

# **Report of the Steering Group for the Review of the Regulation of Alcohol Advertising**

**March 2007**

# Table of Contents

<a href="#">Foreword</a> .....	3
<a href="#">Executive summary</a> .....	4
<a href="#">Chapter One: Background</a> .....	7
1. <a href="#">Genesis of the Review</a> .....	7
2. <a href="#">Alcohol-related harm</a> .....	8
3. <a href="#">Alcohol advertising in context</a> .....	9
4. <a href="#">Advertising – what is it?</a> .....	13
5. <a href="#">Market Self-regulation and Codes of Practice</a> .....	13
6. <a href="#">Current Regulation of Alcohol Promotion</a> .....	14
7. <a href="#">Liquor Advertising (Television and Radio) Bill</a> .....	18
8. <a href="#">Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill</a> .....	18
<a href="#">Chapter Two: Structure of the Review</a> .....	20
1. <a href="#">Goal of the Review</a> .....	20
2. <a href="#">Governance of the Review</a> .....	20
3. <a href="#">Process followed by Steering Group</a> .....	22
<a href="#">Chapter Three: Summary of Research Evidence and Other Information</a> .....	25
1. <a href="#">Alcohol consumption patterns</a> .....	25
2. <a href="#">Research on alcohol advertising</a> .....	26
3. <a href="#">Media access by young people in New Zealand</a> .....	29
4. <a href="#">Research on alcohol sponsorship</a> .....	32
5. <a href="#">Alcohol advertising spend</a> .....	32
6. <a href="#">Other information considered by the Steering Group</a> .....	33
<a href="#">Chapter Four: Consultation Feedback</a> .....	38
1. <a href="#">Overarching Themes</a> .....	38
2. <a href="#">Overview of Stakeholder Feedback</a> .....	39
<a href="#">Chapter Five: Discussion</a> .....	43
1. <a href="#">Role and impact of advertising in New Zealand</a> .....	43
2. <a href="#">Amount of advertising in New Zealand</a> .....	44
3. <a href="#">Freedom of expression and social responsibility</a> .....	45
4. <a href="#">Exposure of children and young people to advertising</a> .....	46
5. <a href="#">Naming, Packaging, Labelling and Promotions</a> .....	50
6. <a href="#">New and Emerging Forms of Advertising and Marketing</a> .....	50
7. <a href="#">Sponsorship</a> .....	52
<a href="#">Chapter Six: Regulation of Alcohol Advertising</a> .....	54
1. <a href="#">Regulatory best practice</a> .....	54
2. <a href="#">Regulatory models</a> .....	55
3. <a href="#">Projected outcomes of alternative regulatory frameworks</a> .....	58
<a href="#">Chapter Seven: The Current Regulatory Framework for Alcohol Advertising</a> .....	61
1. <a href="#">Strengths and weaknesses of the current self-regulatory system</a> .....	61
2. <a href="#">Opportunities for strengthening the existing regulatory framework</a> .....	62
<a href="#">Chapter Eight: Conclusions, Options and Recommendations</a> .....	69
1. <a href="#">Strengths of the current regulatory system</a> .....	69
2. <a href="#">Preferred regulatory model</a> .....	70
3. <a href="#">Recommendations regarding the regulation of alcohol advertising</a> .....	71
4. <a href="#">Alcohol sponsorship</a> .....	72
5. <a href="#">Implications of the recommendations</a> .....	74
6. <a href="#">Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill</a> .....	76
7. <a href="#">Final comments and other areas for possible action</a> .....	77
<a href="#">References</a> .....	78
<a href="#">Glossary</a> .....	81

# Foreword

It has been a pleasure to chair the Review of the Regulation of Alcohol Advertising. Alcohol-related harm is an important issue for New Zealand and there have been concerns about the role that advertising might play in contributing to that harm. This Review set out to address those concerns and find ways to address any shortcomings in our current system of regulating alcohol advertising.

It was gratifying to receive such a high level of interest in the Review as evidenced by the more than 250 submissions received – so many, in fact, that we had to ask the Minister for a three-month extension to give due consideration to them all. Each Steering Group member received a copy of all the individual submissions. Many of the submissions were thoughtful, well researched and provided practical suggestions on solutions to the problems identified. I wish to thank everyone who took the time to make a submission or attended the consultation hui and fono, and the organisations that participated in the commissioned research on sponsorship.

The Steering Group members engaged willingly with the task and considered the relevant issues thoroughly. Our monthly meetings were characterised by robust discussions, with the focus always on the issues rather than individuals. I wish to thank the Steering Group members for their high level of commitment, and their willingness to listen to each other and carefully consider a range of perspectives.

As noted in the report, Steering Group members had diverse views on the issues discussed and the potential solutions. While we have arrived at a set of consensus recommendations, this by no means implies that these are the preferred options for each and every member of the Group. The full range of different viewpoints, whether held by Steering Group members or expressed in the submissions, were well canvassed during our meetings.

The Steering Group needed high-quality analytical support, especially in light of the timeframe for and scope of the Review. In this regard, we were very ably supported by a Working Group comprising staff from the Ministry of Health and the Alcohol Advisory Council (ALAC): Jo Burgi, Megan Larken, Eden Green, Chris Laurenson, Sara McFall and Wendy Moore. I also wish to thank the Ministry of Youth Development for its assistance with consulting young people on the Review.

**Ashley Bloomfield**  
**Chair – Steering Group for the Review of the Regulation of Alcohol Advertising**  
**March 2007**

# Executive summary

In May 2006, the Government initiated a review of the current self-regulatory framework for alcohol advertising in New Zealand, acting on a recommendation from the Health Select Committee. The goal of the review was to assess whether or not the current regulatory framework for alcohol advertising is in harmony with the aims of the Government in regard to alcohol policy, and if not, what must be done to achieve this. A Steering Group was established to oversee the review.

Over the course of ten months, the Steering Group considered a broad range of New Zealand and international research evidence and other information about alcohol advertising and its regulation, including consultation feedback from over 250 submissions.

The Steering Group concluded that alcohol advertising plays a role in shaping the culture of drinking in New Zealand. It reflects and amplifies drinking practices in the context of a country's social, economic and cultural history. The research evidence considered by the Steering Group suggested a small but significant association between the level of exposure to alcohol advertising and alcohol consumption. The Steering Group noted that the research examining the link between exposure to alcohol advertising and alcohol consumption is complex and will continue to be contested for various reasons.

The Steering Group looked at the current self-regulatory system for alcohol advertising in New Zealand, and found that it compared well against international standards, and had a number of strengths. However, the Steering Group also identified the following features of an effective regulatory framework for alcohol advertising, which are lacking or insufficient in the current voluntary self-regulatory system:

- The system should be underpinned by legislation that sets out clear policy goals
- The jurisdictional scope should include all forms of commercial promotion and marketing communications
- Government should have the opportunity to influence the regulatory process and outcomes
- There should be enforcement powers in cases of serious or persistent non-compliance
- Rather than relying on a complaints-based approach to identifying and address potential breaches of the rules, the body responsible for administering the system should have formal powers to investigate potential breaches

- There should be systematic, independent monitoring, audit and research of the system processes and outcomes
- Public consultation during reviews of the rules governing liquor advertising should elicit a diverse range of views.

The Steering Group considered a range of regulatory options to address the identified gaps or weaknesses in the current system. The range of options included voluntary self-regulation, enforced self-regulation, co-regulation and full government regulation. After considerable debate, the Steering Group concluded that a move to co-regulation or full government regulation of alcohol advertising through a statutory body is not warranted at this time, and that the improvements needed could potentially be implemented within a system based on self-regulation.

An important change to the current self-regulatory system recommended by the Steering Group is the introduction of a coherent legislative framework that includes the following public policy goals:

- To ensure alcohol advertising does not conflict with or detract from the need for responsibility and moderation in liquor consumption
- To minimise overall exposure of alcohol advertising to children and young people under the minimum legal purchasing age.

Another significant enhancement that is recommended is the introduction of sanctions that can be invoked in specific circumstances, in particular in instances of serious or persistent non-compliance, which would also be set out in legislation. These changes would move New Zealand from a voluntary self-regulatory model to an enforced self-regulatory model that requires the participation of all industry operators. Other key recommendations are that:

- the scope of the regulatory system for alcohol advertising be extended to include all forms of liquor promotion and marketing communications
- the body responsible for administering the self-regulatory system have formal powers to investigate breaches of the rules
- there are both internal monitoring processes that are independently audited, and external, independent monitoring of the outcomes of the regulatory system
- there be a planned programme of research, based on the policy goals
- new ways of engaging with the community be explored in order to elicit a wider range of views during reviews
- the implementation of these enhancements be reviewed after two years to ensure that sufficient progress has been made.

With regard to alcohol sponsorship, the Steering Group found insufficient evidence to determine whether further restrictions on sponsorship by the alcohol industry are warranted at the present time. However, the Steering Group acknowledged concerns about the exposure of children and young people to alcohol products and brands as a result of sponsorship arrangements and recommends that:

- There be further research on alcohol sponsorship
- national, regional and local organisations be encouraged to undertake voluntary initiatives to minimise the exposure of children and young people to alcohol products and brands.

The Steering Group noted that alcohol advertising is but one of a range of factors influencing alcohol consumption and alcohol-related harm. The Review recommendations should be seen in the wider context of alcohol use and alcohol-related harm in New Zealand.

# Chapter One: Background

This Chapter provides an overview of the background and context of the Review, including:

- Genesis of the Review
- Alcohol-related harm
- Alcohol advertising in context
- Market self-regulation and codes of practice
- Current regulation of alcohol promotion
- Parliamentary Bills related to alcohol advertising.

## 1. Genesis of the Review

In June 2004 Dr Viola Palmer and 2,869 others (2002/119) presented a petition to the House of Representatives requesting that the House recommend an inquiry by the Health Select Committee into the effects of alcohol promotion, especially advertising and sponsorship. The petition was referred to the Health Select Committee on 9 June 2004.

The Health Select Committee recommended:

- that research on the health effects of advertising exposure is monitored, analysed, and takes into account the New Zealand cultural context, and that this research is considered in future reviews of advertising standards
- that adequate resourcing is available for further counter-advertising to publicise the negative consequences of alcohol consumption
- that it undertake a comprehensive review with the goal of improving the current regulatory framework for alcohol advertising.

The Government's response to the Health Select Committee's recommendations, as tabled in the House on 9 March 2005<sup>1</sup>, was that the Government was already undertaking initiatives regarding the first two recommendations, but in regard to the third recommendation, the Inter-Agency Committee on Drugs (IACD) would prepare a paper for the Ministerial Committee on Drug Policy (MCDP) exploring the need for a Government-led review of the regulatory regime for alcohol advertising and outline options for such a review.

At its meeting of 14 June 2005, the MCDP directed officials to undertake a review of the regulatory framework for alcohol advertising (the Review). Following that

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<sup>1</sup> LEG Min (05) 3/5 refers

direction, officials prepared a paper for MCDP to clarify the problem, goal and scope of that Review.

The lead Minister for the Review (Hon Damien O'Connor, Associate Minister of Health) appointed a Steering Group to oversee the Review. A Working Group was formed to support the Steering Group. The Minister directed the Steering Group to:

- direct the work of the Working Group on the Review, providing guidance and feedback as required
- provide progress reports to the lead Minister, to the MCDP, and to the IACD on a regular basis
- provide a conduit for communication between the working group and other interested parties.

## 2. Alcohol-related harm

Alcoholic beverages are enjoyed by the majority of New Zealanders, but when alcohol is misused it causes social, economic and health harms. In 2002, New Zealand had a net loss of 26,000 disability-adjusted life years<sup>2</sup> due to alcohol (Connor J et al 2005). Research suggests that there are some benefits of moderate alcohol consumption in relation to people aged 45 years or older.

The harm caused by alcohol consumption, particularly risky or heavy per-occasion consumption, impacts more heavily on younger age groups, men and Māori. The National Alcohol Strategy (Minister of Health 2001) identifies the most significant types of alcohol-related harm in New Zealand as being:

- deaths and physical health problems from alcohol-related conditions
- alcohol dependence and other mental health problems
- effects on unborn children
- drink-driving fatalities and injuries
- drownings
- violence in families and communities
- workplace injuries and lost productivity.

Young people are especially vulnerable to harm from risky or heavy consumption of alcohol. Developmentally, they are in a period of rapid brain growth. They are prone to risk-taking and are forming personal identities. Statistics on alcohol consumption patterns are presented in Chapter Three.

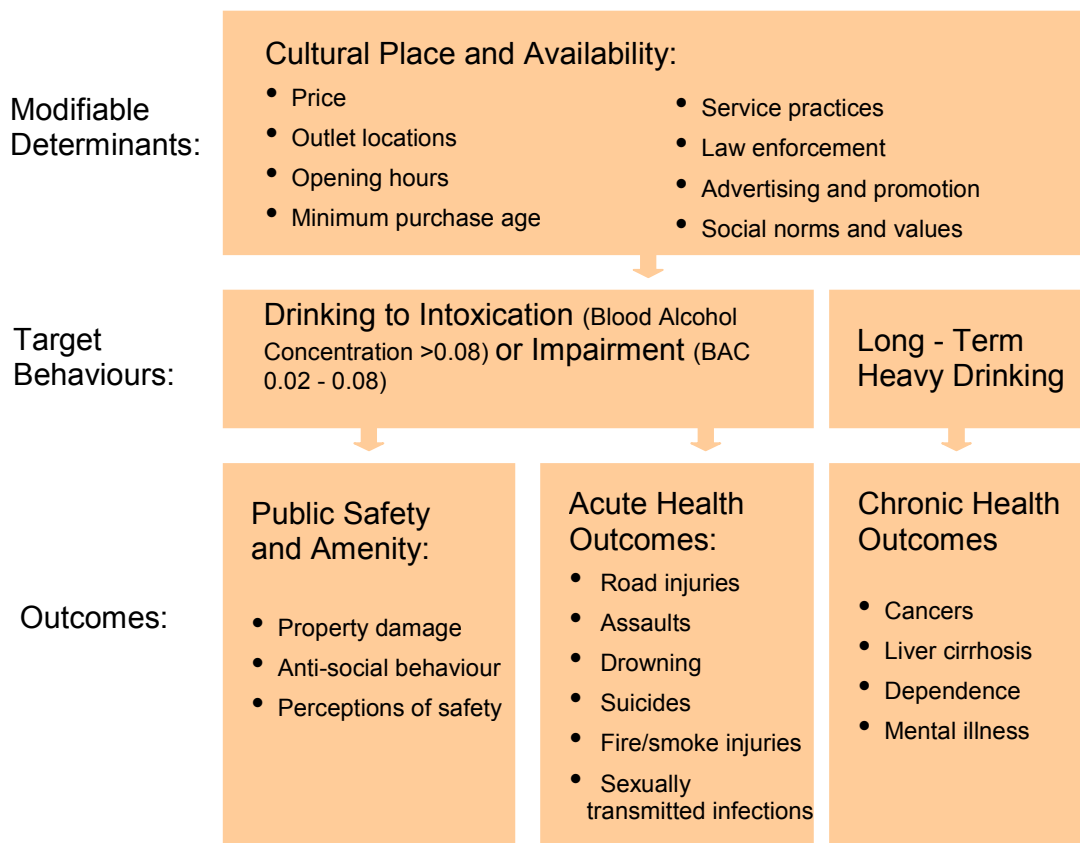
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<sup>2</sup> DALY is a measure of morbidity, disability and mortality combined.

