### Summary

ADMA’s core remit of supporting and promoting data-driven marketing and advertising points to the direction of an industry-led solution. The emergence of advertising and marketing that is focussed on using data to gain insights into the preferences – and other qualities including age – of consumers will lead to ads that can be tailored to individual consumers and groups of consumers, with particular efficacy online.

Steps to introduce age verification in the online environment are already well underway, with many major brands requiring consumers to verify their age before entering websites and social media sites where alcohol is being marketed and promoted.

ADMA works closely with the other relevant industry associations to ensure that codes are consistent and provide comprehensive coverage across all channels. Cross-platform organisations such as the Australian Marketing and Media Industry Forum, and the Australian Digital Advertising Alliance provide a means for a coordinated industry approach to self-regulation.

ADMA agrees with sentiment presented in the issues paper; that it is difficult to determine if alcohol marketing specifically causes people to drink.[[1]](#footnote-1) ADMA would also concur with the sentiments extolled in the quote from the International Centre for Alcohol Policy: “The most powerful factors in shaping beliefs and attitudes about drinking are parental and peer influences”.[[2]](#footnote-2)

ADMA commends and concurs with the Alcohol Industry’s DrinkWise program, an initiative of – and funded by – the alcohol industry, which has been supported by successive governments. It reinforces the fact that parents are the greatest influence on their children’s attitudes towards alcohol.[[3]](#footnote-3)

ADMA believes that increased regulation of alcohol advertising and marketing is not the solution to a public policy problem. Rather, the solution lies in promoting enlightened education programs that address the strongest influences on minors and young adults, namely family and peers.

ADMA recommends that ANPHA consider the advantages that technology and the use of data can bring in terms of accurate targeting, and the widespread availability of these alternative mechanisms for marketers and advertisers to respond to community expectations.

### Who is ADMA?

ADMA is the principal industry body for data-driven, customer-centric, measurable marketing and advertising in Australia. ADMA’s primary objective is to help companies achieve better marketing results through the enlightened use of data-driven insights into consumers.

Consistent with this objective, ADMA has been involved in the development of legislation, as well as co-regulatory and self-regulatory schemes, over many years. ADMA was formed in 1966, and has during its 45 years of operation been involved in the development of the *Privacy Act 1988,* the *Spam Act 2003*, the *Competition and Consumer Act 2010,* the *Do Not Call Register Act 2006,* andthe *Privacy Amendment (Enhancing Privacy Protection) Act 2012*. ADMA developed and enforces the ADMA Direct Marketing Code of Practice 2006 (based on the model code of practice endorsed by the Ministerial Council of Consumer Affairs in 2003), and co-developed the Australian eMarketing Code of Conduct 2005, which is enforced by the ACMA*.*

ADMA works closely with other relevant industry associations to ensure that codes remain consistent, relevant, and provide comprehensive coverage across all channels of the marketing and advertising industry. Cross-industry forums and alliances such as the Australian Marketing and Media Industry Forum, and the Australian Digital Advertising Alliance, provide a means for a consistent approach to tackling the challenges that exist in every regulatory environment.

ADMA has over 500 member organisations, including some of Australia’s most well-known and trusted brands. Our members come from many industries including major financial institutions, telecommunications companies, energy providers, information and technology companies, digital service providers, travel service companies, major charities, statutory corporations, educational institutions and specialist suppliers of marketing services.

### What is data-driven marketing and advertising?

Data-driven marketing and advertising includes any marketing communication which uses data-insights, including personal information, to engage with a consumer with a view to producing a tangible and measurable response. Data-driven marketing is platform neutral. It includes marketing via:

* email
* mobile phones and other mobile devices
* apps
* online
* social media networks
* mail
* telephone calls
* print
* television and radio broadcast

As almost every Australian company and not-for-profit organisation markets to its current and potential customers using data-insights, as a normal and legitimate part of its business activities, the ability to continue to conduct this activity underpins a good proportion of Australia’s economic activity.

# General Points

ADMA welcomes this opportunity to provide a submission to the Australian National Preventative Health Agency’s (ANPHA) issues paper *Alcohol Advertising: The Effectiveness of Current Regulatory Code in Addressing Community Concerns*.

