MINISTER FOR HEALTH
VICTORIA

REPORT TO THE
MINISTERIAL COUNCIL OF DRUG STRATEGY

Review of the Self-Regulatory System for Alcohol Advertising

By the National Committee for the Review of Alcohol Advertising

AUGUST 2003
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MEMBERSHIP OF THE NATIONAL COMMITTEE FOR THE REVIEW OF ALCOHOL ADVERTISING

- Mr Paul McDonald, Department of Human Services, Victoria (Chair)
- Mr Graham Strathearn, Drug and Alcohol Services Council, South Australia
- Ms Chrys Athanasos, Commonwealth Department of Health and Ageing
- Ms Di Rayson, Department of Health and Community Services, Northern Territory
- Ms Melissa Ward, Australian Federal Police, ACT
- Mr Steve James, Victoria Police
EXECUTIVE SUMMARY

The misuse of alcohol is a significant problem, both socially and economically, to the Australian community. The social cost of alcohol to the Australian community has been estimated at $7.560 billion per annum\(^1\) accounting for 22 per cent of the social cost of all drug use in Australia.\(^2\)

The social harms associated with alcohol misuse in Australia are also significant and can be associated with a number of negative consequences, such as depression, violence, suicidal behaviour, high-risk sexual activity and delinquent behaviour.\(^3\)

While alcohol is deeply embedded in Australian culture and is consumed by more Australians than any other drug, there is considerable community concern that the advertising and marketing of alcoholic beverages is a socialising force in promoting the misuse of alcohol, especially among young people. At the Ministerial Council on Drug Strategy (MCDS) meeting in Darwin on 18 July 2002, the concern was raised that while the specific influence of alcohol advertising is difficult to measure, there is no doubt that advertising stimulates alcohol consumption by both adults and young people.

Up to 1996, the Media Council of Australia (MCA) and the Advertising Standards Council administered the self-regulatory system for advertising in Australia. Following reviews by the Australian Competition Tribunal and the Australian Competition and Consumer Commission, the MCA was abandoned and replaced by the Australian Association of National Advertisers (AANA) in 1998. During this time, the alcohol beverage industry also established its own self-regulating advertising code, which came into operation on 1 July 1998.\(^5\)

Although the alcohol beverage industry would argue that the self-regulation of alcohol advertising has worked effectively, in recent years health and community advocates have raised concerns about the alcohol industry’s ability to comply with its own specific alcohol advertising code. In a recent study, it was found the main messages that young people perceived as being conveyed to them by Australian alcohol advertisements was that the consumption of alcohol could lead to a significant change in mood, and could contribute to social and sexual success.\(^6\)

After a presentation by the former Minister for Health of Victoria, the Hon. John Thwaites MP, the MCDS resolved at the meeting in Darwin on 18 July 2002 that a review would be undertaken to examine the effectiveness of the current self-

\(^2\) Ibid note 1
regulatory system for alcohol advertising, as well as consider the impact of alcohol advertising on young indigenous people. The terms of reference outlined a review of:

- the capacity of the industry to self-regulate
- the effectiveness of the complaints mechanism
- opportunistic marketing of alcohol to under 18’s
- the degree to which Internet advertising of alcohol complies with the requirements of the code.

The findings and recommendations of this review are outlined below.

**Summary of Existing Regulatory System**

The existing self-regulatory system for alcohol advertising has been in operation since 1998. As stated previously, the alcohol advertising code was established after the abandonment of the MCA, however it was also established in response to the specific examination of alcohol advertising and its relationship to National Health Policy by the MCDS in 1989. At this time, the MCDS adopted a policy on alcohol that placed the role of alcohol advertising in terms of broader health policy. The National Health Policy aimed to create a holistic approach to alcohol use and argued that the existing system of industry self regulation of advertising “was not working in a way calculated to protect the health interests of the population.”

During the 1990s, the alcohol beverage industry liaised with the Federal Government regarding the objectives of the National Health Policy and created the alcohol advertising code and the specific complaints system. Since this time, the existing self-regulatory system for alcohol advertising has been complex, with alcohol advertisements covered by both a general Code (Advertiser Code of Ethics) relating to all advertisements and an alcohol advertising specific Code (Alcohol Beverage Advertising Code).

The Advertiser Code of Ethics is a generic ethical code applying to all advertisements, including alcohol advertisements. The Code of Ethics covers matters of taste and decency, such as discrimination, violence, portrayal of sex and inappropriate language. Complaints by members of the public about matters covered by the Code of Ethics are heard by the Advertising Standards Board, which is set up under the Advertising Standards Bureau (ASB).

In its investigations, the National Committee for the Review of Alcohol Advertising (NCRAA) found that approximately 5% of all complaints received by the ASB relate to alcohol advertising. Since the establishment of the ASB in 1998, 361 complainants have complained about a total of 48 different alcohol advertisements. None of these 361 complaints has been upheld.

The alcohol advertising code, the Alcohol Beverages Advertising Code (ABAC), was established by the alcohol beverage industry and deals with alcohol-specific advertising issues, such as appeal to young people and alcohol consumption being linked to sporting or sexual success. The industry has established an independent

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8 Ibid note 7.
ABAC Adjudication Panel to hear complaints which fall under the ABAC Code. Since its establishment in 1998, the ABAC Adjudication Panel has heard a total of 20 complaints. Of this total, five were upheld and thirteen were dismissed.\(^9\)

During its review, NCRAA observed that most alcohol advertising complaints are dealt with by the ASB Advertising Standards Board (95%), as they relate to matters falling under the ASB Code of Ethics. The ASB receives all advertising complaints and forwards the wording of the complaints about alcohol advertisements to the ABAC Adjudication Panel, however only 5 per cent of complaints are reviewed under the ABAC. While the existing self-regulatory system and both of the advertising Codes have their merits, NCRAA is of the view that the ABAC deals with specific concerns with the marketing and advertising of alcoholic beverages that need to be considered when adjudicating any alcohol advertising complaints. This would ensure that all alcohol advertising, irrespective of the nature of the complaint would be viewed under the alcohol specific code, which addresses public health concerns relating to the marketing and advertising of alcoholic beverages.

*Pre-Vetting of Alcohol Advertisements*

During consultations with the Federal Government around the National Health Policy in the early 1990s, the Distilled Spirits Council of Australia (DSICA) and the Australian Associated Brewers (AAB) also created the Alcohol Advertising Pre-Vetting System (AAPS). This was introduced in 1992. Among others, this initiative is claimed to have been what caused the MCDS to rethink earlier suggestions concerning government regulation as it led to the adoption of a ‘watching brief’ over the self-regulatory system.\(^10\)

The AAPS is a voluntary system that is operated by DSICA and the AAB. All members are required to have all advertisements pre-vetted against the ASB Code of Ethics and the ABAC prior to broadcast or publication. Data provided by DSICA demonstrates that there are a large number of advertisements that are subject to pre-vetting. For example, in the period of 1999 to 2001 a total of 1388 advertisements were pre-vetted, with approximately 10 per cent of advertisements being rejected.

*Shortcomings of the Existing Regulatory System*

Having considered the operations of the existing alcohol advertising regulatory system in detail, NCRAA is of the view that it is a reasonable system, however it requires specific improvements to ensure that it fulfils the expectation and spirit of the self-regulatory Codes. If the marketing and advertising of alcoholic beverages is to continue to be self-regulated, the following issues require redress:

- the current system does not address public health concerns about alcohol advertising and use. In particular, 95 per cent of complaints about alcohol advertising are dealt with under the general advertising complaints resolution system rather than the alcohol-specific system
- the general public is largely unaware of the complaint resolution system and, in particular, how to make complaints

\(^9\) Ibid note 7.
\(^10\) Ibid note 7.
• the system lacks transparency. In particular, there is insufficient reporting of how complaints are adjudicated and the outcomes of those complaints
• the current system does not apply to all forms of advertising, for example, internet advertising and promotions
• the effectiveness of the current system is compromised by the amount of time taken to resolve complaints.

The recommendations below give effect to a model which NCRAA believes will address these issues. NCRAA’s main concern with the existing self-regulatory system is that the Advertising Standards Board, a body that does not have any specialist knowledge or skills in relation to public health issues, deals with most alcohol advertising complaints. While in theory the ABAC was established with an understanding that all complaints relating to alcohol advertisements would be adjudicated under the specific complaints system, NCRAA has found that this has not taken place in practice.

To ensure a strong and viable system for the reviewing of alcohol advertising complaints, it is essential that the existing self-regulatory system for alcohol advertising be strengthened so that the ABAC Adjudication Panel, with an understanding of the problems associated with alcohol use in the community, review all alcohol advertisements that have received complaints.

Response of the Alcohol Beverage Industry

Throughout its review of the operations of the existing self-regulatory system for alcohol advertising, NCRAA consulted with the alcohol beverage industry on numerous occasions and has also received a number of written submissions. During this time, the industry has acknowledged that there are issues with the existing system that require attention and have undertaken to liaise with NCRAA to discuss ways in which the system can be improved.

The alcohol beverage industry has agreed in principle to make a number of modifications to the self-regulatory system for alcohol advertising. These include:

• Requiring the ABAC Adjudication Panel to review all alcohol advertisements that have received complaints, and making determinations about whether alcohol advertisements comply with the ABAC based on the advertisement as a whole, rather than how the complaint is expressed.

• Amending the ABAC to address the advertising of alcoholic beverages on the internet.

• The development of a protocol document outlining a policy regarding the promotion of alcoholic beverages at events clearly targeting young people (i.e. Schoolies Week)

• The inclusion of a government representative on the ABAC Management Committee and a public health representative on the ABAC Adjudication Panel.
Recommendations of NCRAA

NCRAA is of the view that alcohol advertising should continue to be self-regulated in Australia and recommends that the MCDS work with the alcohol industry to enhance the existing self-regulatory system. Should industry fail to implement the recommendations contained in this report, other options, such as regulation by Government, should be considered. Thus NCRAA have recommended a monitoring strategy on the implementation of the recommendations, and plans to report back to MCDS in 2004.

Therefore NCRAA recommends that:

1. The MCDS monitor the response of industry to the recommendations made in this report
2. The alcohol industry implement the recommendations contained in this report by 31 March 2004
3. NCRAA be maintained as a subcommittee of IGCD to monitor the implementation of the recommendations
4. NCRAA provide a report to MCDS through the IGCD after 31 March 2004 regarding the alcohol industry’s implementation of the recommendations

Recommendations Regarding the Advertising Standards Bureau and the Advertiser Code of Ethics

In recognising the public profile of the ASB and the role it plays as the receiver of all advertising complaints, NCRAA is of the view that the ASB should continue to receive all complaints relating to alcohol advertisements and refer each complaint to the ABAC Adjudication Panel. While the ASB is also recognised as being the umpire of taste and decency for all type of advertisements, further consideration should be given as to how the system may be improved to ensure that it remains viable.

Therefore NCRAA recommends that:

5. The ASB continue to receive all advertising complaints, including those relating to alcohol
6. The ASB refer all alcohol advertisements that are subject to complaints irrespective of how the complaints are expressed, including those falling within the ASB Code of Ethics, to the ABAC Adjudication Panel
7. The ASB be encouraged to continue to run ongoing media campaigns to publicise the advertising complaint process and to improve the accessibility of the complaints process to the general public
8. The ASB be encouraged to indicate on their publication materials, such as the ASB website, that all alcohol advertisements that are subject to complaints will also be considered under the ABAC.

Recommendations Regarding the Alcohol Beverages Advertising Code and in relation to the ABAC Adjudication Panel

To ensure that the ABAC meets public health expectations about alcohol advertising as well as the effective resolution of alcohol advertising complaints, NCRAA believes
that there are a number of enhancements that could be made to both the ABAC and to
the ABAC Adjudication Panel. It is expected that if alcohol advertising continues to
be self-regulated, smaller industry members should become signatories to the ABAC.
It will also be required that the ABAC Adjudication Panel hear all complaints relating
to alcohol, including those that only fall within the ASB Code of Ethics.

Therefore NCRAA recommends that by 31 March 2004:

9. ABAC be amended to include a definition of ‘advertisement’ that will address
internet advertising
10. ABAC should have a generic preamble emphasising its underlying philosophy
and requiring the Code to be applied in spirit and in intent
11. The Management Committee be encouraged to ensure that all smaller industry
members become signatories to the ABAC
12. As per recommendation 6, the ABAC Adjudication Panel should hear all
complaints relating to alcohol advertisements
13. At least one member of the ABAC Adjudication Panel should be a public health
expert nominated by MCDS, and that this representative is part of all
adjudications
14. The ABAC Adjudication Panel should make determinations about whether
alcohol advertisements comply with the ABAC based on the advertisement as a
whole, rather than how the complaint is expressed

Recommendations Regarding the ABAC Management Committee

NCRAA recognises the imperative role that the ABAC Management Committee plays
in ensuring that the self-regulatory system for alcohol advertising operates effectively.
Part of this effectiveness relates to increasing the transparency of the self-regulatory
system, which not only necessitates constant reporting of the system to external
parties but also increasing the public awareness of the system’s operations. NCRAA
is of the view that it is the ABAC Management Committees who is responsible for
these undertakings.

Therefore NCRAA recommends that by 31 March 2004:

15. The Management Committee’s membership include one Government
representative nominated by the MCDS
16. The Management Committee’s role be formalised and that it meet on a quarterly
basis to undertake roles as outlined in section 5.3.2
17. The Management Committee effectively publicise the ABAC and the work of
the ABAC Adjudication Panel, including maintaining a website containing the
ABAC and all Panel adjudications and reports
18. The Management Committee report to the IGCD outlining how they propose to
effectively publicise the ABAC and the work of the ABAC Adjudication Panel
19. The Management Committee review the timelines for resolving complaints,
with a view to all complaints being finalised within 30 days
20. The Management Committee provide an annual report each calendar year to
MCDS on the operations of the ABAC, detailing all adjudications made by the
ABAC Adjudication Panel, identifying any issues with the ABAC and if
appropriate, making improvements to the ABAC
21. The Management Committee develop a protocol outlining a policy regarding the promotion of alcoholic beverages at events clearly targeting young people

**Recommendations in Relation to Pre-Vetting**

NCRAA believes that the pre-vetting system serves a very important function in helping advertisers understand and comply with both the ABAC and the ASB Code of Ethics. An effective pre-vetting system has the potential to reduce the number of complaints made, by ensuring that both Codes are considered before an advertisement is published or broadcast. While NCRAA recognises that there are a number of confidentiality issues at the production stage, NCRAA is of the view that the system could still be broadened.

