large proportion of the audience during prime time.

In prime time the highest percentage of children aged 0 – 12 watching is 12.5% between 7 – 8pm. Teenagers aged between 13 – 17 make up only 5.2% of the viewing audience. The balance or 82.3% of the audience are adults aged 18 and over. Of that 82.3% the age group watching in the greatest numbers are people 55 years and over (making up 30.0% of the viewing audience).

Although there are low numbers of children viewing in the evenings, figures show that the majority of these children are watching with an adult.

On weekday evenings (6pm to 9pm), 60 per cent of children are watching Free TV with an adult. This is slightly higher on weekends, where 65 per cent of nightly viewing is with an adult.⁹

⁹ OzTAM; 5 cap cities; Jan to June 2007; children 5-12 years; co-viewing with an adult

These figures show very clearly that the majority of the viewing audience in prime time are adults, with the highest percentages being people aged 40-54 and 55 and over.

Pay TV is not regulated to the same extent as commercial free to air television. There are no scheduling restrictions and the content restrictions in the CTS and Code do not apply. A child can watch *The Simpsons*, for example, in the regulated environment of commercial free to air (where all ads directed to children are regulated), but switch seamlessly to pay TV and watch the same *Simpsons* episode without these protections.

5.5.2 Regulations of programs and advertising in prime time

As the programs in this time slot are not designed specifically for the child audience they do not attract the same level of regulation as a C or P program.

The amount of time permitted in any hour for advertising material in prime time is between 13 and 15 minutes.¹⁰

There is a range of regulation however which does apply to advertising during prime time, as follows:

- Only advertisements suitable in content for the timeslot are permitted. For example, M rated ads are not permitted until 8:30pm;
- All advertising directed to children is subject to the same content restrictions as an advertisement in a C program. This means that all advertisements for food which are directed to children cannot encourage excessive consumption of food or beverages or an inactive lifestyle;
- Advertisements for alcohol drinks are not permitted before 8:30pm;
- Commercials relating to betting, gambling or condoms are not permitted in the G time zone.

The Code of Practice extends these restrictions to all advertising directed to children (irrespective of the time of the day the advertisements are broadcast).

5.6 Level of advertising is often overstated

Often-quoted research consistently overstates the types of advertisements children see across the viewing day by basing studies on a small sample period. For example, a 2006 Cancer Council sponsored study published in *Health Promotion International* only sampled advertisements on four days of the year.

¹⁰ Commercial Television Industry Code of Practice, July 2004, clause 5.6.

This approach means results are distorted by the cyclical and short nature of advertising campaigns i.e. December and January features higher than average amounts of retail sales promotions due to Christmas and January sales.

There are also examples of research overestimating the average amount of time children spend watching commercial television. For example, a major 2005 study released by the NSW Health Department assumed children watch 2.5 hours of commercial television per day in 2005, when they actually watched an average of 75 minutes.

6 ACMA's Evidence Based Review of the CTS

6.1 No evidence of a link between advertising and obesity

Free TV strongly supports the current ACMA review as the most appropriate means through which to ensure the ongoing adequacy of the regulatory arrangements for food advertising to children.

ACMA has conducted an exhaustive, evidence-based consideration of the full range of issues surrounding children's television, including a focus on food advertising to children. ACMA's review has considered a significant body of research, including:

- A major study into the influence of media and communications on children, comprised of a literature review and community survey of 751 families.
- An independent literature review on television advertising to children, including the relationship between children's television advertising exposure and their food and beverage preferences.
- An analysis of OzTAM ratings data to assess children's viewing trends, including the times when children watch television and the type of programs they watch.
- Qualitative research into the funding structure of children's television production in Australia.
- Economic modelling of the likely impact of various restrictions on food advertising.

This research is available from the ACMA website.

Based on the findings of an independent literature review (which looked at 200 sources), ACMA found no clear demonstration of a causal relationship between food advertising to children and obesity in children. On this basis, ACMA found that it is "difficult to define with any clarity what the benefit of banning food advertising to children would be in the Australian context."¹¹ Without evidence of a causal link between television

¹¹ ACMA *Review of the Children's Television Standards 2005 – Report of the Review* (Draft August 2008) p 11

food advertising and obesity, it was not possible for ACMA to conclude that further advertising restrictions would have any net benefit.

ACMA has specific expertise in this area and there has been ample opportunity for public feedback on the CTS. ACMA is consulting further on the findings of its Review and its proposed CTS amendments.

ACMA is able to take a holistic approach to the issue, considering all relevant factors in the broadcasting regulatory and business environment. There is no evidence that ACMA's review has failed to take into account any relevant considerations, evidence or community feedback.

The ACMA review should be allowed to continue through to its conclusion. It should also be noted that ACMA has a sufficiently broad range of regulatory tools to enable it to respond to any findings of regulatory failure.

The outcomes of the ACMA review make sense when looking at child audience figures. There are less children watching television and those who are watching are watching less per day. These trends are not consistent with the argument that the increasing rates of childhood obesity are due to advertising on commercial free to air television.

6.2 ACMA's Cost Benefit Analysis

It is pertinent to note the draft findings of ACMA's independent, evidence-based review of the CTS, which included a particular focus on food advertising to children.

It is vital that any proposed further regulatory restriction on advertising is the most effective means of addressing a clearly identified problem. Free TV therefore endorses the approach taken by ACMA, which was to carefully consider relevant research and available evidence before conducting a cost-benefit analysis of various options for further advertising restrictions.

The ACMA report noted a report by its UK equivalent, OFCOM, which concluded that food advertising account for just 2% of preference in children's food choices.

ACMA then considered the potential economic impact of further advertising restrictions on the profitability of commercial free to air broadcasters and the potential impact on audiences. ACMA found that there would be a significant impact on broadcaster revenues and profitability, even from minimal further restrictions. More extreme regulatory proposals, such as banning food and beverage advertising from popular viewing times would reduce profitability, dampen future industry investment and impact on overall programming quality.

ACMA found that a reduction in obesity-related costs of between 4 and 12 per cent across the economy would be required to offset the likely impact of such proposals on commercial free to air broadcasters and their audiences.

Having already found that a reduction in obesity costs through the banning of advertising of food to children is not assured,¹² ACMA went on to conclude that there was insufficient evidence to conclude that the reduction in obesity-related costs would offset the negative financial impact to broadcasters of such bans.

ACMA's draft findings do recommend some modification of existing regulations regarding food advertising to children. These include further clarification of CTS 20 regarding premium offers and bans on the endorsement of commercial products by program characters, celebrities and licensed characters. ACMA is currently consulting on these proposed changes.

¹² Ibid., p 12

APPENDIX 1 REGULATION OF ADVERTISING

1. Current Regulatory Framework – All Advertising

Trade Practices Act Cth 1974

The *Trade Practices Act (Cth) 1974* (TPA) protects consumers by prohibiting misleading and deceptive conduct in trade or commerce. Misleading consumers about the nutritional value of a food product for example, is prohibited by the TPA. The impression left in the mind of the viewer and in particular the child viewer is important in determining whether an advertisement is misleading or deceptive.

Complaints about misleading and deceptive conduct are investigated by the Australian Competition and Consumer Commission (ACCC) and the complaint process is described clearly on the ACCC's website.¹³ The ACCC has a range of penalties available to it including fines, injunctions (to require withdrawal of the advertisement), corrective advertising and compliance programs.

State food legislation

Making health claims and nutrient content claims in food advertising is regulated by the State food legislation. This legislation is enforced by state and territory health departments and Food Standards Australia New Zealand (FSANZ), the Australian and New Zealand regulatory body.¹⁴

Under the current system, health claims are generally prohibited. The Food Standards Health Code regulates nutrient content claims. These claims are subject to thresholds that must be met before a nutrient content claim can be made. For example, the claim "low sodium" can only be made if the food contains no more than 120 milligrams of sodium per 100 grams.

Misleading and deceptive conduct is also prohibited under the state food legislation. The state food legislation establishes the Food Standards Health Code and the Code of Practice on Nutrient Claims; these Codes provide more detail in relation to misleading and deceptive practices in food advertising.

Complaints under the State food legislation can be made to FSANZ and the State/Territory Health Departments. Penalties include fines, withdrawal of the advertisement and corrective advertising.

