



**Submission by
Free TV Australia Limited**

**Australian National Preventative Health
Agency**

*Alcohol Advertising – The Effectiveness of
Current Regulatory Codes in Addressing
Community Concerns*

March 2013

| |
|--------------------------|
| TABLE OF CONTENTS |
|--------------------------|

| | | |
|----------|---|-----------|
| 1 | EXECUTIVE SUMMARY | 2 |
| 2 | INTRODUCTION | 3 |
| 3 | REGULATION OF ALCOHOL ADVERTISING ON TELEVISION | 4 |
| 3.1 | COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE | 4 |
| 3.2 | CHILDREN'S TELEVISION STANDARDS | 4 |
| 4 | NO EVIDENCE OF REGULATORY FAILURE | 5 |
| 4.1 | ADEQUACY OF THE COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE | 5 |
| 4.2 | ONGOING REVIEW OF THE CODE | 7 |
| 5 | CHANGING MEDIA LANDSCAPE | 8 |
| 6 | ALCOHOL BEVERAGES ADVERTISING CODE SCHEME | 10 |

| | |
|----------|--------------------------|
| 1 | Executive Summary |
|----------|--------------------------|

- There is an extensive range of restrictions in place governing the content and scheduling of alcohol advertising on commercial free to air television and no evidence of policy failure in this area.
- Free TV members are bound by the Commercial Television Industry Code of Practice (**Code**) and Children's Television Standards (**CTS**), both of which contain rules on the placement of advertisements for alcoholic products and limit young peoples' exposure to alcohol advertisements. Compliance with the Code and the CTS is regulated by the Australian Communications and Media Authority (**ACMA**).
- Under the Code alcohol advertisements can only be broadcast after 8.30pm, between 12.00pm and 3.00pm on school days, and during live sporting events on weekends and public holidays. In addition, alcohol advertisements cannot be broadcast during any nominated children's programming periods.
- These existing placement restrictions appropriately reflect periods when television audiences are predominately adult. Children and adolescents make up less than 12 per cent of the total viewing audience in these timeslots.
- Commercial free to air broadcasters successfully comply with these requirements and there is very little evidence of community dissatisfaction, with viewer complaint levels consistently very low. Less than 1% of Code complaints received by Free TV members between 2009 and 2012 related to alcohol advertising placement and no breach of the Code was found in these cases.
- In addition to the Code and CTS, Free TV supports the existing Alcohol Beverages Advertising Code (**ABAC**) which is designed to ensure that the content of alcohol advertising is consistent with responsible alcohol consumption and does not encourage under-age drinking.
- Free to air television is the only medium subject to such stringent regulatory requirements. Media consumption and usage patterns have evolved rapidly in recent times, particularly among young people. Content can now be accessed over a range of platforms and devices which are not subject to the onerous regulations and restrictions that apply to Free TV broadcasters.
- If further alcohol advertising restrictions were to be placed on free to air television 'regulatory bypass' will occur and advertisements will simply move to those platforms which are not subject to any regulation. Therefore, any alcohol advertising restrictions should apply equally across all media platforms. A comparison between 2008 and 2012 classification data shows a 29% reduction in the total number of advertisements for alcoholic drinks submitted for classification on the commercial free to air platform.

2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free to air television licensees. Free TV welcomes the opportunity to respond to the issues paper and provide the Agency with relevant information in its consideration of the advertising of liquor products on television.

The commercial free to air television sector is committed to ensuring that television content aligns with community standards and expectations, particularly in regards to children and young audiences. Free TV members are cognisant of community concerns and sensitivities regarding the appropriate advertising of alcohol products.

Accordingly, commercial free to air broadcasters are already subject to an extensive range of measures restricting alcohol advertising, especially in relation to child and youth exposure. These measures do not apply on other media platforms despite research showing that children are spending less time watching commercial free to air TV and more time online.

The regulatory regime for television services is established at the federal level through the *Broadcasting Services Act 1992* (**BSA**) and the regulatory and enforcement powers of the ACMA.