Therefore NCRAA recommends that by 31 March 2004:

22. Most alcohol industry members participate in a pre-vetting system
23. All alcohol advertising in the broadcast media, on billboards and other outdoor campaigns be subject to pre-vetting
24. Australian internet sites advertising alcohol products be subject to pre-vetting.

**Recommendations in Relation to IGCD**

NCRAA recommends that:
25. IGCD through NCRAA convene biannual meetings of a consultative committee to review recent advertisements and complaints over the last six months. The committee should comprise the Management Committee, Pre-vetters, Adjudication Panel Members and representatives of public health interest organisations, Government and industry.

**Implementation of Recommendations**

The recommendations outlined above give effect to a self-regulatory system that NCRAA believes will redress the many issues identified with the existing system. To ensure that these recommendations are implemented effectively, NCRAA has detailed dates by which each recommendation should be fully effective. It is recommended that at least two Ministers from the MCDS meet with the ABAC Management Committee to discuss the recommendations in further detail six weeks after the MCDS meeting in August 2003. It is also recommended that NCRAA continue to monitor the self-regulatory system, as well as the industry’s response to these recommendations to ensure that the issues identified with the existing self-regulatory system are fully addressed.
INTRODUCTION

The misuse of alcohol is a significant problem, both socially and economically, to the Australian community. The cost of alcohol to the Australian community has been estimated at $7.560 billion per annum\(^1\) accounting for 22 per cent of the social cost of all drug use in Australia.\(^1\) This cost factors in premature death, treatment costs, loss of productivity in the workplace, and increased law enforcement. It does not include the costs of alcohol-related crime, violence and other anti-social behaviours.

The social harms associated with alcohol misuse in Australia are also significant. Alcohol abuse has been shown to be a major contributor to intentional and unintentional harms, and is associated with a number of other negative consequences, particularly among young people such as depression, violence, suicidal behaviour, high-risk sexual activity and delinquent behaviour.\(^1\)\(^3\)\(^4\) Current research demonstrates that young people are consuming alcohol earlier in adolescence and are increasingly adopting high risk drinking patterns.\(^1\)\(^5\) The 2001 National Drug Strategy Household Survey revealed that almost a third of teenagers aged 14 – 19 consume alcohol on a weekly basis and that the drinking patterns of the 20 – 29 year age group puts them at risk of long term alcohol related harm.\(^1\)\(^6\)

While alcohol is deeply embedded in Australian culture and is consumed by more Australians than any other drug, there is considerable community concern that the advertising and marketing of alcoholic beverages is a socialising force in promoting the misuse of alcohol, especially among young people by portraying alcohol as vehicles for social and sexual success. While the specific influence of alcohol advertising is difficult to measure, there is no doubt that advertising stimulates alcohol consumption by both adults and young people.\(^1\)\(^7\)

The Alcohol Beverages Advertising Code (ABAC) was introduced by the alcohol industry in 1998 to monitor and ensure that alcohol advertisements present a balanced and responsible approach to the consumption of alcohol, however there is evidence to suggest that not all alcohol advertisements occupy the views of the ABAC. For example, a recent study found the main messages which young people perceived as being conveyed to them by Australian alcohol advertisements was that the consumption of alcohol could lead to a significant change in mood, and contribute to social and sexual success.\(^1\)\(^8\)

A study undertaken by the Australian Drug Foundation (ADF) indicated that, in conveying positive messages about alcohol consumption, alcohol advertisements run

\(^1\) Ibid note 1.
\(^2\) Ibid note 1.
\(^3\) Ibid note 3.
\(^4\) Ibid note 4.
\(^8\) Ibid note 6.
the risk of normalising drinking, particularly for young people. Other research suggests that alcohol advertisements that use animation, humour, rock music, or imply an association with illicit drugs are particularly attractive to young people, and may encourage drinking behaviour.

**History of Self-Regulation of Alcohol Advertising**

In 1989, the MCDS adopted a National Health Policy on Alcohol that aimed to minimise the harms associated with alcohol and create a holistic approach to alcohol use. The Policy also identified the need to establish a specific code to regulate alcohol advertising due to the existing system not addressing the health concerns of the population. It set out two objectives to be met in alcohol advertising:

1. To ensure that the marketing and advertising of alcoholic beverages is consistent with the aim of encouraging responsibility in its use; and
2. To ensure that the advertising of alcohol is subject to the provisions of a Code of Practice which adequately addresses health issues, which does not place unfair pressure on young people and which is subject to effective mechanisms of review and monitoring of its administration.

During consultations with the Federal Government around the National Health Policy in the early 1990s, the Distilled Spirits Council of Australia (DSICA) and the Australian Associated Brewers (AAB) created the Alcohol Advertising Pre-Vetting System (AAPS). This was introduced in 1992 and is claimed to have been what caused the MCDS to rethink earlier suggestions concerning government regulation as it led to the adoption of a ‘watching brief’ over the self-regulatory system.

Up to 1996, the Media Council of Australia (MCA) and the Advertising Standards Council administered the self-regulatory system for advertising in Australia. Following reviews by the Australian Competition Tribunal and the Australian Competition and Consumer Commission, the MCA was abandoned and replaced by the Australian Association of National Advertisers (AANA) in 1998. During this time, the alcohol beverage industry also established its own self-regulating advertising code, which came into operation on 1 July 1998.

While the alcohol advertising code was established after the abandonment of the MCA, it was also established in response to the specific examination of alcohol advertising and its relationship to the National Health Policy adopted by the MCDS in 1989.

In recent years, concerns regarding the self-regulatory system have arisen again, especially with regard to the alcohol industry’s ability to comply with the ABAC.

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20 Ibid note 7.
21 Ibid note 7.
Ministerial Council on Drug Strategy

At the MCDS meeting in Darwin on 18 July 2002, the former Victorian Minister for Health, the Hon. John Thwaites MP did a presentation on the impact of alcohol marketing on young people. This followed the MCDS approving the National Alcohol Strategy, which also questioned the effectiveness of the self-regulatory system. 23

The issues highlighted in the presentation included:
- Capacity of the industry to self-regulate;
- Concerns on the marketing and manufacturing of Ready-to-Drink (RTD) beverages;
- The impact of the internet in marketing alcohol to young people; and
- Placement of alcohol advertisements in areas where numbers of young people congregate.

Advertisement for Alcoholic Beverage Beck’s Beer

This advertisement for Beck’s Beer (located in a bus shelter) is one of the alcohol advertisements that were included in the presentation to the MCDS.

Following the presentation, the MCDS resolved that a sub-committee of the Intergovernmental Committee on Drugs (IGCD), NCRAA, would review the effectiveness of the current self-regulatory system for alcohol advertising, in particular its complaints mechanism and report back to MCDS in August 2003. The terms of reference drawn up for NCRAA were:
- the capacity of the industry to self-regulate
- the effectiveness of the complaints mechanism
- opportunistic marketing of alcohol to under 18’s
- the degree to which Internet advertising of alcohol complies with the requirements of the code.

NCRAA was also requested to consider the impact of alcohol advertising on young indigenous people.

The Review

As part of the Review, NCRAA focussed primarily on the system for regulating alcohol advertising in Australia. Due to time and resource constraints, not all of the terms of reference were fully explored. The activities undertaken under the terms of reference relating to opportunistic marketing and the impact of alcohol advertising on young indigenous people are outlined in the Appendix.

Throughout the Review, NCRAA consulted with a number of health bodies, alcohol beverage industry groups and other individuals relevant to the self-regulatory system.

The following alcohol beverage industry groups consulted with included:
- Distilled Spirits Industry Council of Australia
- Australian Associated Brewers
- Winemakers’ Federation of Australia
- Liquor Merchants Association of Australia Ltd
- Lion Nathan
- Carlton United Breweries.

The following health bodies consulted with included:
- Australian National Council on Drugs
- Alcohol and Drug Council of Australia
- National Expert Advisory Committee on Alcohol
- Australian Drug Foundation.

Other individuals consulted with included:
- Mr Robert Koltai, Chair, Advertising Standards Bureau
- Ms Eileen Lamerton, Complaints Officer, Advertising Standards Bureau.
- Mr Michael Lavarch, Chief Adjudicator, Complaint Adjudication Panel
- Ms Victoria Rubensohn, Chief Adjudicator, Alcohol Advertising Pre-vetting System
- Dr Anne Roche, former Complaint Adjudication Panel Member

All alcohol industry members and health bodies were also given the opportunity to make submissions.
2. THE CURRENT SYSTEM OF ALCOHOL ADVERTISING REGULATION IN AUSTRALIA

The regulatory system for alcohol advertising consists of:
- Advertising Standards Bureau, incorporating the ASB Code of Ethics and the Advertising Standards Board (discussed in section 2.1)
- Alcohol Specific System, incorporating an alcohol-specific advertising Code, a pre-vetting system and a Complaints Adjudication Panel (discussed in section 2.2).

2.1 Advertising Standards Bureau

The Advertising Standards Bureau (ASB) administers Australia’s national system of advertising self-regulation. The self-regulatory system came into operation in 1998 and is funded through a voluntary levy administered by the Australian Advertising Standards Council. Under this system, the Advertising Standards Board hears complaints by members of the public and the Advertising Claims Board resolves complaints by industry members.

Both boards determine complaints under the ASB Code of Ethics (See Attachment 1). The Code of Ethics applies to all forms of advertising and deals with issues including:
- misleading advertisements
- discrimination/vilification
- violence
- portrayal of sex, sexuality and nudity
- inappropriate language.

The ASB views its role as the umpire of taste and decency for all types of advertisements and the Advertising Standards Board determines all complaints based on prevailing community standards on health and safety.

Membership of the Advertising Standards Board

The Advertising Standards Board is made up of thirteen members, with the aim of representing a variety of ages and backgrounds (See Attachment 2). At present, most members have an arts, communications or media background. There is currently no public health representation on the Board.

Complaint Resolution Process

The ASB receives complaints about advertising for all products, including those that are covered by specific industry codes, such as alcohol. Complaints about alcohol advertisements are often made directly to television and radio stations or to Liquor Licensing Authorities. These complaints are all referred on to the ASB.

The ASB public complaint resolution process is a free service. Complaints must be made in writing and may be submitted by post, fax or electronically. All complainants must provide their name and postal address.
When a complaint is received, the ASB determines if it falls within the ASB Code of Ethics (and should therefore be dealt with by the Advertising Standards Board) or whether it is more appropriately dealt with under an industry-specific code. Complaints that fall under the ABAC are referred to the ABAC Adjudication Panel (see section 2.2.3).

The details of complaints relating to alcohol advertisements that are dealt with by the ASB, regardless of whether they are formally referred, are provided to the ABAC Adjudication Panel and ABAC Management Committee for their information.

When complaints fall within the ASB jurisdiction, the ASB contacts the advertiser, inviting comment on the advertisement’s compliance with the ASB Code of Ethics. The Board then considers the advertisement, taking into account the ASB Code of Ethics, the complaint and the advertiser’s response. The time taken for a complaint to be resolved will depend on whether a complaint is upheld or dismissed by the Board. Where the Board dismisses a complaint, the complainant will be informed of the outcome within five working days from when the Board has made its decision. Where the Board upholds a complaint, the process is likely to take up to ten working days, as the advertiser is given a period in which to advise whether the advertisement will be modified or discontinued.

**Reporting**

The complainant and advertiser are informed of the Board’s decision in writing. The determinations are also published as a collection of case reports and, in some instances, may be circulated to the news media. It is apparent that the reporting of ASB determinations is a reactive process and that case notes are not readily publicised to the general public.

The case reports outlining the Board’s determination do not provide detailed reasons for decisions. This is of concern to NCRAA, as it appears to suggest a lack of transparency and therefore a lack of accountability surrounding the system.

**Publicising the ASB**

The ASB relies on free campaigns run by its Australian Association of National Advertisers members to publicise the complaints resolution process. Such campaigns are infrequent, however a new campaign was launched in 2003. This campaign aims to inform the public about the ASB and the complaint process and advertises the telephone number and website. The campaign is currently airing on television, radio and in newspapers.

The ASB stated that complaints relating to alcohol advertisements increase when the ASB undertakes publicity campaigns.
Number of Alcohol Advertising Complaints Dealt with by ASB

Each year the ASB receives a total of between 1000 and 2600 complaints. In 2002, 4.8% of all complaints received related to alcohol advertising. The vast majority of alcohol-related complaints (95%) are dealt with by the ASB under the ASB Code of Ethics, rather than being referred to the ABAC Adjudication Panel. In Chart 2, it demonstrates the number of alcohol advertising complaints dealt with by the ASB since its inception in 1998.

Table 1 outlines the various types of alcohol complaints that the ASB has dealt with since it was established in 1998. As shown in the Table 1, the ASB data indicates that since 1998:

- alcohol advertisements on television attract more complaints than other forms of advertising (59%)
- most alcohol advertising complaints relate to discrimination and vilification (68%), portrayal of sex, sexuality and nudity (40%) and health and safety (31%).

When referring to the section in the Table outlining the number of advertisements that attract complaints, it indicates that only a small number of alcohol advertisements are the subject of complaints each year (between 7 and 13), with some advertisements attracting large numbers of complaints. For example, one TV advertisement for Tooheys New attracted 133 complaints on the grounds of discrimination and vilification (see Case Study 1). In 2000 an outdoor advertisement for Chivas Regal attracted 77 complaints (see p.p.8).

None of the 361 alcohol advertising complaints determined by the ASB since 1998 have been upheld.

As demonstrated in Table 1, there are a large number of complaints relating to alcohol advertisements that were not reviewed under the alcohol beverage industry Code. This is concerning to NCRAA as while the ASB Code of Ethics is a viable Code, the ABAC and the ABAC complaints system were designed specifically to address issues with the marketing and advertising of alcoholic beverages.

Below are two case studies outlining determinations made by the ASB Advertising Standards Board about complaints relating to alcohol advertisements. Neither of the complaints was upheld.

**Case Study 1**

An example of a determination of an alcohol related complaint by the Advertising Standards Board not being upheld is provided below. The complaint relates to an alcohol advertisement for Tooheys New that received 133 complaints. The advertisement shows a priest and a young man in confessional. The young man uses the confessional to trick the priest in providing him with the names of three women, whom the young man and his friends intend to meet with.

Some of the comments of the complainants made regarding this advertisement included:

"*What I am annoyed about is this commercial’s arrogant use of Religion purely as an ‘attention grabber’ to promote the product.*"

"*The Ad ridicules the confidentiality and trust of the Confession...contravenes all laws of discrimination.*"
“This (advertisement) shows a complete lack of respect for the sacrament of reconciliation and then goes on to demean women showing that women should be used as sex objects.”