The food industry has also adopted, through a self regulatory system, a Code of Practice on Nutrient Content Claims which follows the Food Standards Health Code but provides more detail and guidance for manufacturers and consumers. This code sets thresholds that must be met before a nutrient content claim can be made. For example, there are prescribed thresholds before claims of "light", "lite" and "diet" can be made. The code is administered by the Food Industry Code Management Committee following complaint to the food manufacturer. The Food Industry Management Committee can require an undertaking to cease advertising or corrective advertising.

¹³ <http://www.accc.gov.au/content/index.phtml/itemId/815327>

¹⁴ <http://www.foodstandards.gov.au/>

AANA Codes

The Australian Association of National Advertisers (AANA), the peak advertising industry body, has developed a number of codes (the AANA Codes) which provide a broad range of community safeguards for advertising¹⁵.

The AANA Codes include:

- AANA Code of Ethics
- Advertising to Children Code
- Alcohol Beverages Advertising Code
- Motor Vehicle Advertising Code
- Therapeutics Goods Code
- Weight Management Code of Practice
- ICC Framework for responsible food and beverage communications

The advertising industry-regulation system is managed through the Advertising Standards Bureau and funded through a voluntary levy administered by the Australian Advertising Standards Council Ltd. Complaints about advertising are determined by the Advertising Standards Board and the Advertising Claims Board. The Advertising Standards Board (ASB) is made up of a representative cross-section of the community and provides complaints resolution service free to the public.

The ASB considers complaints about any form of published or broadcast advertising. The ASB will consider complaints regarding any of the matters covered in the AANA Codes including:

- the use of language
- the discriminatory portrayal of people
- concern for children
- portrayal of sex, sexuality and nudity, and
- health and safety.

The Advertising Claims Board provides a competitive claims resolution service on a user-pays cost recovery basis, adjudicating on issues of:

- truth
- accuracy; and
- legality of advertising.

The AANA Advertiser Code of Ethics and the AANA Code for Advertising to Children provide that advertisements shall not be misleading or deceptive.¹⁶

The AANA Code for Advertising to Children provides that advertisements to children which include to or refer to a premium should not create a false or misleading

¹⁵ http://www.aana.com.au/3_self_regulation/3_1_self_reg.html

¹⁶ Clause 1.2 AANA Advertiser Code of Ethics and clause 2.1.1 of the AANA Code for Advertising to Children

impression in the minds of children about the nature or content of the advertised product.¹⁷

Although the AANA Codes are voluntary and form part of a self regulatory system, there is complete compliance by advertisers with ASB decisions.

2. Current Regulatory Framework – regulation specific to commercial free to air television

Children's Television Standards and the Commercial Television Industry Code of Practice

Section 122 of the BSA requires ACMA to develop standards for children on commercial free to air television.

The Children's Television Standards (the CTS), made under section 122, are intended to:

1. Provide for children to be specifically catered for in programming, including Australian programming; and
2. Provide for the protection of children from possible harmful effects of television.

The CTS operates alongside the Code. The BSA sets down a co-regulatory system for the regulation of broadcasting content, in which broadcasters comply with codes of practice that are developed by the broadcasting industry in consultation with the public. ACMA is responsible for registering the codes, for monitoring compliance and for investigating unresolved complaints.

The BSA provides guidance on matters to be covered in Codes of Practice including the broadcasting time devoted to advertising, methods of complaint handling and reporting to ACMA on complaints¹⁸. The Code is required by the BSA to take into account community attitudes in relation to a range of matters including any matters which are of concern to the community.¹⁹ The role of assessing community standards in relation to broadcasting content is assigned to ACMA, based on relevant research.²⁰

The CTS requires broadcasters to provide a minimum number of hours of programming specifically catering for preschoolers and school-aged children. Importantly the CTS also impose restrictions on the scheduling and content of advertising in children's programming.

The Code provides a regulatory framework for television viewing more broadly and regulates both programming and advertising. Importantly the Code places hourly restrictions on the amount of advertising and other non-program matter which may be broadcast.

¹⁷ Clause 2.8 AANA Code for Advertising to Children

¹⁸ Section 123(2) BSA

¹⁹ Section 123(3) BSA

²⁰ Section 123(1) BSA

The Code specifically provides that all advertising directed to children (irrespective of the time of the day it is broadcast) is subject to the content restrictions in the CTS.

The regulatory framework for television content set down in the Code provides a comprehensive suite of viewer protections, including requirements for content pre-assessment, display of classification symbols, provision of consumer advice, scheduling restrictions, complaints-handling procedures and strong regulatory enforcement mechanisms.

3. Content and scheduling restrictions for advertisements on commercial free to air television

There are a range of scheduling and content restrictions which apply to advertising on television and in particular to advertising directed to children.

Consistent with the underlying principle that adult viewers should be able to read, hear and see what they want, the Code and CTS provisions are focused on protecting the child viewer and providing guidance to parents rather than overly restricting the material an adult viewer may choose to see.

4. Classification System

The classification system in the Code divides the viewing day into a series of timezones which has been carefully constructed to make sure that appropriate material is broadcast throughout the day.

The classification system enables viewers to make informed choices about the content they access and to limit the risk of exposure to inappropriate content by children. The classification system provides parents with information regarding the suitability of material for children.

As noted above, in recognition of the high numbers of adults watching, the early evening hours contain material which is suitable for general family viewing. The classification of material in the early evening hours ranges from G (suitable for family viewing) to PG (suitable for family viewing with parental guidance). These programs are not specifically designed for children. As such they do not attract the same level of regulation as a C program, an advertisement in a C program, or an advertisement directed to children. This is consistent with the principle that adults should be able to watch what they want to. Nevertheless, such material is still subject to significant regulation in order to balance with the need to protect children from unsuitable material.

ACMA research indicates a high level of familiarity with the classification system.²¹

5. Limits on advertising

The Code imposes restrictions on the amount of advertising scheduled in all programs across the viewing day. The Code aims to balance the interests of viewers in uncluttered program presentation and the commercial interests of advertisers and

²¹ ACMA report Reality Television Review p 66 - 67

broadcasters in setting these limits.²² The average amount of non program matter permitted in each hour schedule ranges from 13 minutes to 15 minutes.

In P and C periods²³, the limits imposed by the CTS apply as follows:

- no commercials are permitted to be broadcast in any P period; and
- each 30 minutes of a C period may contain no more than 5 minutes of commercials.²⁴

6. Content Restrictions – Advertisements directed to children

In addition to scheduling restrictions, the CTS and the Code contain a range of content restrictions on advertisements in C periods. The Code extends the CTS provisions to all advertisements directed to children.²⁵ This means that any advertisement which is directed to children irrespective of the time of the day it is broadcast is subject to the content restrictions in the CTS.

The Code provides guidance in the form of an Advisory Note on when an advertisement is directed to children.²⁶ This Advisory Note was included in the 2004 review of the Code and is based on a previous ABA decision.²⁷ Advertisements which have child appeal, which include child themes, music, characters, and which use child language will be regarded as directed to children. These ads must comply with the CTS no matter what time of the day they are shown.

7. Content Restrictions - special care and judgment

All advertisements directed to children must exercise special care and judgment.²⁸ Only advertisements which satisfy the G classification requirements and comply with the CTS can be broadcast during a C period or in breaks immediately before or after a C or P program.

8. Content Restrictions – undue pressure

The CTS and Code prohibit advertisements directed to children which are designed to put undue pressure on children to ask their parents or other people to purchase an advertised product or service.²⁹ An advertisement which merely encourages a child to request that their parent purchase the product will not, of itself, constitute undue pressure. Tone, placement, frequency or content of the pressure are all relevant. For example an advertisement which suggested that parents who buy the advertised product love their children more, would not be permitted by the CTS.

9. Content Restrictions – truth and accuracy

The concepts of misleading and deceptive conduct in the TPA have been incorporated in various forms in the CTS. The CTS provide that:

²² Clause 5.1.1 Commercial Television Industry Code of Practice

²³ P and C periods as defined in the Children's Television Standards are those periods nominated by a network during which they will broadcast P and C programs respectively.

²⁴ Clause 5.8 Commercial Television Code of Practice; CTS 13 and CTS 14.

²⁵ Clause 6.20 Commercial Television Industry Code of Practice.