### 3. Alcohol advertising in context

Alcohol advertising is one factor in the overall picture of alcohol consumption and alcohol-related harm. Likewise, the regulation of alcohol advertising is but one of the range of interventions to prevent and reduce alcohol-related harm. The diagram below illustrates the range of determinants of alcohol-related harm, and how these relate to drinking behaviours and outcomes.

**Figure 1: Alcohol-related harm: determinants, behaviours and outcomes<sup>3</sup>**



Source: Kypri K. *A social ecology of alcohol-related harm*, in preparation

### 3.1 Alcohol policy

#### 3.1.1 Harm minimisation – The National Drug Policy and the National Alcohol Strategy

The National Drug Policy 2007-2012 (NDP) aims to prevent and reduce the effects of harmful substance use through a balance of measures that control or limit availability (supply control), limit use by individuals, including abstinence (demand reduction),

<sup>3</sup> A version of this diagram is included in the Australian National Alcohol Strategy 2006-2009. This version is reproduced here with the kind permission of Kyp Kypri.

and reduce harm from existing use (problem limitation) (Ministerial Committee on Drug Policy 2007).

The NDP recognises that there is a continuum of harm associated with drug use and that there is no single approach or strategy that can, on its own, address the problems, but rather that a range of strategies is needed. This requires the development of approaches that are responsive to, and culturally appropriate in addressing, the needs of Māori, Pacific peoples and young people, given the over representation of these groups in many drug-related problems. The National Alcohol Strategy (NAS) sits under the NDP and sets out more detailed strategies and actions (Minister of Health 2001). The NAS is due for review, and will sit under the NDP as an action plan.

An international review of interventions to reduce alcohol-related harm concluded that the most effective policies are those that restrict the availability of and accessibility to alcohol beverages and manage the price at which they can be bought relative to other goods (Babor et al 2003).

In 2004, in recognition of New Zealand's problematic patterns of high-risk alcohol consumption, the Government approved funding for the Alcohol Advisory Council (ALAC) to run a social marketing programme aimed at changing New Zealand's drinking culture.

### **3.1.2 Supply control**

Supply control strategies are generally focused on managing the sale and supply of alcohol, controlling the sale and supply to minors – New Zealand, as with many equivalent jurisdictions, has a legal minimum purchase age of 18 years – and enforcing the law around sale and supply to intoxicated persons and minors.

In New Zealand, the sale and supply of alcohol is regulated by the Sale of Liquor Act 1989 (the Act). This Act moved New Zealand from reasonably restrictive policies towards greater alcohol availability. Many of the age exceptions for purchasing alcohol were removed and the process of obtaining a licence simplified. The Act was premised on the Laking Principles (Working Party on Liquor 1986). These were:

- Controls on the sale and consumption of liquor should not be seen in isolation but as part of the broader policy on alcohol
- Liquor laws should be seen as social legislation not as economic regulation
- Any licensing system should impose the minimum amount of control necessary to achieve the objective of the liquor laws. It should not impose unnecessary restrictions on the drinking of alcohol
- The primary objective of the Sale of Liquor Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim

of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means

- Liquor laws, while embodying principles to be applied consistently throughout the country should be sufficiently flexible to cope with changing social conditions and with particular requirements of local circumstances
- The licensing system should be simple to understand and easy to administer
- The liquor laws should be capable of effective enforcement.

A key aspect of the review that led to the Act's amendment was the desire to balance the dual interests of business and the public.

### **3.1.4 Demand reduction**

Demand reduction strategies are focused on reducing overall demand for alcohol. The relative price of alcohol is maintained through annual CPI-related adjustments to the excise tax. Controls on price are an internationally accepted policy lever and are particularly effective in reducing demand in young people and heavier drinkers. Recent research indicates that pricing in supermarkets is contributing to a reduction in the real price of some alcohol beverages (Business and Economic Research Limited 2007).

Limiting alcohol promotion through regulation is also a demand reduction strategy. The NAS identifies the following four objectives for responsible marketing:

- Ensure that all alcohol advertising/sponsorship conforms to the relevant codes of practice
- Minimise the exposure of young people to alcohol marketing messages
- Minimise the use of marketing strategies that may cause or contribute to alcohol-related harm
- Ensure that any new detrimental alcohol marketing strategies are identified early, and do not become established in New Zealand.

### **3.1.5 Problem limitation**

Problem limitation strategies are focused on reducing the harm experienced by those who misuse or abuse alcohol. In recent times, there has been a shift towards early and brief intervention before the harm becomes such that more intensive, residential treatment is required.

Early intervention provides individuals with the tools to make positive changes, and is an effective way to help address the disparities in access to advice, support and treatment. Early intervention can be delivered in a wide range of settings such as workplaces, schools and universities and healthcare settings.

### 3.1.6 Drinking Culture Change

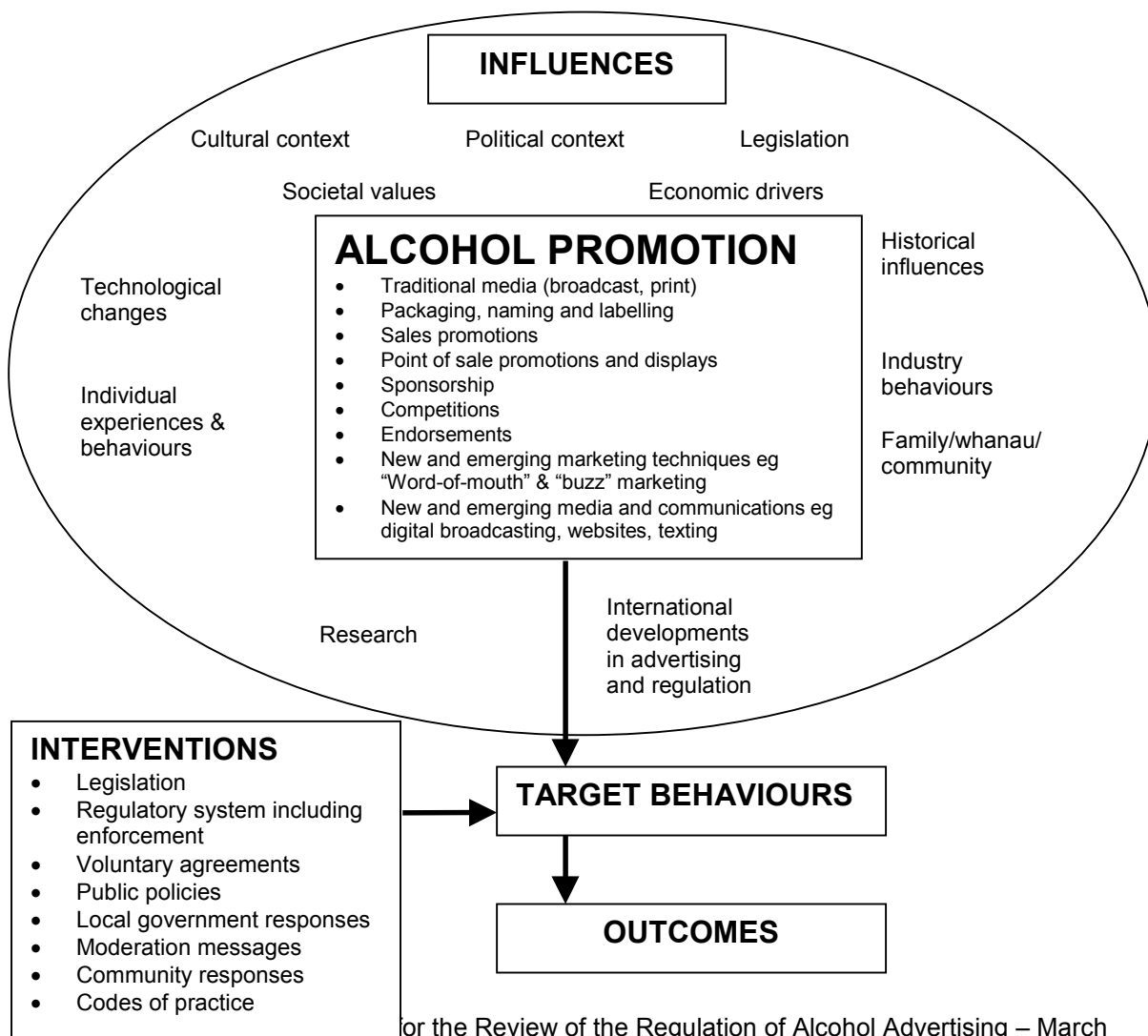
ALAC research shows that New Zealand has a drinking culture that accepts high per-occasion consumption as normal. In 2004, the Government approved funding for a social marketing programme aimed at changing this culture.

The drinking culture change programme delivers strategies across the three pillars of demand reduction, supply control and problem limitation, led and supported by a social marketing and media programme. This programme focuses on changing the culture of drinking from one that accepts, tolerates and sometimes celebrates drunkenness and intoxication to one that does not.

### 3.2 Factors influencing alcohol promotion

The table below illustrates the range of factors that influence alcohol promotion and potential interventions, including regulation. There is a two-way relationship between the aspects of alcohol promotion listed in the centre of the diagram, and the influencing factors.

**Figure 2: The factors influencing alcohol promotion and potential interventions**



## 4. Advertising – what is it?

In New Zealand's industry advertising codes, "the word 'advertisement' is to be taken in its broadest sense to embrace any form of advertising that promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity"(ASA 2006).

Consumer choice and freedom of expression are important concepts and the law protects both<sup>4</sup>. As Chen and Palmer advised the 1998 Barker Review<sup>5</sup>, freedom of expression (which includes advertising) should be impaired as little as possible and there must be proportionality between the effects of the proposal [to restrict such expression] and its purpose.

With few exceptions, advertising is now considered a legitimate method for competitors in a market to differentiate their product from that of a rival producer and/or trader. Advertisers use a broad range of media, including internet and interactive texting. Sponsorship, competitions and pricing strategies are also important promotional methods and are often used in an integrated way.

One of the key strengths of advertising today is brand-building. Advertisers look for intersections between commonly-held beliefs in society and connect these with the product being sold. This results in the product becoming part of our shared cultural experience. Once brands are accepted on this level, they become more powerful.

The entertainment industry, particularly music and sports, has become more commercially competitive globally. Music has an emotional impact and is used not only in broadcast advertisements, but also by associating a brand with popular music.

Advertisements in general are ever-present in New Zealand's environment now, extending to public spaces such as bus stops and mall toilets, buses, trains and even planes. Branded clothing, gym bags, hats and other clothing items are commonplace.

## 5. Market Self-regulation and Codes of Practice

Market behaviour is generally regulated to promote a fair and informed market place to ensure product safety, product quality, service performance and to provide a process to resolve disputes (Ministry of Consumer Affairs 1997). Regulation is the

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<sup>4</sup> Commerce Act 1986 and the New Zealand Bill of Rights Act 1990

<sup>5</sup> Chen and Palmer submission to Advertising Review 1998, Justice Barker

process of making rules which govern behaviour and the regulatory process can happen in three different ways:

- Government regulation occurs when the Government makes the rules
- Co-regulation occurs when the rules that govern market behaviour are developed, administered and enforced by a combination of government agencies acting under legislative requirements and people whose behaviour is to be governed
- Self-regulation occurs when the rules that govern market behaviour are developed, administered and enforced by representatives selected by the people whose behaviour is to be governed.

Self-regulation is usually practised through the implementation of Codes of Practice (or conduct) embodying mutual obligations by competing players in a market. With self-regulation the extent to which people who are bound by the rules, and also control those rules, can vary. The rules can be controlled exclusively by the people to be bound or they can be influenced and sanctioned by a number of outsiders, including consumers and government agencies (Ministry of Consumer Affairs 1997).

The main rationale behind the process of making law or regulation in consumer markets is the creation and maintenance of efficient markets in which the legitimate rights and interests of the consumers are reflected. This is based on the premise that competitive markets are the best mechanism for achieving an environment where business and consumers can gain mutual satisfaction in their dealings with one another.

## **6. Current Regulation of Alcohol Promotion**

### **6.1 Jurisdiction – the ASA**

The current system for regulating alcohol advertising is voluntary self-regulation administered by an independent body using codes of practice and a complaints process. The Advertising Standards Authority (ASA) is an independent organisation with responsibility for self-regulation of all advertising in all media. From 1989, upon the establishment of the Broadcasting Standards Authority (BSA) by way of the Broadcasting Act, the BSA and the ASA had shared jurisdiction over broadcast advertising for a period of time. Following the passage of the Broadcasting Amendment Act in 1993, jurisdiction over advertising content transferred solely to the ASA.