The primary focus of this issues paper is defined as the impact of alcohol marketing on children and young people, and the effectiveness of current regulation in addressing community concern.

ADMA would like to draw a clear distinction between children and adults. In this submission, ADMA will refer to minors and adults exclusively for clarity. ADMA takes this position because the issues paper does not clarify what is meant by the term *youth* or *young*, and ADMA believes this omission may lead to unnecessary confusion. Following the common legal definition of children, we refer to minors as persons under 18 years of age.

ADMA’s position is that there are many effective codes and regulatory schemes already in place to regulate the advertising and marketing of alcohol. More specifically, ADMA believes that existing codes are effective at preventing advertising and marketing from promoting alcohol consumption to minors.

ADMA’s focus will be on the existing regulatory system; its effectiveness in addressing community concerns, and its ability to tackle the issue of the impact of alcohol marketing and advertising on minors and young adults, from the perspective of the general community.

Self-regulatory codes and schemes are flexible enough to adapt to changes in the contemporary media landscape. New technology, and marketing innovations that flow from these, are a constant feature of the digital media environment. ADMA is therefore strongly of the view that only principles-based regulation is sufficiently adaptable, and effective.

# ADMA’s response to *Questions Arising* in the issues paper

## Effectiveness

The current regulatory mechanisms for alcohol advertising self-regulation are comprehensively detailed in the issues paper. ADMA will limit comments to the following brief contextual summary:

The self-regulation of alcohol advertising content occurs primarily under the Alcoholic Beverages (and Packaging) Code (ABAC) scheme, and through the Advertising Standards Board (ASB) complaints process.

The guidelines which apply under the ABAC scheme have been negotiated with government. The signatories to this scheme represent 90% of the alcohol market in Australia. Advertisers have access to the pre-vetting service, consumer complaints are handled independently, and all costs are borne by industry. This system provides excellent coverage of the market.

Complaints-based self-regulation, as it occurs through the ASB, is a very effective means of reflecting community standards. Complaints that are directed to the ASB are assessed by the Board, composed of members that broadly reflect the composition of the Australian community. This includes several members who have backgrounds as health practitioners.

ADMA does not agree that the low number of complaints which are upheld every year by the Board demonstrates the ASBs inability to reflect community standards. Rather, ADMA would argue that the low number is a proper reflection of the majority decision, achieved through debate of the merits of the complaint with respect to the relevant codes, and the pre-vetting scheme. To criticise the function of the majority decision making process is to fundamentally undermine the notion of achieving a community standard. A community standard is nothing more, nor less, than the aggregate standards of all members of the community. The majority decision of the Board, which is designed and composed to be broadly representative of the community, is as accurate a gauge as any for such a standard.

ADMA notes that a search of the ASB decision database for the 12 months from 1 February 2012, indicates that only three complaints where received about alcohol advertising for the internet or social media, two of which were dismissed. Alcohol advertising represents less than 4% of all complaints submitted to the ASB.[[4]](#footnote-4) This does not seem to demonstrate a large or overwhelming community concern.

It may be tempting to mount the argument that there is a lack of awareness in the community about the ASB as a complaints mechanism, however the ASB has mounted numerous awareness campaigns in the past. The most recent survey indicates a respectable 63% awareness rate amongst respondents of the ASB, and only 15% unawareness of a suitable avenue for a complaint.[[5]](#footnote-5)

**Conclusion**

The existing self-regulatory environment is effective at reflecting community concerns. There is good general awareness of the avenues of complaint (of which there are many), principal among them being the ASB.

## Scope

The ASB complaints-driven process enforces the following codes relevant to this discussion: AANA Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children. Complaints to the ASB result in an assessment process by the Board applying the AANA codes cited above, and a separate parallel process under the ABAC code.

The ABAC scheme and ASB code enforcement mechanisms do not leave any perceptible gaps in coverage. Taken together, these codes apply to all forms of advertising and marketing of alcohol products in Australia. The ASB will accept complaints about any advertising and marketing communications in any media.