²⁶ Advisory Note "Commercials or Community Service Announcements Directed to Children" Commercial Television Industry Code of Practice.

²⁷ ABA investigation "Agro's Cartoon Connection", November 1996

²⁸ Clause 6.2 Commercial Television Code of Practice.

²⁹ CTS 18 and CTS 19 Children's Television Standards

- no advertisement may mislead or deceive children³⁰;
- advertisements must accurately represent the advertised product or service³¹;
- claims in advertisements must not be ambiguous³²;
- advertisements directed to children for food products must not contain any misleading or incorrect information about the nutritional value of that product³³

10. Content Restrictions – premium offers

The CTS prohibits advertisements for products with premium offers from stimulating any unreasonable expectation of the product or service offered. Any reference to the premium must be incidental to the main product and any conditions which must be met before obtaining the premium must be clearly presented.³⁴

11. Content Restrictions – product placement in programs mainly directed to children

The CTS provides that hosts or other regular presenters or characters in a C or P program must not sell or promote products or services.³⁵

12. Content Restrictions – endorsements by personalities or characters from C or P programs

Material within a C or P program and in breaks before and after such programs cannot contain an endorsement of a product by a principal personality or character from a C or P program which features the personality of character (a) not being currently broadcast in the service area, and (b) has not been broadcast within the preceding 12 months.³⁶

13. Content Restrictions – food and beverage advertising

During the last Code review, in response to community concerns Free TV included a food and beverage clause in the Code. The clause provides that:

“6.23 Advertisements directed to children for food and/or beverages:

6.23.1 Should not encourage or promote an inactive lifestyle;

6.23.2 Should not encourage or promote unhealthy eating or drinking habits;

6.23.3 Must not contain any misleading or incorrect information about the nutritional value of the product.”

³⁰ CTS 17 Children's Television Standards

³¹ CTS 19(1) Children's Television Standards

³² CTS 19(2) Children's Television Standards

³³ CTS 19(6) Children's Television Standards, Clause 6.23 Code of Practice and AANA Code Clause 2.10.1

³⁴ CTS 20(2) Children's Television Standards. The AANA Code contains a similar provision,

³⁵ Clause 6.24 Commercial Television Code of Practice

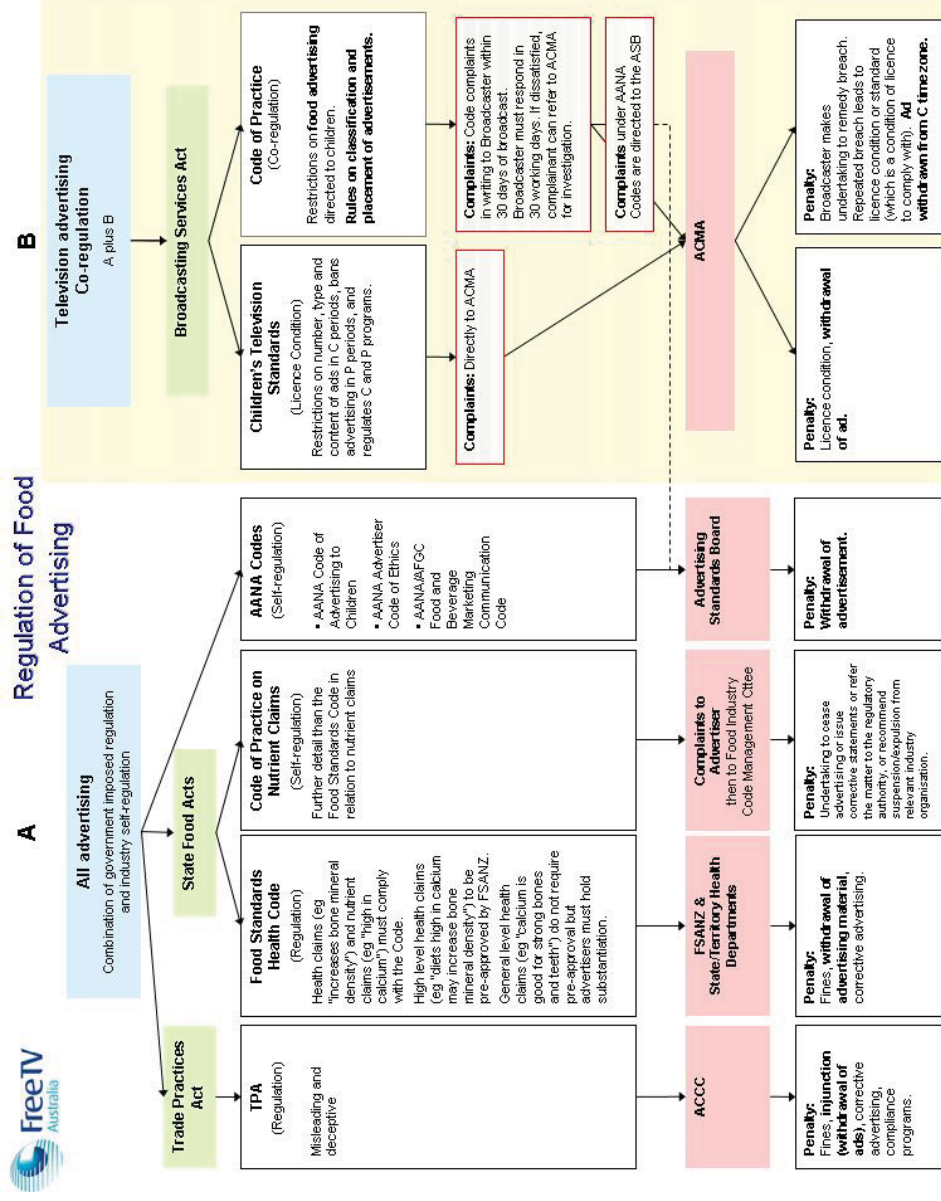
³⁶ CTS 22 Children's Television Standards



Inactive lifestyle means not engaging in any or much physical activity as a way of life and unhealthy eating or drinking habits means excessive or compulsive consumption of food and/or beverages.

The clause was amended to be more restrictive following submissions from the Queensland and New South Wales Departments of Health.

APPENDIX 2 Regulation of Food Advertising





**Submission by
Free TV Australia Limited**

National Preventative Health Taskforce

Technical Report No 3
Preventing Alcohol-related Harm in Australia

24 December 2008

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1 Executive Summary

- Australia's commercial free-to-air television broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.
- Accordingly, there is an extensive range of restrictions already in place governing both the content and scheduling of advertising for alcohol products.
- Broadcasters comply with these requirements and there is very little evidence of community dissatisfaction, with viewer complaint levels consistently very low.
- There is no evidence of regulatory failure and no link proved between the existing content and pattern of alcohol advertisements and excessive alcohol consumption.
- The existing provisions of the Commercial Television Industry Code of Practice which restrict the scheduling of alcohol advertisements continue to reflect child and adult television viewing patterns.
- Adolescents make up a very small proportion of the overall viewing audience in both the 8.30pm to 9.30pm time slot and during weekend live sport.
- Additional scheduling restrictions would do little to reduce young people's exposure to alcohol advertising and yet the impact on broadcasters, advertisers and sporting groups would be significant.
- Any further regulatory restrictions must not unduly focus on free-to-air commercial television. The majority of alcohol advertising occurs outside of television and young people have access to a broad range of entertainment platforms such as pay TV and the Internet, where advertising is significantly less regulated.

2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free-to-air television licensees.

Free TV welcomes the opportunity to comment on the National Preventative Health Taskforce's Technical Report No 3, Preventing Alcohol-related Harm in Australia ('the Report'). Free TV would like to comment primarily on those aspects of the Report which consider the appropriate regulatory framework for alcohol advertising on television.

The commercial free-to-air television sector takes very seriously the need to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.

In particular, the commercial free-to-air television sector is mindful of community expectations regarding appropriate advertising of alcohol products. Accordingly, there is an extensive range of restrictions already in place, particularly as regards to restricting children's exposure to alcohol advertising.

Broadcasters comply with these requirements and there is little evidence of community dissatisfaction. Between 2000 and 2008, there were only six viewer complaints to broadcasters regarding the alcohol advertising timezone restrictions in the Commercial Television Industry Code of Practice, compared to 6685 complaints under the Code overall.¹

If broadcasters are found to be in breach of these requirements, there is a strong range of enforcement mechanisms open to the regulator, the Australian Communications and Media Authority (ACMA).