Self-regulation of advertising was recognised by the Government in March 1992 when Cabinet agreed that the advertising industry should have the opportunity to

become self-regulating<sup>6</sup>. Some procedures were formally agreed between the ASA and the Government at that time, and subsequently between the ASA and Ministry of Commerce. For instance, it was agreed that review panels would include representatives nominated by the Ministry of Health and ALAC.

The ASA oversees the standards for advertising content and the development of codes of practice for the advertising industry (including the Code for Advertising Liquor (CAL). It is made up of 14 representatives from media groups, advertisers and advertising agencies. The ASA is monitored by the Ministry for Culture and Heritage.

The ASA funds a separate self-regulatory body called the Advertising Standards Complaints Board (ASCB) that adjudicates on complaints received about advertisements that may be in breach of the codes of practice. Sections 8(2) and (3) of the Broadcasting Act 1989 now acknowledge the jurisdiction of the ASCB. There is also an Advertising Standards Complaints Appeal Board (ASCAB) that adjudicates on appeals of decisions of the ASCB. Public and advertising industry representatives make up the membership of these Boards, with a public member majority.

The Liquor Advertising Pre-vetting System (LAPS) was developed by the Association of New Zealand Advertisers (ANZA) as a process for its members to check that advertising concepts comply with the codes of practice before production. The majority of alcohol producers, advertisers and media, have agreed to not produce brand alcohol advertisements that have not received approval from LAPS. The LAPS Code Consultative Committee meets twice a year to review recent broadcast and print advertisements, with participation by people from relevant government agencies such as the Ministry of Health and ALAC, and non-governmental organisation (NGOs).

## **6.2 Jurisdiction - the BSA**

The BSA is an independent Crown entity empowered by the Broadcasting Act 1989 to oversee the maintenance of acceptable standards in programmes (as opposed to advertising) on radio and television, specifically by way of determining formal complaints and approving codes of broadcasting practice.

With regard to alcohol, the BSA's jurisdiction is over alcohol promotion within broadcast programming. Generally this covers programme sponsorship, product placement and advocacy of alcohol consumption. The three codes of broadcasting practice, covering free-to-air TV, pay TV and radio, each include an identical standard setting out these restrictions. The main standard requires broadcasters to

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<sup>6</sup> CAB (92) M 10/14 refers.

observe restrictions on the promotion of liquor appropriate to the programme genre; to ensure that any liquor promotion is responsible; and not to encourage consumption by minors.

The guidelines to the standard set out seven further obligations on broadcasters, such as limiting sponsorship credits, avoiding “advocacy of excessive liquor consumption” in programmes, and ensuring that liquor promotion does not dominate programmes.

Section 8(2) of the Broadcasting Act allows the BSA to hear a complaint about a broadcast advertisement if neither the broadcaster nor advertiser recognises the jurisdiction of the ASCB in relation to the complaint. The BSA last revised the broadcasting standards concerning restrictions on liquor promotion in December 2004.

### **6.3 Enforcement**

Voluntary self-regulation is designed to work through persuasion and cooperation rather than punitive means. To this end, the ASA educates advertisers, advertising agencies and the media about code compliance and, as mentioned above, ANZA runs the Liquor Advertising Pre-vetting System to help advertisers abide by the CAL and any other relevant codes.

The CAL has a number of principles that advertisers should adhere to. When a complaint is upheld, the advertiser, the advertising agency and the media are asked to discontinue the advertisement. Liquor and advertising companies in New Zealand generally comply with the directions of the ASCB. However, enforcement can be a problem where there is no media company involved. All decisions of the ASCB and ASCAB are released to the media and are available to the public on the ASA website.

In the co-regulatory broadcast programmes regime, if a formal complaint about a programme is upheld, the BSA has various powers to censure. These include requiring corrective statements, awarding costs against broadcasters, and requiring advertising or transmission to cease for a period. Programme-makers cannot be directly censured by the BSA, but broadcaster contracts with independent production houses almost always require an indemnity from the producer against any financial penalties awarded against a broadcast programme. All BSA decisions are also made public.

## 6.4 The Code for Advertising Liquor - social responsibility in advertising

As described earlier, the term ‘advertisement’ is defined broadly in the Advertising Codes of Practice, and includes “any form of advertising that promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity”. The definition includes advertising in all traditional media and new media such as online advertising, including websites. Emails and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes, as are neck labels or promotions attached to a product. Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail (ASA 2006).

The ASA Chairman’s statement notes “the Advertising Standards Authority is dedicated to ensure that not only does advertising comply with the law but it is also truthful and not misleading or deceptive, and that it is socially responsible<sup>7</sup>”. Both the ASA and its decision-making body the ASCB accept that advertisements should not inappropriately target children.

The CAL sets standards for alcohol advertising. Alcohol advertisements must not mislead, promote unlawful activity, inappropriately target children, or be offensive or socially irresponsible. Alcohol advertisements must be directed at adult audiences and not at minors, nor may they have strong or evident appeal to minors, as set out in the CAL (ASA 2006).

The CAL reiterates generic advertising principles and supplies more details specific to alcohol. For instance, Principle 4 of the Advertising Code of Ethics states: “All advertisements should be prepared with a due sense of social responsibility to consumers and to society” whereas, since 2003, the CAL principle has required a “high standard of social responsibility”.

The CAL was amended in 1993 to reflect the change to sole jurisdiction by the ASA. An independent review conducted in 1994 recommended that the CAL be stricter. The ASA agreed that, although the focus of the review had been on broadcast liquor advertising, the new CAL should apply to all media and not just radio and television.

There have been two further independent reviews. A review in 1998 made minor changes to the CAL. In 2003, the Review Panel from the Review on Liquor Advertising on Radio and Television, recommended that a principle of social responsibility be introduced into the CAL (Hardie Boys Review Panel 2003), and that the National Guidelines on the Naming, Packaging and Merchandising of Alcoholic

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<sup>7</sup> Chairman’s comment on ASA website, [www.asa.co.nz](http://www.asa.co.nz)

Beverages be included under this principle, in relation to advertising. Principle 2 states: "Liquor advertisements shall observe a high standard of social responsibility". Clauses expand on this, for example: "2(b) Advertisements shall not depict or imply offensive, aggressive or irresponsible behaviour or unduly masculine themes or portray unrealistic outcomes."

The 2003 Review Panel made these recommendations in light of the evidence of appeal to young people and concern expressed in submissions to the Panel. In making these recommendations the Panel acknowledged that youth drinking, especially excessive or binge drinking, was causing great concern throughout the country. The Panel was of the view that "it is essential to ensure liquor advertising is presented in a socially responsible manner which ensures inappropriate images or messages are avoided".

The 2003 review also resulted in a change in the television watershed from 9.00pm to 8.30pm. The decision to change the watershed from 9.00pm to 8.30pm was made in the context of the liberalisation of the sale of liquor in terms of the legal purchase age, the availability of liquor and Sunday trading. The new watershed time also aligned with the beginning of 'adults only' programming.

## **7. Liquor Advertising (Television and Radio) Bill**

The Steering Group notes that the Liquor Advertising (Television and Radio) Bill was introduced to Parliament on 7 September 2006, and has been postponed until 1 May 2007. It is sponsored by Jeanette Fitzsimons MP of the Green Party. The Bill proposes to ban all alcohol advertising and promotion on television and radio. The exceptions to this ban would be for foreign-made programmes, unless their sole purpose is the promotion of alcohol, and New Zealand programmes made before the Act comes into force (provided any product placement is incidental).

## **8. Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill**

The Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill was introduced to Parliament in 2005 and covered two main subjects: the minimum legal purchase age and broadcasting liquor advertising. The Bill proposed to raise the minimum legal purchase age for alcohol from 18 to 20 years. It also contained two proposals for the regulation of broadcast alcohol advertising; that the watershed time be changed from 8:30pm to 10pm, and that the jurisdiction for the regulation of broadcast advertising be moved from the ASA to the BSA.

The Bill was considered by the Law and Order Select Committee. In recognition of this Review, the Select Committee elected to split the Bill into two Bills that separately covered the purchase age issue and the broadcast alcohol advertising issues. In November 2006, Parliament voted against the Bill's proposal to raise the minimum legal purchase age for alcohol. The broadcast advertising component of the Bill has been postponed until 1 May 2007. The Select Committee recommended that the Bill be amended to clarify that the watershed provisions of the Bill only relate to television broadcast advertising, and would not apply to sponsorship. A watershed provision for radio advertising was not recommended because the proportion of young radio listeners increases later in the evening and it would not achieve its intended purpose.

# Chapter Two: Structure of the Review

This Chapter outlines the structure of the Review of the Regulation of Alcohol Advertising including:

- Goal and governance of the Review
- Steering Group membership
- Consultation on the Review
- Criteria for options considered by the Steering Group.

## 1. Goal of the Review

The goal of the review was to assess whether or not the current regulatory framework for alcohol advertising is in harmony with the aims of the Government in regard to alcohol policy and, if not, what must be done to achieve this. New Zealand's regulatory framework for alcohol advertising should:

- ensure alcohol advertising does not conflict with or detract from the need for responsibility and moderation in liquor consumption
- support a change in cultural norms away from acceptance of binge drinking towards moderate drinking and a low tolerance of drunkenness
- minimise overall exposure of alcohol advertising to children and young people under the minimum legal purchasing age.

## 2. Governance of the Review

The Government considered that a Steering Group with representatives from government agencies with an interest in alcohol advertising, and additional members with relevant knowledge and expertise, was the most appropriate governance structure for the Review of the Regulation of Alcohol Advertising. Chief Executives of relevant government agencies were invited to join the Steering Group or to nominate a representative. These individuals were to participate in Steering Group deliberations with the confidence that his/her organisation would be in agreement. Cabinet agreed to the membership of the Steering Group and its Terms of Reference in May 2006<sup>8</sup>.

The Steering Group was designed with a project governance role in mind. It was set up to oversee a Working Group, which comprised staff from the Ministry of Health and ALAC. The Terms of Reference<sup>9</sup> for the Steering Group included a

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<sup>8</sup> CAB Min (06) 18/3B refers.

<sup>9</sup> The Terms of Reference are available at [www.ndp.govt.nz](http://www.ndp.govt.nz)

confidentiality clause, and required members to declare any interest they had in alcohol advertising regulation, and state how they would manage the Review-related work to ensure the integrity of the process.

## 2.1 Formulation of the Steering Group

In addition to government officials, the Steering Group included members from relevant organisations and individuals who brought perspectives and knowledge relevant to the Review. Below is a list of the agencies represented on the Steering Group, the names of additional members, and the experience they brought to the Review.

Agency/name	Contribution to the review
Ashley Bloomfield Chair Ministry of Health	Public health expertise. The Ministry of Health is the principal advisor to the Government on health policy. It provided secretariat support and working group capacity.
Mike Macavoy Alcohol Advisory Council of New Zealand	ALAC is a Crown Entity tasked with encouraging and promoting moderation in the use of alcohol. ALAC also provided working group capacity.  Mike Macavoy attended three meetings before he finished his employment at ALAC. He was not replaced by another representative from ALAC.
Ruth Richards Ministry of Social Development	Ensuring a social sector-wide, long-term strategic view of well-being for all New Zealanders.
Alison Taylor/David Rea Ministry of Youth Development (MYD)	Expertise in the interests and well-being of young people. Alison Taylor left her position in the MYD in September 2006 but remained on the Steering Group as an independent member. David Rea replaced Alison Taylor as the representative on the Steering Group from MYD.
Phil Knipe Ministry of Justice	Administers the Sale of Liquor Act 1989 and has expertise on legislative matters including the Bill of Rights Act.
Nonnita Rees Ministry for Culture and Heritage	Expertise in regulatory impacts on broadcasting.
Jane Wrightson	Expertise in regulatory jurisdiction in relation to broadcasting

Chief Executive, Broadcasting Standards Authority	and advertising. The BSA is a Crown Entity with responsibility for broadcasting standards and has some responsibilities in relation to broadcast alcohol promotion. Jane Wrightson left her position at the BSA in February 2007 but continued as a member of the Steering Group.
Hilary Souter Executive Director, Advertising Standards Authority	Expertise in self-regulation of advertising. The ASA is the self-regulatory industry body responsible for regulating advertising.
Tim Harding Consultant	Expertise in addiction treatment, alcohol and drug policy, and related research.
Tim Rochford Lecturer in Māori Health, Department of Public Health, Wellington School of Medicine	Expertise in public health, policy analysis and a Māori perspective.

### 3. Process followed by Steering Group

#### 3.1 Timeframe

The Review was originally intended to be completed by the end of 2006. However, it soon became clear that, due to the wide scope of the Review, and the complexity of the issues, the Steering Group would need more time to complete its work. In addition, due to the large number of submissions received, the analysis of feedback from the consultation process took longer than anticipated. For these reasons the deadline for the Steering Group to report to the Minister was extended until the end of March 2007.

#### 3.2 Meetings

The Steering Group met monthly from June 2006 until March 2007 (except January 2007) to consider the issues, research and hear presentations from relevant to alcohol advertising. The minutes of the Steering Group's meetings are available on the National Drug Policy website ([www.ndp.govt.nz](http://www.ndp.govt.nz)).

### **3.3 Research evidence and other information considered**

As outlined in Chapter Three of this report, the Steering Group reviewed information and research to assist its consideration of alcohol advertising and inform their conclusions and recommendations. The sources of this information included:

- Research literature on alcohol advertising
- Research on the role of alcohol sponsorship (commissioned by the Steering Group)
- Presentations from various experts in the areas such as public health, marketing, and advertising regulation
- Presentations from international researchers with a particular interest in the impact of alcohol advertising.

### **3.4 Consultation with stakeholders**

The consultation with stakeholders was a major component of the Review. The intention of the review was to identify any areas where the current regulatory framework did not meet the Government's policy goals for alcohol advertising and to identify solutions. The information gathered during the consultation formed part of the evidence considered by the Steering Group to ascertain whether changes to the alcohol advertising regulations were needed, and whether or not desired changes could be made within the current self-regulatory framework.