Despite receiving 133 complaints, the ASB Advertising Standards Board dismissed each of them and determined that the advertisement did not breach the ASB Code of Ethics. The reasoning provided by the ASB Advertising Standards Board is outlined below. According to NCRAA’s research, the ASB Advertising Standards Board consider complaints based on community values and standards, however the basis on which these community values are measured is not sufficiently communicated to the complainant or to the community as shown below.

“The Board, while appreciating the complaints’ personal points of view, determined that the advertisement’s portrayal of the characters concerned would not offend prevailing community values and standards, did not constitute discrimination or vilification and did not breach the Code. Board members noted the contextual humour of the advertisement.”

**Case Study 2**

To examine the effectiveness of the complaints system, the Australian National Council on Drugs (ANCD) made a formal complaint to the ASB regarding a television advertisement for the alcoholic beverage ‘Bundaberg Rum’, having observed that it did not comply with the ASB Code of Ethics or the ABAC.

The television advertisement shows a group of men eavesdropping on the conversation of a young woman with the assistance of a talking polar bear – ‘Bundaberg Bear’. The conversation involves one young woman attributing casual sexual experiences with the consumption of alcohol. The nearby group of males then endorsed this as a positive female attribute.

In their letter of complaint, the ANCD stated:

“it is irresponsible and dangerous for any marketing campaign to encourage woman to believe that consuming alcohol makes them attractive to men. In turn, it is equally irresponsible and dangerous to encourage men to believe that woman who do consume alcohol are sexually vulnerable.”

In response to the ANCD, the ASB stated that the Advertising Standard Board determined that the advertisement did not breach prevailing community standards on health and safety and that it did not breach the ASB Code of Ethics on any other grounds.

While the ASB determined that the advertisement did not breach the ASB Code of Ethics, there are grounds for it to have been reviewed under the ABAC in terms of potentially depicting the consumption or presence of alcohol as a cause of or contributing to the achievement of sexual success. As the complaint was not ‘expressed’ in such terms, the ABAC Adjudication Panel was not required to review the advertisement. As a result the complaint was dismissed.
**Table 1:** Summary of Alcohol-Related Complaints Dealt with by Advertising Standards Board 1998-2002

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of complaints received by ASB</td>
<td>1074</td>
<td>2065</td>
<td>2558</td>
<td>1705</td>
<td>1203</td>
</tr>
<tr>
<td>Total number of alcohol complaints received</td>
<td>14 (1.3%)</td>
<td>165 (7.9%)</td>
<td>106 (4.14%)</td>
<td>38 (2.2%)</td>
<td>58 (4.8%)</td>
</tr>
<tr>
<td>Number of complaints referred to the ABAC Adjudication Panel</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Total number of alcohol complaints dealt with by ASB</td>
<td>9</td>
<td>160</td>
<td>104</td>
<td>32</td>
<td>56</td>
</tr>
<tr>
<td>Number of advertisements attracting complaint (number of complaints received in relation to the same advertisement indicated in brackets).</td>
<td>7 (3)</td>
<td>7 (133, 15, 5, 3,2)</td>
<td>11 (77, 8, 4, 4, 3,2,2)</td>
<td>13 (12,7,2,2)</td>
<td>10 (26,8, 4, 4, 3,3,3,2,2)</td>
</tr>
</tbody>
</table>

The information below relates to alcohol complaints dealt with by ASB.

| Media attracting complaint | TV 3; Print 6 | TV 158; Radio 1; Outdoor 1 | Radio 1; Print 4; Outdoor 80; TV 19 | Radio 1; TV 27; Print 2; Outdoor 2 | TV 7; Print 1, Outdoor 2 |

<table>
<thead>
<tr>
<th>Nature of complaint (note some complaints fall into more than one of these areas)</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination/Vilification</td>
<td>3</td>
<td>136</td>
<td>88</td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td>Portrayal of sex/sexuality/nudity</td>
<td>6</td>
<td>17</td>
<td>93</td>
<td>3</td>
<td>28</td>
</tr>
<tr>
<td>Health and Safety</td>
<td>0</td>
<td>2</td>
<td>81</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>Portrayal of people</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Violence</td>
<td>1</td>
<td>0</td>
<td>4</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Language</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>13</td>
<td>0</td>
</tr>
</tbody>
</table>

**Result of complaints**  
All dismissed.  All dismissed.  All dismissed.  All dismissed.  All dismissed.
2.2 Alcohol Beverage Industry Specific Mechanisms for Regulating Advertising

As stated previously, the creation of Alcohol Beverage Industry Code (ABAC) came about as a result of the abandonment of the MCA self-regulatory system, following reviews of by the Australian Competition Tribunal and the Australian Competition and Consumer Commission in 1996. The creation of the ABAC also addressed concerns raised by the MCDS about the marketing and promotion of alcohol products in the early 1990s.

There were numerous organisations that had input into the development of the ABAC other than the alcohol beverage industry including marketing industry associations, key advertising, media and consumer bodies, Federal Ministers and Departments and the Australian Competition and Consumer Commission.

2.2.1 Alcohol Beverages Advertising Code

The four major alcohol beverage industry associations established the ABAC:
- Australian Associated Brewers (AAB). This is the national industry association for the Australian brewing industry. It has six members representing all major brewers in Australia, who account for over 99% of all beer produced and marketed in Australia.
- Distilled Spirits Industry Council of Australia (DSICA). DSICA is the peak national body representing the leading manufacturers and importers of spirits into Australia.
- Liquor Merchants Association of Australia. This is a non-profit organisation for all companies wholesaling beers, wines, spirits and ciders in Australia.
- Winemakers’ Federation of Australia (WFA). This is the peak body of the Australian Wine Industry representing over 95% of the wine production in Australia.

Collectively these four groups represent between 95%-99% of the industry. However, it is of concern to NCRAA that not all members of the alcohol industry are captured under the ABAC. While those not captured are very small players in the market, there is a view among the larger industry members that it is these smaller members who generally contravene the ABAC. NCRAA was informed that there have been attempts for the smaller members to be captured under the ABAC and while this is a welcomed effort, NCRAA believes it is imperative that all alcohol industry members become signatories to the ABAC for the self-regulatory system to remain sound.

The basic tenets of the Code (See Attachment 3) are that alcohol advertisements must:
- present a mature, balanced and responsible approach to the consumption of alcohol
  - must not encourage excessive consumption or abuse of alcohol
  - must not encourage underage drinking
- not have a strong or evident appeal to children or adolescents
  - adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults
- not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment
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

- not depict any direct association between the consumption of alcohol beverages and the engagement in any potentially hazardous activity (e.g. driving or swimming)
- comply with the ASB Code of Ethics.

The ABAC states that the conformity of an advertisement with the Code is to be assessed ‘in terms of its probable impact upon a reasonable person with the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated.’

The current ABAC does not cover:
- product names
- product packaging
- internet advertisements
- sponsorships
- promotions
- point of sale advertising materials.

Internet Site for Beer Monsters (Tooheys New)

Internet sites like BeerMonsters are not currently covered under the ABAC.

2.2.2 The ABAC Management Committee

A Management Committee has been set up under the ABAC Management and Adjudication Protocol and consists of the Executive Directors from the AAB, DSICA, WFA, and Liquor Merchants Association of Australia, and a representative of the Advertising Federation of Australia. While the original Protocol provided that the Federal Minister nominate a representative for Consumer Affairs to sit on this
Committee, no such nomination was ever made and when the Protocol was revised, this requirement was eliminated.

The main function of the ABAC Management Committee is to oversee the operations of the ABAC and the ABAC Adjudication Panel. The Management Committee is the main point of contact for the ASB when referring complaints relating to alcohol advertisements, as well as the main point of contact for the ABAC Adjudication Panel and advertising agencies when complaints are being reviewed under the ABAC.

The ABAC Management Committee meets on an “as needs” basis, most often at alcohol industry forums.

2.2.3 The ABAC Complaints Adjudication Panel

The ABAC Complaints Adjudication Panel commenced operation on 1 July 1998, at the same time as the ABAC. The role of the Panel is to examine all complaints referred to it by the ASB to determine if an advertisement is in breach of the ABAC. The members of the four alcohol beverage industry associations are required to abide by both the ABAC and the decisions of the Panel. The Panel does not have jurisdiction to deal with complaints by industry members about a competitor.

Funding

The costs of the Panel are met by the four alcohol beverage industry associations in proportion to each industry group’s Australian advertising expenditure as a proportion of total Australian alcohol advertising expenditure.

ABAC Adjudication Panel Structure

The ABAC Adjudication Panel is established by a Protocol. The Protocol provides that there are five panel members, who are to be appointed to ensure that they reflect a cross-section of mainstream community opinion and values. The ABAC Management Committee, which oversees the ABAC, is also responsible for appointing members to the Panel. Each panel member is appointed for a period of one year but is eligible for reappointment. The Protocol provides that no panel member may be a current employee or member of the alcohol beverages industry or have been an employee or member in the previous five years. The Management Committee was not able to provide detailed information about how members are selected, other than that they are selected from a list of ‘suitable candidates’.

Current Panel members are:

- Mr Michael Lavarch, Chief Adjudicator. Mr Lavarch is a former Commonwealth Attorney General and consults to the national law firm, Deacons, on matters of public law and major projects. (Member since 1998).
- Ms Jean Strachan, Managing Director of Inview Pty Ltd, a market research consultant. Ms Strachan is a qualitative researcher, experienced in social and commercial research. (Member since 1998).
- Ms Elizabeth Dangar, who has a background in research marketing and advertising. (Member since 1998)
Former members of the Panel are:
- Dr Anne Roche, formerly of the Queensland Alcohol and Drug Relief and Education Centre at Queensland University and currently Director of the National Centre for Education and training on Addiction, Flinders University. (Member 1998-2000)
- Ms Ita Buttrose, media personality and businesswoman. (Member 1998-2002).

The Panel meets by teleconference on an as-needs basis in response to individual complaints. There is a quorum of three members required for a decision to be made, however former members of the Panel stated that often decisions are determined by the Chief Adjudicator alone without input from other Panel members.

**Complaint Resolution Process**

All complaints about alcohol advertising are received by the ASB. The ASB then determines which complaints relate to matters of taste and decency or breaches of the ASB Code of Ethics (and should therefore be dealt with by ASB) and which complaints relate to the ABAC (and should be dealt with by the ABAC Adjudication Panel). The Chief Adjudicator receives a copy of all alcohol advertising complaints received by the ASB and has an opportunity to dispute the ASB’s decision about which body should deal with a complaint. The Chief Adjudicator has reported that, in practice, most complaints about alcohol advertising clearly relate to matters of taste and decency and therefore fall within the ASB’s jurisdiction.

A complaint about an alcohol advertisement may relate to both taste and decency (covered by the ASB Code of Ethics) and also matters falling under the ABAC. In such instances, each of the complaint mechanisms handles that part of the issue within their jurisdiction, that is, the ASB will determine the issues covered by the ASB Code of Ethics and the ABAC Adjudication Panel will consider those issues covered by the ABAC. However, the Chief Adjudicator reports that this rarely occurs and that most complaints clearly fall into one jurisdiction or the other. Consequently, only approximately 5% of complaints relating to alcohol advertising are dealt with under the ABAC (see Table 3).

Chart 2 provides a comparison between the number of alcohol advertising complaints dealt with by the ABAC Adjudication Panel compared to those dealt with by the Advertising Standards Board.
As is shown in Chart 2, there are considerably more complaints relating to alcohol advertisements being dealt with by the ASB rather than the ABAC Adjudication Panel. It should be noted that when deciding whether a complaint relates to the ABAC, the Chief Adjudicator looks solely at the wording of the complaint or how the “complainant expressly raises provisions” 25 rather than at the advertisement as a whole. Given that the general public are largely unaware of the existence of the ABAC, there would be few complaints relating to alcohol advertisements that express their complaint in regard to the specific provisions of the ABAC. Consequently, only a small percentage of complaints are considered by the ABAC Adjudication Panel despite a larger majority of advertisements potentially breaching the ABAC.

**Timelines**

Upon receiving a complaint referred by the ASB, the Chief Adjudicator:
- advises the complainant about the ABAC, the Panel and its processes
- seeks the assistance of the ABAC Management Committee to identify and obtain copies of the advertisement complained of and the contact details for the relevant advertiser and advertising agency

**This process can take up to 12 days.**

Upon receiving copies of the advertisement, the Chief Adjudicator:
- conducts a preliminary assessment of the advertisement against the ABAC and, in light of the complaint, frames issues for the advertiser and the advertising agency to respond to; and
- invites comments from the advertiser and agency on the complaint and the issues identified by the Chief Adjudicator. The advertiser and advertising agency have ten business days to provide this information.

**This process can take up to 30 days and includes 10 days to allow the advertiser to respond to the complaint.**

Upon receiving a response from the advertiser and/or advertising agency, the Chief Adjudicator:
- drafts a draft determination. The determination is based on the Code, the complaint and the advertiser or agencies’ response. An informal precedent system, whereby previous decisions are taken into account, also operates; and

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• convenes a Panel meeting (teleconference).
  ▪ the Panel meets and determines the complaint
  ▪ the Chief Adjudicator revises the draft determination to reflect the Panel’s
decision and forwards the final determination to the complainant, the
Australian Standards Bureau and the ABAC Management Committee.

This process can take up to 15 days.

The Management Committee has the responsibility for following up the Panel’s
decisions. An advertisement found by the Panel to be in breach of the ABAC may
either be modified or withdrawn. In practice, the cost involved in modifying
advertisements means that most advertisers choose to withdraw non-complying
advertisements.

In total, complaints can take up to 57 days to resolve. In reality, resolutions of many
complaints take longer than this. This is of concern to NCRAA as given that most
advertisements have a very short life, the time taken to deal with complaints may
serve to diminish the effectiveness of decisions as the campaign may have ceased by
the time a decision is made.

Number of Complaints dealt with by ABAC

Since its inception in 1998, the ABAC Adjudication Panel has adjudicated a total of
20 complaints. Of the complaints determined by the panel, five (27.7%) were upheld
and 13 were dismissed. The Panel’s decisions from 1998 to 2002 are summarised
in Table 3.