Free TV supports the existing Alcohol Beverages Advertising Code (ABAC) Scheme, which governs the content of alcohol advertising. The Scheme was recently the subject of extensive review and important enhancements have been made to address community concerns and emerging trends in the advertising market.

Television advertising of alcohol was also recently considered by the Senate Community Affairs Committee, which recommended against the passage of a Bill containing further restrictions on alcohol advertising on commercial free-to-air television.²

Before any changes are made to the current regulatory restrictions, there should be clear evidence that the current patterns and content of alcohol advertising on television are contributing to the misuse of alcohol. No such evidence has been put forward and furthermore, there is no evidence of significant community concern centred on alcohol advertising. The number of alcohol advertisements which are the subject of viewer complaint through the ABAC Scheme remains low.

Free TV is aware of proposals to extend the existing timezone restrictions on alcohol advertising on commercial television from the current 5.00am to 8.30pm limit, and to

¹ Source: FACTS/CTVA/Free TV Australia Code of Practice Complaints Database 2000-2008

² Senate Community Affairs Committee report on the Inquiry into the Alcohol Toll Reduction Bill 2007, page 33

remove the current exemption for live sport, with the aim of further limiting children's exposure to alcohol advertising.

However, television viewing data suggests that adolescents make up a very small proportion of the viewing audience at these times. Ratings data also suggests that only a small proportion of that age group are watching Free TV at those times. It is apparent from this data that the target audience for alcohol advertisements screened after 8.30pm and during weekend live sport is adults.

Many of the calls for further regulatory restrictions are predominantly focussed on free-to-air commercial television. However, when beverage and retail advertising on alcohol products are considered, television advertising accounts for less than 25% of all annual advertising expenditure. Further, recent trends in advertising, whereby expenditure is being spread across a new range of entertainment platforms, suggests this would be an ineffective way to target young people's exposure to alcohol advertising. Any proposed regulatory action to address alcohol advertising must take a consistent approach across media platforms, and not unduly focus on free-to-air television. Experience shows that if advertising is restricted on one platform, the advertising expenditure redistributes to other, competing media. There would therefore be no overall reduction in alcohol advertising.

Further, a movement of advertising revenue to other platforms may impact on free-to-air television's ability to continue to provide quality Australian programming, including drama, news and current affairs, documentary, children's programming and live sport.

This submission provides background on the existing regulatory framework governing alcohol advertising and considers its ongoing effectiveness. This submission also considers the likely ineffectiveness of proposals for further regulatory restrictions.

3 Background

3.1 Regulation of alcohol advertising on television

3.1.1 Commercial Television Industry Code of Practice

The Commercial Television Industry Code of Practice sets down rules relating to the content and placement of advertisements designed to limit young people's exposure to alcohol advertisements.

Clause 2.9 of the Code states that advertisements to children must not be for, or relate in any way to, alcoholic drinks or draw any association with companies that supply drinks.

Clauses 6.7 to 6.13 also deal with advertising of alcohol and state that advertisements for alcohol drinks:

- May only be broadcast in M, MA or AV classification periods (ie, between 8.30pm and 5.00am on weekdays, and 12.00pm to 3.00pm on school days – exemptions apply for broadcasts of sporting events); and
- May not be broadcast during nominated children's programming periods.

The exemption for live sport, for weekends and public holidays allows alcohol advertising as an accompaniment to a "live" sporting broadcast, shown at any time of day.

The relevant provisions of the Code are extracted at Attachment A.

These restrictions have been in place for many years and originate from a Technical Program Standard originally issued by the former Australian Broadcasting Tribunal.

The ACMA is empowered under the *Broadcasting Services Act 1992* to enforce compliance with the Commercial Television Industry Code under a complaints-based scheme (see below). Penalties apply for a breach of an industry code of practice.

3.1.2 Children's Television Standard

In addition to the requirements of the Commercial Television Industry Code of Practice, Children's Television Standard 23 states that advertisements for alcoholic drinks may not be broadcast during C or P periods. The restrictions extend to C or P programs broadcast outside C or P periods, and breaks immediately before and after C and P programs.

The relevant provisions of the Standard are extracted at Attachment B.

A C period is defined in the Standard as a period nominated by, or on behalf of, a licensee under during which the licensee will

broadcast C programs. A P period is defined in the Standard as a period nominated by, or on behalf of, a licensee under during which the licensee will broadcast P programs.

No advertisement or sponsorship announcement broadcast during a C or P period may identify or refer to a company, person, or organisation that manufactures or distribute alcoholic drinks.

The restrictions extend to advertisements and sponsorship announcements during C or P programs broadcast outside of C or P periods, and breaks immediately before and after C and P programs.

3.1.3 *Complaints Process*

It is important to note that in relation to the Code of Practice and the Children's Television Standard, the regulation is open and accessible to viewers through a well-managed complaints process. Complaints about advertising perceived to conflict with the Children's Television Standard can be made directly to the regulator who can investigate. Complaints about the Commercial Television Code of Practice can be made directly to the broadcaster who is obligated to respond substantively within 30 working days, and must advise the complainant of their right to refer the matter to ACMA for investigation.

3.2 **Alcohol Beverages Advertising Code**

The *Alcohol Beverages Advertising Code*³ (ABAC) is the advertising code of the alcohol industry and is primarily concerned with regulating the content of alcohol advertisements in order to promote responsible use of alcohol.

It has been in operation since 1 July 1998 and was prepared in agreement with the Australian Associated Brewers Inc (AAB), and the Distilled Spirits Industry Council of Australia Inc (DSICA). In April 2004, these bodies and the Winemakers' Federation of Australia and the Liquor Merchants Association of Australia Ltd agreed to abide by an updated Code. These alcohol industry bodies recommend that all of their members comply with the Code.

The requirements set out in the Code relate primarily to responsible advertising of alcohol, as opposed to issues of taste, decency or community standards (which are addressed under the Australian Association of National Advertisers (AANA) Code of Ethics).

The Code applies to advertisements on television, radio and the Internet, in print and also to outdoor advertising.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage people.

³ [http://www.abac.org.au/uploads/File/ABAC%20Code%20\(October%202007\).pdf](http://www.abac.org.au/uploads/File/ABAC%20Code%20(October%202007).pdf)

The Code requires that advertisements:

- must not encourage excessive alcohol consumption or abuse of alcohol;
- must not encourage under-age drinking;
- must not have a strong or evident appeal to children (there are specific rules relating to the inclusion of children in advertisements);
- must not suggest that alcohol can contribute to personal, business, social, sporting, sexual or other success;
- must not depict alcohol consumption in relation to the operation of machinery or vehicles;
- must not challenge or dare people to consume alcohol;
- must not promote a beverage on the basis of its higher alcohol content; and
- must not encourage consumption that is in excess of Australian Alcohol Guidelines.

The Code is set out at Attachment C.

The Code also includes provisions relating to the promotion of alcohol at events.

3.2.1 Pre-vetting of advertisements

The Alcohol Advertising Pre-Vetting Scheme (AAPS) was established in 1992 and is part of the ABAC Scheme.

Proposed advertisements are assessed against the Alcohol Beverages Advertising Code at an early stage of campaign development.

In 2006, 936 advertisements were submitted through the pre-vetting system.

3.2.2 Complaints under the ABAC scheme

The ABAC scheme is administered by a management committee which includes industry, advertising and government representatives.

Complaints under the ABAC Scheme are received through the Advertising Standards Bureau (ASB). The ASB refers any and all complaints involving alcohol products to ABAC, and an initial decision is made as to whether the complaint relates to matters addressed under the ABAC scheme, or matters (such as taste and decency) addressed under the AANA Code of Ethics.

Complaints addressing matters covered by the AANA Code are then referred back to the ASB for consideration. This system of referral from the ASB maintains a single point of contact for the public for complaints in relation to advertisements.

Complaints relating to the ABAC scheme are referred on to the full Alcohol Beverages Advertising Adjudication Panel. Where a complaint is upheld, the advertiser is asked to withdraw or modify the advertisement within five business days.

The number of public complaints received through the ABAC Scheme has been reasonably constant over recent years. The clear majority of complaints raise solely issues of taste, decency and sexism and are therefore dealt with under the AANA Code by the ASB.