The primary method of consultation was a call for written submissions on a consultation document developed by the Steering Group entitled "Review of the Regulation of Alcohol Advertising: Information for stakeholders". The consultation document presented information relevant to the Review and sought feedback on a range of issues in relation to alcohol advertising in New Zealand. The consultation document was emailed to a wide range of stakeholders, and was available on the National Drug Policy website ([www.ndp.govt.nz](http://www.ndp.govt.nz)). A separate consultation document entitled "Review of the Regulation of Alcohol Advertising: tell us what you think", based on the general consultation document, was developed for young people with the assistance of the Ministry of Youth Development.

The written consultation period ran for six weeks. Due to the tight timeframe of the Review, the Steering Group was not able to receive oral submissions as part of the consultation process. However, the Steering Group acknowledged that seeking written submissions alone is not an appropriate way to engage with Māori and Pacific people. In order to supplement the feedback from Māori and Pacific people elicited through the written submission process, a fono was held with Pacific peoples

in Auckland on 16 October 2006 and a hui was held in Auckland on 14 November 2006 with Māori.

There was an excellent response to the call for written submissions on the Review, with over 250 submissions being received from various sectors. The response from young people was particularly positive, with 96 submissions received from individuals or groups of young people. The submissions received from the consultation, including feedback received at the hui and fono, were analysed by an independent organisation and the results presented in a report to the Steering Group.

### 3.5 Criteria

The Steering Group developed the following criteria to inform its consideration of options for improving the regulatory framework developed during the course of the Review. The options considered by the Steering Group, and its recommendations to Government are summarised in Chapter Eight.

<b>Criteria</b>	<b>Consideration of policy options against:</b>
Effectiveness	<ul style="list-style-type: none"> <li>• Achieves the Government’s alcohol policy goals (taking into account possible “displacement” effects), which in relation to this Review are:               <ol style="list-style-type: none"> <li>1. Minimise alcohol-related harm and reduce inequalities</li> <li>2. Change the drinking culture</li> <li>3. Minimise the exposure of young people to alcohol marketing messages</li> </ol> </li> <li>• Clear accountability and monitoring</li> <li>• Adaptability and responsiveness</li> </ul>
Efficiency	<ul style="list-style-type: none"> <li>• Implementation and compliance costs</li> <li>• Economic impacts for different groups/stakeholders</li> <li>• Proportionality</li> <li>• Administrative simplicity</li> </ul>
Fairness	<ul style="list-style-type: none"> <li>• Freedom of expression</li> <li>• Natural justice</li> <li>• Balance of responsibility between government, private sector, individuals and parents</li> </ul>

# Chapter Three: Summary of Research Evidence and Other Information

This chapter of the report outlines the evidence concerning alcohol-related harm and summarises the evidence considered by the Steering Group, including:

- Alcohol consumption patterns in New Zealand
- A review of the most recent literature on the relationship between alcohol advertising and alcohol consumption and attitudes towards drinking
- The amount spent on alcohol advertising since 1987
- Commissioned research on alcohol-related sponsorship in New Zealand
- Presentations by New Zealand and international subject matter experts.

## 1. Alcohol consumption patterns

Research confirms that New Zealand has a culture of risky drinking across its population. Surveys of drinking patterns conducted by ALAC found that young people drink in much the same way as adults do (ALAC 2004). The survey found that overall:

- 635,000 adults drink at least once a week and binge drink<sup>10</sup>
- 1.2 million drinkers are okay with bingeing or accept bingeing and regularly binge themselves.

Around 50 percent of young people aged 12 to 17 drink alcohol. In 2003, 59 percent of these young people thought it was okay to get drunk as long as it wasn't every day; a quarter said they drank to get drunk, while a third of 12 to 17 year-olds reported they had consumed more than five 'glasses' of alcohol on their last drinking occasion.

Figures from the most recent national alcohol use survey show that an estimated 81.2 percent of the population drank alcohol in 2003. The survey results show that potentially harmful drinking patterns are common, with around 14 percent of people reporting that they consumed large amounts of alcohol in one sitting at least once a week<sup>11</sup>. Although Māori are less likely to be drinkers, they are more likely to drink in a potentially harmful way if they do drink. Approximately 55 percent of young people surveyed aged 12-17 years said that they had consumed alcohol. Of those drinkers, 12.4 percent said they had drunk a large amount of alcohol in one sitting at least once a week (Ministry of Health 2007).

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<sup>10</sup> Binge drinking is high per occasion consumption of alcohol.

<sup>11</sup> In this survey a large amount of alcohol means more than six standard drinks per occasion for men, and more than four standard drinks per occasion for women.

Drinkers in the survey were also asked about problems they had experienced as a result of their drinking in the past year. The most commonly reported problems were that people had felt the effects of their drinking the next day (37.7 percent) and that they had felt the effects of alcohol while at work, study or while doing household duties (15.1 percent).

## **2. Research on alcohol advertising**

The Steering Group commissioned a review of recent studies on alcohol marketing. The review was undertaken by the New Zealand Health Technology Assessment (NZHTA) group of Otago University. The Steering Group identified key papers for the review using the following criteria:

1. Recent systematic reviews of alcohol advertising research literature
2. A selection of studies that add to the findings of the latest systematic review, including:
  - Key longitudinal studies: these studies investigate the relationship between advertising and alcohol consumption in groups of young people over time
  - NZ qualitative research on alcohol advertising and young people.

Four consumer studies, one econometrics paper, one qualitative study and three reviews were provided. NZHTA was asked to assess these studies for their suitability on which to base policy and to advise whether any other major studies should be included.

### **2.1. Consumer Studies**

Three of the four consumer studies (Snyder et al 2006; Ellickson et al 2005; Stacey et al 2004) used alcohol consumption as the key outcome variable. In two studies, exposure to various types of alcohol advertising was associated with increased alcohol consumption. In the other study (Martino et al 2006), a range of exposure measures was used. In general, the results favoured a positive association between alcohol advertising exposure and subsequent alcohol consumption, though there was some level of inconsistency across the different exposure measures. Specifically, of the five different exposure measures, one was associated with a negative association with alcohol consumption. However, the majority of exposure measures favoured a positive association with subsequent consumption.

The fourth consumer study (Martino et al 2006), focused on alcohol outcome expectancies as the key outcome measure. This study focused on the role of social

influences and social bonding rather than exposure to alcohol advertising (although the latter information was collected). After controlling for a range of potential confounds, exposure to alcohol advertising was not associated with a tendency to rate favourable outcomes as more likely to occur when drinking than unfavourable outcomes or a tendency to rate all outcomes, regardless of valence, as likely.

This result implied social bonds/influences had a greater role in determining alcohol intake than exposure to alcohol advertising. The four studies all had limitations but they were generally well conducted.

## **2.2 Econometrics Paper**

The NZHTA concluded that, in general, econometrics papers are considered to be of lower utility than consumer studies. Particular limitations include:

- Use of highly aggregated data result in an inability to study subgroups of the population (such as young people)
- Reliance on a range of assumptions in modelling papers
- Concerns that simplistic models do not accurately reflect the complex interactions involved.

Most econometrics papers have found no association between exposure to alcohol advertising and alcohol consumption. However, the econometrics study included in this review (Saffer and Dave 2002) observed an association between advertising bans and reduced alcohol consumption. This study has adequate variation in exposure, which many others included in earlier systematic reviews did not.

The study aimed to examine the relationship between alcohol advertising bans and alcohol consumption using data from 20 OECD countries over a period of 26 years. The study found that partial and total advertising bans reduced alcohol consumption. However these results were only significant at the 10 percent (as opposed to the normal 5 percent) significance level.

The limitations of this study included the reliance on assumptions, use of aggregate data, potential sources of misclassification and susceptibility to confounding.

## **2.3 Qualitative Paper**

This was a New Zealand study of 250 participants aged between 14 and 18 about alcohol marketing (McCreanor et al 2005). Data were collected in focus group discussions and three themes identified: participants identified with alcohol marketing and discussed the sophisticated understandings of youth culture which were reflected in the alcohol advertising. They demonstrated identification with

brands at social and personal levels. The participants also had varied ways of adopting alcohol identities for use in personal and social settings.

The limitations of this study included:

- lack of clarity about the recruitment of participants and whether diverse views would be included through sampling
- the views of non-drinkers are not represented and
- there was no information on the impact of the researchers on the focus group discussions.

## **2.4 Review papers**

The three review papers assessed by NZHTA were reviews of the recent literature about alcohol advertising. Two of the three reviews are described as narrative reviews (Foundation for Advertising Research undated; Hasting et al 2005). NZHTA noted that it would not normally include these studies for appraisal in reviews it conducts as they provided minimal detail on the study methodology – in particular, there was no information on databases searched, search terms, selection criteria, method of assessing study quality and method of extracting data and critically appraising the literature.

The third study (Cooke et al 2002) provided a description of the databases searched and search terms used. However, information on selection criteria, data extraction and critical appraisal methods was lacking. While it was difficult to assess the completeness of the studies selected, this review reiterated the problems with econometric papers and described the apparent complexity evident from consumer studies. They suggested a two-way relationship existed: alcohol advertising encourages targeted drinkers to drink and being a drinker will encourage attention to advertising (Cooke et al 2002).

## **2.5 Summary**

All the papers included in the NZHTA review had limitations and it was apparent from the review articles and one of the consumer studies that this is a field with inconsistent study findings. However, overall the NZHTA findings were that the papers provided some data that:

- was consistent with the hypothesis that alcohol advertising influences non-drinkers to start drinking
- supported the hypothesis that exposure to alcohol advertising influenced the level of intake amongst drinkers and

- supported the hypothesis that drinking generated a positive attitude to alcohol advertising.

One paper was consistent with peer and adult approval being more important determinants of alcohol intake for young people than exposure to alcohol advertising.

Importantly, the NZHTA review concluded that the more robust studies did provide some support for a small but statistically significant association between exposure to alcohol advertisements and alcohol consumption, particularly in young people.

### 3. Media access by young people in New Zealand

Alcohol advertising is increasing be conveyed via a range of media and communications technologies. The Steering Group considered it important to understand the level of access to and use of these technologies, particularly by young people. In November 2006, the Working Group prepared a report on media access by young people for the Steering Group. Some of this information may already be out of date, given the current rapid rate of change.

#### 3.1 Mobile phones

New Zealand’s mobile market is approaching saturation, with 3.5 million subscribers and a penetration level of 86 percent in mid-2005. The mobile subscriber base increased by 17 percent between 2004 and 2005. Growth is forecast to begin tapering off during 2006 and 2007 (Budde 2006).

A 2005 survey of students in a large metropolitan decile 4 high school found that 73 percent of students used mobile phones. Of those who don’t have their own mobile phone, 69 percent reported that they use others’ mobile phones.

#### 3.2 Internet

The table below shows internet access in the home, as measured by the New Zealand Living Standards Survey (MSD 2006).

<b>Proportion of the population with internet access in the home, 2000 and 2004</b>		
	Internet access	
	<i>2000</i>	<i>2004</i>
<i>Population estimates</i>		

Total adult population 18 years and over	36.5	65.1
Dependent children	38.8	66.0
<i>Economic family ethnicity</i>		
Māori economic family	26.9	45.5
Pacific economic family	11.0	39.5
European economic family	36.8	63.1
Other economic family	50.5	79.6

The table shows overall less home internet access by Māori and Pacific populations, but access has increased across all groups.

### 3.3 Broadband

Broadband access remains very low in New Zealand compared with other developed markets. However, during 2005 the number of dial-up internet subscribers started to decline as customers migrated to broadband in more substantial numbers, and this trend is forecast to continue. In June 2005, OECD figures showed a total of 284,000 broadband subscribers for New Zealand. Regulatory intervention to introduce Local Loop Unbundling will free up the market (Budde 2006), and implementation of the Government's Digital Strategy will gradually improve access to high-speed ICT ([www.digitalstrategy.govt.nz](http://www.digitalstrategy.govt.nz)).

### 3.4 Television

#### 3.4.1 Free-to-air television

There are currently four main free-to-air television operators, with several smaller companies operating regionally. The four main companies are Television New Zealand, CanWest TVWorks, Prime and Māori Television. The free-to-air viewing audience appears to be trending downward over time as media options increase.

In June 2006, the Government announced that it would support the establishment of free-to-air digital television in New Zealand to be delivered by FreeView, a consortium of New Zealand's free-to-air broadcasters.

The Government has agreed to provide up to \$25 million over five years to assist with establishment of FreeView, with the bulk of costs to be met by broadcasters. Broadcasters will also have free access to digital frequencies during the transition to digital, estimated to be worth up to \$10 million.

FreeView will operate on a non-profit basis during this period, with open access for new services. At least one channel, "TVNZ 4", will target part of its schedule to children and young people. This will join C4 (music channel) and some Sky channels indirectly targeting young people.

### **3.4.2 Pay TV**

Sky TV is the primary supplier of pay TV content in New Zealand. It supplies over 70 TV and radio channels on a primarily digital TV platform, several of which are directly targeted at children and young people. A comparatively small amount of advertising is carried. In 2006, Sky introduced "MySky" a PVR (personal video recorder) which allows easy recording and sorting of programmes on to a hard drive. In early 2007, Sky began streaming eight specially-formatted channels on mobile phones, including children's programmes. Sky has a growing market share, and the proportion of New Zealand households that are residential Sky TV subscribers increased from 29.5 percent in 2001 to 42 percent in 2006.

### **3.4.3 Television broadcasting regulation**

As indicated above, conventional television viewing is becoming more fragmented as viewing options increase and technology expands. This has implications for regulatory systems, which generally have a strong emphasis on protection of children and young people. An independent opinion piece commissioned by the BSA summarises some of these implications in five key points, as follows:

1. An exploding information and communications technology revolution is creating a range of new formats for the mass delivery of data, including news and news-like broadcasts, films, and entertainment programming.
2. The technologies are changing the entire media environment into something more interactive, fast-paced, demand-driven, and collaborative.
3. The BSA does not have jurisdiction over many of these formats. Some may be impossible to control anyway. Competition from unregulated formats may render broadcasting standards obsolete. Already they are revealing gaps and inconsistencies in our regulatory regime.
4. The Government will have to decide whether (and if so, how) to regulate them.
5. Control of broadcasting-like content will probably revolve less around laws and more around labelling and filtering requirements, voluntary protocols and self-regulation, contractual arrangements, and evolving social norms. (Brown and Price 2006).