The BSA requires broadcasters to develop a code of practice pertaining to their broadcasting operations¹. The code is co-regulated by industry and the ACMA. If broadcasters are found to be in breach of Code requirements, there is a range of strong enforcement mechanisms open to the ACMA.

The BSA also requires the ACMA to independently develop standards for children's programming². Compliance with the Children's Television Standards is a condition on broadcasting licensees³. A licence breach carries substantial civil penalties, including fines of up to \$340,000 and suspension or cancellation of the licence.

Broadcasters successfully comply with these restrictions and there is little evidence of community dissatisfaction. Between 2009 and 2012, Free TV members received four viewer complaints relating to the alcohol advertising time zones compared to 7438 complaints under the Code overall⁴. Less than 1% of all public submissions received by Free TV during last Code Review in 2010 related to alcohol advertising time zones⁵.

In addition to the Code and CTS, Free TV supports the existing ABAC and corresponding complaints handling and enforcement schemes in place.

The advertising codes and complaints handling systems for alcohol products provide a robust and efficient process for ensuring alcohol advertisements accord to community expectations and appropriately restrict child exposure to alcohol advertising.

¹ Section 123 of the *Broadcasting Services Act 1992*

² Section 125 of the *Broadcasting Services Act 1992*

³ Section 7, Schedule 2 of the *Broadcasting Services Act 1992*

⁴ Free TV Australia Annual Code of Practice Complaints Reports 2009-2012

⁵ Free TV Australia Code Review 2010

The Code and CTS ensure that advertisements for alcohol products are broadcast in adult viewing hours. Television viewing data suggests that children and adolescents make up a very small proportion of the viewing audience after 8.30 pm and during weekend live sports.

The ABAC deals with the responsible promotion of alcohol and the number of alcohol advertisements which are the subject of viewer complaint through the ABAC Scheme remains low.

3 Regulation of Alcohol Advertising on Television

3.1 Commercial Television Industry Code of Practice

The Code sets down rules relating to the content and placement of advertisements designed to limit young peoples' exposure to alcohol advertisements.

The Code provides that advertisements for alcohol drinks can only be broadcast during 8.30pm and 5am on weekdays and 12.00pm and 3.00pm on school days⁶. In effect, advertisements for alcohol drinks are only permitted during declared adult classification zones where M, MA and AV programs may be shown.

An exception to this rule applies for live sporting events during weekends and public holidays only. This exception allows alcohol advertising as an accompaniment to a "live" sporting broadcast.

In addition, the Code states that advertisements for alcohol drinks cannot be broadcast during nominated children's programming periods.

These restrictions also apply to content within programs that are broadcast in return for consideration, for example product placement.

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

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

The ACMA is empowered under the BSA to enforce compliance with the Code under a complaints-based scheme (see below) and Free TV members face substantial penalties for a breach of the Code.

3.2 Children's Television Standards

In addition to the requirements of the Code, CTS 36 of the Children's Television Standards states that advertisements for alcoholic drinks may not be broadcast during C periods. The restrictions extend to C or P programs broadcast outside C or P periods, and breaks immediately before and after C and P programs.

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

⁶ Clause 6.7 and 6.13 of the Commercial Industry Code of Practice

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

A C program is one that has been classified by the ACMA as being suitable for children other than preschool children and a P Program is one that has been classified by the ACMA as being suitable for preschool children.

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

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

Complaints Processes

The Code and the CTS provide for an efficient and well-managed complaints process.

Complaints about advertising under the CTS can be made directly to the ACMA who must investigate.

Complaints about the Code can be made directly to the broadcaster who is obliged to respond substantively within 30 working days, and must advise the complainant of their right to refer the matter to the ACMA for further investigation if they are unsatisfied with the broadcaster's response.

4 No Evidence of Regulatory Failure

The extensive placement rules for the advertising of alcohol products on commercial free to air television are well established and well understood in the industry. The low level of complaint and concern expressed through several Code reviews confirm that the public policy in this area is effective and meets community standards.

4.1 Adequacy of the Commercial Television Industry Code of Practice

There has long been recognition of the need to ensure that advertisements for alcohol products are not in any way directed at children and are scheduled to avoid peak children's viewing times.