Table 2: Complaints dealt with by the ABAC Complaints Adjudication Panel

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of complaints</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Media attracting complaint</td>
<td>TV 1; outdoor 2; cinema 1; print 1.</td>
<td>Cinema 1; print 2; TV 1; other 1</td>
<td>Radio 1; TV 1.</td>
<td>Print 1; inappropriate product name 1; TV 3 other 1</td>
<td>TV 1; print 1.</td>
</tr>
<tr>
<td>Number of complaints upheld</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>N/a</td>
</tr>
</tbody>
</table>

Type of Complaints

Complaints dealt with by the ABAC Adjudication Panel since 1998 have raised the
following issues:
  ▪ advertisements appealing particularly to the youth market (5 complaints)
  ▪ offensive behaviour (2 complaints)
  ▪ underage people appearing in the advertisement (1 complaint)
  ▪ alcohol contributing to sexual success (4 complaints)

26 Ibid note 7.
- alcohol represented as having therapeutic benefits (2 complaints)
- inappropriate location of advertisement (1 complaint)
- inappropriate name of alcohol product (1 complaint)
- health and safety (3 complaints)
- irresponsible promotion of product (1 complaint).

The complaints that have been upheld by the Panel have related mainly to advertisements appealing to the youth market and the consumption of alcohol contributing to sexual success.

**Reporting**

The ABAC Management and Adjudication Protocol require the ABAC Adjudication Panel to prepare an annual report summarising the complaints received and dealt with by the Panel to the Management Committee. The Protocol originally required this report to be provided to relevant State and Federal Ministers, and groups such as the MCDS, however this requirement was removed when the Protocol was redrafted. It is unclear as to whether State and Federal Governments were consulted about the redraft.

NCRAA observes that there has been no mechanism for decisions to be verified by an external party, nor tabled on the public record. NCRAA believes that the current arrangements do not provide necessary confidence in the accountability structures in applying the Code.

**Publicising the Adjudication Panel**

The ABAC Adjudication Panel relies primarily on the ASB advertising about the general complaints mechanisms in relation to advertisements. In addition, the four industry associations run limited promotions about the operations of the panel, although these are aimed at the industry, rather than the general public. In general, there is no publicity about decisions, although the Chief Adjudicator does talk to the media when there are queries about specific determinations. In effect, there is no main mechanism for the complaints procedure to be publicised. NCRAA views this as problematic. Similar to the ASB complaints system, there appears to be a lack of transparency associated with how the ABAC Adjudication Panel reviews complaints.

**2.3 Alcohol Advertising Pre-vetting System**

As stated previously, the Alcohol Advertising Pre-vetting System (AAPS) was launched by the alcohol industry in July 1992 to address concerns expressed by the 1992 MCDS that some alcohol advertisements were not responsible and failed to conform to community expectations. The system was established by DSICA and the AAB. The Federal Health Department and the Advertising Federation of Australia provided input into the development of the system and the system was endorsed by the then Media Council of Australia.
The constitutions of DSICA and the AAB require all members to have advertisements pre-vetted by the AAPS. The members of the WFA, the Liquor Merchants Association of Australia and smaller industry members do not participate in the AAPS.

**Membership**

The pre-vetting is performed by one of three independent adjudicators who are appointed by DSICA and AAB. The current adjudicators are Ms Victoria Rubensohn (Chief Adjudicator), Ms Una Lawrence and Mr Jeremy Bean. All three have been panel members since the system commenced and are people who have advertising and media experience but are at arms lengths from the alcohol industry.

**Pre-vetting Process**

The AAPS operates informally and has no written constitution or guidelines for operation. Each advertisement is pre-vetted twice, once at the concept or storyboard stage and again as a final product. A single adjudicator performs the pre-vetting, with Ms Rubensohn pre-vetting the vast majority of advertisements. The adjudicator’s role is to evaluate advertisements against the ASB Code of Ethics and the ABAC. At the concept or story-board stage, the adjudicator may recommend against an advertisement in its entirety, or may make recommendations regarding any changes required to ensure the material meets the required standards. Advertisers in dispute with a decision may request that the adjudicator refers the advertisement for adjudication by panel comprising all three adjudicators, although this rarely occurs. The finished advertisement, incorporating any necessary changes, is again submitted to the adjudicator. This ensures that the final advertisement is consistent with the original material submitted. At this time the adjudicator may recommend against the material and suggest further changes. Because of the often tight timelines in developing advertisements, the adjudicators discuss advertisements with advertisers by telephone rather than providing formal written advice.

The requirement of DSICA and AAB members to submit advertisements for pre-vetting is in addition to any other pre-vetting requirements that may exist under other media bodies such as Federation of Australian Television Advertising Stations, Federation of Australian Radio Broadcasters or Australian Publishers Bureau. This effectively means that most alcohol advertisements are pre-vetted under two systems prior to their broadcast or publication.

As stated previously, the WFA does not require its members to submit advertisements for pre-vetting. The WFA has established its own code of practice, as well as being signatories to the ABAC. Winemakers who are signatories to the code are required to ensure that their advertisements comply with the code.

**Number of Advertisements Pre-vetted**

Table 2 sets out the advertisements pre-vetted by the adjudication panel from July 1999 to June 2001. Unfortunately NCRAA was not provided with data for June for 2001/02.
Data provided by DSICA shows that there are a large number of advertisements that are required to be approved by the pre-vetting system, indicating that both DSICA and the AAB find it a useful mechanism, which they adhere to regularly. As is shown in Table 2, it is apparent that the AAPS adjudication panel approved the majority of advertisements, with approximately ten per cent of advertisements being rejected in both years.

The reasons behind advertisements being rejected related mainly to associations between alcohol and hazardous activities, associations with social/sexual/sporting success, and the display of excessive alcohol consumption. Information provided by DSICA also indicated that there had been an increase in advertisements being rejected due to them not complying with the ASB Code of Ethics.

Table 3: Summary of Alcohol Advertisements Pre-vetted under the AAPS

<table>
<thead>
<tr>
<th></th>
<th>Total Number of Advertisements Pre-vetted</th>
<th>Approvals</th>
<th>Conditional Approvals</th>
<th>Rejections</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1999 – June 2000</td>
<td>812</td>
<td>743</td>
<td>8</td>
<td>75</td>
</tr>
</tbody>
</table>

As stated previously, only DSICA and the AAB participate in AAPS. Given the role that this system could play in ensuring all alcohol advertisements comply with the ABAC, as well as the ASB Code of Ethics, NCRAA believes it is problematic that not all industry members participate in some form of pre-vetting. While there have been less concerns raised with the WFA and the Liquor Merchants Association of Australia, there has been recent media attention highlighting the concerns about alcohol advertisements commissioned by smaller industry members, for example, the advertising campaign for the alcoholic beverage ‘Mezzanine’. This advertisement was not required to be subject to any form of pre-vetting and as can be seen below does not comply with the ABAC or the ASB Code of Ethics.

AdVERTISEMENT FOR ALCOHOLIC BEVERAGE MEZZANINE
**Impact of Pre-Vetting on Complaints**

A survey commissioned by DSICA and AAB shortly after the introduction of the AAPS concluded that the system had increased compliance with the ASB Code of Ethics and the ABAC. In its first full year of the AAPS’ operation, complaints under the former alcohol-specific advertising code fell from 35 in 1990 to zero in 1993. The industry also cites the current low number of alcohol advertising complaints dealt with by the ABAC Adjudication Panel as evidence of the success of the AAPS.

The adjudicators do not provide any reports to any body about their adjudications.

**Publicising the Pre-vetting System**

DSICA and AAB publicise the AAPS to industry members. In particular, if the adjudicators report that a certain area of the ASB Code of Ethics or the ABAC is frequently arising in the pre-vetting process, the industry associations will inform their members about this to ensure that this concern is taken into account when new advertisements are produced.
3. EXAMPLES OF ALCOHOL ADVERTISING REGULATION IN OTHER JURISDICTIONS

As part of its review, NCRAA considered the alcohol advertising regulatory systems in place in several other jurisdictions. The systems in place in the United Kingdom, New Zealand, the United States and the Netherlands are outlined below.

3.1 United Kingdom

The Advertising Standards Authority was established in 1962 and regulates advertisements in all non-broadcast media. Advertisements in the broadcast media are covered by Codes governed by the Radio Authority and the Independent Television Commission.

In 1996 the Portman Group, an industry funded organisation introduced a voluntary Code of Practice on the naming, packaging and merchandising of alcohol beverages. Following a recent review, a new, third edition, of the Code will take effect from 1 March 2003. The revised Code will cover a wider range of marketing activity, including promotions, sponsorships, web sites and branded merchandise. The Code applies to all alcoholic beverages sold in the United Kingdom with an alcoholic strength above 0.5%.  

An Independent Complaints Panel hears complaints under the Code. Only two of the seven current Panel members have a background in advertising and marketing. The Panel’s decisions are published annually in the Portman Group’s Code Report, which is submitted to the government, alcohol interest groups and the media.

The Portman Group operates an Advisory Service which allows manufacturers to submit new products for assessment of their likely compliance with the Code. When the third edition of the Code comes into effect, the Advisory Service will also provide advice about the likely compliance of proposed promotional activities.

The Advertising Standards Authority is a member of the European Advertising Standards Alliance (EASA), an international association of advertising self-regulatory organisations. EASA administers a cross-border complaints mechanism that enables complaints about international advertisements be dealt with by the appropriate country that is the country where the advertising originates.

3.2 New Zealand

In New Zealand, the Advertising Standards Authority’s Code of Ethics applies to all advertising and, in addition, the Code for Liquor Advertising applies to alcohol

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27 The Portman Group, http://www.portman-group.org.uk, 20/11/02
29 European Advertising Standards Alliance, http://www.easa-alliance.org/, 26-11-02
advertising. Both Codes apply to all forms of advertising, including Internet advertising. The Code for Liquor Advertising also applies to sponsorships.

The Code for Liquor Advertising was implemented in 1994 and was revised in 1998. The Code is currently under review.

The Code for Liquor Advertising has a generic preamble that states that ‘The Code is designed to ensure that liquor advertising will be conducted in a manner which neither conflicts with the principle of moderation of liquor consumption nor promotes irresponsible liquor consumption’. The preamble also states that, in interpreting the Code, emphasis will be placed on the spirit and intention of the Code. The Code also restricts the hours when liquor advertisements can be broadcast on television.

The Advertising Standards Complaints Board hears complaints about advertisements under all advertising Codes, including the Liquor Code. The Complaints Board comprises four public representatives, nominated by the Ministers of Communications and Consumer Affairs, who have no connection to the media or advertising groups, plus four persons nominated by the Advertising Standards Authority. In addition to adjudicating on complaints, the Board also advises the Advertising Standards Authority on the interpretation of the Codes, highlighting possible improvements and matters of concern.

A three-member Appeals Board hears appeals from decisions of the Advertising Standards Complaints Board.

All Board decisions are available on line and a quarterly report detailing the Advertising Standards Authority’s activities is submitted to the Minister of Broadcasting.

The Advertising Standards Authority is a member of EASA. However, it does not apply the EASA cross-border complaints mechanism, opting to adjudicate complaints by New Zealand consumers about international advertising, rather than referring these to the relevant authority in the advertisement’s country of origin.

The Association of New Zealand Advertisers operates a voluntary pre-vetting system. Brand alcohol advertising in all media and at major points of sale must be pre-approved. Retail advertising in television, radio and cinema is also subject to pre-vetting. The compulsory pre-approval occurs at the final stage, however adjudicators are also available for pre-production consultation. A Pre-vetting Consultative Committee comprising the pre-vetters, representatives of public interest organisations, including Students Against Drunk Driving, Liquor Advisory Council, Ministry of Health and Industry meets twice annually. These meetings debate advertising shown in the previous six months and any complaints received by the Complaints Board.

The Alcohol Advisory Council of New Zealand (ALAC) produced National Guidelines on Naming, Packaging and Merchandising of Alcoholic Beverages in 2001, after consultation with local alcohol producers, suppliers and retailers. The

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30 Advertising Standards Authority Inc, [http://www.asa.co.nz/interpretation.htm](http://www.asa.co.nz/interpretation.htm), 24/01/03.

31 Advertising Standards Authority Inc, [http://www.asa.co.nz/ascb.htm](http://www.asa.co.nz/ascb.htm), 24/01/03.

32 Advertising Standards Authority Inc, [http://www.asa.co.nz/laps.htm](http://www.asa.co.nz/laps.htm), 14/01/03.
voluntary code has sixteen signatories. Complaints under the Code are referred to the company concerned and ALAC monitors the company’s progress in addressing the complaint. As the Guidelines are self-regulatory, ALAC has no ability to enforce them. ALAC also offers a free, voluntary pre-launch advice service which provides advice on compliance with the Guidelines.

3.3 United States

In the United States, the industry associations representing each of the three sectors of the alcohol beverage industry (beer, wine and distilled spirits) have established voluntary advertising Codes. The Codes contain very similar provisions and have an emphasis on ensuring that alcohol and marketing efforts do not appeal to young people. The Codes apply to all types of advertising, including Internet advertising. The company itself deals with complaints about beer and wine advertisements, while a review board within the trade association deals with complaints about spirits advertisements.

In 1999 the Federal Trade Commission reviewed the self-regulatory system for alcohol advertising and recommended that an independent external review board be established to hear complaints. The industry associations have not yet implemented this recommendation.

The advertising self-regulatory organisations in the USA are members of EASA.

3.4 The Netherlands

The Dutch Advertising Code, established in 1978, governs all advertising in the Netherlands. Following parliamentary concern about alcohol advertising, a Code for Alcohol Beverages was implemented in 1990. The Code was revised in April 2000. The Code applies to all alcohol advertising specifically intended for the Netherlands. The Code covers all forms of advertising including labels, packaging, the Internet, point of sale material and sponsorship.

The Code requires 40% of alcohol beverage advertising broadcast on television have an educational slogan which either encourages responsible use of alcohol or warns against misuse. The Code also prohibits the advertising of alcoholic beverages on radio and television immediately before, after or during programs which, according to rating figures are listened to or viewed by more than 25% minors.

The Advertising Code Commission monitors compliance with all Dutch Codes, including the Code for Alcoholic Beverages. An Appeals Board hears appeals from decisions of the Commission.

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The Commission is able to assess an advertisement without any complaint being submitted. The Commission may impose a fine of up to 45,378 Euro for a breach of the Advertising Code for Alcoholic Beverages.

The Dutch Advertising Code Commission is a member of EASA.
4. OPTIONS FOR REGULATING ALCOHOL ADVERTISING IN AUSTRALIA

NCRAA considers that there are three basic approaches that can be taken to the regulation of alcohol advertising in Australia, namely maintaining the status quo, regulation by Government and the enhancement of the existing self-regulatory system. Each of these options is discussed below.