In 2006, the ASB referred 53 complaints dealing with 26 alcohol advertisements to ABAC. Of these, 15 were considered to be taste and decency matters and referred back to the ASB.⁴

- Out of 936 advertisements submitted for pre-vetting in 2006⁵, only nine, or 2.7%, were complained against for reasons relating to appropriate promotion of alcohol.
- Of the nine advertisements considered under the ABAC scheme, seven complaints were dismissed and two were upheld.
- Of these nine complaints, five related to broadcast advertisements.⁶

In 2005, the ASB referred 105 complaints dealing with 29 advertisements (54 complaints were for one advertisement). Of these, 12 were considered to be taste and decency matters and were referred back to the ASB.

- Out of 761 advertisements submitted for pre-vetting in 2005, only 17, or 2.2%, were complained against for reasons relating to appropriate promotion of alcohol.
- Of the 17 advertisements considered under the ABAC scheme, 15 were dismissed and two upheld.⁷

In 2004, 212 complaints were received relating to 23 advertisements (180 were for one advertisement). Of these 15 were taste and decency matters and were referred back to the ASB.

- Of the 754 advertisements submitted for pre-vetting in 2004, only eight, or one per cent, were complained against for reasons relating to appropriate promotion of alcohol.
- Of the eight advertisements considered under the ABAC scheme, five were dismissed and three were upheld.⁸

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

⁵ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

⁶ Source: ABAC Adjudication Decisions 2006 - <http://www.abac.org.au/publications/adjudication-decisions/>

⁷ Source: ABAC Scheme Annual Report 2005

⁸ Source: ABAC Scheme Annual Report 2004

3.3 Other relevant regulation

3.3.1 Australian Association of National Advertisers Code of Ethics

All advertisements are covered under the AANA Code of Ethics. The Code sets out requirements for advertisements generally and does not regulate advertisements for alcohol products in any specific way.

The Code covers such matters as misleading and deceptive ads, advertisements which discriminate against or vilify particular members of particular groups, portrayal of violence, sex and nudity, obscene language and other community standards issues.

The AANA has also published a Code for Advertising to Children. Amongst other things, the Code states that advertisements must not relate in any way to alcohol drinks, or draw any association with companies that supply alcohol drinks.

4 Adequacy of the existing framework

Free TV is mindful of the Government's commitment to address the misuse of alcohol. Free-to-air television broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.

Accordingly, there is an extensive range of restrictions already in place for advertising of alcohol products. Before there is any further regulatory intervention in relation to advertising of alcohol products, there must be clear evidence of a causal link between the current regulatory treatment of alcohol advertising (ie, the existing content and pattern of advertisements), and the issues the Government seeks to address.

Reference to general research into alcohol advertising as a determinant of attitudes or consumption patterns will not be sufficient to build the case for further regulatory intervention. This research will not have considered the Australian commercial television regulatory environment, with its comprehensive suite of content and scheduling restrictions, as it stands in 2008.

The National Preventative Health Taskforce's Technical Report No 3 acknowledges the lack of definitive research supporting further advertising restrictions as an effective regulatory intervention.⁹ In particular, the Report notes the lack of consensus on the impact of alcohol advertising on young people.¹⁰

4.1 Adequacy of the Commercial Television Industry Code of Practice

There has long been recognition of the need to ensure that advertisements for alcohol products are not in any way directed at children and are scheduled to avoid peak children's viewing times. The current provisions of the Commercial Television Industry Code of Practice which restrict the scheduling of alcohol advertisements were implemented to reflect the viewing patterns of child and adult audiences. As discussed below in section 5.1 of this Submission, the existing Code of Practice timezone restrictions for alcohol advertisements continue to reflect child and adult viewing patterns.

Free-to-air broadcasters comply with these provisions and there has been very low levels of viewer complaint. As already noted, of the 6685 Code of Practice complaints received by broadcasters between July 2000 and September 2008, only six related to a perceived error in the scheduling of alcohol advertisements.¹¹ In each of these six cases, no breach of the Code's requirements was found to have occurred. This provides no evidence of widespread community concern regarding the scheduling of alcohol advertisements.

It should be noted that there is, built into the Code-based regulatory arrangements for broadcasting content, an existing process for ensuring the

⁹ National Preventative Health Taskforce Technical Report No 3; Preventing Alcohol Relation Harm in Australia: a window of Opportunity, page 19

¹⁰ Ibid., p 33

¹¹ Source: FACTS/CTVA/Free TV Australia Code of Practice Complaints Database 2000-2007

ongoing adequacy of the Code. Free TV supports this process as the most appropriate means of ensuring that community expectations regarding broadcasting content continue to be met.

This process provides for the Commercial Television Industry Code of Practice to be reviewed every three years. As part of each review, it is the role of the regulator, ACMA, to take an evidence-based approach to assessing the adequacy of the Code, including the provisions restricting the scheduling of alcohol advertisements.

The review process commences with a detailed discussion between broadcasters and the regulator on potential areas for review under the Code.

Free TV, on behalf of the broadcasters, then develops a draft in consultation with the regulator. The draft is then approved by the regulator for release to the public for comment. Following the public consultation phase, Free TV then provides copies of all submissions to the regulator for its consideration. Discussions then continue between the regulator and Free TV in relation to the issues raised by the public, which may result in further amendments to the Code. Following that process, the regulator then considers whether to register the Code.

There are important safeguards built into the Code review process, in which ACMA is only permitted to register a Code if it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.

Under section 125 of the *Broadcasting Services Act 1992* ACMA is also empowered to make program standards in circumstances where it is satisfied that a Code of Practice has failed to provide adequate community safeguards. Compliance with an ACMA program standard is mandatory.

It should be noted that provisions to restrict the scheduling of advertisements for alcohol products have formed part of the Code of Practice since its inception in 1993. ACMA has not at any stage determined that the alcohol advertising provisions of the Code have failed or that a program standard is required.

The Code of Practice was last reviewed three years ago. The final Code as registered by ACMA included several concessions to respond to community concerns raised in these submissions.

This highlights the responsiveness of the existing co-regulatory arrangements, and in particular, the way the Code review process allows for community concerns to be expressed and addressed.

The next scheduled review of the Code is currently underway. Free TV endorses the existing processes of review, community consultation and

ACMA approval of the Code as the most appropriate means in which to address any community concerns regarding the scheduling of alcohol advertising.

4.2 Adequacy of the ABAC Scheme

Free TV also supports the approach taken in the ABAC Scheme for ensuring the content of alcohol advertisements is consistent with the need to ensure responsibility and moderation in alcohol consumption.

In March 2006, the Victorian Government received the report of the Inquiry into Strategies to Reduce Harmful Alcohol Consumption. This inquiry was conducted by the Drugs and Crime Prevention Committee and considered the regulation of alcohol advertising. The report noted the significant strengthening of the ABAC Scheme that had occurred in recent years and concluded that there was insufficient evidence at that time to suggest that any changes were necessary to the ABAC Scheme.¹²

It should also be noted that the level of complaints received under the Scheme has remained fairly constant over recent years. The very low proportion of alcohol advertisements complained against in relation to appropriate promotion of alcohol (ie, as distinct from complaints made in relation to taste and decency issues and dealt with under the AANA Code), suggests that the ABAC Scheme has kept pace with community standards on these issues. As already noted, out of 936 advertisements submitted for pre-vetting in 2006¹³, only nine, or 2.7%, were complained against for reasons relating to appropriate promotion of alcohol.

4.2.1 The Report's comments on the ABAC Scheme

Section 4.7 of the Report considers the adequacy of the ABAC Scheme and comments on the effectiveness of the Scheme's objective to discourage advertising with strong appeal to children and adolescents.

The National Preventative Health Taskforce's Report implies the ABAC Scheme has not prevented high exposure to alcohol advertising amongst young people (page 34), by referencing television advertising data from a 2005 study.

A closer examination of this data suggests it can not be used to support such commentary. The data referred to is now quite dated and audience viewing habits, particularly those of children, are changing quickly in light of new and competing entertainment choices. A reliance on data that is outdated may give a misleading impression.