The commercial free to air television placement restrictions prevent the broadcast of advertisements for alcohol products prior to 8.30pm. Research indicates that this accords with community expectations. The 2011 Alcohol Education and

Rehabilitation Foundation Survey found that 69 per cent of adults support a ban on alcohol advertising on television before 8.30pm⁷.

The National Preventative Health Strategy's Roadmap for Action recommends that alcohol advertising should be phased out from times and placements which have a high exposure to young people aged up to 25 years⁸. This principle is enshrined in the current Code time zones which restrict alcohol advertising to screening times dominated by adult viewing.

On average, children aged between 5-12 watch 52 minutes a day of commercial free to air TV while children aged between 13-17 watch on average of 1 hour and 2 minutes a day. This is considerably less than adults who watch on average 2 hours of television a day⁹.

Current ratings data shows that children constitute a very small percentage of overall commercial free to air television viewing:

- Only 4.8 per cent of children aged 5-12 and 5.7 per cent of children aged 13-17 watch commercial free to air television on any given day¹⁰.
- Average child audiences from 2008 – 2012 have declined by 3 per cent for children aged 5-12 and 5.4 per cent for children 13-17¹¹.

Ratings data also shows that the vast majority of Free TV viewers during 8.30pm to midnight are adults:

- Children aged 5-17 make up less than 9 per cent of the total viewing from 8.30pm to midnight¹².
- Adults are the large majority of viewing audience after 8.30pm at 91%¹³.

Of the children watching TV in the evening, at least half are co-viewing with an adult in the room¹⁴.

Ratings data also shows that Free TV audiences for weekend sport are predominantly comprised of adult viewers:

- Children aged 5-17 make up less than 12% of the total viewing audience for any of the top 10 sporting events in 2012 (excluding Olympics)¹⁵.
- Adolescents between the age of 13 and 17 make up less than 6 per cent of the viewing audience for the top 20 weekend sport programs in 2012¹⁶.

⁷ https://www.pansw.org.au/sites/default/files/public/AER_Foundation_AnnualAlcoholPoll2011%5B1%5D.pdf

⁸ [http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/CCD7323311E358BECA2575FD000859E1/\\$File/nphs-roadmap.pdf](http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/CCD7323311E358BECA2575FD000859E1/$File/nphs-roadmap.pdf)

⁹ OzTAM, 5 city metro, 01 Jan - 31 Dec 2008 - 2012, 6am - midnight, children 5-12 and 13-17, average audience, based on consolidated data from 2010

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

- Of those children who were watching the top 10 sporting events, the majority were co-viewing with an adult (around 8 in 10 for the 5-12 age group, and around 7 in 10 for the 13-17 age group)¹⁷.
- Even the event with the highest audience proportion of child viewers (State of Origin 3) was only watched by 13.5% of children aged 13-17. This figure is lower for children aged 5-12 (12.8%). Of those children who were watching, more than 85% were co-viewing with an adult¹⁸.

This data shows that the existing time zone restrictions in the Code adequately reflect adult and children's viewing patterns. Advertisements for alcohol products after 8.30pm and during weekend live sports are targeted at the majority adult component of the audience.

Free to air broadcasters comply with these provisions and there have been very low levels of viewer complaint.

As already noted, of the 7438 Code complaints received by broadcasters between 2009 and 2012, only four related to a perceived error in the scheduling of alcohol advertisements¹⁹. In each of these four cases, no breach of the Code's requirements was found to have occurred.

4.2 Ongoing Review of the Code

The Commercial Television Industry Code of Practice is reviewed every three years. As part of each review, it is the role of the regulator to register the Code after ensuring that it reflects community standards.

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

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

Under section 125 of the BSA, the ACMA is also empowered to make program standards in circumstances where it is satisfied that a Code has failed to provide adequate community safeguards²⁰. Compliance with an ACMA program standard is mandatory²¹.

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

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Free TV Australia Annual Code of Practice Complaints Reports 2009-2012

²⁰ Section 125 of the *Broadcasting Services Act 1992*

²¹ Section 7, Schedule 2 of the *Broadcasting Services Act 1992*

The Code was last reviewed three years ago. Only 10 of the 1543 submissions received from the public during this Review related to alcohol advertising time zones²².