As explained by the ASB in their February 2013 newsletter:

“*The Advertising Standards Board (the Board) has considered complaints about internet advertising since 2006.*

*In 2009 the definition of advertising was amended by the Australian Association of National Advertisers (AANA) to refer to ‘advertising and marketing communications.’ The intent and effect of this change was to ensure that the broad range of advertising and marketing activities of advertisers met industry own standards as set out in the Code of Ethics and community standards as the Codes are applied.*

*The broadening of the definition in the Codes reflected the growing diversity of mediums for advertising and marketing communications and extended the reach of the Code of Ethics not only into online activities but also into a greater variety of traditional marketing areas that were previously not always captured, such as in-store activities and giveaways.*

*In terms of diversity of media the Bureau now considers complaints about activities in media such as SMS Marketing, in-store marketing, advertiser owned Apps and more recently elements of advertiser Facebook pages.*

*Marketing communication clearly, and without ambiguity, applies to any material or activity that is within the control of an advertiser and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a ‘product, service, organisation or line of conduct.’*

*Brand promotions will therefore be considered as advertising or marketing communications as they are calculated to promote the organisation.*[[6]](#footnote-6)

Further to the coverage of advertising and marketing communication content provided by these codes, ADMA would like to draw attention to the [Australian eMarketing Code of Practice](http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/australian%20emarketing%20code%20of%20practice.pdf) (the Code), which was developed by representatives from peak industry associations, consumer groups, message service providers, government regulatory agencies and corporate business, under section 112(1A) of the *Telecommunications Act 1997*.[[7]](#footnote-7) It is administered by the ACMA.

The Code applies specifically to the e-marketing industry, as defined in section 7 of the Telecommunications Act. It contains the following relevant clause:

“*11.1 Where the content of a commercial communication seeks to promote or inspire, interaction with a product, service or event that is age sensitive, the Message Originator must take reasonable steps to ensure that such content is sent to Recipients who are legally entitled to use or participate in the product, service or event*”[[8]](#footnote-8)

The following extract from Guideline 10 of the Code defines age sensitive content as follows:

**“*Age Sensitive Content***

*Examples of age sensitive content might be:*

* + *An invitation to participate in a competition promoting alcoholic beverages;*
  + *Invitations to events that are held at establishments where the minimum age of entry is 18;*[[9]](#footnote-9)

ADMA members are also regulated by the ADMA Direct Marketing Code of Practice 2006 (the ADMA Code). The ADMA Code is based on the model code of practice endorsed by the Ministerial Council of Consumer Affairs in 2003. The management of this code is discussed under the heading *Management*.

The ADMA Code is currently being amended, and it is ADMA’s intention that the amended Code will contain provision(s) aimed at preventing advertising and marketing communications for products which are legally restricted to adults (such as alcohol), from appearing in advertising and marketing communications directed at minors online.

The use of data, and insights derived from that data, will play an integral role in assisting ADMA members in preventing age sensitive advertising and marketing communications being targeted to minors online.

**Other co-regulatory codes, policies and initiatives applicable to ADMA members**

ADMA’s membership spans a variety of industries, many of which also have co-regulatory or self-regulatory, policies and other mechanisms for advertising alcoholic products. For example:

* Foxtel, as a subscription television licensee, must comply with codes of practice developed by the Australian Subscription Television and Radio Association (ASTRA) registered with the Australian Communications and Media Authority (ACMA) (we would refer you to the ASTRA submission to this Issues Paper for details on requirements applicable to STV licensees);
* Various online platforms have detailed policies and practical tools for advertisers to manage how their ads are targeted;
* Retailers such as Woolworths, support and participate in the DrinkWise program, which is a successful initiative of – and is funded by – the alcohol industry.

**Conclusion**

Existing codes apply to all forms of advertising and marketing, produced by any advertiser or marketer in Australia. This includes those “below-the-line” forms of advertising noted in the issues paper, such as company and brand websites, social media sites, and any other form of marketing communication including brand promotion.

As the development of the Australian eMarketing Code of Practice and the expansion of the ASB to cover social media demonstrate, voluntary as well as quasi and co-regulatory codes have been, and are being, adapted and amended to reflect change.

ADMA's experience – particularly with the Privacy Act which took more than a decade to be amended – suggests that self-regulatory codes of practice, are far more flexible than legislation or codes which are legislative instruments.