4.1 Maintain the Status Quo (Not Recommended)

Having considered the operations of the existing self-regulatory system for alcohol advertising in detail, NCRAA is of the view that though it is a reasonable and viable system, there are considerable shortcomings that require redress. NCRAA has identified the following issues of concern:

- the current system does not address public health concerns about alcohol advertising and use. In particular, most complaints about alcohol advertising are dealt with under the general advertising complaints resolution system (95%) rather than the alcohol-specific system (5%)
- there is a high dismissal rate within the current system. For example, not one of the 361 alcohol related complaints heard by the ASB was upheld.
- the general public is largely unaware of the complaint resolution system and, in particular, how to make complaints
- the system lacks transparency. In particular, there is insufficient reporting of the outcomes of complaints
- the current system does not apply to all forms of advertising, for example, promotions and internet advertising
- the current system does not apply to all members of the alcohol industry. There are many smaller members within the industry who are not signatories to the ABAC and are not subject to any form of pre-vetting
- the effectiveness of the current system is compromised by the amount of time taken to resolve complaints.

Given these concerns, NCRAA does not recommend that the existing regulatory system be continued in its current form.

4.2 Government Regulation of Alcohol Advertising (Not Recommended)

A number of countries have adopted a legislative model for dealing with alcohol advertising. In some countries, for example the Ukraine, alcohol advertising is totally prohibited. In other countries, such as Switzerland and Norway, advertising is permitted but regulated by Government.

Given the national nature of many advertising campaigns, such regulation in Australia would need to be at the Federal level, with States and Territories potentially retaining some jurisdiction, for example in relation to point of sale advertising. This model has been adopted for the regulation of tobacco advertising in Australia.
Government regulation would apply to all alcohol advertisers (not just those who are voluntary signatories to a code) and would enable the public health issues posed by alcohol advertising to be fully addressed. A panel set up by the government to hear complaints about alcohol advertisements would have the advantage of being entirely independent of industry.

However, NCRAA does not recommend that Australian Governments assume responsibility for the regulation of alcohol advertising at this stage. As well as being costly for the Government to set up and maintain, such a system may not overcome some of the problems with the existing system, such as the length of time taken to resolve complaints. In addition, the failings of the existing system do not at this stage warrant full-scale Government regulation.

While NCRAA acknowledges that the existing system of self-regulation has several shortcomings, it is of the view that these issues can be addressed through enhancements to the existing system. Overseas experience has shown that the alcohol industry is generally willing to cooperate with Governments to enhance self-regulatory systems in order to avoid Government regulation. This has also been the experience of NCRAA with the alcohol beverage industry in Australia.

NCRAA recommends that the MCDS monitor the response of industry to any recommendations made as a result of this report. If the alcohol beverage industry fails to address the concerns raised in this report, it is recommended that the MCDS reconsider the role of Government in the existing self-regulatory system.

4.3 Enhance Existing Self-regulatory System (Recommended)

Having examined the existing alcohol advertising regulator system in detail, NCRAA is of the view that this system provides a framework for a potentially effective self-regulatory system. NCRAA believes that most of its concerns about the current system can be addressed by modification of the system. NCRAA therefore recommends that the MCDS work with the alcohol beverage industry to remodel the existing self-regulatory system.

In this report NCRAA provides detailed recommendations for the enhancement of the current system. It is recommended that NCRAA be maintained as a subcommittee of MCDS to assist in the implementation of these recommendations and to continue to consider public health issues associated with alcohol advertising.

Response of the Alcohol Beverage Industry

In response to the review of the operations of the existing self-regulatory system for alcohol advertising, the alcohol beverage industry has expressed its support for the enhancement of the system. During consultations, the industry has acknowledged issues with the existing system and expressed commitment to comply in the future.

The alcohol beverage industry has agreed in principle to make a number of modifications to the self-regulatory system for alcohol advertising. These include:
- Requiring the ABAC Adjudication Panel to review all alcohol advertisements that have received complaints, and making determinations about whether alcohol advertisements comply with the ABAC based on the advertisement as a whole, rather than how the complaint is expressed.
- Amending the ABAC to address the advertising of alcoholic beverages on the internet.
- The development of a protocol document outlining a policy regarding the promotion of alcoholic beverages at events clearly targeting young people (i.e. Schoolies Week).
- The inclusion of a government representative on the ABAC Management Committee and a public health representative on the ABAC Adjudication Panel.

These are discussed in further detail in the following chapter.
5. RECOMMENDATIONS FOR ENHANCING ALCOHOL ADVERTISING REGULATION IN AUSTRALIA - MODELS FOR AN ENHANCED SELF-REGULATORY SYSTEM

At present the vast majority of complaints about alcohol advertisements (95%) are heard by the Advertising Standards Board, the industry body established to hear all advertising complaints. Not one of the 361 alcohol related complaints heard by the ASB between 1998 and 2002 was upheld. This raises some questions about the effectiveness of the process, particularly when a number of advertisements attracted significant numbers of complaints. NCRAA is concerned that the high dismissal rate for complaints about alcohol advertisements does not engender community confidence in the complaint system and may discourage people from making complaints about alcohol advertisements.

NCRAA is recommending the following amendments to the ASB and the ABAC to enhance the existing self-regulatory system, in particular the complaints process. These amendments are summarised below and discussed in further detail throughout this chapter.

- Advertising Standards Board to continue to hear advertising complaints under the ASB Code of Ethics and refer all complaints relating to alcohol advertisements to ABAC for their adjudication.
  - Better publicising of the ASB complaint process
  - Publicise the protocol referring alcohol advertising complaints to ABAC through the ASB Code of Ethics or through the website and other print materials.
- Strengthening the ABAC by: requiring all complaints about alcohol advertisements to be adjudicated under the ABAC; require all alcohol advertisers to comply with the Code; expand the Code to include internet advertising; development of a protocol outlining a policy regarding promotions and include a generic preamble to aide interpretation of the Code.
- Enhancement of the ABAC Management Committee by: formalising the role of the Committee; including a Government representative on the Committee; improving the publicity of the ABAC and the Adjudication Panel; establishing and maintaining a 30 day timetable for review of complaints; and regularly reviewing the ABAC;
- Enhancement of the ABAC Adjudication Panel by: appointing a public health representative on the Panel; broaden adjudication decision making to three panel members including the public health representative; and provide an annual report to the ABAC Management Committee.
- Enhancement of the Pre-vetting system by: ensuring most alcohol advertisements be pre-vetted; and include internet advertising in pre-vetting.
5.1 Enhancement of the ASB

5.1.1 ASB to Continue to Hear Advertising Complaints

The ASB is made up of thirteen members, most of whom have an arts, communications or media background (See Attachment 2). There are no members with public health expertise and no members that represent Government. NCRAA does not believe that this body as currently composed is well qualified to consider the special issues posed by alcohol advertisements. The lack of consideration for public health concerns has also been an issue also raised by Australian National Council on Drugs (ANCD) and the Alcohol and Drug Council of Australia (ADCA). Therefore, NCRAA strongly recommends against the Advertising Standards Board continuing being the sole adjudicator for the majority of complaints relating to alcohol advertising.

As the Advertising Standards Bureau has a public profile as the receiver of complaints and views its role as the umpire of taste and decency for all types of advertisements, it is recommended that the ASB continue to receive and review all alcohol advertising complaints under the ASB Code of Ethics. However, all alcohol related complaints should also be referred by the ASB to be reviewed by the ABAC Adjudication Panel as the appropriate specialist body. This is further explored in section 5.2.1.

Recommendation: the ASB continue to receive all advertising complaints, including those relating to alcohol and refer all alcohol advertisements that are subject to complaints irrespective of how the complaints are expressed, including those falling within the ASB Code of Ethics, to the ABAC Adjudication Panel for their Adjudication.

5.1.2 Better Publicising of the Complaint Process

NCRAA is of the view that the general public is not sufficiently aware of the existence of the advertising complaints system administered by the ASB. This was also a concern highlighted by health bodies during consultations. In particular, the National Expert Advisory Committee on Alcohol (NEACA) commented that the lack of awareness worked to discourage the general public from making complaints.

NCRAA is aware of the ASB publicity campaign scheduled for 2003. The ASB should be encouraged to run on-going media campaigns to highlight the availability of the complaint process and be encouraged to improve the accessibility of the advertising complaints system.

Recommendation: the ASB be encouraged to continue to run ongoing media campaigns to publicise the advertising complaint process and to improve the accessibility of the complaints process to the general public.

5.1.3 Publicising the Protocol

The ASB does not publicise the process whereby alcohol complaints are referred to the ABAC. NCRAA recommends that a protocol between the two bodies outlining the process for referral of alcohol complaints be established, and that this protocol be
publicised. The protocol could be included in the ASB Code of Ethics in a similar manner to the referral of car advertisements in section 2.7 (see Attachment 1). Alternatively, the protocol could be placed on the ASB’s website.

The ASB agreed in principle to advertising the protocol on the ASB website, all correspondence to complainants, and all other publicity regarding the ASB complaints mechanism. No commitment has been made by the ASB at this time to include the protocol in the ASB Code of Ethics.

Recommendation: the ASB indicate on their publication materials, correspondence to complainants and the ASB website, that all alcohol advertisements that are the subject of complaints will also be considered under the ABAC.

5.2 Enhancement of the ABAC

5.2.1 ABAC Adjudication Panel to Deal with all Alcohol-related Complaints

The ABAC Adjudication Panel currently hears only a small proportion of the alcohol advertising complaints received by ASB. NCRAA strongly recommends that this specialist Panel be given jurisdiction over all complaints relating to alcohol advertisements.

NCRAA understands that under the current system, the way a complaint is worded is the key to whether the complaint falls under the ASB Code of Ethics or the ABAC. NCRAA recommends that when a complaint about an alcohol advertisement is made, the entire advertisement be reviewed by the ABAC Adjudication Panel irrespective of the way the complaint is expressed. This model ensures that all advertisements that receive complaints are considered against the ABAC as the specialist alcohol advertising code.

The ANCD and NEACA support this recommendation. During consultations concerns were raised by these bodies regarding the high percentage of complaints reviewed under the ASB Code of Ethics despite their relevance under the ABAC.

The AAB, WFA and DSICA have expressed in principle support for the ABAC Adjudication Panel to hear all complaints and to consider the advertisement in totality as part of the adjudication process. A written submission from WFA to NCRAA states that it ‘supports the broadening of the jurisdiction of the Panel to include all alcohol advertising complaints and believes the system with the Chair of Michael Lavarch has now been in place a sufficient time to be confident such a move would be effective.’

The ABAC Management Committee in conjunction with the ASB has agreed to draft a protocol document outlining the procedures of this model. It is intended that this model will be operational in March 2004.

Recommendation: the ABAC Adjudication Panel hears all complaints relating to alcohol advertising, both under the ASB Code of Ethics and the ABAC.
5.2.2 All Alcohol Advertisers Required to Comply with the ABAC

At present, only those industry members belonging to the industry groups who are signatories to the ABAC are required to comply with the Code. This means that there are a small number of alcohol advertisers, particularly small companies, not covered by the Code.

The Australian Drug Foundation (ADF) is of the view that it is many of the smaller industry members who are not signatories to the ABAC whose alcohol advertisements are deemed to be contentious. Like NCRAA, they also view the voluntary nature of the ABAC as problematic. The AAB’s Executive Director also indicated that the alcohol industry is “concerned about alcohol marketers who were not part of the self-regulatory ABA Code – which includes the pre-vetting system for ads – of which all major marketers are a member.” 36

Many international codes relating to alcohol advertising cover all alcohol advertising in the jurisdiction. For example, the Dutch Code applies to all alcohol advertising specifically intended for the Netherlands. The Portman Group Code applies to all pre-packaged alcoholic drinks marketed for sale and consumption in the UK.

During consultations with the ABAC Management Committee, the Committee stated that most smaller industry players would not have the capacity or the resources to advertise their products extensively. These resource constraints limit the effect of irresponsible advertising. The ABAC Management Committee also outlined situations in which the industry associations pursue ‘rogue’ advertisers outside the complaints system. For example, DSICA has had numerous discussions with Suntory, the makers of Midori, about Suntory’s promotions during Schoolies Week in 2002. Suntory has given DSICA an undertaking that this promotion will not proceed in the future.

NCRAA believes that the extension of the ABAC to all alcohol advertising in Australia would strengthen the ABAC considerably. The extension of the ABAC would also alleviate industry concerns about smaller industry members running irresponsible advertising campaigns. NCRAA therefore recommends that the ABAC Management Committee be encouraged to recruit smaller industry players to become signatories to the ABAC.

**Recommendation: the ABAC Management Committee is encouraged to ensure that all smaller industry members become signatories to the ABAC.**

5.2.3 Expansion of the ABAC

**Internet Advertising**

As outlined by the former Victorian Health Minister last year at MCDS, the ABAC does not cover the internet as an advertising medium. This concern was also highlighted during consultations with health bodies such as ADF and ANCD.

Subsequent to discussions with NCRAA, the ABAC Management Committee recognise in principle the need for internet to be included in the ABAC. The AAB has drawn up a draft definition which will be further discussed with the ABAC Management Committee prior to inclusion in the ABAC.

While NCRAA commends this agreement, NCRAA is mindful that the definition of “internet” be sufficiently broad to capture internet advertising that contravenes the ABAC.

**Recommendation:** the ABAC be amended to include a definition of ‘advertisement’ that will address internet advertising.

**Promotions**

Another area of alcohol advertising that has recently received a significant amount of media attention is the promotion of alcoholic beverages targeting youth markets. For example, the Insight Program on SBS ran a story in March 2003 highlighting the promotional activities of the alcoholic beverage ‘Midor’ at Schoolies’ Week in Queensland. The program stated that over 300,000 school leavers throughout Australia were sent information about ‘Midori Party Week’, some of who were still under the age of 18. Some of these underage students were even given free tickets to the Midori parties despite supplying information that showed they were underage on the application form. 37

NCRAA therefore believes it is necessary for the promotion of alcoholic beverages to be restricted so that promotional activities do not target young people, especially those under the age of 18 years. In consultations with the ABAC Management Committee, the Committee agreed to develop a protocol outlining a policy regarding this issue for the use of all industry members. This protocol should end any further examples of irresponsible alcohol promotions to underage persons.

The ABAC Management Committee are currently in the process of drafting this protocol and it is intended that it will be operational six months after the MCDS meeting in August 2003.

**Recommendation:** the Management Committee develop a protocol outlining a policy regarding the promotion of alcoholic beverages at events clearly targeting young people.

**Other forms of Advertising**

Concerns have been raised by health bodies, such as ADCA and ADF, that the ABAC does not address other forms of advertising such as product names, product packaging, sponsorship, and point of sale advertising materials. At this stage, NCRAA does not believe it is necessary to expand the ABAC to address these advertising mediums, however NCRAA does recommend that the operations of the ABAC continue to be monitored to ascertain what improvements can be made in these advertising mediums in the future.