These conclusions are also germane to the future regulation of alcohol advertising.

## **4. Research on alcohol sponsorship**

There is little information on the extent or nature of sponsorship activity by the alcohol industry within New Zealand. As part of this Review, a survey was conducted on alcohol sponsorships in New Zealand.

Responses were received from 91 arts and sports organisations. All the respondent rugby clubs that received sponsorship had beer sponsorship. Other sports and events sponsorships were split between wine and beer. The arts organisations principally received their sponsorships from the wine industry. Few of the surveyed organisations thought that promoting alcohol via sponsorship conflicted with their organisational aims in any way. Over half the respondents that answered the relevant questions have both alcohol sponsorship and people under 18 involved in their team or event, either through participation or viewing.

Although alcohol sponsorship is widespread, the survey showed that sponsorship from the alcohol industry is typically only a small part of the total sponsorship received by organisations. For over two-thirds of the respondents with alcohol sponsorship, alcohol sponsorship accounts for 20 percent or less of their total sponsorship. This result is corroborated by a study of sponsorship logos on the sports clubs' websites that found that, for rugby clubs, 20 percent of their sponsorship was from the alcohol industry, while for other sporting codes, 10 percent or less of their sponsorship came from sources associated with alcohol.

Along with other sponsors, alcohol companies are involved in sponsorship of events associated with youth. Examples include popular music events such as the Big Day Out, and extreme sports such as the 'X-air' event. Branded events give the sponsoring company a high level of control of both the event and the associated marketing.

Sponsorship is often part of larger marketing campaigns involving advertising, including, for example, in store promotions, packaging, branded merchandise and a full suite of channels for communicating the sponsorship arrangement, including new media technologies such as internet and cell phone (Research New Zealand 2007).

No research on how alcohol sponsorship affects overall alcohol consumption was identified.

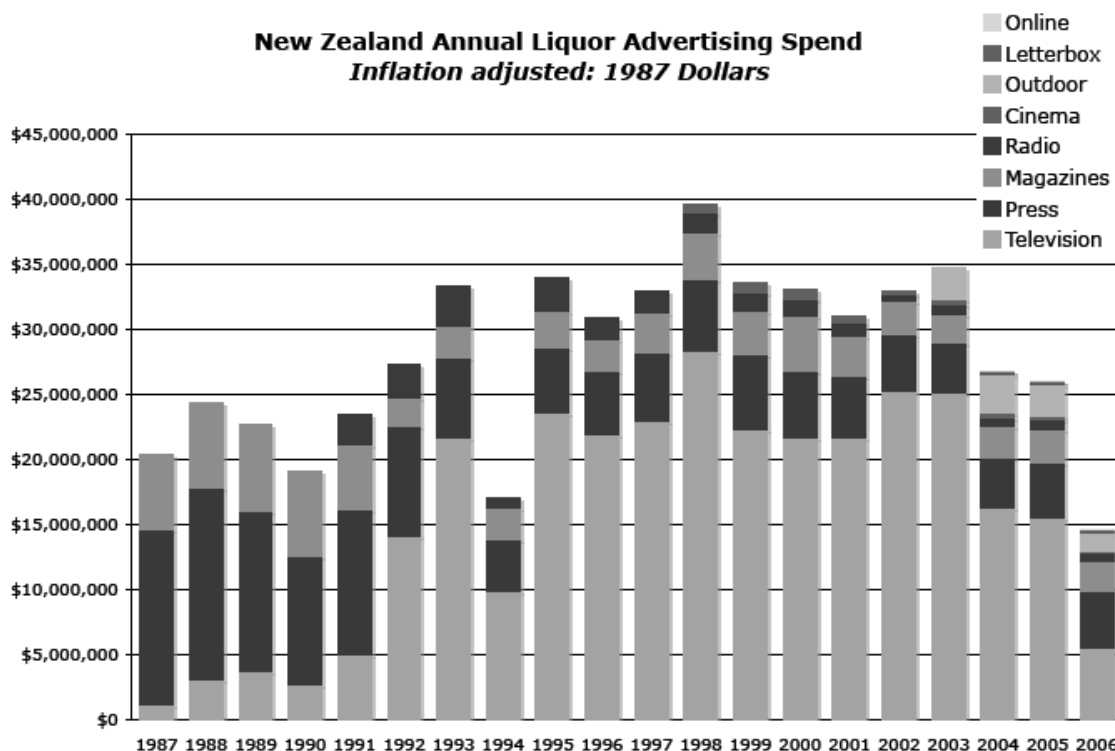
## **5. Alcohol advertising spend**

The Steering Group received the most recent figures on alcohol advertising spend, a common measure of the amount of alcohol advertising. AC Nielson collects

information on the amount spent on advertising in various media (online, letterbox, outdoor, cinema, radio, magazines, press and television). The graph below from AC Nielson shows inflation-adjusted alcohol advertising spend since 1987.

These summary data show expenditure by media category, but not specific media, that is, magazine title, television channel, radio station. Thus, they do not show which groups are exposed to the advertising. Additionally, the data does not show marketing or promotional spend beyond paid advertising (eg sponsorship, point of sale and public relations).

**Figure 3: Alcohol advertising spend**



Source: AC Nielson.

## 6. Other information considered by the Steering Group

Several members of the Steering Group attended presentations organised by Alcohol Healthwatch, which are summarised below.

## **6.1 Dr David Jernigan, Executive Director, Center on Alcohol Marketing and Youth (CAMY), Georgetown University, Washington DC**

Dr Jernigan summarised recent research into the association between drinking patterns in young people and alcohol marketing. Most of these studies had been selected by the Steering Group for the NZHTA review.

Dr Jernigan reported that qualitative research has found that:

- young people are particularly attracted to advertisements with humour, music, character and a story
- those young people who liked the alcohol advertisements were found to be more likely to believe in the positive consequences of drinking and have a greater likelihood of drinking themselves (Chen et al 2005).

Underage drinking accounts for between 12 and 20 percent of the United States alcohol market, where the legal drinking age is 21 years, and Dr Jernigan discussed the different ways that alcohol was marketed and how this increases youth exposure to alcohol advertising. These marketing methods include product placement in films, alcohol-branded merchandise, and youth-focused games on alcohol websites.

## **6.2 Associate Professor Sandra Jones, Centre for Health Behaviour and Communication Research, University of Wollongong**

The focus of Professor Jones' presentation was the Australian regulatory framework for alcohol marketing. Alcohol advertising spend in Australia between 2002-2003 (excluding online advertising) was Aus\$94.32 million. Although all advertising comes under the Advertiser Code of Ethics, alcohol advertising is regulated through a voluntary system of self-regulation – the Alcoholic Beverages Advertising Code (ABAC) - developed by the alcohol industry. The ABAC also has its own complaints management system and covers internet advertising and promotional materials. The ABAC states that advertisers must:

- show a balanced and responsible approach to alcohol consumption and must not encourage excessive consumption or underage drinking
- not depict alcohol contributing to social, sexual or business success, nor must it be associated with the operation of motor boats, cars or other potentially hazardous activities.

In 2004/05, Professor Jones and colleagues reviewed way the ABAC and Advertising Standards Board deals with complaints about alcohol advertising. The review showed:

- poor response systems and mechanisms for monitoring a self-regulated system such as the ABAC, particularly given the increase in emerging forms of advertising, such as viral and web marketing
- the ABAC only deals with the content of advertisements and does not address the issue of exposure to advertisements.

## **Presentations to the Steering Group**

### **6.3 Bronwyn Dalley, Chief Historian, Ministry for Culture and Heritage**

Ms Dalley presented “Lovely Booze – a history of alcohol in New Zealand”. She focused on the 19<sup>th</sup> century through to 1980. The presentation traced the roots of New Zealand’s male-oriented, “hard-drinking” culture, the prohibition and temperance movement, and the development of contemporary alcohol regulations.

### **6.4 Tim McCreanor, Researcher, Te Ropu Whariki, Massey University**

Dr Tim McCreanor and his colleagues discussed the New Zealand youth experience of alcohol marketing, and presented some of the findings of a Massey University research study involving thematic and discursive analysis of 40 groups of three or more New Zealand young people (McCreanor et al 2005). This study was included in the NZHTA review.

The presentation included several direct quotes from young people interviewed during the study. The presenters talked about their finding that young drinkers were very aware of alcohol brand marketing, perceiving the “cool”, fun and humorous elements, and expressing opinions on what brands appealed to them and why. Older drinkers (around age 17) displayed an ability to be “media savvy”, whereas younger ones (around age 14) were much less likely to. Drinking was associated with entering the adult realm. Some of the young women interviewed associated drinking with freedom.

### **6.5 Jeff Clark, Clemenger BBDO**

Jeff Clark presented to the Steering Group on modern marketing principles, objectives and methods. Strong brands succeed in “telling a story”, understanding that the heart is as important as the head when it comes to consumers’ choices. For integrated marketing communications, content is more important than channel, and channels are decided through a planning process that considers all possible brand contact points.

Recent trends in alcohol marketing include a surge in marketing in youth environments and cultural events where branding is carefully tailored to appeal to particular youth subcultures. Promotion often occurs where young people congregate and make good use of internet and texting. It was also noted that older people, not attuned to youth environments, are seldom aware of the promotion concerned. During discussion, it was noted that:

- the current advertising regulatory framework is designed for the traditional three-party process to advertising, that is, the advertiser, the media company and the consumer
- some forms of advertising, such as internet and viral marketing, involve a two-party process without a media company acting as gatekeeper.

## **6.6 Glen Wiggs, Director, Foundation for Advertising Research**

In his presentation Glen Wiggs addressed the different models available to regulate advertising and the different roles a regulator can play in terms of achieving compliance and cooperation. Mr Wiggs advised that a responsive regulatory model is one that elicits the best response from those being regulated; persuasion is cheap, punishment is expensive. He noted that non-advertising promotion or broader forms of marketing, are not regulated in New Zealand. These broader forms of marketing include packaging, labelling, brand name, external wrapping, promotional material and promotional activities.

Mr Wiggs compared the regulatory system in New Zealand with other countries and reported that 52 countries had legislation to ban or restrict alcohol advertising, 23 had no controls, 22 had a combination of self-regulation and legislation and 16 had self-regulatory controls. He used the UK as an example of a country with self-regulation for advertising that also had a self-regulatory code for the wider forms of marketing. This was one of the benchmarks established at a 2004 London workshop titled 'Sharing Best Practice in Self-regulation'.

Mr Wiggs noted that the challenge for New Zealand is for the alcohol industry, the advertising industry, and media to work together with government agencies and health groups to achieve agreed objectives. Mr Wiggs is hopeful that this can work with alcohol as this kind of collaboration works in other areas.

## **6.7 Sally Casswell, Director, Centre for Social and Health Outcomes Research and Evaluation, Massey University**

Professor Sally Casswell presented data on alcohol consumption patterns, harms and trends, expenditure and exposure to alcohol advertising and the implications of these data for the development of effective alcohol policies.

Professor Casswell stated that, in her view, the evidence base around impacts (ie longitudinal studies of young people) is sufficient to draw firm conclusions for policy-making. However, she identified the following areas that could be researched further:

- Alcohol sponsorship
- Impacts on recovering alcoholics
- The way marketing affects parents' responses to their children.

# Chapter Four: Consultation Feedback

This Chapter summarises feedback received from stakeholders during the consultation on the Review. All members of the Steering Group received a copy of all of the submissions.

## 1. Overarching Themes

This section provides a summary of the key themes emerging across the submissions. Two separate coding frameworks were developed; one for the youth submissions and one for the adult submissions. This reflects the different formats, questions and responses in respect of each. In total, 252 written submissions were analysed.

Submissions were analysed both in terms of the specific themed questions asked in the Consultation Documents, as well as from an overarching consideration of the explicit or inferred position in each submission in relation to the current self-regulatory framework for the regulation of alcohol advertising. An analysis of notes from the consultation hui and fono, as well as feedback representative of people recovering from alcohol dependence, was also undertaken using the existing coding framework developed.

### 1.1 Youth submissions

Submissions representing the youth voice were received from 105 submitters. For the purposes of the analysis, these were categorised as:

- Youth-orientated submissions (9)
- Groups of youth (7)
- Individual young people under 25 (89).

There is a consensus amongst young people that alcohol advertising influences, and has an impact upon, young people (as do other factors such as peer pressure).

Youth submitters do not think that alcohol advertising influences their own attitudes or behaviours towards alcohol, but it does impact on different peers.

Alcohol advertising is seen as seeking to target youth.

A large number of the youth submissions received indicate that the present regulations are 'about right', although more control on youth exposure to alcohol

advertising is considered necessary, particularly in relation to forms of media in addition to television.

Submissions from youth-orientated organisations propose that alcohol advertising should be government-regulated.

## **1.2 Adult submissions**

In total, 147 adult submissions were analysed.

These submissions are divided as to whether or not the current self-regulatory framework is supported.

Those who support the present system largely see it to be working well. Some of these submissions would support amendments to the present codes of practice in the areas of newer forms of advertising and naming and packaging. Some of these submissions positively refer to a proposed expansion of the regulations by the ASA. Submissions supporting this position generally come from the following groups: *media/advertising, liquor industry, sponsored groups.*

Submissions that do not support the current self-regulatory framework see alcohol advertising as a public health issue best regulated by the Government. In the main, these submissions come from the following groups: voluntary and community sector, individuals, health sector, researchers.

Generally, submissions across the board indicate some concern about newer forms of advertising, youth exposure to alcohol advertisements, and the naming and packaging of products. There is a level of consensus that regulations need to be tighter or expanded to better control potential harmful effects of alcohol advertising in these areas.

## **2. Overview of Stakeholder Feedback**

This section highlights the general feedback received by stakeholder groups to demonstrate the difference of opinions held. It is acknowledged that there is a potential for diversity of opinion within each stakeholder group. However, this summary offers an overview of the more general views held by each group. Where such a generalised opinion does not exist, the diversity within the group is made explicit.