## Management

The following comments focus briefly on the two primary advertising and marketing content self-regulatory schemes discussed above (ABAC and ASB), the ADMA Code of Practice, and the codes governing the placement of ads within broadcast programming.

*ABAC*

The ABAC scheme was developed in agreement with all major Australian alcohol beverages manufacturing and marketing industry associations, and key advertising, media and consumer bodies. Federal and State Governments are also key stakeholders, represented on the Management Committee of the Scheme. Two public health specialists, approved by governments, are also members of the adjudication panel. The diversity of stakeholders on the management committee ensures a balanced approach is taken in decision making.

*ASB*

As explained above, the ASB is an independent decision making body with broad community representation on the panel. As the ASB explained in its submission to the 2011 House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the regulation of billboard and outdoor advertising:

“*Prevailing community standards are at the heart of all Standards Board decisions and are the reason the Standards Board is made up of members of the community. The overriding objective of the Standards Board is to make decisions relating to the AANA Code of Ethics and other AANA codes based on what it perceives are prevailing community attitudes. In this way, the Standards Board aims to draw community expectations into its consideration of the rules set out in the codes”.*[[10]](#footnote-10)

*ADMA Code of Practice*ADMA’s Code of Practice is enforced by an independent Code Authority, which contains two representatives from Industry and two Consumer representatives, as well as a Chair who is a former Commonwealth Deputy Ombudsman. The secretariat to the Code Authority also provides guidance to the Authority based on extensive experience in applying community standards, as they are understood to apply to entertainment media and the advertising thereof, under the *Classification (Publications, Films and Computer Games) Act 1995*.

**Conclusion**

ADMA contends that the existing management arrangements are appropriate, effective and rigorous.

ADMA notes that the current siloed approach of separate codes providing rules for different media channels, can discriminate against those traditional channels with heavy legacy requirements placed on them.

Creating new rules for every emerging media and marketing channel is unworkable, and will be more so in the future. The best approach is 'principles-based' policy framework, suited to the new converged communications environment. This was the fundamental recommendation arising from the Convergence Review conducted in 2011.[[11]](#footnote-11)

1. *Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concerns*, ANPHA Issues Paper December 2012, para.41. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. “Kids form their attitudes to alcohol long before they ever have a drink themselves, from their most important role model…you.” Accessed on 12 February 2013. <http://www.drinkwise.org.au/parents/>. [↑](#footnote-ref-3)
4. AANA, AANA In The News – 19 February 2013, accessed on 23 February 2013. <http://www.aana.com.au/pages/aana-in-the-news.html>. [↑](#footnote-ref-4)
5. ASB Research Report - *Community Perceptions 2012* (produced by Colmar Brunton Social Research), p.42. accessed on 23 February 2012. <http://issuu.com/cre8ive/docs/asb_research_report_june2012?mode=window&backgroundColor=%23222222> [↑](#footnote-ref-5)
6. ASB, Ad Standards – February Bulletin, accessed on 28 February 2013. <http://www.adstandards.com.au/process/theprocesssteps/specificproductsandissues/socialmedia>. [↑](#footnote-ref-6)
7. ACMA, Australian E-marketing Code of Practice – 25 July 2012, accessed on 25 February 2013. <http://www.acma.gov.au/WEB/STANDARD/pc=PC_310326>. [↑](#footnote-ref-7)
8. Australian eMarketing Code of Practice, March 2005, p.40. [↑](#footnote-ref-8)
9. Ibid, p.58. [↑](#footnote-ref-9)
10. Advertising Standards Bureau (ASB), *Submission 27 to the* House of Representatives Standing Committee on Social Policy and Legal Affairs tabled the report of its inquiry into the regulation of billboard and outdoor advertising, p. [12]. [↑](#footnote-ref-10)
11. Glen Boreham, Chair - Convergence Review Committee, Letter of Transmittal (Convergence Review Final report), 30 March 2012, p.iii. Accessed on 20 February 2013. <http://www.dbcde.gov.au/__data/assets/pdf_file/0007/147733/Convergence_Review_Final_Report.pdf>. [↑](#footnote-ref-11)