The final Code as registered by the ACMA included several changes to respond to community concerns raised in these submissions.

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

The next scheduled review of the Code is about to commence. Free TV endorses the existing processes of review, community consultation and the ACMA registration of the Code as the most appropriate means in which to address any community concerns regarding the scheduling of alcohol advertising.

5 Changing Media Landscape

Media consumption and usage patterns have evolved rapidly in recent times, particularly among young people. Content can now be accessed over a range of platforms and devices which are not subject to the kinds of regulations and restrictions that apply to Free TV broadcasters. A single device (such as a connected TV) can be used to view substantially similar content that is subject to very different levels of regulation.

Despite this, commercial free to air television is the only media platform subject to proscribed and enforceable time zone restrictions for the advertising of alcohol products.

These restrictions do not apply to commercial radio, Pay TV and online. The Publisher's Advertising Bureau's "Guiding Principle for Alcohol Beverages", which is a self-regulatory instrument, provides that advertisements are to be placed where at least 70% of the audience is reasonably expected to be above the legal purchase age²³.

It is important that any alcohol advertising restrictions apply equally across all media platforms. Otherwise 'regulatory bypass' will occur, and the relevant advertisements will simply move to those platforms which are not subject to any regulation or have less onerous regulation.

Classification data shows that there has been a gradual decrease in the number of alcohol advertisements classified for airing on commercial free to air television. A comparison between 2008 and 2012 data shows a 29% reduction in the total number of advertisements for alcoholic drinks submitted for classification²⁴.

Young people are driving the use of these emerging technologies in the new media environment. Nielsen reports that over a third (34.8%) of people aged 13-17's total TV screen time from January to September 2012 was dedicated to "other screen usage" (such as non-broadcast activities (gaming), online activity on the TV screen or

²² Free TV Australia Code Review 2010

²³ <http://www.publishersbureau.com.au/resources/pdf/PAAB%20-%20Alcohol%20Advertising%20Guidelines.pdf>

²⁴ Commercials Advice (CAD) – a classification and information service for advertisements on television

playback beyond 7-days). This is more than double that of people 40-54 (14.2%) and four times more than people 55+ (8.3%)²⁵. The same report notes that approximately 18% of all homes now have internet-enabled televisions²⁶.

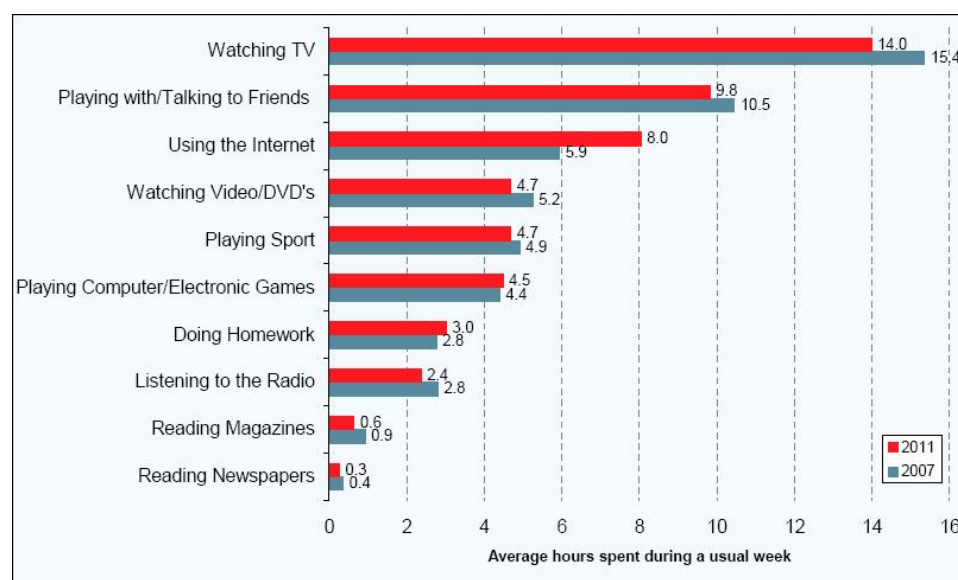
The table below from the same Nielsen report shows the penetration of various technologies and demonstrates the rapid rate of growth in these new content delivery platforms.