Stakeholder groups are listed below in order from those with the highest level of support for the existing self-regulatory framework through to those who are not supportive of it and advocate change.

## **2.1 Liquor industry**

- Support self-regulation – it is working well, so why change it.
- Support the codes of practice, although just over half would support some amendments.
- Amount of advertising is decreasing (ad-spend).
- More control is needed over newer forms of advertising.

## **2.2 Media & advertising bodies**

- Support self-regulation.
- Support the codes of practice, although nearly all would support some amendments.
- Alcohol is marketed in a socially responsible way.
- The amount of alcohol advertising is not an issue and is decreasing (ad-spend).
- More control is needed over naming and packaging material.

## **2.3 Sponsored groups**

- Support self-regulation and the current codes of practice.
- The codes of practice and the commitment and responsibility of industry and sponsored groups together ensures alcohol is marketed in a socially responsible way.
- Sponsorship provides vital revenue for community groups and events. Further controls will adversely affect the operation of events and groups.

## **2.4 Government**

- Differing opinions.
- One submission appears to support the current codes of practice.
- Another provides that amendments are required to tighten the control of alcohol advertising.
- The other submission received does not indicate support for either self-regulation or the present code, but proposes that alcohol advertising should be government-regulated.
- Two of the submissions provide that more control is needed over alcohol advertising to control the volume of advertising and youth exposure to it.

## **2.5 Regulatory bodies**

- Differing opinions.
- One regulatory body supports self-regulation, but proposes that the codes of practice require amendment and more control is needed over promotional advertising. This submission makes reference to a proposal by the ASA to extend its jurisdiction.
- The other regulatory body does not support the current framework and does not consider that a voluntary code is adequate any longer. This submission indicates concern with the amount of exposure to alcohol advertising, and advocates greater balance with advertisements promoting moderation, and a rigorous enforcement regime.

## **2.6 Individuals**

- Do not support self-regulation and the Code and propose that alcohol advertising should be controlled by government regulation. About half of the individual submissions indicate that alcohol advertising should be banned.
- Sponsorship regulations are not effective in minimising harm.
- Concerns about young people's exposure to alcohol advertising and advertising making drinking desirable.

## **2.7 Voluntary & community sector**

- Do not support self-regulation and the codes of practice – alcohol advertising should be government regulated as alcohol-related harm is a public health issue.
- Current system lacks accountability and there are concerns with the complaints process.
- More control is considered necessary over newer types of advertising and placement and exposure to advertising.
- Tighter control of sponsorship is required.

## **2.8 Health sector**

- Do not support self-regulation. Support government regulation because alcohol advertising is a public health issue.
- Do not support the present codes of practice. Almost half of the submissions propose a total ban on alcohol advertising.
- Youth are considered to be exposed to alcohol advertising due to placement. "At risk" groups are targeted by alcohol advertising.
- More control over newer forms of advertising is considered necessary.

## 2.9 Researchers

- Do not support self-regulation and the codes of practice – alcohol advertising should be government regulated as alcohol-related harm is a public health issue.
- Current complaints process is perceived as biased.
- More control is considered necessary over newer types of advertising and placement and exposure to advertising.
- Indicates sponsorship encourages harmful drinking - alternative sponsorship can be created.

## 2.10 Māori

The hui was attended by nine people, many of whom were from the health sector. Views expressed include:

- Māori do not seem to be targeted by alcohol advertisers
- The influence of alcohol advertising for Māori is through sports sponsorship, caps, T-shirts and other giveaways. Humorous advertisements have high appeal.
- Alcohol advertising works against efforts to change the binge-drinking behaviours and culture
- Generally Māori do not like to use formal complaints processes
- There should be more stringent controls on alcohol advertising and the community needs to have a role and be heard.

## 2.11 Pacific

The Pacific peoples fono was attended by nine people. All worked in their communities, some representing more than one organisation, and some in the health sector. Views expressed include:

- Pacific peoples do not seem to be targeted, but there was general agreement that there is too much alcohol promotion
- Availability and relative price of alcohol were seen as more significant factors impacting on the drinking culture of Pacific peoples than alcohol advertising
- Pacific peoples are more likely than the general population to be offended by alcohol advertisements perceived to conflict with Christian-based values
- Pacific people do not find the complaints system user-friendly
- Social marketing is an effective tool for countering alcohol advertising, if carefully designed to reach Pacific sub-groups.

# Chapter Five: Discussion

This Chapter outlines the Steering Group's conclusions in relation to the following issues:

- The role and impact of advertising
- The amount of advertising
- Freedom of expression and socially responsible advertising
- Exposure of children and young people to alcohol advertising
- Naming, packaging, labelling and promotions
- New and emerging marketing techniques
- Alcohol sponsorship.

## 1. Role and impact of advertising in New Zealand

### 1.1 Role of advertising

The Steering Group has considered a broad range of data on alcohol advertising, including published articles, qualitative and quantitative research, as well as presentations from both New Zealand and international researchers. On the basis of this evidence, the Steering Group has concluded that alcohol advertising plays a role in shaping the culture of drinking. It reflects and amplifies drinking practices in the context of a country's social, economic and cultural history.

### 1.2 Impact of advertising

There is ongoing debate about the nature and extent of the relationship between exposure to alcohol advertising and the level and patterns of alcohol consumption at a population level. The submissions received during the consultation process of the Review presented polarised views of the findings of existing research, with industry-related organisations concluding that there is no obvious association between the two, and public health organisations concluding that there is a clear relationship.

#### 1.2.1 Benefits of alcohol advertising

The Steering Group notes that a number of stakeholders identified various benefits of alcohol advertising. These include:

- Sponsorship of sports clubs, which contribute to a healthy and active society

- Contribution to sports, music, arts and cultural organisations and events - including the ability of some events to increase in size and attract overseas attention
- Information provided to consumers about the price, characteristics of and where to purchase a product.

### **1.2.2 Harms of alcohol Advertising**

The Steering Group considered a range of information about the harms of alcohol advertising. A number of stakeholders submitted that alcohol advertising contributes to harmful drinking attitudes and behaviours, and has a particular effect on young people and people recovering from alcohol dependence. Other harms identified by submitters are that alcohol advertising links alcohol to 'normal' or desirable behaviour, and that it promotes only the positive side of alcohol use rather than balancing these with the negative consequences. Many of these submitters referred to research that they consider to show a link between alcohol advertising and subsequent consumption or attitudes to alcohol.

As discussed in Chapter Three, the Steering Group sought an independent critical review of previous reviews and key recent published research literature on the relationship between alcohol advertising and alcohol consumption. Most research has examined the relationship between exposure to alcohol advertising and consumption in young people. The review concluded that, when all the published studies are considered together, the evidence suggests a small but statistically significant association between the level of exposure to alcohol advertising and the level and patterns of alcohol consumption.

However, research also shows that alcohol advertising is but one determinant of drinking behaviour. Other significant factors are price, access, availability, and parents, peers and other social influences.

The Steering Group notes that the research examining the link between the level of exposure to alcohol advertising and the level and patterns of alcohol consumption will continue to be contested for a range of reasons.

## **2. Amount of advertising in New Zealand**

The Steering Group notes that AC Nielson figures to 2006 show that alcohol advertising expenditure increased, when adjusted for inflation, that alcohol advertising expenditure decreased 45.9 percent between 1998 and 2006, mainly due to a large decrease in spending on television advertising. The AC Nielson data

measure television, radio, press, magazine, cinema, outdoor, letterbox and online media advertising.

The Review consultation document stated that there has been an increase in alcohol advertising expenditure since 1992. In fact, the picture is somewhat more complex, with an increase from 1992 to 1998, a general levelling off until 2003, and a steep decline since 2003.

### **3. Freedom of expression and social responsibility**

#### **3.1 The Bill of Rights and the right to the freedom of expression**

Section 14 of the New Zealand Bill of Rights Act 1990 provides that that “Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.”

Advertising is a form of expression which involves imparting information. Legislation or practices that regulate the content of any publication, broadcast, display or promotion will involve some level of interference with the right to freedom of expression.

The Steering Group notes that the Bill of Rights Act allows freedoms to be subject to such reasonable limits prescribed by law as can be justified in a free and democratic society. Certain categories of expression (including advertising) are more likely to be subject to reasonable limits than others (such as political and social speech – which relate to participation in democratic processes).

In a few cases, it is recognised that risks to public safety may allow complete prohibitions on advertising (eg tobacco advertising). In New Zealand, there are existing limits on alcohol advertising that are accepted as reasonable limitations on the right to freedom of expression, which include limits on content, timing and placement.

The Steering Group considers that any changes to the current regulatory framework would need to be based on a consideration of the balance between the benefits and harms of alcohol, alongside the New Zealand Bill of Rights Act requirement that any restrictions be important, significant to the objective and proportionate. This means that any increase to the restrictions on alcohol advertising would need to be a justified limitation on the right to freedom of expression set out in the NZ Bill of Rights Act.

## 3.2 Social responsibility

One of the five basic principles of the Advertising Code of Ethics states that “all advertisements should be prepared with a due sense of social responsibility to consumers and to society”. In addition, Principle 2 of the CAL states that “liquor advertisements shall observe a high standard of social responsibility” (ASA 2006). The CAL sets out guidelines for this principle, for example that advertisements should not depict or imply offensive, aggressive or irresponsible behaviour or unduly masculine themes, or that alcohol will create a significant or desirable change in mood or social environment, and so on.

The Steering Group asked stakeholders what ‘social responsibility’ means in the context of alcohol advertising. Few submitters responded to this question, but those who did generally thought that social responsibility means being mindful of the harm and consequences of alcohol consumption and ensuring that advertisements do not ignore its negative effects. Some submitters, particularly those from the health sector, felt that alcohol cannot be marketed in a socially responsible way as this is incompatible with the need to make a profit, while industry groups pointed out that the concept of social responsibility is embodied in the guidelines of the Code.

The Steering Group considers it important that alcohol advertising is conducted in accordance with a high standard of social responsibility, which recognises the potential harms of alcohol, and the need to minimise the exposure of children and young people to alcohol advertising messages. The content of alcohol advertisements should not directly or subtly reflect a binge-drinking culture.

## 4. Exposure of children and young people to advertising<sup>12</sup>

One of the objectives for responsible marketing of alcohol set out in the National Alcohol Strategy is to “Minimise the exposure of young people to alcohol marketing messages”. With this in mind, the Terms of Reference for the Review state that New Zealand’s regulatory framework for alcohol advertising should minimise overall exposure of alcohol advertising to children and young people under the minimum purchase age.

Principle 4 of the CAL states that liquor advertisements shall be directed to adult audiences, shall not be directed at minors nor have strong or evident appeal to minors in particular. The principle includes a placement threshold for television advertising – the ‘watershed’ time of 8:30 pm – and for the number of ads per hour.

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<sup>12</sup> With regard to the issue of exposure, this paper generally refers to young people under the legal alcohol purchase age of 18.

There are no placement rules specific to other media. The Steering Group noted that there is limited ability to control children's exposure to outdoor advertising (such as billboards) and point of sale marketing.

With regard to ensuring that young people are not targeted by alcohol advertising, the Code states that:

- Alcohol advertisements shall be directed at adults, not at minors, and they should not have strong or evident appeal to young people
- People consuming alcohol in advertisements should appear to be at least 25 years old, and minors may only appear in advertisements if there is no suggestion that they will serve or consume alcohol
- Alcohol advertising should not be shown on television between 6am and 8:30pm
- Advertisements should not use heroes or heroines of the young
- Broadcasters should avoid the impression that alcohol promotion is dominating the viewing or listening period (there should be not more than two advertisements per commercial break, and total alcohol advertising time should not exceed six minutes per hour).

The CAL enables censure of alcohol advertising that clearly targets children. However, the Steering Group noted that it does not result in restrictions on advertising with youth-oriented content that is likely to appeal to young people under 18 along with the target audience of adults over the age of 18.

The regulatory framework for alcohol advertising needs to have the ability to minimise the level of exposure of children and young people to all forms of alcohol advertising. Audience exposure is a function of the content, placement and media used. The Code mainly controls advertisement content, with some other restrictions as mentioned above. However, when considering the issue of exposure of young people to advertising, the placement of advertisements also needs to be taken into account.

#### **4.1 Advertising content**

The CAL focuses mainly on controlling the content of advertisements, and ensuring that alcohol advertising occurs in a socially responsible way, both in terms of adults and young people. Some stakeholders submitted that more control over content is necessary because alcohol advertising:

- Normalises alcohol consumption and makes drinking desirable
- Reflects young people's interests, culture and taste (therefore influencing young people)

- Is presented in ways that get around the Code (for example with humour or irony).

Other submitters felt that the current voluntary controls over content are sufficient, saying that current content restrictions are seen as strict by international standards and that there is a high level of compliance, and that the industry advertises responsibly.

The Steering Group found that while the restrictions on content are relatively well adhered to in New Zealand, there are limits to a system based mainly on the control of advertising content. The Steering Group was informed about overseas jurisdictions where content controls are perceived to be more loosely adhered to than in New Zealand. Also, a system that relies on complaints may not prevent irresponsible advertising (eg if there is no complaint about an advertisement) and also may not address wider public concerns (for instance, about placement of advertising). Therefore, it may be desirable to have a way of ensuring that the spirit of the Code is being adhered to, such as through a system of independent audit of advertisements.

It was also felt that some advertisements designed to appeal to young people over the legal alcohol purchase age could also appeal to younger age groups. There are also other issues, such as the overall exposure to and placement of alcohol advertisements, that are not addressed by controls on content. These issues are discussed in the following paragraphs.

## **4.2 Volume of advertising**

As mentioned above, the CAL currently limits the number of television advertisements to no more than six minutes per hour, and no more than two advertisements in a single commercial break. However, this restriction does not fully address the Government's policy of minimising exposure of children and young people to alcohol advertising because it does not take into account other forms of advertising.