Further, the study did not also consider retail advertising expenditure (that is, the advertisements for liquor outlets, which provide information on where to buy alcohol and where it can be bought most cheaply). When considering alcohol advertising, it is prudent to

¹² Victorian Government Drugs and Crime Prevention Committee Inquiry into Strategies to Reduce Harmful Alcohol Consumption Final Report March 2006 page xxxi

¹³ Source: The Alcohol Beverages Advertising Code (ABAC) Scheme Annual Report 2006

include all relevant advertising categories, to ensure an accurate impression of exposure is given.

Free TV also notes that Table 9, which summarises the study's findings, could give a misleading impression of the original research. The Table lists five brands as having comparative exposure levels between 13-17 year olds and 18-29 year olds in Melbourne in 2005. However the original research considered 30 brands, with only 8 brands generating greater exposure to 13-17 year olds, than 18-29 year olds.¹⁴

The original research also considered the same data for the Sydney market, which showed that of the 30 brands studied, only one brand had higher exposure in the 13-17 year old age group.¹⁵

It is also questionable whether the comparison between 13-17 year olds and 18-29 year olds is truly informative. The viewing behaviour of 13-17 year olds is roughly similar to that of 18-29 year olds, so it perhaps unsurprising that exposure levels are similar for these age groups.

Further, these age groups make up a very small proportion of audiences in times where alcohol advertising is allowed, suggesting a more useful comparison would be with the target audience for alcohol advertisements, which ratings figures show is the over 25 year-old age group.

Ratings figures show the adolescent and young adult (13-24 year old) group is not the target for television alcohol advertisements. The overwhelming majority of viewers watching weekend sport, for example, are over 25 (81.3%)¹⁶ and a very small proportion of 13-17 year olds watch at these times (only 2% of this group are watching weekend sport).¹⁷

A more informative picture of young people's exposure to alcohol advertising on television comes from a consideration of the proportion of advertisements young people are exposed to which are alcohol advertisements. Ratings figures show that in the 12 months to April 2008, of all advertisements seen by under-17s, only 1.5% were alcohol advertisements.¹⁸

¹⁴ King E, Taylor J and Carroll T, Australian alcohol beverage advertising in mainstream Australian media 2003 to 2005: expenditure, exposure and related issues, page 15.

¹⁵ Ibid., page 13

¹⁶ Source: OzTAM; 5 City Metro; 2008 Calendar year to date (1 Jan – 14 Dec); Sat & Sun only; 5:30 – 20:30

¹⁷ Source: OzTAM; 5 City Metro; 2008 Calendar year to date (1 Jan - 14 Dec); Sat & Sun only; 5:30 -20:30; Free TV channels only; based on all programs classified as sport events, special sport events and other sports.

¹⁸ OzTAM; 29 April 2007 to 29 April 2008 – Ppl 0-17, TARPs Alcohol, TARPs all other; Sydney, Melbourne, Adelaide, Perth

5 The effectiveness of further restrictions

As already discussed, an evidence-based case has not been established for any extension or amendment of the existing restrictions on alcohol advertising. Indeed, the Report notes that this is an area “where there has been considerable research, but of somewhat poor quality, yielding conflicting results.”¹⁹

However, Free TV is aware of calls for further restrictions on the advertising of alcohol on television, including suggestions that the existing timezone restrictions be extended until 9.30pm and that the provision of alcohol advertising in weekend and public holiday live sport be removed.

Free TV notes that these proposals are put forward with the objective of reducing young people’s exposure to alcohol advertising. Free TV would like to comment on these proposals.

A review of available audience and demographic data suggests that such proposals would do little to reduce children’s exposure to alcohol advertising, yet impose substantial costs on the free-to-air television industry.

5.1 Extension of existing timezone restrictions

Proposed extensions of the existing timezone restrictions to 9.30pm would take place in prime time adult viewing hours. It therefore stands to impact on the most important component of the day for broadcasters in terms of advertising revenue.

For such measures to represent an efficient and equitable regulatory response, it is vital that the beneficial outcomes of the additional regulation clearly outweigh the cost to industry.

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

- Adolescents between the age of 13 and 17 make up a very small proportion of the nightly television viewing population.
- Indeed during the period of 8.30pm to 9.30pm, 13 to 17 year olds make up just 4.4 per cent of viewers.²⁰
- Viewers aged 18 to 24 only make up 5.9 per cent of viewers in this period.²¹
- Adults 25 and over make up the overwhelming majority of the viewing audience for this period at 82.7 per cent.²²

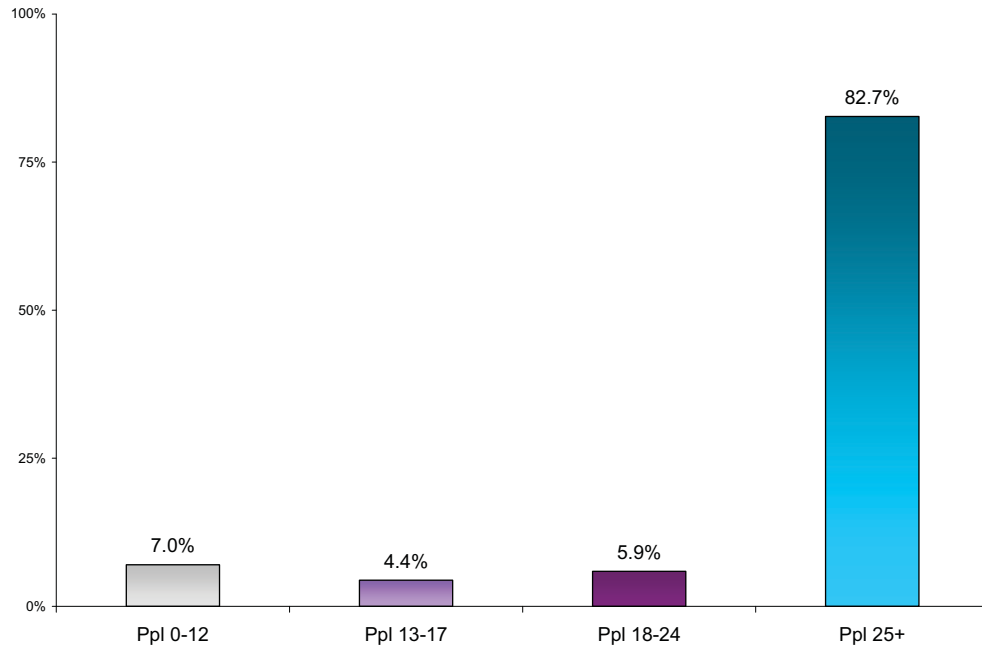
¹⁹ National Preventative Health Taskforce Technical Report No 3; Preventing Alcohol Relation Harm in Australia: a window of Opportunity, page 33

²⁰ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm; Ppl 13-17

²¹ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm; Ppl 18-24

²² Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm; Ppl 25+

Audience Composition - 8.30pm - 9.30pm



Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); total television; 8.30pm - 9.30pm

- Of the small proportion of the potential viewing audience in the 13 to 17 year old age group watching at this time, not all are watching Free TV.²³
- Minute-by-minute viewing after 8.30pm shows that viewing by 13 to 17 year olds declines in the minutes after 8.30pm.²⁴
- Of the small percentage of 13-17 year olds watching Free TV in this timeslot, 50% per cent are watching with an adult.²⁵

While it is impossible to ensure certain demographics will not be watching at any given time, the ratings data clearly show that the vast majority of viewers during these hours are adults.

It also shows that the existing timezone restrictions in the Code adequately reflect adult and children’s viewing patterns. Advertisements for alcohol products in this time period are targeted at the majority adult component of the audience.

Extending the ban on alcohol advertising from 8.30pm to 9.30pm would be unduly restrictive on advertisers wanting to reach the large proportion of the audience that is adult viewers in prime time. Most

²³ Source: OzTAM; 5 city metro; based on 2007 calendar year.

²⁴ Source: OzTAM; 5 city metro; 2030-2100; 2008 calendar year to date (1 Jan – 14 Dec).

²⁵ Source: OzTAM; 5 city metro; 2030-2130; 2008 calendar year to date (1 Jan – 14 Dec); % Ppl 13-17 co-viewing with Ppl 18+; Free TV channels only.

importantly, it is an inefficient method of reducing young people's exposure to alcohol advertising.

Given the potential impact on broadcasters of any additional restrictions on the scheduling of advertisements, the proposed timezone extension is not warranted.