37 SBS Insight Program, 6/03/03
5.2.4 **ABAC to have Generic Preamble to Aide Interpretation**

Many international codes have a general preamble outlining the philosophy underpinning the code. The New Zealand Code, for instance, states that it is designed to ‘ensure that liquor advertising would be conducted in a manner which neither conflicts with the principle of moderation of liquor consumption nor promotes irresponsible liquor consumption’. The preamble also states that, in interpreting the Code, emphasis will be placed on the Code’s spirit and in letter. This acknowledges that while an advertisement may not directly breach the Code, it may not be in keeping with the Code’s underlying philosophy.

NCRAA believes that a preamble would considerably strengthen the ABAC, by allowing a more flexible approach to its interpretation and placing greater focus on public health issues. NCRAA therefore recommends the drafting of a preamble to the ABAC to reinforce the Code’s underlying philosophy and to require the Code to be applied in spirit as well as in letter.

It is intended that the ABAC Management Committee would work in conjunction with NCRAA to draft and finalise a preamble.

**Recommendation:** ABAC include a generic preamble emphasising its underlying philosophy and requiring the Code to be applied in spirit and in intent.

5.3 **Enhancement of ABAC Adjudication Panel**

To ensure the effective resolution of alcohol advertising complaints, NCRAA considers that some enhancements should be made to the ABAC Adjudication Panel.

5.3.1 **Appointment of ABAC Adjudication Panel Members**

The ABAC Management Committee appoints members to the ABAC Adjudication Panel. The Protocol provides that the five Panel members must reflect a cross-section of mainstream community opinion and values. NCRAA recommends that at least one panel member should be a public health expert.

The ABAC Management Committee have agreed in principle to having a public health expert on the ABAC Adjudication Panel, however they are currently reviewing the process by which this public health expert will be decided. One option would be for the MCDS to provide the ABAC Management Committee with a choice of three public health experts to choose from.

**Recommendation:** that at least one member of the ABAC Adjudication Panel be a public health expert nominated by MCDS.

5.3.2 **Adjudication of Complaints**

At present, only the Chief Adjudicator of the ABAC Adjudication Panel reviews advertisements then seeks support for two other adjudicators. As a result, the manner in which complaints are being adjudicated is limited and the cross-section of
mainstream community opinion and values is not been reflected in adjudication decisions. This was a common criticism of former Panel members, Dr Anne Roche and Ms Ita Buttrose, who stated that decisions about advertisements had already been determined before they had had an opportunity to review them.

NCRAA therefore recommends that the reviewing of complaints be shared amongst the ABAC Adjudication Panel to broaden the manner in which decisions are made and to make the process more representative of community opinion and values. The public health representative should always be part of the adjudication panel.

**Recommendation: that the public health expert on the ABAC Adjudication Panel be part of all adjudications.**

5.3.3 Contents and Dissemination of Adjudication Panel’s Annual Report

The Protocol requires the ABAC Adjudication Panel to prepare an annual report summarising the outcome of all complaints. In addition to reporting on activities, the equivalent complaints resolution body in New Zealand also provides advice on the interpretation of the Code and highlights possible improvements and matters of concern. It is recommended that the ABAC Adjudication Panel’s annual report identify any issues with the ABAC and make recommendations for appropriate improvements to the Code. The report should also clearly identify all complaints, which fell within the ASB Code of Ethics, and any issues which arose in relation to that Code.

The Panel’s annual report is currently circulated only to the ABAC Management Committee. NCRAA believes that these reports contain important information and it therefore recommends that these reports be included in the annual report, which the ABAC Management Committee provides to MCDS.

The Adjudication Panel’s report should be placed on the website maintained by the ABAC Management Committee.

**Recommendation: the ABAC Management Committee provide an annual report each calendar year to MCDS on the operations of the ABAC, detailing all adjudications made by the ABAC Adjudication Panel.**

5.4 Enhancement of ABAC Management Committee

The ABAC Management Committee that currently oversees the ABAC Adjudication Panel and ABAC is made up entirely of representatives of the alcohol beverage industry. To make the system more responsive to public health concerns, the membership of the ABAC Management Committee should be expanded to include one Government representative. The inclusion of a government representative would increase the ABAC Management Committee’s independence and ensure that amendments to the Code and the selection of Adjudication Panel members are cognisant of public health issues. It is recommended that the government representative would be a member of the IGCD and would be nominated by the MCDS.
Members of the ABAC Management Committee have expressed their support for such representation on the Committee.

**Recommendation:** the ABAC Management Committee’s membership include one Government representative nominated by the MCDS.

### 5.4.1 Formalisation of the ABAC Management Committee

The existing Protocol document outlines the functions and role of the ABAC Management Committee, however the extent to which these functions are adhered to is questionable. For example, while the Protocol document states that the ABAC Management Committee must meet at least annually, NCRAA have been advised that the ABAC Management Committee meets on an “as needs” basis, most often at alcohol industry forums.

To ensure that the ABAC Management Committee’s functions are formally adhered to, NCRAA recommends that the Committee’s role be formalised and that terms of reference be established. The terms of reference could consist of the following:

- Encourage smaller industry members to participate in the self-regulatory system;
- Play a pro-active role to ensure an effective self-regulatory system;
- Monitor the implementation of the self-regulatory system and suggest improvements when necessary;
- Coordinate the development and completion of annual reports to be provided to MCDS and the ASB.

**Recommendation:** the ABAC Management Committee’s role be formalised and that it meet on a quarterly basis.

### 5.4.2 Better Publicising of Complaint Process

As was noted earlier, the complaint process is not well publicised. While the ASB, as the complaints-receiving body, has the main responsibility for publicising the system, NCRAA considers that the ABAC Management Committee should play a more active role in promoting the ABAC and the alcohol advertising complaint process. The AAB submission notes that the general public may be confused if the ABAC system is advertised separately from the ASB. While large-scale advertising campaigns may result in public confusion about the complaint process, NCRAA recommends that the ABAC Management Committee maintain a website to disseminate important information such as the ABAC, Panel adjudications and annual reports.

The ANCD and NEACA support this recommendation, as they believe that making this information publicly available will increase the transparency of the overall complaints process.

**Recommendation:** the ABAC Management Committee effectively publicise the ABAC and the work of the ABAC Adjudication Panel, including maintaining a website containing the ABAC and all Panel adjudications and reports.
5.4.3 Timelines for Resolving Complaints

As advertising campaigns may have relatively short life spans, complaints need to be handled as quickly as possible to ensure that the complaints resolution system is effective. According to the Protocol document, complaints should take up to 35 days to resolve. However, a report provided to NCRAA by the ABAC Adjudication Panel outlines standard timelines of up to 57 days to resolve. NCRAA believes that the streamlining of these timelines would enhance the complaints resolution system. It is therefore recommended that the ABAC Management Committee review these timelines, with a view to all complaints being finalised within 30 days. While the ABAC Management Committee may deem this unrealistic, NCRAA believes that if the ABAC is applied in spirit and in letter the process of reviewing complaints could be shortened considerably.

Recommendation: the ABAC Management Committee review the timelines for resolving complaints, with a view to all complaints being finalised within 30 days.

5.4.4 ABAC to be Regularly Reviewed

All of the international codes considered in Part III have been the subject of regular review and modification. For example, the Portman Group Code has had three editions since 1996. NCRAA believes that, given the fast-changing nature of both the advertising and alcohol beverage industries, it is necessary to regularly assess the effectiveness of the Code. If the recommendations in this report are adopted, the ABAC Adjudication Panel will make annual reports to the ABAC Management Committee, not only about its operations but also about the application of the ABAC. NCRAA therefore recommends that the ABAC Management Committee review the operations of the Code annually and to provide a report to MCDS. In addition, the report should be placed on the website maintained by the ABAC Management Committee.

5.5 Enhancement of Pre-vetting System

NCRAA believes that the pre-vetting system serves a very important function in helping advertisers understand and comply with both the ABAC and the ASB Code of Ethics. An effective pre-vetting system has the potential to reduce the number of complaints made, by ensuring that both Codes are considered before an advertisement is published or broadcast.

Members of the alcohol beverage industry submitted that pre-vetting is a confidential process at pre production. NCRAA recognises these issues, and therefore recommends that the existing pre-vetting continue to operate, however it recommends that the activities of the pre-vetting system be broadened as discussed below.
5.5.1 All Alcohol Advertisements to be Pre-Vetted

At present, the pre-vetting of alcohol advertisements is voluntary with only DSICA and the AAB requiring all their members to subject their advertisements to AAPS. All other industry members do not require their alcohol advertisements to be approved through a pre-vetting system. Given the significant function that a pre-vetting system serves in ensuring that alcohol advertisements comply with the ABAC and the ASB Code of Ethics, NCRAA recommends that the ABAC Management Committee encourage all smaller industry members to participate in the AAPS.

**Recommendation:** the ABAC Management Committee encourage all alcohol beverage industry members to participate in a pre-vetting system.

5.5.2 Establishment of Consultative Feedback Committee

In New Zealand, a consultative committee has been established to debate recent advertising and to review complaints received. The Committee meets twice annually and consists of the adjudicators and representatives of public interest organisations, including Students Against Drunk Driving, Liquor Advisory Council, Ministry of Health and industry representatives.

NCRAA believes that the establishment of such a Committee would be a valuable addition to the pre-vetting system, enabling pre-vetters to view completed advertisements from a different perspective and potentially make them more aware of issues that members of the public have with particular advertisements.

NCRAA could be responsible for establishing the Consultative Committee. The Committee could consist of the following members:
- ABAC Management Committee;
- ABAC Adjudication Panel;
- AAPS Panel;
- Representatives of the ADF, ADCA and the ANCD; and
- NCRAA.

It is intended that the Consultative Committee meet twice a year and would review advertisements and complaints over the last six months.

**Recommendation:** IGCD through NCRAA convene biannual meetings of a consultative committee to review recent advertisements and complaints over the last six months. The committee should comprise the ABAC Management Committee, Pre-Vetters, ABAC Adjudication Panel Members and representatives of public health interest organisations, Government and the alcohol beverage industry.

5.5.3 Internet Advertising to be Pre-vetted

NCRAA has recommended in section 5.2.3 that the definition of advertising in the ABAC be extended to include internet advertising. Given the highly sophisticated websites that are being used by some industry members to advertise alcohol products,
it is recommended that the pre-vetting system be extended to include Australian-based websites.

The pre-vetting of internet advertising is supported by the AAB. In their submission, it is recognised that if internet advertising is to be covered under the ABAC, it should also be subject to pre-vetting. It should be noted that the AAB has not sought the support from the three other industry associations regarding this matter.

**Recommendation:** Australian internet sites advertising alcohol products be subject to pre-vetting.
6. **TIMELINES ASSOCIATED WITH RECOMMENDATIONS**

<table>
<thead>
<tr>
<th>Action</th>
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<tbody>
<tr>
<td>MCDS endorse recommendations outlined in NCRAA Report</td>
<td>2 August 2003</td>
</tr>
<tr>
<td>Ministerial meeting with ABAC Management Committee to discuss recommendations</td>
<td>Late September 2003</td>
</tr>
<tr>
<td>NCRAA meet with ABAC Management Committee to discuss implementation of recommendations</td>
<td>Late November 2003</td>
</tr>
<tr>
<td>Recommendations to be implemented</td>
<td>31 March 2003</td>
</tr>
<tr>
<td>NCRAA to report to MCDS regarding implementation of recommendations</td>
<td>Late April 2003</td>
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APPENDICES

Background and Methodology

Background

At its meeting in Darwin on 18 July 2002, the MCDS resolved that a sub-committee of the Intergovernmental Committee on Drugs, NCRAA, would review the effectiveness of the current self-regulatory system for alcohol advertising. The terms of reference outlined a review of:

- the capacity of the industry to self-regulate
- the effectiveness of the complaints mechanism
- opportunistic marketing of alcohol to under 18’s
- the degree to which Internet advertising of alcohol complies with the requirements of the code.

The subcommittee was also requested to consider the impact of alcohol advertising on young indigenous people.

The subcommittee, has the following membership:

- Mr Paul McDonald, Department of Human Services, Victoria (Chair)
- Mr Graham Strathearn, Drug and Alcohol Services Council, South Australia
- Ms Chrys Athanasos, Commonwealth Department of Health and Ageing
- Ms Di Rayson, Acting Manager Alcohol and Other Drugs Program, Department of Health and Community Services, Northern Territory
- Ms Melissa Ward, Australian Federal Police, ACT
- Mr Steve James, Victoria Police.

Mr Keith Evans, Department of Human Services, South Australia ceased to be a Committee member in April 2003.

The Drugs Policy and Services Branch of the Department of Human Services in Victoria, provided secretariat support for NCRAA.

NCRAA’s review primarily focussed on the system for regulating alcohol advertising in Australia. Due to time and resource constraints, not all of the terms of reference were fully explored. The activities undertaken under the terms of reference relating to opportunistic marketing and the impact of alcohol advertising on young indigenous people are outlined in section 1.3.

Methodology


At the meeting on 11 December 2002, the Committee considered a background paper which set out in detail the existing system of alcohol advertising self-regulation. In
preparing the background paper, the following persons were consulted to gain information about the system:

- Mr Michael Lavarch, Chief Adjudicator, Complaint Adjudication Panel
- Ms Victoria Rubensohn, Chief Adjudicator, Alcohol Advertising Pre-vetting System
- Dr Anne Roche, former Complaint Adjudication Panel Member
- Mr Gordon Broderick, Executive Director, Distilled Spirits Industry Council of Australia
- Mr Ross Burns, Executive Director, Liquor Merchants Association of Australia Ltd
- Ms Eileen Lamerton, Complaints Officer, Advertising Standards Bureau.

As part of the meeting on 31 January 2003, NCRAA held a consultation with stakeholders. Stakeholders in attendance at this meeting were:

- Mr Gordon Broderick, Executive Director, Distilled Spirits Industry Council of Australia
- Ms Sam Hudson, Executive Director, Australian Associated Brewers
- Mr Ian Sutton, Chief Executive, Winemakers’ Federation of Australia
- Mr James Tate, Lion Nathan
- Mr David Parker, Carlton United Breweries.

In addition, Mr Keith Evans and Mr Paul McDonald met with the Chair of the Advertising Standards Bureau, Mr Robert Koltai, on 14 February 2003.