TABLE 1: TECHNOLOGY PENETRATION

| | Q3 2011 | Q4 2011 | Q1 2012 | Q2 2012 | Q3 2012 |
|---|---------|---------|---------|---------|---------|
| Digital terrestrial television (DTT): Penetration within TV households ¹ | 94% | 95% | 96% | 97% | 97% |
| Completely DTT: Penetration within TV households (Homes capable of receiving DTT on each working TV within the home) | 65% | 70% | 74% | 77% | 79% |
| Personal video recorder (PVR): Penetration within TV households | 42% | 44% | 47% | 49% | 50% |
| Internet Connection: Household penetration ² | 76% | 77% | 78% | 78% | 78% |
| Tablets: Household penetration | N.A. | N.A. | 15% | 19% | 22% |
| Internet Connected TV in Home | N.A. | N.A. | 15% | 16% | 18% |
| Smartphones: People 16+ ³ | 46% | 45% | 48% | 52% | 56% |

A 2012 study by Roy Morgan Research on the media habits of children aged 6-13 from 2007 to 2011 shows children are spending more time using the internet²⁷. The study also shows a decline in the number of hours children are watching TV during the week.

Children's time spent in 2011 compared to 2007



²⁵ Nielsen (2012) *Australian Multi-screen report Q3 2012*, 6 December 2012: <http://www.nielsen.com/au/en/news-insights/reports-downloads/2012/australian-multi-screen-report-q3--2012.html>; pp. 3

²⁶ Ibid.

²⁷ Roy Morgan Research Press Release 2012 *TV Still Dominates for Kids* <http://www.roymorgan.com/news/press-releases/2012/1748/>

This trend is reflected in ratings data which shows that children and teens watching commercial free to air TV is on the decline. Free TV audiences year on year declined by 3 per cent for children aged 5 – 12 and 5.4 per cent for children aged 13-17²⁸.

6 Alcohol Beverages Advertising Code Scheme

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

In March 2006, the Victorian Government received the report of the Inquiry into Strategies to Reduce Harmful Alcohol Consumption. This inquiry was conducted by the Drugs and Crime Prevention Committee and considered the regulation of alcohol advertising. The report noted the significant strengthening of the ABAC Scheme that had occurred in recent years and concluded that there was insufficient evidence at that time to suggest that any changes were necessary to the ABAC Scheme²⁹.

The level of complaints received under the Scheme has remained fairly constant over recent years³⁰.

The very low proportion of alcohol advertisements complained against in relation to appropriate promotion of alcohol (i.e., as distinct from complaints made in relation to taste and decency issues and dealt with under the Australian Association of National Advertisers Code of Ethics), suggests that the ABAC has kept pace with community standards on these issues. Indeed, the number of complaints made to ABAC in relation to television reduced by 37% in 2011³¹.

The ABAC Scheme is well known and respected by industry. The Alcohol Advertising Pre-Vetting Service is a helpful tool for advertisers and industry alike. Determinations made by the ABAC adjudication panel carry significant weight in the industry and the vast majority of advertisers have withdrawn or modified advertisements relating to upheld complaints.

²⁸ OzTAM, 5 city metro, 01 Jan - 31 Dec 2008 - 2012, 6am - midnight, children 5-12 and 13-17, average audience, based on consolidated data from 2010

²⁹ http://www.parliament.vic.gov.au/images/stories/committees/dccpc/alcoholharmreduction/DCPC-Report_Alcohol_Vol1_2006-03.pdf

³⁰ ABAC Annual Report 2011: <http://www.abac.org.au/uploads/File/ABAC2011AnnualReport.pdf>

³¹ Ibid

Attachment A

Commercial Television Industry Code of Practice July 2010 (Extract)

Commercials which Advertise Alcoholic Drinks

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

6.12 **“Live sporting event”** means:

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

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

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

Attachment B

Children's Television Standards 2009 (Extract)

CTS 36 Advertising of Alcoholic Drinks

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