Free TV notes that research showing public opinion in favour of such restrictions is often cited to support further regulatory intervention. For example, research undertaken by the Australian Institute of Health and Welfare showing over 70% of people support alcohol ad bans before 9.30pm, is often used to argue in favour of such restrictions. Indeed, this research is included in the Report, at Table 14. However, an examination of the questionnaire provided to respondents²⁶ reveals no context is given for the question on this point, and so it is unclear whether or not respondents were aware that significant restrictions are already in place.

Without such context, the results of the questionnaire may be best interpreted as support for restrictions which reflect adult and child viewing patterns. As demonstrated above, the current restrictions achieve that objective.

Free TV also notes the National Preventative Health Taskforce's Report distinguishes between the public popularity of regulatory measures and their effectiveness by noting that "in general, the measures that are most often called for by community members tend to be the least effective."²⁷

5.2 Weekend live sport

Free TV is also aware of calls to remove the current provision for alcohol advertising during live sport on weekends and public holidays.

Freely available coverage of sporting events is of great importance to audiences and to the ongoing viability of commercial free-to-air television broadcasters. Removing the provision for alcohol advertising in sport would impact strongly on the advertising and sponsorship revenue associated with sporting coverage. It is once again vital that the beneficial outcomes of this proposed additional regulation clearly outweigh the cost to industry.

However, ratings information shows that Free TV audiences for weekend sport are predominantly comprised of adult viewers:

- Adolescents between the age of 13 and 17 make up just 3.7 per cent of the total viewing audience for weekend sport programs;²⁸
- 18 to 24 year olds make up 6.0% of Free TV's audience for these programs.²⁹
- Adults over 25 make up a clear majority of the audience at 81.3%.³⁰

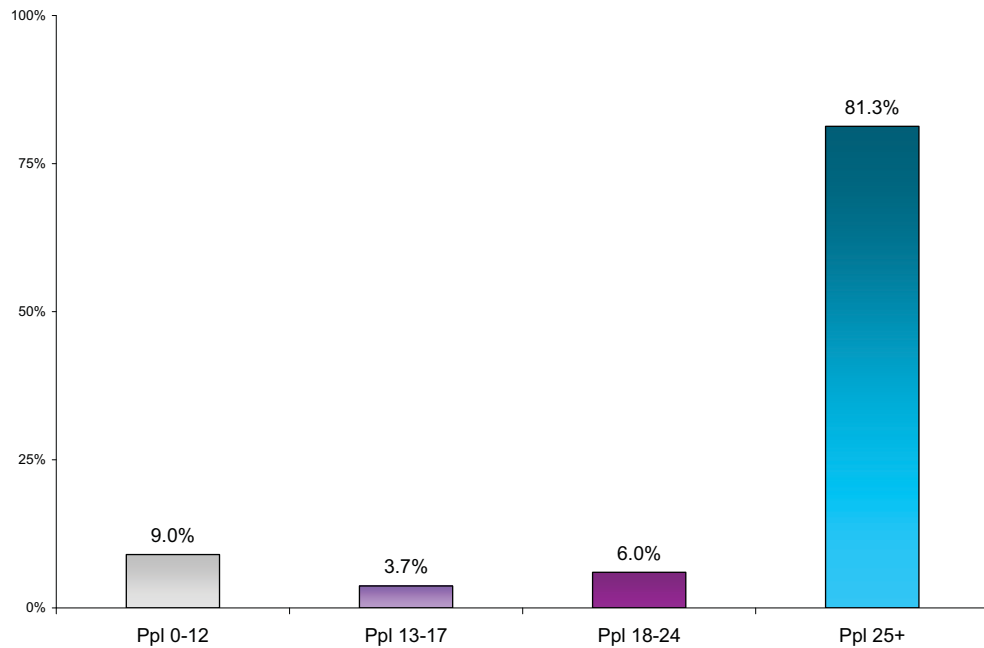
²⁶ Available at: <http://www.aihw.gov.au/publications/phe/ndshs07-fr/ndshs07-fr.pdf> (viewed 18 December 2008)

²⁷ National Preventative Health Taskforce Technical Report No 3; Preventing Alcohol Relation Harm in Australia: a window of Opportunity, page 17

²⁸ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec) (Sat & Sun only); 05:30 – 20:30; based on all programs classified as sports

²⁹ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); (Sat & Sun only); 05:30 – 20:30; Free TV channels only; based on all programs classified as sports.

Audience Composition - Weekend Sport (5.30am - 8.30pm)



Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); Sat & Sun only; 5:30 – 20:30

- More importantly, only a very small proportion of the potential viewing audience in the key 13 to 17 year old age group are watching these programs. The percentage of Australian children aged 13 to 17 years watching sport on television at the weekends is 2.0 per cent.³¹
- Only six of the top 50 programs for the 13 to 17 year old age group in 2008 were sporting events, and these were the marquee events of the Olympic Games and the Rugby League State of Origin.³²

This information strongly suggests that the proposed prohibition of alcohol advertising in live sport on weekends and public holidays would be an ineffective means of reducing young people’s exposure to alcohol advertising. Again, this would be unfair on advertisers wishing to target the overwhelming proportion of the audience that are adults.

³⁰ Source: OzTAM; 5 city metro; 2008 calendar year to date (1 Jan – 14 Dec); (Sat & Sun only); 05:30 – 20:30; Free TV channels only; based on all programs classified as sports.

³¹ Source: OzTAM; 5 City Metro; 2008 Calendar year to date (1 Jan - 14 Dec); Sat & Sun only; 5:30 -20:30; Free TV channels only; based on all programs classified as sport events, special sport events and other sports.

³² Source: OzTAM; 5 city metro; 2008; Ppl 13-17.

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

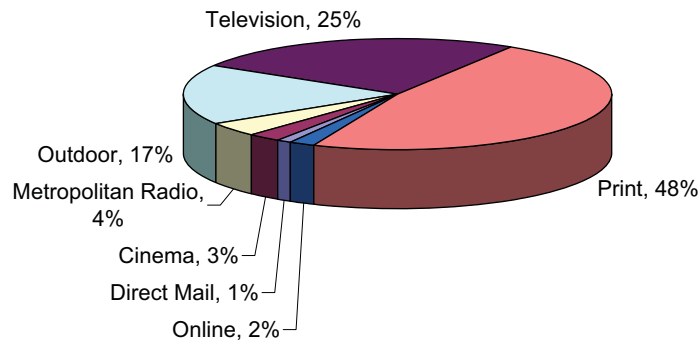
Many of the proposals for further regulatory restrictions on alcohol advertising focus solely on commercial free-to-air television.

An analysis of recent trends in advertising expenditure and audience behaviour suggests this would be an inequitable and inefficient means of reducing young people’s exposure to alcohol advertising.

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

Advertising of alcohol comprises both beverage or product advertisements and retailer advertisements. Any move to reduce alcohol advertising has to take into account the effects of both forms of advertising on the community, particularly when it is considered that retail advertisements often promote discounted alcohol products. When retail alcohol advertising spend is considered together with alcohol beverage advertising, television advertising accounts for less than 25% of the total spend.