The Steering Group concluded that the overall exposure of under 18 year-olds to alcohol advertising should be minimised and monitored. Reducing exposure of minors might entail restrictions on placement and a corresponding limit on youth-oriented advertising, as much advertising designed to appeal to the 18 to 30 age group also appeals to under-18 year-olds.

### **4.3 Placement of advertising**

The CAL includes a watershed time of 8:30pm for television broadcast advertising, which is also the 'adults only' time). There are no placement restrictions for other media. Radio does not have a watershed time for any content. A watershed for alcohol advertising on radio would not be effective because the proportion of young people listening to radio increases later in the evening. A number of submissions identified exposure of young people to alcohol advertising as an issue, and propose further controls over the placement of advertisements. Advertisements near schools and at youth events were given as examples of inappropriate placement of alcohol advertising. Some industry submissions countered that alcohol advertising placement is adequately controlled and that advertisers are responsible in their placement of advertisements (ie they target adults only).

The Steering Group discussed the issue of media that parents cannot control their children's exposure to, in particular outdoor advertising (eg billboards and bus shelters). While the Steering Group was not able to identify any research that looks specifically at the impact of this type of advertising, or the effectiveness of restrictions on advertising placement, this should not prevent consideration of further restrictions on the placement of alcohol advertising. It is noted that there is currently a voluntary ban on advertising before 8:30pm on television, in that it is part of the voluntary Code. Consideration could be given to extending this voluntary ban to outdoor alcohol advertising in locations that are highly visible to children and young people (eg near schools) to ensure that the exposure of children and young people to alcohol advertising is minimised.

The watershed time for alcohol advertising on television was brought forward from 9pm to 8:30pm following the 2003 review of the CAL. This change contributed to the perception among public health groups that the voluntary self-regulatory system does not take adequate account of public health concerns. The Steering Group notes that, although 8:30 is the watershed for 'adults only' programming, many young people are still watching television after this time. The Steering Group notes that the Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill proposes to shift the watershed time from 8:30pm to 10pm. The Steering Group's response to this proposal is outlined in Chapter Eight.

### **4.4 Possible displacement effects**

The Steering Group considered the possibility, raised by some submitters, that introducing stricter regulations for alcohol advertising could have the unwanted effect of causing advertisers to move into marketing techniques that are harder to regulate, or driving advertising to off-shore markets (eg via the internet). The Steering Group sought the opinion of visiting researchers Dr Jernigan and Associate Professor

Jones on this issue based on experience in the USA and Australia respectively. The Steering Group was advised that, in the example of a ban or partial ban on advertising, it is likely that advertising spend could be displaced into media that are less effective at reaching audiences, and therefore the overall effectiveness of the restriction could outweigh possible unwanted displacement effects.

The Steering Group considers that policy responses need to consider possible displacement effects but that this should not prevent enhancements to the current system being considered.

## **5. Naming, Packaging, Labelling and Promotions**

Both industry and non-industry submitters on the Review mentioned the need for more regulatory control over the naming and packaging of products. Some felt that labelling and packaging should be strictly controlled to avoid young people being exposed to products being brought into the home by adults and at sports and other public events. Principle 2 of the CAL states that the naming, packaging and merchandising of products must comply with the National Guidelines on the Naming, Packaging and Merchandising of Alcohol Beverages (ALAC 2000). However, there is currently no mechanism for enforcing this, so there is no way of addressing products that do not comply with the Code. The Steering Group considers that this is a significant gap in the current regulatory framework.

The Steering Group notes that the ASA has indicated an intention to extend the jurisdiction of the Code to cover the naming, labelling, packaging and sales promotion of liquor products. The Steering Group understands that the extended Code would be administered by the ASA, and would involve a separate complaints procedure. The development of an enforcement system within self-regulation will require the cooperation of retailers. It is understood that there is general support from the industry for the ASA's proposal (including from some industry-related submitters to the Review).

## **6. New and Emerging Forms of Advertising and Marketing**

This section addresses forms of advertising that tend to use newer media such as mobile technology or the internet, or are less visible than traditional broadcast or print advertising. These forms of marketing include guerrilla, viral and online marketing<sup>13</sup>. Websites originating off-shore are not covered by the New Zealand Code or any New Zealand legislation.

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<sup>13</sup> See glossary for definitions of these marketing techniques.

Overall, submissions on the Review were of the view that more control is needed over newer forms of advertising due to the appeal and exposure of these forms of advertising to young people. Some stakeholders submitted that there is no need for further control over newer forms of advertising, either because the existing controls are sufficient, or because newer forms of advertising represent only a small portion of the market share. While this may be so, this is a growth area for advertising, as it tends to be less costly than traditional forms of advertising (broadcast and print). Also, these newer types of advertising tend to be part of wider marketing campaigns, such as websites that support TV advertising campaigns.

In addition, use of newer media such as mobile technology and internet is increasing in New Zealand. The Steering Group was presented with information on the use of new and future technologies in New Zealand, with a focus on young people. This information is summarised in Chapter Three, and the key figures showed that:

- 86 percent of New Zealanders had a mobile phone in mid-2005. This increased by 17 percent between 2004 and 2005
- 73 percent of young people (aged 12 to 19) have mobile phones
- Internet access for the total population increased from 36.5 in 2000 to 65.1 in 2004 (however, access is significantly less for Māori and Pacific People)
- Use of broadband likely to increase with local-loop unbundling
- In June 2006 42 percent of the population subscribed to pay-TV.

Some of these newer media are difficult to regulate. Under the current system, media companies act as voluntary enforcers of the Code by refusing to broadcast, print or display advertisements that do not comply with the Code. But this system does not apply when there is little or no control over the medium of advertising, such as overseas-based internet sites. Also, if further restrictions were implemented on more mainstream advertising (such as broadcast advertising), then alcohol advertising spend may be diverted into these newer, less visible marketing techniques.

Internet-based marketing poses a special challenge because it is very difficult to enforce regulations that place responsibility on Internet service providers, web hosting companies or search engines, and especially if they are based overseas. The Internet is in the early stages of development of response to issues such as spam, pornography, copyright infringement and libel, and regulation may not extend beyond these issues. The only feasible option for regulation of alcohol promotion on the Internet, at this stage, is a code that places the onus on New Zealand publishers/advertisers, with sanctions for non-compliance.

The Steering Group is aware of current developments in the regulation of new media. For example, the Ministry for Culture and Heritage under its 'Broadcasting Programme of Action' is currently reviewing options for content regulation in the digital environment. This includes institutional arrangements and whether the BSA's responsibilities should be extended to new delivery platforms.

Some of the non-traditional forms of advertising are not only hard to regulate but are also hard to measure because they may not involve a medium; examples include word-of-mouth marketing, giveaways at events, branded vehicles and young women wearing branded gear at events. Where such marketing activities come to the attention of the body responsible for regulating alcohol advertising, it would be desirable for that body to have the power to take action in cases where the advertising is non-compliant (eg it targets minors). Currently the ASA acts on complaints about an advertisement, and does not have a formal power to investigate.

## **7. Sponsorship**

Overall, many of the submissions from stakeholders recognised the important revenue contribution that alcohol sponsorship makes to community groups and events and, in turn, their ability to contribute to society (for example sports clubs encouraging physical activity). A number of submissions said that community groups and events would be adversely affected without sponsorship from the alcohol industry. However, a number of submissions state that tighter control is needed over alcohol advertising relating to sponsorship. These submissions tended to view alcohol advertising through sponsorship as increasing harmful drinking attitudes and behaviour by normalising or making alcohol desirable, or by encouraging the purchasing of the sponsor's product.

Sponsorship by the alcohol industry of arts and sports clubs, events and activities comprises three elements. In addition to the sponsorship itself, which can take many forms including financial or support "in kind" such as sports equipment, there is also sponsorship advertising and sponsorship credits. Sponsorship advertising is an advertisement to promote the fact that the advertiser is sponsoring a person, competition, activity or event and a sponsorship credit is a public acknowledgment of a liquor advertiser's sponsorship.

The ASA regulates non-broadcast sponsorship advertising and credits by the alcohol industry through Principle 5 of the CAL. Sponsorship of television and radio programmes by the alcohol industry is regulated by the BSA. Restrictions include that alcohol sponsors of television programmes can only use brand and logo and not a sales message. Other aspects of sponsorship are currently unregulated.

One of the pieces of research commissioned by the Steering Group was a literature review of sponsorship by the alcohol industry (Research New Zealand 2007). This research found there was a lack of information about the nature and extent of sponsorship by the alcohol industry in New Zealand. The Steering Group considers that more research on alcohol sponsorship in New Zealand is required.

The Steering Group did not find sufficient evidence to support further restrictions on sponsorship by the alcohol industry at the present time. However, it acknowledged stakeholders' concerns about exposure of young people to alcohol sponsorship messages, and concerns that the sponsorship of sports clubs and events by the alcohol industry may be a contributing factor in the culture of heavy and potentially harmful drinking sometimes associated with sports clubs. In view of these issues, the Steering Group concluded that further action is warranted.

The Steering Group considered that there is an opportunity for organisations that receive alcohol sponsorship to develop voluntary codes aimed at minimising the exposure of young people to alcohol sponsorship, and reducing the likelihood of harmful drinking in the context of these organisations.

Examples of initiatives that might act as a model for this type of code are:

- the Smart and Sober Sport (SASS), which has been introduced for Mid-Canterbury youth sports clubs in conjunction with secondary schools and sports clubs
- the Sports Clubs Accreditation Programme, jointly initiated by ACC and ALAC, and adapted from the *Good Sports* programme in Australia. The aim of the programme is to assist clubs to develop a health promoting culture, including adopting responsible drinking practices and a code of conduct. An evaluation of the pilot has been conducted and the report is due shortly.

A voluntary code could also be developed with industry with guidelines on what kind of activity, event or club would be appropriate to sponsor. Agreement could be reached on the most appropriate means of sponsorship, particularly for events or clubs with a high proportion of young members or participants. Part of this voluntary code could include ensuring that any sports equipment or kit provided to sports clubs for its younger members does not have alcohol brand logos. This has recently been agreed between the Scottish Executive and alcohol companies in Scotland.

# Chapter Six: Regulation of Alcohol Advertising

This chapter includes:

- A summary of key points from New Zealand and international literature on best practice regulation, which informed the Steering Group's consideration of regulator options
- A description of the four broad regulatory models considered by the Steering Group
- An assessment of those models against the criteria set out in Chapter Two.

## 1. Regulatory best practice

Debates about alcohol advertising regulation are often polarised around the models of self-regulation versus government regulation. An important point sometimes gets overlooked in the debate: self-regulation by industry and regulation by the Government are not mutually exclusive but are regulatory techniques that can be used successfully alongside each other.

Ayres and Braithwaite (1992) propose that an effective regulatory model is responsive to industry structure and incentives, and conducive to different degrees and forms of regulation and compliance instruments. A strategy based totally on persuasion and self-regulation may be exploited, whereas a strategy based mostly on punishment will undermine the good will of actors and foster a culture of regulatory cat-and-mouse. Moreover, persuasion is inexpensive compared with punishment.

The Ministry of Consumer Affairs analysed industry-led regulation and produced a discussion paper that lists the advantages and disadvantages of industry-led regulation. It also lists necessary elements for effective industry-led regulation. The report notes that the system should:

- Meet consumers' reasonable expectations
- Include consultation between industry and consumers to identify problems
- Raise awareness through publicity and education (of the public and industry)
- Be enforced effectively, including access to redress for consumers, and credible sanctions for non-compliance
- Be monitored on an ongoing basis
- Be suitable for the market structure, although a market may not be suitable for industry-led regulation if there is a lack of competition, lack of public confidence, or potential for major harm (Ministry of Consumer Affairs 2005).

In 2006, the European Commission commissioned an extensive study of co-regulation in the media sector, including an impact assessment of co-regulation models in that sector. The report found that there are specific advantages to co-operation between State and non-State regulation, including high industry accountability, fast pace of decision-making, and sustainability. Two areas the study found to be especially suitable for co-regulation were advertising content regulation and the protection of minors (Hans-Bredow 2006).

The European Union recently sponsored a study on self-regulation of advertising (Health & Consumer Protection Directorate General 2006). The resulting report by Robert Madelin (Director-General of the European Commission's Health and Consumer Protection Directorate General) reflects the findings of a roundtable discussion that drew together participants from the Commission, interested NGOs and representatives of the European Advertising Standards Alliance (EASA), the coordinating body of advertising self-regulation in Europe.

The Madelin report concluded that advertising is well-suited to self-regulation. The complexity, variable contexts and changing nature of advertising, marketing and media mean that State regulation can be ineffective, while indirect forms of regulation may be quicker, more responsive and flexible.

The report also established a consensus that self-regulation in advertising can only maximise its potential if it is underpinned by a clear legislative framework that allows self-regulation sufficient scope to operate. The EASA agrees that self-regulation within a framework of legislation is a complementary arrangement, like "the frames and strings of a tennis racquet, to produce a result which neither could achieve on its own" (EASA 2005).

The determinants of best practice in the self-regulation of advertising are reported in the Madelin report under the headings of effectiveness, independence, coverage and funding. The determinants relate not only to the role of self-regulatory organisations but also to other stakeholders. For instance, there should be stakeholder involvement in the elaboration of codes to meet the expectations of society.

## **2. Regulatory models**

The Steering Group considered the ability of a range of regulatory options to address the issues identified during the Review. The boundaries between self-regulation, enforced self-regulation and co-regulation are not always distinct, as the different models are similar in many respects. Along the spectrum of options, there are several possible combinations involving components of both self-regulation and

government regulation. The options considered fall approximately into four broad models:

## **2.1 Voluntary self-regulation**

This is a continuation of the current system of voluntary self-regulation, with some widening of coverage as planned by the ASA.

## **2.2 Enforced self-regulation**

This model is based on self-regulation but with a number of changes to strengthen and improve it, including a legislative framework. Changes would be made to ensure a greater role for government, wider coverage, systematic monitoring and research, independent auditing, and strengthening compliance incentives by introducing new “back stop” enforcement measures in legislation.

New enforcement measures would empower a government agency to impose sanctions, on advice from the ASCB, for serious or persistent non-compliance with self-regulatory codes. Sanctions could include a financial penalty and/or suspension of liquor licence, or for notification of the breach to licensing authorities when the licence is due for renewal.

