

Submission to the review into alcohol advertising restrictions in the Free TV Code

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Introduction

Reduced alcohol ads would mean reduced alcohol use. Alcohol ads do not merely promote one brand over other brands but increase overall alcohol use by maintaining the alcohol culture in Australia and continually reminding people of the possibility of purchasing and consuming alcohol.

The greater the reduction in alcohol ads and use, the greater the benefits. A substantial reduction in alcohol ads would lead to major improvements in public health due to improved physical and mental health. There would be increased personal and public safety due to fewer accidents, lower crime rates and a reduced burden on emergency services and personnel. There would be stronger social connections and improved productivity as interactions and performance would be less likely to be impaired by alcohol use.

Individuals would save money currently spent on alcohol which could be instead used for healthier and more productive pursuits. More people would engage in hobbies, exercise and activities that do not involve alcohol use. There would be massive savings for individuals and governments due to lower health costs.

I therefore support further restrictions on televised alcohol ads. I refer to and repeat all submissions and evidence which I provided to Free TV Australia for the purpose of its review of the Free TV Code which was completed in March 2025. ACMA has indicated that it will have regard to evidence already available to it, including submissions to the 2025 review process, for the purpose of the current review.

The Free TV Code is required to be a code which is suitable for protecting all Australians from harmful content, including children. The Free TV Code is plainly unfit for purpose regarding alcohol ads. Doctors and public health experts have for many years overwhelmingly called for the abolition of the sports program loophole. Most Australians oppose children being exposed to alcohol ads. Again, that opposition is longstanding.

There is, in addition, a surfeit of other evidence, not merely convincing but compelling, that the code does not provide appropriate community safeguards, most notably the copious evidence that alcohol ads cause children to use alcohol. Countries which increased restrictions on alcohol ads have achieved reduced alcohol harm. There is no evidence or argument which can reasonably support the notion that the Free TV Code contains appropriate safeguards.

When ACMA introduced certain restrictions on gambling ads on free TV in 2018 it explained the restrictions to Parliament by saying that significant numbers of children watch sports programs on weekends. Tobacco advertising was banned on free TV during sports programs, not just other programs, before and after the registration of the Free TV Code. These matters are further compelling evidence of the inadequacy and unreasonableness of the code.

The only remaining question is whether ACMA should determine a standard under section 125 of the *Broadcasting Services Act 1992* (BSA). As outlined below that question must be answered affirmatively.

Absence of appropriate community safeguards in the Free TV Code

It is beyond dispute that alcohol ads cause children to use alcohol and are otherwise harmful to children and adults, for example by increasing harmful stereotyping of women and reminding people of alcohol-related trauma.

Through its making of the *Broadcasting Services (Australian Content and Children's Television Standards 2020)*, which prohibits alcohol ads during children's programs, ACMA has acknowledged that alcohol ads are harmful to children.

It is also beyond dispute that the Free TV Code does not contain appropriate community safeguards in relation to alcohol ads. This is because its permission for alcohol ads during sports programs makes it like a safety net with a big hole in the middle.

The Free TV Code contains many permissions for alcohol ads. It permits sports programs to be broadcast at anytime and permits:

- i. Alcohol ads during ad breaks in sports programs on weekends and public holidays.
- ii. Alcohol ads during ad breaks in sports programs after the watershed time of 8.30 pm on any night.
- iii. Alcohol ads during ad brakes in any program after 8.30 pm on any night.
- iv. Alcohol ads from 12 to 3 pm on school days during M-classified programs.
- v. Ads for drinks containing 1.15% or less alcohol by volume, including low-alcohol beer, without any restrictions on when such ads can occur.
- vi. Alcohol ads regardless of the number of children watching. Paragraph 5.7.1 of the Free TV Code says that advertisers "are expected" to comply with the "ABAC Responsible Marketing Code" (which cannot be enforced by ACMA), paragraph 4(c) of which limits alcohol ads to where the audience is reasonably expected to comprise at least 80% adults. However, as adults are more than 78% of the population and at least around 80% of the population aged two or more, paragraph 4(c) makes negligible practical difference because it is unlikely to result in the exclusion of alcohol ads from any programs from which

it is not excluded for other reasons. The ABAC code does not apply to alcohol promotions on player clothing and in sporting stadiums.

Not only should there be no sports program loophole, but sports programs are the last programs where alcohol ads should be permitted – because children can be highly influenced by ads which associate alcohol with sport or sportspeople. It follows that even if alcohol ads are permitted in non-sport programs after the watershed time, alcohol ads should not be permitted in sports programs *at any time*.