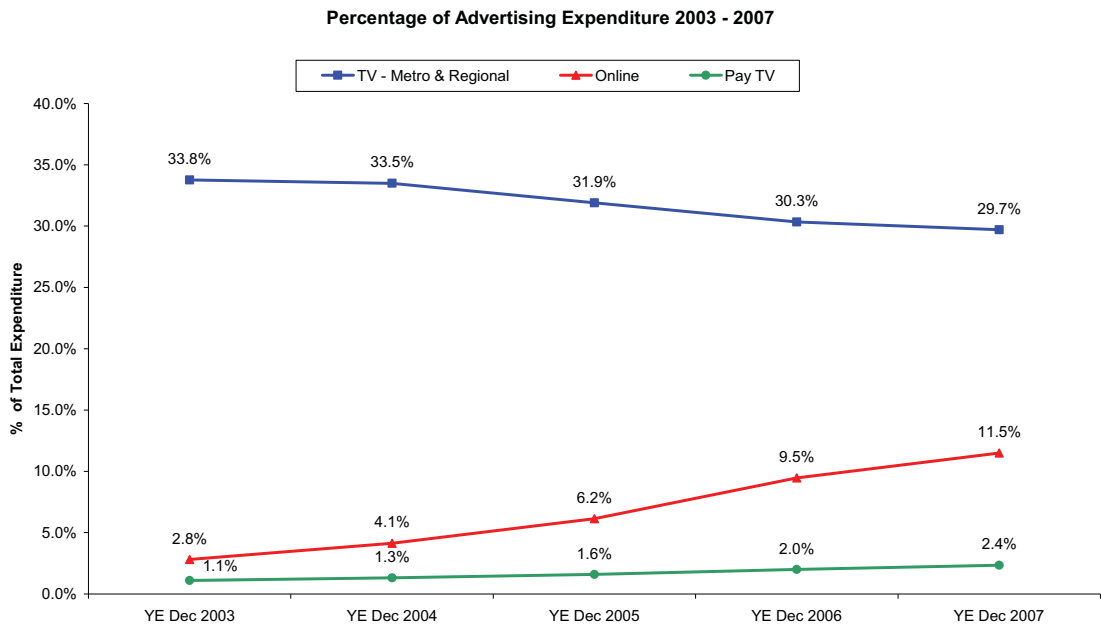
Combined Retail and Product Advertising



Source: Nielson Adex Data

Further, according to Commercial Economic Advisory Service Australia (CEASA) data, television’s share of advertising has been gradually decreasing. Expenditure on broadcast media is not growing at the same rate as other media, particularly the Internet. Online

advertising expenditure has increased from \$236 million in 2003, to over \$1.346 billion in 2007, an increase of 470 per cent.³³



Source: The Ceasa Report - Advertising Expenditure in Main Media, year ended 31 December 2007.

Some alcohol beverage manufacturers are now targeting online, viral and cinema advertising as the starting point for major promotional campaigns, with a delayed release of advertisements onto television.³⁴

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

Yet many regulatory proposals do not address online advertising of alcohol or other forms of promotion.

Such an approach would not reduce children’s exposure to alcohol advertisements on pay TV, SBS, in cinema, print or through outdoor advertising. Outdoor advertising can not be switched off at certain times of the day, guaranteeing continued exposure for 13 to 17 year olds.

³³ Source: The CEASA Report; Advertising Expenditure in Main Media; year ended 31 December 2007

³⁴ Source: 'Fosters goes skyward for Carlton ad' B&T Tuesday 26 February 2008

A focus on free-to-air commercial television would not only result in an inefficient targeting of young people's exposure to alcohol advertising, it would greatly exacerbate the financial impact of further regulatory intervention on commercial free-to-air broadcasters. Market dynamics dictate that as advertising is restricted on one medium, the advertising expenditure redistributes to other, competing media, putting Free TV at a further disadvantage.

This predicted redistribution of advertising expenditure to other media highlights a further inefficiency in a commercial television-focussed approach. As advertising expenditure for alcohol products moves away from the more heavily regulated free-to-air television sector, there would naturally be an increased level of alcohol advertising on other mediums. This would mean that despite the restrictive approach to advertising on free-to-air television, there would be minimal decrease in alcohol advertising (and young people's exposure to that advertising) overall.

5.3.2 *Audience behaviour trends*

A focus on free-to-air commercial television is not only inconsistent with trends in advertising expenditure, it is also inconsistent with trends in audience behaviour.

In 2008 a range of entertainment and information technologies competes for viewers' attention. As well as the traditional media of free-to-air television, radio, newspapers and magazines, consumers now have access to the Internet, pay TV, DVDs, computer games, digital media players and mobile phones.

Children in particular are availing themselves of a wide range of alternative screen time activities increasingly in less regulated environments.

Younger children and teens are all watching considerably less television than they did several years ago. Even with the advent of dedicated children's channels on pay TV, the average time spent viewing television overall is down among children, while the average time spent viewing among adults has increased.³⁵

³⁵ Source: OzTAM; 5 city metro; 2001-2007

Attachment A

Commercial Television Industry Code of Practice July 2004 (Extract)

Commercials which Advertise Alcoholic Drinks

- 6.7 A commercial which is a “direct advertisement for alcoholic drinks” (as defined in Clause 6.11) may be broadcast:
- 6.7.1 only in M, MA or AV classification periods; or
 - 6.7.2 as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.
- 6.8 Notwithstanding Clause 6.7, a commercial which is a “direct advertisement for alcoholic drinks” may be broadcast as an accompaniment to the live broadcast of a sporting event if:
- 6.8.1 the sporting event is broadcast simultaneously across a number of licence areas; and
 - 6.8.2 Clause 6.7 permits direct advertisements for alcoholic drinks in the licence area in which the event is held or, if the event is held outside Australia, direct advertisements for alcoholic drinks are permitted in a majority of the metropolitan licence areas in which the event is simulcast.
- 6.9 A commercial which is a direct advertisement for an “alcoholic drink” or a “very low alcohol drink” (as both are defined in Clause 6.10) may not be broadcast during a C classification period, as defined in the Children’s Television Standards.
- 6.10 An **“alcoholic drink”** means any beer, wine, spirits, cider, or other spirituous or fermented drinks of an intoxicating nature, and is generally understood to refer to drinks of 1.15% or more alcohol by volume. The view of the Commonwealth Department of Health is that drinks of less than 1.15% alcohol by volume should be classified as **“very low alcohol”** drinks.
- 6.11 **“Direct advertisement for alcoholic drinks”** means a commercial broadcast by a licensee that draws the attention of the public, or a segment of it, to an alcoholic drink in a manner calculated to directly promote its purchase or use. This does not include the following, provided that their contents do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use:
- 6.11.1 a program sponsorship announcement on behalf of a brewing company or other liquor industry company;
 - 6.11.2 a commercial for a licensed restaurant; or
 - 6.11.3 a commercial for a company whose activities include the manufacture, distribution or sale of alcoholic drinks.

6.12 “**Live sporting event**” means:

- 6.12.1 live-to-air sporting broadcasts, including breaks immediately before and after the broadcast;
- 6.12.2 sporting broadcasts delayed for time zone reasons and broadcast as plausible “live”, without reformatting;
- 6.12.3 sporting broadcasts delayed in the licence area in which the event is being held pursuant to a requirement of the relevant sporting organisation (known in the industry as “delay against the gate”);
- 6.12.4 replay material where a scheduled live-to-air sporting broadcast has been temporarily suspended (e.g. during rain breaks in cricket coverage), provided that normal or stand-by programs have not been resumed.

6.13 “**Public holidays**” are those days proclaimed, Gazetted, or nominated in a statute as public holidays under the relevant State or Territory legislation. These holidays generally affect either an entire State or Territory (such as the various Queen’s Birthday holidays) or a particular city or region (such as Melbourne Cup Day in Melbourne).

- 6.13.1 Where a licence area covers areas in which different public holidays are observed, the station should schedule according to the public holidays in the area which contains the majority of the licence area population.

Attachment B**Children's Television Standards 2005
(Extract)****CTS 23 Advertising of Alcoholic Drinks**

- 1) Advertisements for alcoholic drinks may not be broadcast during a C period.
- 2) No advertisement or sponsorship announcement broadcast during a C period may identify or refer to a company, person, or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.
- 3) No advertisement for alcoholic drinks may be broadcast during a C program or P program that is broadcast outside a C period or P period, or in a break immediately before or after any C program or P program.
- 4) No advertisement or sponsorship announcement broadcast during a C program or P program that is broadcast outside a C period or P period, or in a break immediately before or after such a C program or P program, may identify or refer to a distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.

ATTACHMENT C

ALCOHOL BEVERAGES ADVERTISING CODE (Extract)

Preamble

Australasian Associated Brewers Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

Definitions

For the purpose of this Code –

adult means a person who is at least 18 years of age;

alcohol beverage includes any particular brand of alcohol beverage;

adolescent means a person aged 14-17 years inclusive;

Australian Alcohol Guidelines means the electronic document 'Guidelines for everyone (1-3)' published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

child means a person under 14 years of age; and

low alcohol beverage means an alcohol beverage which contains less than 3.8% alcohol/volume.

Advertisements for alcohol beverages must –

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage under-age drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

- iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Internet advertisements

The required standard for advertisements outlined in (a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.

Retail Advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible

serving of alcohol (which preclude the serving of alcohol to underage persons); and

- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and
- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

Third Parties

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

Public Education

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.