As part of the meeting on 25 June 2003, NCRAA held another consultation with stakeholders. Stakeholders in attendance at this meeting were:

- Mr Robert Koltai, Chairman, Advertising Standards Bureau
- Mr Gordon Broderick, Executive Director, Distilled Spirits Industry Council of Australia
- Ms Sam Hudson, Executive Director, Australian Associated Brewers
- Mr Ian Sutton, Chief Executive, Winemakers’ Federation of Australia
- Mr Steve Strauchen, Winemakers’ Federation of Australia

Stakeholders were also given the opportunity to make submissions about the system for reviewing alcohol advertising. The following stakeholders made submissions:

- Winemakers’ Federation of Australia
- Australian Associated Brewers (AAB).

The main issues raised by these stakeholders are discussed below.

A range of health bodies with expertise in the area of alcohol policy were also given consulted. The following bodies were given the opportunity to provide written and oral submissions to the review:

- Australian National Council on Drugs
- Alcohol and Drug Council of Australia
- National Expert Advisory Committee on Alcohol
- Australian Drug Foundation.

The main issues raised by these groups are discussed below
Opportunistic Marketing and Impact of Alcohol Advertising on Indigenous Youth

Impact of Alcohol Advertising on Indigenous Youth

In addition to reviewing the current self-regulatory system for alcohol advertising, NCRAA was also asked to consider the impact of alcohol advertising on young indigenous people. However due to time and resource constraints, NCRAA has had limited ability to address this issue.

NCRAA is aware that there is limited research in this area within Australia and that most research is from New Zealand and Canada. During consultations with health bodies, the National Expert Advisory Committee on Alcohol and the Australian National Council on Drugs did state that while the alcohol industry targeted all youth similarly, certain aspects of alcohol advertising could potentially be more influential on young indigenous youth due to issues surrounding the normalisation of alcohol in some indigenous communities.

NCRAA believes that the impact of alcohol advertising is a significant issue and requires further research.

Opportunistic Marketing

As part of its review, NCRAA requested that NEACA develop a background paper examining the various components of opportunistic marketing and its impact on increased levels of youth drinking, including among young indigenous people. In summary, the paper states that:

- product placement occurs in TV shows, movies and magazines. Advertising of alcohol in this manner may increase if advertising restrictions are introduced (as was the experience when tobacco advertising restrictions were implemented)
- television and cinema shape societal views as to what is ‘normal’ behaviour. Therefore it is important that the portrayal of alcohol by the television industry and its advertisers takes into account major health and safety concerns
- the connection between sport and alcohol is of particular concern. It would be useful to revisit previous Australian work aimed at reducing the reliance of sporting clubs on alcohol sales and on strategies to help clubs change the drinking culture
- there should be restrictions on advertising at cultural and sporting events when a substantial proportion of the expected audience is under age.

NCRAA has taken the issues raised by NEACA into account in formulating its recommendations. A copy of NEACA’s final paper is at Attachment 5.
ATTACHMENTS

Attachment 1

AANA ADVERTISER CODE OF ETHICS

This Code has been adopted by AANA to be applied as a means of advertising self-regulation in Australia and is intended to be applied to all forms of advertising. The object of this Code is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors. In this Code, the term 'advertisement' shall mean matter which is published or broadcast other than via internet, direct mail, point of sale or direct distribution to individuals, in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct.

SECTION 1

1.1 Advertisements shall comply with Commonwealth law and the law of the relevant State or Territory.

1.2 Advertisements shall not be misleading or deceptive or be likely to mislead or deceive.

1.3 Advertisements shall not contain a misrepresentation which is likely to cause damage to the business or goodwill of a competitor.

1.4 Advertisements shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.

1.5 Advertisements shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.

SECTION 2

2.1 Advertisements shall not portray people or depict material in a way, which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

2.2 Advertisements shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

2.3 Advertisements shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.

2.4 Advertisements for any product, which is meant to be used by or purchased by children, shall not contain anything which is likely to cause alarm or distress to
those children.

2.5 Advertisements shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.

2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

2.7 Advertisements for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertisements to which the Federal Chamber of Automotive Industries Code of Practice applies.
JOHN BOKOR
Appointed August 1999
A working artist who also manages an art gallery, John Bokor graduated from the National Art School in 1993. His paintings have been regularly exhibited with four solo shows earning critical acclaim. In his mid-twenties, John Bokor has a strong understanding and enthusiasm for popular culture as well as an extensive knowledge of literature, film and contemporary art. John is also joint editor of A Public of Individuals, a journal of art criticism.
"This year on the Board there has been a lot less table thumping, less violent pulling off of glasses and yelling 'I disagree!', and almost no coffees have been spilt due to wild gesticulations. It has been a year of round table discussions and level-headed decision-making. Precedents have been set and standards have been adhered to as accurately and honestly as it is possible to do with a group comprised of individuals with such different points of view. It has been both a privilege and a pleasure to be part of this process."

THE HON. JOHN BROWN AO
Appointed May 1998
Former Federal Tourism Minister, John Brown has the Olympic Silver Order of Merit, Australian Institute of Marketing Gold Medal Award, and has been elected Life Member of the Australian Institute of Sport. He is a member of the President's Council of the Surf Lifesaving Association and President of Spinesafe.
"A fascinating year once again as a Member of the Advertising Standards Bureau. The bulk of the complaints seem to be billboards, where "clever" agencies continue to push the boundaries of community standards of decency and taste. By and large our advertising skills and creativity are a credit to our Australian talent. Smart witty and pithy in their content and overall of world class standard. " I am still amused over all these years at the sometimes petty approach of some citizens to very mild attacks on their sensibility in certain ads. But keep your letters coming. This is democracy in action and also very amusing."

JOANNA COHEN
Inaugural member
Joanna Cohen has a background in communications and qualitative market research and has carried out research into youth culture. She currently works in the Media Office at the University of Sydney.
"The willingness of advertisers to comply with decisions made by the Board demonstrates the value and success of the self-regulatory system. I am very proud to contribute to a process which enables individuals to effect change in the world about them."

GRAHAM COX
Appointed August 1998
Graham Cox has spent all his Australian working life in advertising, the last twenty five years with George Patterson Bates, of which he was a director for twenty years. He has an honorary MA Communications degree.
"Complaints are upheld where the Board is satisfied that prevailing community standards, as set out in the ASB code, are breached. However, the majority of complaints are dismissed, and the fact that relatively little public debate is generated on specific advertisements suggests that the ASB code is a contemporary reflection of acceptable community values and standards."
THOMAS KENEALLY AO
Inaugural member
Best selling author, playwright, scriptwriter, English Professor and holder of a number of honorary Doctorates and multi-award winner, Thomas Keneally has written more than 20 novels including The Chant of Jimmy Blacksmith and, of course, Schindler's List. He was the inaugural chairman of the Australian Republican Movement and is now a Director.
"I know from my own participation that the Board operates with great conscientiousness, within its guidelines, to respond to citizens' concerns about advertising. Though the Board is empowered to make decisions on the basis of community standards, health and safety, issues of vilification, etc., its powers do not include judgment on the basis of that vague yet important issue of taste. The advertising industry itself has a duty in that regard, and we are not convinced that it always discharges that duty in terms which leave such important community values as civility, of urbane behaviour, intact."

JOHN KONRADS
Appointed May 1998
Olympic Gold medallist and triple Commonwealth medallist, John Konrads brings to the Board extensive experience in industry and sports, during a long corporate career with L'Oreal and Ansett. He is now a director of Cook & Phillip Park Aquatic and Fitness Centre in Sydney's CBD. He contributed to the evolution of numerous consumer regulations. He has been decorated by the French Government with the National Order of Merit.
"The previous year has been challenging but it's satisfying to know that advertisers are sensitive to the Board's rulings."

MARY KOSTAKIDIS
Inaugural member
Mary Kostakidis has been chief news reader at SBS Television for ten years. She was a member of the team which set up the network, and as Director Program Preparation was responsible for overseeing the development and implementation of the station's classification and censorship policy. She has been a member of the Drug and Alcohol Council, a councillor on the Constitutional Centenary Foundation and a member of the Order of Australia Honours Committee.
"Billboard advertising has emerged as the most controversial area for the Board and the most challenging. No other medium has an equivalent ability to confront and intrude. We have had to consider concern by sections of the public about increasingly graphic sexual images in public places. Without a doubt, advertisers are pushing the envelope in an area where the public cannot choose not to see. The Board has chosen to uphold complaints about those advertisements we considered verged on pornographic, but we have refrained from curbing the use of sexual imagery altogether. Its prevalence, however, is a complex issue and debate about this ought to be occurring in the public domain."

GEOFF LAWSON OAM
Inaugural member
Geoff "Henry" Lawson has had an outstanding career in Australian cricket both nationally and internationally. In 1990, he was awarded the Order of Australia for services to cricket. He has a degree in Optometry, is a member of the Council of the University of New South Wales, Chairman of the UNSW Optometry Appeal Committee, and a trustee of the Sydney Cricket Ground and Sydney Football Stadium. He was a foundation director of the NSW Sports Federation.
"Once again, a wide range of views and issues were put to the Board. All of these may not have been dealt with to the complainants' satisfaction, but the openness and free discussion which surround each individual issue ensure that a broad view and community-based decision are always reached."
CATHARINE LUMBY
Inaugural member
Catharine Lumby is a columnist and senior writer for The Bulletin as well as Associate Professor of Media Studies at Sydney University. She has written widely on feminism, culture and the media and is the author of the book Bad Girls: The Media, Sex and Feminism in the 90s.
"As always, the Advertising Standards Board has engaged in rigorous and lively debate about advertisements drawn to our attention by the community. We have paid particular attention this year to concerns about car ads which emphasise speed and about sexually explicit material on billboards. All members of the Board are, in my experience, extremely committed to giving a voice to the community and I am proud to be a member of the Board."

ROY MASTERS
Appointed May 1998
Following careers as a school teacher and coach of leading rugby league teams, Roy is a journalist with The Sydney Morning Herald and a television and radio commentator. He is also an inaugural member of the Board of the Australian Sports Commission. He divides his time between Sydney and Melbourne.
"After another year of vigorous debate on complaints regarding advertisements, consumers can feel confident their interests are protected. The Board comprises a diverse group and is ever mindful of the sensitivities of all aspects of the community. The Board has acquired a collective corporate memory regarding complaints and is able to track developments. The sexually aggressive aspect of some outdoor advertising is a looming concern."

MARGARET POMERANZ
Inaugural member
Margaret Pomeranz is a writer/producer with SBS Television. She currently hosts The Movie Show and is executive producer of The Movie Show and Front Up. She has also been the executive producer of the AFI Awards for SBS, and was on the executive of the Film Critics Circle of Australia. Her career in the media began as a freelance writer of drama for radio, film and television.
"It’s been another confronting, challenging year being part of the arbitration system of what is acceptable to the Australian public in advertising. The Board’s debates delve into all aspects of life in this country, and we confront the philosophy of life in Australia constantly. It is a challenging, stimulating process with a group of people I respect highly. I hope we have represented the standards of people in this country fairly and responsibly."

BRIAN SWEENEY
Inaugural member
Brian Sweeney is the Chairman of his own company, one of Australia's leading market research companies, and has been involved in market research for thirty five years. He has been at the forefront of evaluating the success of advertising campaigns and providing guidance on what the public think of specific commercials.
"The Advertising Standards Board is a forum for the monthly review of hundreds of complaints, many of which reflect the highly individual and sometimes idiosyncratic attitudes of sections of the community. Each complaint is evaluated objectively, on its merits, and the process ensures that those who are exposed to advertising have the opportunity to voice their criticisms and to be given a fair hearing."
EMMA TOM
Appointed May 2003
Emma Tom is a young writer with three books to her credit. She has worked in radio and television, including some time as a reporter on Channel Seven’s The Late Report. In 2001, the Women’s Electoral Lobby awarded Emma the Edna Ryan Humour Award for "using wit to promote women’s interests". She has also received the Henry Lawson Award for Journalism, and currently writes two weekly newspaper columns.

LIZ WISE
Appointed May 2001
Focusing her studies on communications theory and film production, Liz completed her Bachelor of Media degree at Macquarie University in 2001. Whilst studying, she produced four short films, worked in the publishing industry as a business strategist, and in a community radio as a show host, producer, voice over artist and writer.

"There is no question that advertising deeply impacts our community, irrespective of the medium through which it is communicated and the audience at which it is targeted. In a culture saturated by media images, it is important for the community to have the opportunity to give voice to their concerns."
Attachment 3

VOLUNTARY ALCOHOL BEVERAGE'S ADVERTISING CODE

The Australian Associated Brewers Incorporated, the Distilled Spirits Industry Council of Australia Inc., the Winemakers Federation of Australia and the Liquor Merchants Association of Australia Limited recommend that all advertisements for alcohol beverages, other than point of sale advertising, produced for publication or broadcast in Australia must comply with the following Code.

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.

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;

“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 having 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 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 alcoholic 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 potential hazardous activity and, accordingly –

I. any depiction of the consumption of alcoholic beverages in connection with the above activities must not be represented as having taken place before or during the 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

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 or 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 purchaser to identify the retailer or retailers on whose behalf the advertisement s published, must comply with the spirit and intent of the Code but are not subject to any process of prior clearance
INTRODUCTION

The Intergovernmental Committee on Drugs (IGCD) is conducting a review of the effectiveness of the current self-regulatory system for alcohol advertising including advertising and promotion of alcohol to young people. The National Expert Advisory Committee on Alcohol (NEACA) was asked to examine issues of product placement and advertising in and around places where young people congregate. This paper briefly reviews the context of the perceived problem of alcohol and minors in Australia and sets out the current state of knowledge we have on product placement as well as advertising in and around places where young people congregate.

The Australian context

Alcohol use in Australia is widely accepted as part of social and business life. Over 80% of the general population of Australians over the age of 14 consumed alcohol in the last year (Australian Institute of Health and Welfare, May 2002). In terms of pure alcohol, total consumption peaked during 1981/82 at 9.8 litres of pure alcohol per capita and then declined to 7.5 in 1995/1997. In 1999/2000 the figure had risen to 7.8. (World Drink Commodities Board for the Distilled Spirits Industry, 2001). Seventeen point five percent of Australians aged 14 years and over had not consumed alcohol in the previous 12 months. Among those who had consumed alcohol almost one in two (46.8%) Australians drank at levels considered at low risk of harm in the short and long term. The average age at which females first consumed a full glass of alcohol was 17.6 and the average age for males was 16.2 years, over the population 14 years and older.

Consumption of alcohol has not been without its costs. According to the 2001 National Drug Strategy Household Survey, alcohol is the second greatest cause of drug-related deaths and hospitalisations in Australia. In 1998, the number of deaths attributed to alcohol consumption was estimated to be 3,271 (Miller and Draper, June 2001). For the same year, the number of hospital separations attributable to alcohol consumption was about 43,000 (Ridolfo and Stevenson, June 2001).