Children should be able to watch major sporting events such as grand slam tennis events or cricket, golf, football or Olympic events overnight, if their parents permit them to do so, without being required to watch alcohol ads.

The sports program loophole is therefore illogical and perverse for multiple reasons.

The Free TV Code was clearly inadequate when it was registered by ACMA in 2015. It is even more obviously inadequate now due to:

- i. Further convincing evidence that alcohol advertising causes children to use alcohol.
- ii. Further convincing evidence of public concern about alcohol advertising.
- iii. Increased evidence, recognition and concern that alcohol use causes violence against women and children.
- iv. Increased recognition that no alcohol should be consumed during pregnancy.
- v. Convincing evidence that substantially reducing or eliminating alcohol advertising would have negligible or nil impact on the revenue of television stations.
- vi. Convincing evidence of the availability of sponsors of sporting events other than the alcohol industry.
- vii. Further convincing evidence that alcohol use causes a range of cancers.
- viii. Clearer and more widespread recognition and evidence that “moderate” alcohol consumption causes health problems, including cancer.
- ix. Clearer and more widespread recognition and evidence that there are no health benefits of using alcohol and no safe level of alcohol use.
- x. Increased community concern about gambling advertising and about gambling. Alcohol use increases gambling losses by impairing judgment.
- xi. Increasing rates of children avoiding in-person attendance at school and therefore increased potential for children to be exposed to alcohol ads from 12 to 3 pm.

Contrary to the assertions by the alcohol industry and broadcasters, restrictions on alcohol ads in Australia are neither strict nor effective. As evidenced in my previous submissions alcohol use by children continues to be high, some types of alcohol harm have increased in recent years, and damage done by alcohol use in Australia is enormous. Restrictions on alcohol ads in Australia are lax or non-existent.

Millions of children watch televised sport in Australia. Children may not be the majority of the sport-viewing audience – because they are a minority of the population. But what counts is that large numbers of children watch televised sport, and other programs, at times when alcohol ads are permitted.

The existence of lax regulatory regimes in other countries does not make Australia's regime adequate. And some countries have taken a stricter approach. International research in multiple countries shows that increased restrictions on alcohol advertising results in reduced alcohol use and harm.

The need for ACMA to make a standard under section 125 of the BSA

ACMA is required to play a prominent and pre-eminent role in ensuring that regulations affecting broadcasting provide appropriate community safeguards in respect of the subject matter of the regulations.

ACMA's section 125 power was given to it by Parliament, and so ACMA should not expect Parliament to do ACMA's job or wait to be directed by the Minister to determine a standard.

On the contrary, Parliament is busy and there are not enough sitting days for it to pass laws on every topic, or amend codes, even where the topics are very important. Parliament therefore expects authorities to which it has given powers to exercise those powers when needed. Parliament is not about to consider a bill to provide better restrictions on alcohol ads. Parliament can amend the law anytime about anything within its powers, but it does not follow that officials can legitimately take no action in the meantime.

In the *Harbour Radio* case, the Federal Court anticipated that ACMA will make decisions under section 125, despite Parliament's section 128 role.¹

The Free TV Code is so glaringly deficient that ACMA must determine a standard. The need to do so is urgent. The content of the standard will await a further consultation process, but the sports program loophole must be removed apart from any other changes.

Removing the sports program loophole, for example, would merely bring the approach to alcohol ads more into line with the approach for certain other products or services which are lawful for adults but not for children and merely treat sport programs the same as all other programs in relation to alcohol ads. Removing the sports program loophole would therefore not involve fundamental change, while still substantially reducing the exposure of children and others to alcohol ads.

¹ Paragraph 100.

Nor would better restrictions going beyond removing the sports loophole involve fundamental change. There are already many restrictions on advertising in Australia. Better restrictions would merely end, or reduce, the special treatment for alcohol ads.

While broader restrictions on alcohol ads and other unhealthy ads across all media would be ideal compared with merely reducing televised alcohol ads, it does not follow that ACMA should not act to reduce televised alcohol ads now. The ideal should not become the enemy of the much improved.

The proliferation of alcohol ads on the internet is no reason not to significantly improve the Free TV Code. The deficiencies in the Free TV Code must be remedied whether anything is done to remedy other problems or not.

It is implausible that reduced alcohol ads on television would result in significantly increased internet ads because alcohol companies would know that an escalation of internet ads might precipitate a regulatory response by the Parliament. Further, the alcohol industry has plenty of money to pay for ads wherever they are permitted and so reduced spending on TV ads would not mean more internet ads.

Fewer televised alcohol ads would also mean that parents would be more likely to encourage their children to watch sport on television, which would result in reduced internet use by children.