Alcohol consumption by 12 to 17 year olds

National results include a 2002 survey conducted through the National Alcohol Campaign (NAC); the 2001 National Drug Strategy Household Survey (NDSHS) and the Australian secondary students' use of alcohol in 1999 (ASSA). Results from one
Western Australian survey in 1999 are also included here (WAASSA).

- 16 and 17 year olds were surveyed in 2002 as part of the Booster Campaign Evaluation of the NAC
- 14 to 17 year olds were surveyed by the 2001 NDSHS
- 12 to 17 year olds were surveyed in 1999 by the ASSA and the WAASSA

Consumption

- Overall consumption by 12 to 17 year olds decreased from 1984/85 to 1993/95 (Makkai and McAllister, 1998)
- Both ASSA and WAASSA found that 90% of students some time in their life had tried alcohol
- The 2001 National Drug Strategy Household Survey results indicated that 28.1% of teenagers 14 to 17 years old had never had a full glass of alcohol (NDSHS)
- The proportion of 12-15 year olds who had been drinking in the week before the ASSA surveys in 1996 and 1999 increased only slightly from 26% to 28%. The ASSA also found that the increase in alcohol consumption for 16 and 17 year olds from 1996 to 1999 was not statistically significant
- The NAC found that 59% of males and 54% of females aged 16 to 17 years old had consumed more than 10 drinks in their life (NAC)
- The NAC found that of those 16 to 17 year olds who had drunk any alcohol in their life, 71% and 63% of males and females, respectively, had consumed alcohol in the last three months
- Of the 71% of males and the 63% of females who had ever had a drink of alcohol and who had consumed alcohol in the last three months some 54% (47% females and 60% males) drank the equivalent of five or more standard drinks on their last drinking occasion; and, 37% of the same group (24% females and 50% males) drank the equivalent of seven or more standard drinks on the last drinking occasion (Lum et al., November 2002).
- The WAASSA reported that from 1996 to 1999 the percentage of females aged 13 to 15 years who drank in the last week increased from 30% to 37%. Those who drank in the last four weeks increased from 44% to 51%. There was also a significant increase in the percentage of males aged 16 to 17 years who drank in the last four weeks, from 68% to 76%, and in the last 12 months, from 88% to 91% over this period. A breakdown of the figures for WA included these figures:
  - there was no change for 12 year olds over this period
  - the increase in the percentage of 13 to 15 year olds who drank alcohol last week was significant
  - there were no significant changes among 16 and 17 year old males and females over this period
Social responsibility and young people

Legislation to regulate the sale and use of alcohol exists in most countries. Ethical and social standards for advertising and marketing are largely self-regulated by the alcohol industry. The industry has established codes of practice for this purpose to control the promotion and advertising of alcohol to young people. The International Centre for Alcohol Policies (ICAP), whose sponsors include eleven of the leading alcohol producers in the world, stated in its submission to the *WHO International Technical Meeting on Marketing and Promotion of Alcohol to Young People, Valencia, Spain, 7-9 May 2002*,

'Beverage alcohol should not be marketed towards [minors]in any country.' (p3)

On the issue of advertising and promotion, ICAP stated,

'Self-regulation through voluntary codes of good practice, including in some instances the creation of independent bodies charged with the responsibility to monitor advertising and marketing practices” is the appropriate vehicle to regulate advertising and promotion.' (p3)

On the nature of alcohol advertising,

'All alcohol advertising and promotion should be of a nature, which should not influence young people towards illegal, reckless or inappropriate consumption.' (p4)

(International Center for Alcohol Policies, 2002)

The Australian Association of Brewers (AAB), the Distilled Industry Council of Australia Inc. (DSICA), the Winemakers Federation of Australia (WFA) and the Liquor Merchants Association (LMA) participate in the application of the Alcohol Beverages Advertising Code (ABAC). The ABAC outlines guidelines for the actual and perceived age of actors, avoiding the portrayal of potentially hazardous activities after drinking such as driving and boating, and avoiding linking alcohol consumption with success such as sexual success. The ABAC also states that advertisements for alcohol beverages must not encourage underage drinking or have a strong or evident appeal to children or adolescents (Distilled Spirits Industry Council of Australia, 2002a).

The alcohol industry asserts that alcohol promotion is restricted to those people [18 years and older in Australia] (Distilled Spirits Industry Council of Australia, 2002b);(International Center for Alcohol Policies, 2002). The industry position is that marketing and promotion is designed to encourage people [18 years and over in Australia] to switch brands rather than to increase total consumption (International Center for Alcohol Policies, 2002).

The industry acknowledges that people for whom advertisements were not intended could be exposed to alcohol advertising just as they are to many other product promotions (International Center for Alcohol Policies, 2002). The industry also accepts it has some obligation to ensure that exposure is limited, through application
of advertising codes and timing of advertising spots for example. Industry also argues that although underage people seem to have an awareness of alcohol products, there is no 'compelling evidence' that advertising is causing young people to drink (International Center for Alcohol Policies, 2002) p. 9). Furthermore, industry research concludes that it is the influences of parents and peers that overwhelmingly shape a youth’s attitudes towards drinking; advertising has little or no effect (International Center for Alcohol Policies, 2002).

The Australian Association of National Advertiser’s (AANA) code of ethics includes the Alcohol Beverages Advertising Code (ABAC). Advertising that currently falls under the code deals with matter that is published or broadcast but does not include internet promotions, point of sale advertising, product placement, or event sponsorship.

**Branding and young people**

Advertising is only one of a range of promotional tools that can be used to develop and manage brands. Between 1983 and 1993 only 25% of expenditures by US alcohol brands went to direct advertising with the remainder spent on other promotional activities such as sponsorships, product tie-ins and placements, contests and sweepstakes and other special promotions (Jernigan, 2001). Advertisers target specific users to make their product 'an integral part of the users’ lifestyle' (Jernigan, 2001). This is all part of branding. Branding involves communicating, reinforcing and securing an emotional connection between consumer and product.

Marketing a brand commonly involves an attempt to associate the product with certain values. The alcohol industry sponsors large sporting and entertainment events in Australia; such as, the Australian Open (winery), Fosters Australian Grand Prix (major brewery), the Heineken Cup (major international brewery), and the Big Day Out (major brewery). Marketers are presenting their products not as commodities but as concepts, experiences and lifestyles (Jernigan, 2001). Overseas examples of industry sponsorship of events follow the pattern in this country. An example commonly cited is the association of certain brands with sport. Anheuser-Busch (Budweiser) is the main sponsor of the NBA, NHL, NFL, and Major League Baseball while Coors is associated with surfing and other sports.

**Event sponsorship and young people**

Sponsorship of special events and sporting events by the alcohol industry is common in Australia and around the world. Associating alcohol with sporting events appears to contravene the spirit of Australian advertising codes of practice, though not the letter of the codes, which stipulate that "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". The worldwide value of sponsorship increased from US$2 billion to US$18 billion between 1984 and 1997 (Grehan, 2002). There has only been limited research into the effects of sponsorship in Australia. However, given the industry’s huge investment in this type of marketing, the expenditure above suggests that the alcohol industry expects some return in the form of sales.
PRODUCT PLACEMENT AND YOUNG PEOPLE

Background

Ninety-one percent of teenagers in Australia (15 to 17 years old) attended the cinema at least once in 1999 (Australian Film Commission, 2000). The Division of Paediatrics, Royal Australasian College of Physicians reported that four month-old children watched an average of 44 minutes of television per day. By four years old the average time had increased to over 2.5 hours per day. By the age of 18 years the average child has spent more time watching television (14,000 hours) than attending school (12,000 hours). Films and television are effective ways to influence the attitudes and behaviours of young people (The Division of Paediatrics, 1999).

Product placement, which is also known as 'embedded' advertising, occurs when a product or brand gains exposure incidentally. However incidental the exposure may appear to be, there is strong evidence that advertisers pay for the deliberate placement of brands in order to expose the name of their products to the viewers. This can happen in a film, television show or photograph. High profile movies such as Die Another Day and television shows in Australia such as The Secret Life of Us contain scenes where certain products are clearly in view of the audience. There is evidence that some companies pay to have their products embedded in the action (New South Wales Cancer Council, 2003). Research into tobacco and alcohol use in top USA box-office hits found product placement to be common. Yet, only 30% of films in one study had any references discouraging their use (Everett et al., Aug 1998). In a similar study on tobacco more than 85% of films over a ten-year period contained tobacco use. Four brands accounted for 80% of the brand exposures, which were in 32% of films for adolescents and 20% of children's movies (Sargent et al., January 2001). One author concluded that the main characters smoked and drank without any portrayal of the risks involved in tobacco and alcohol use (Everett et al., Aug 1998). The global nature of the alcohol industry is such that products placed in a US-produced movie are likely to be available in Australian liquor sales premises.

Over and above the issue of the deliberate placement of products in movies, on television and in magazines by advertisers, is the general portrayal of alcohol and tobacco use. If alcohol drinking or smoking appears as an accessory in magazines, or if film stars are seen to be explicitly endorsing cigarettes by smoking in their movies, the message to viewers is that it is okay or even desirable to do the same. In Australia, two studies have examined this aspect of advertising on prime time television. One study reported a three-fold decrease in the number of references to alcohol between 1990 and 1997 in six evening serials on Australian television. For events where people were ingesting or preparing to ingest, the percentage of events decreased from 30% to 24% of all drinking acts observed from 1990 to 1997. However, much of the overall decrease in alcohol references was accounted for by what the authors termed incidental references. The authors concluded that the messages on alcohol use as portrayed in these prime time serials was consistent with Australian social norms - it is everywhere, it is there to be drunk, and it is used and accepted by all ages and sexes. On the other hand, alcohol use is rarely portrayed as being associated with negative consequences (Parsons et al., 1999).
A recent study examined the same issue in one popular evening serial entitled *The Secret Life of Us* (Roberts, April 2002). The author found that alcohol featured in 25% of all scenes, and 100% of the characters consumed alcohol regularly. This latter observation is in contrast to Australian statistics which show that 20% of teenagers do not drink at all. Another observation was that none of the characters were portrayed as smokers. Going out drinking several times a week was seen as a normal thing to do, and alcohol was used as a coping strategy to help to relieve stress or to face problems. Television has the potential to influence beliefs and behaviours. The author concluded that awareness of the harms caused by alcohol was not dealt with in this television program nor did the portrayal of the excessive use of alcohol accurately represent the drinking habits of young Australians.

**ADVERTISING IN AND AROUND PLACES WHERE YOUNG PEOPLE CONGREGATE**

**Background**

Locations where young people under the age of 18 congregate include sporting and entertainment venues, sport clubs, arcades and malls, around the television at home, public transportation hubs and at school. Marketers seem to be aware of these concentrations and some may take advantage of this information. Although Midori’s parent company, Suntory, declared that the company was careful not to associate itself directly with graduating high school students, the large promotion called Midori Party Week coincided with the second week of the Gold Coast Schoolies Week in 2002.

**Sports, advertising and young people**

Many overseas groups, which aim to reduce the harms associated with young people and alcohol, have focused on the connection between alcohol and sports. The Centre for Science in the Public Interest (CSPI) in the United States has initiated a national campaign entitled *Time to End Alcohol Marketing in Sports* (TEAMS) to reduce the promotion of alcohol to young college students at sports events. The aim is to pressure legislators into:

1. Eliminating alcohol sales at amateur, youth and college sports events
   - Note: the legal drinking age in the United States is 21. Therefore, many college and university students are underage
2. Eliminating alcohol signage and alcohol program advertising in sport venues
3. Requiring responsible server practices at all professional sporting venues where alcohol is sold
   - (Center for Science in the Public Interest Alcohol Policies Project, 2002)

Another aim of TEAMS is to prohibit alcohol advertising in sports broadcasting when 15% or 2 million (the lesser of the two) in the viewing or listening audience are under the legal drinking age.

The connection between sport and alcohol is part of the sporting culture of Australia. Five major sports events appealing to young males as well as surf-life saving clubs are sponsored by the liquor industry. Teams are also sponsored by the alcohol industry. The induction into the drinking tradition among young underage males in particular is
part of that culture. In Western Australia, for example, Swan Brewery is a major sponsor of eight football teams and five leagues. Many community-based clubs hold a licence to serve alcohol and depend on alcohol sales to keep the club viable financially. Factors such as taxation exemptions that let clubs serve inexpensive alcohol, alcohol used for promotions such as door prizes, and untrained serving staff with little or no training can lead to alcohol misuse, including the sale of alcohol to minors.

The Sporting Clubs' Alcohol Project undertaken by the Australian Drug Foundation in Victoria (1999 found:

- 18% of respondents drank at their club more than three times per week;
- 37% of respondents drank six or more standard drinks on each occasion they attended their club;
- 38% of respondents drank full strength beer when attending their sporting club while 19% reported consuming low/reduced alcohol beer;
- 32% of respondents reported being ‘sometimes concerned’ about people driving away from their club after they had been drinking, and a further 4% indicated being ‘often concerned’ about that occurrence. Over one-third of respondents consumed alcohol at a ‘hazardous level’ (as defined by the National Health & Medical Research Council) on a regular basis at their sports club.

Post project research confirmed that when clubs promoted and served alcohol in a responsible manner they were likely to:

- have a safer and more convivial social atmosphere;
- retain players, members, and their partners;
- have greater participation of families in the clubs;
- have the approval and support of local government, police and the local community; and,
- maintain revenue despite selling and consuming less alcohol.

(Munro, 1998)

Research on other venues and circumstances

Additional Australian research into alcohol advertising in and around the places where young people congregate is limited to one sampling of bus stop ads in Melbourne (Roberts, May 2002). The author's conclusions are subjective and not supported by the evidence collected in the study.

SUMMARY

Australian and overseas research have found that image conscious young people are susceptible to advertising (Casswell and Zhang, 1998, Jones and Donovan, 2001). Product placement is one marketing method for advertisers. Paid product placements continue to be made in movies and television shows. Furthermore, having the characters use alcohol and tobacco products, is effective in convincing people to try drinking and smoking. Marketing of alcohol products, if it occurs in and around places where young people congregate, could be seen as inappropriate for the same reason - young people's susceptibility to advertising. Although there is a great deal of
anecdotal opinion expressed on this topic, little direct research on this subject is available either in Australia or overseas. Campaigns developed on the basis of research into social learning theory, which suggests that people model their behaviour on the behaviour of others they look up to, have been developed and implemented in Australia.

REFERENCES

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