## **2.3 Co-regulation**

Models of co-regulation in literature vary considerably. In the context of the Review, co-regulation was differentiated from other models by defining it as involving a government agency with specific statutory functions that might, *inter alia*, include:

- Adjudicating on appeals against rulings of the body that considers advertising complaints
- Appointing a proportion of the members of body that considers advertising complaints
- Approving the advertising codes.

Co-regulation has the advantage of allowing a higher level of control by government while still allowing industry-led regulation. An example of co-regulation in New Zealand is the system for regulating broadcasting programme content standards. Broadcasters have a set of responsibilities and procedures, such as a complaints process, which are set out in the Broadcasting Act 1989. The BSA is a Crown entity that steps in when a broadcaster’s decision about a complaint is disputed.

The Steering Group also noted the Securities Commission and the Office of the Film and Literature Classification (with regard to film and video labelling and classification) as other examples of co-regulation in New Zealand.

## **2.4 Government regulation**

The model of government regulation considered by the Steering Group is one with legislated rules for alcohol advertising. A government agency would be responsible for many of the functions and processes currently undertaken by self-regulatory organisations, with full responsibility for monitoring and reviews. Infringements of the rules would be punishable by fines administered by the government agency (that is, the government agency would be the primary enforcer rather than a “back-stop” enforcer).

An example of this type of model is the Smokefree Environments Act 1990, under which the Ministry of Health directly monitors and enforces, *inter alia*, restrictions on tobacco advertising and sponsorship.

These broad models were assessed using the criteria of effectiveness, efficiency and fairness. The following table summarises the results of this analysis in an outcomes matrix.

### 3. Projected outcomes of alternative regulatory frameworks

Alternative models	Criteria		
	Effectiveness	Efficiency	Fairness
<b>Voluntary self-regulation (“status quo”)</b>	<ul style="list-style-type: none"> <li>Retains current system’s flexibility and fast-paced decision-making</li> <li>Good level of industry compliance but lacks ability to deal with deliberate non-compliance</li> <li>Some extension of coverage (naming, labelling, packaging and sales promotions) has been notified.</li> <li>Future issues may not be addressed</li> <li>Minimal reduction in exposure of children and young people</li> <li>Accountability and control lies largely with industry</li> <li>Relies on voluntary participation and agreement of industry parties</li> <li>Government policy goals may not be addressed</li> </ul>	<ul style="list-style-type: none"> <li>Least costly model</li> <li>Costs borne by industry</li> <li>High degree of administrative simplicity</li> </ul>	No challenge to Bill of Rights requirement to be proportionate and justifiable
<b>Enforced self-regulation with legislative</b>	<ul style="list-style-type: none"> <li>Retains current system’s flexibility and fast-paced decision-making</li> <li>Good level of industry participation and</li> </ul>	<ul style="list-style-type: none"> <li>Relatively low-cost model</li> <li>Increased compliance costs for the industries</li> </ul>	Compliance with Bill of Rights Act depends on severity of restrictions.

<b>framework</b>	<p>compliance</p> <ul style="list-style-type: none"> <li>• Deliberate non-compliers held to account if legislative enforcement power is included</li> <li>• Increased opportunity for government influence</li> <li>• Facilitates wide extension of coverage</li> <li>• Improved monitoring and research ensures emerging and future issues addressed</li> <li>• Reduced exposure of children and young people and potential for wider restrictions on placement/volume</li> <li>• More complex than status quo</li> <li>• Risk of reduced industry engagement and “good will”</li> </ul>	<p>involved compared with status quo.</p> <ul style="list-style-type: none"> <li>• Moderate increased cost to government</li> </ul>	<p>Severe restrictions are unlikely under this model.</p>
<b>Co-regulation</b>	<ul style="list-style-type: none"> <li>• Similar advantages as for enforced self-regulation (above) plus:</li> <li>• Higher level of government control and accountability</li> <li>• Potentially more opportunity for engagement between key stakeholders</li> <li>• Some reduction in level of industry compliance and “good will”</li> <li>• Some loss of flexibility and fast-paced decision-making</li> </ul>	<ul style="list-style-type: none"> <li>• Moderately costly</li> <li>• Some costs shifted to Government</li> <li>• Administratively complex, may require the creation of a new agency</li> </ul>	<p>As for enforced self-regulation (above).</p>
<b>Government regulation</b>	<ul style="list-style-type: none"> <li>• Reduced exposure to children and young people in traditional media but</li> </ul>	<ul style="list-style-type: none"> <li>• Most costly</li> <li>• Significant shift of costs</li> </ul>	<p>The severe restrictions that would likely</p>

	<p>may result in displacement to advertising methods that are harder to regulate</p> <ul style="list-style-type: none"> <li>• Enables wide extension of coverage</li> <li>• Improved monitoring and research ensures future issues addressed but slowly</li> <li>• Restrictions complied with legally but loopholes exploited, more so as technology progresses</li> <li>• Significant loss of flexibility, slow-paced decision-making</li> </ul>	<p>from industry to Government</p> <ul style="list-style-type: none"> <li>• Administratively complex</li> </ul>	<p>accompany this model would be challenged under the Bill of Rights Act.</p>
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# Chapter Seven: The Current Regulatory Framework for Alcohol Advertising

This chapter includes:

- Strengths and weaknesses of the current regulatory framework
- Opportunities for strengthening the existing self-regulatory system.

The role of the Steering Group, as set out in the Terms of Reference, was to look at whether the current regulatory framework is in harmony with the aims of Government, and if it is not, to look at what improvements can be made. The Steering Group considered the strengths and weaknesses of a voluntary self-regulatory framework for alcohol advertising regulation, and specifically examined the various mechanisms and processes that comprise the self-regulatory system, including:

- the pre-vetting of advertisements
- the Code for Advertising Liquor
- areas of responsibility, accountability and enforcement
- complaints and appeals
- ongoing review, monitoring and evaluation
- research/information needs
- education of stakeholders and the public
- relevant legislation
- the relationship between advertising regulation and broadcasting regulation.

## 1. Strengths and weaknesses of the current self-regulatory system

The Steering Group considered information about best practice for different types of regulation in general, and for alcohol advertising self-regulation specifically, as outlined in the previous chapter. It found that the current system of self-regulation as practised in New Zealand has both inherent strengths and limitations. The Steering Group found that the current New Zealand model generally compares favourably to international “best practice” models. Key strengths of the voluntary self-regulatory system identified by the Steering Group are that:

- it is a low-cost system compared with co-regulation or government regulation
- there is a high level of compliance by industry participants when a complaint is upheld
- it is able to adapt easily and respond in a timely way to emerging issues
- the ASCB and ASCAB have a majority of public members

- a significant proportion of complaints are upheld
- all decisions are published.

The Steering Group also found a number of gaps or weaknesses in the system where there is opportunity for improvement. In general, there are limitations to a system based mainly on complaints about content, as discussed in the earlier section about exposure of young people. It is possible to have a self-regulatory system that is broader than just advertising content, and in fact this may be necessary in order to effectively minimise exposure of children and young people.

The Steering Group identified some specific gaps in the current system that would need to be addressed if the framework for the regulation of alcohol advertising is to be in harmony with the policy goals of Government. These are discussed in the following sections, and can be summarised as:

- The Industry is largely accountable for the system with limited opportunity for influence by the Government
- There is no legislative framework
- The system is not underpinned by clear policy goals
- There are no enforcement powers in cases of persistent or serious non-compliance
- The system relies on complaints to identify and address breaches of the rules, with no facility for proactive investigation of potential breaches
- There is a lack of systematic, independent monitoring, audit and research of the system processes and outcomes
- The jurisdictional scope does not extend to all forms of commercial promotion and marketing communications
- Public consultation during previous reviews of the Code of Advertising Liquor has not elicited a diverse range of views from stakeholders.

## **2. Opportunities for strengthening the existing regulatory framework**

### **2.1 Government influence over regulatory processes and outcomes**

Many submissions that do not support the regulatory framework for alcohol advertising in its current form advocate for at least some degree of government control over the regime. Although there are explicit policy goals in relation to responsible alcohol marketing, the Steering Group has identified that there is currently little ability for government to influence the self-regulatory process for alcohol advertising to ensure that these goals are achieved. The mandate for the

self-regulatory regime is set out in a Cabinet minute.<sup>14</sup> However, this is not well defined and does not formally afford the Government much influence.

The Steering Group believes that the Government could strengthen its role within a self-regulatory system through the following actions, which are discussed in detail below:

- providing a clearer legislative framework for the regulation of alcohol advertising with clear public policy goals and expectations of the regulatory system
- setting a clear mandate for key roles and processes in the system
- providing input into the terms of reference for and conduct of independent reviews through a designated government agency
- allocating resources to monitoring, research and audit
- introducing “back-stop” enforcement powers in legislation.

## **2.2 A clear legislative framework**

There is currently no legislative basis for the regulation of alcohol advertising. As discussed above, a Cabinet minute in 1992 mandating the self-regulatory system notes that the responsibility for the enforcement of advertising standards should be removed from the BSA’s jurisdiction and reside with the ASA and ASCB. The Cabinet minute also notes some processes and procedures agreed to by the ASA and ASCB, such as publishing decisions. The BSA retained jurisdiction only over alcohol promotion within broadcast programming.

The Steering Group notes the statement in the European Advertising Standards Alliance (EASA) “Blue Book” on advertising self-regulation in Europe that “it is now widely accepted that self-regulation works best within a framework of legislation”. The Blue Book goes on to say that “legislation is well-suited to laying down broad principles, for example that advertising must not mislead, and it provides a last resort in the rare cases when all else has failed. It is less effective, however, when dealing with detail. ...Self-regulation, on the other hand, is specifically designed to deal with these ‘important trivia’” (EASA 2005).

The Steering Group considers the lack of a legislative framework underpinning the regulatory process to be a shortcoming of the current regime. In effect, this means there is no way of ensuring adherence to the Code beyond relying on the voluntary participation of the industry participants, which also has implications for compliance. As noted in the EASA’s Blue Book, there are advantages to setting out the broad principles, roles and objectives of the regulatory regime in legislation. A legislative framework could also be used to provide clarity about the regulatory arrangements,

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<sup>14</sup> CAB (92) M 10/14 refers

the role of government and the public in the regulatory process, and provide scope for additional graduated sanctions for non-compliance.

The Sale of Liquor Act currently offers limited options for ensuring that the Government's goals in terms of alcohol advertising are met, but there is potential for this to be developed further. Section 154A of the Sale of Liquor Act creates an offence for a licensee or a manager of on-licensed premise who "does anything in the promotion of the business conducted on the premises, or in the promotion of any event or activity held or conducted on the premises, that is intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent". However, no such section exists for off-licence promotion.

## **2.3 Explicit policy goals for the regulatory framework**

Alcohol advertising is part of the wide range of factors impact on alcohol-related harm in New Zealand. Thus, the public interest is an important consideration in the design and delivery of the system for regulating alcohol advertising. The Steering Group believes that the regulatory system for alcohol advertising should therefore be underpinned by clear public policy goals.

The Steering Group agreed that the following policy goals, which stem from the goal of the review and the goal expressed in the existing Code for Advertising Liquor, should be included as part of the legislative framework underpinning the regulatory system:

- To ensure alcohol advertising does not conflict with or detract from the need for responsibility and moderation in liquor consumption<sup>15</sup>
- To minimise overall exposure of alcohol advertising to children and young people under the minimum legal purchasing age.<sup>16</sup>

## **2.4 Enforcement powers**

As noted earlier, an effective self-regulatory system for advertising should include appropriate sanctions for non-compliance with codes, including for repeat offences and for consistently ignoring codes or adjudications. Using the language of a key text on regulation, the sanctions must represent a "credible threat" for market operators against non-compliance (Ayres and Braithwaite 1992). This is particularly important in a voluntary self-regulatory system to ensure participation of all the operators.

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<sup>15</sup> Principle 1 of the Code for Advertising Liquor.

<sup>16</sup> This goal is adapted from one of the objectives for responsible marketing in the National Alcohol Strategy 2000-2003.

Currently, the ‘sanction’ for non-compliance with the CAL is voluntary removal of an advertisement. This can be a minor penalty for a one-off advertisement, or an expensive one in the case of a larger advertising campaign.

Compliance with self-regulation in the New Zealand system is based on the following incentives and sanctions:

- Persuasion and education
- Awareness that if the industry does not regulate itself, the Government will
- When an advertising campaign is pulled because a complaint is upheld, it is an expensive loss for the advertiser
- “Naming and shaming” occurs when ASA decisions upholding complaints are published, tarnishing the corporate images of the advertisers and media organisation
- Consumers may withdraw from media that misleads or offends them, resulting in a loss of advertising revenue for the media company.

The BSA, as a statutory body, has severe penalties available to it for breaches of the broadcasting codes. None have been used against breaches of the liquor promotion standards to date.

The Steering Group considers that the ability to apply sanctions for non-compliance under the current system is limited. At present media organisations act as ‘gatekeepers’ by refusing to run advertisements that do not comply with the Code. Although this system is effective for advertisements that appear in ‘mainstream’ media, advertising is increasingly appearing in forms that bypass media organisations. In addition, although there is a good level of compliance and use of the pre-vetting system by most advertisers, there are advertisers that do not participate in the self-regulatory system. The current system does not have sanctions for repeat offences or for consistently ignoring codes or adjudications.

The Steering Group believes there is scope for further sanctions for non-compliance that represent a “credible threat” to participants. Specifically, the Steering Group considers there is a need for legislative provisions that would impose sanctions for serious or persistent non-compliance. These sanctions would be invoked by the government agency responsible for applying the sanctions, on advice from the body overseeing the regulatory process. Sanctions could include a financial penalty, temporary suspension of a licence, or notification to the liquor licensing authorities for consideration when a licence is due for renewal.

Sanctions of this nature would require the participation of all industry participants, including any ‘rogue operators’. Consideration would need to be given to ensuring that the risk of losing the good will of the participants in the system is minimised.

Currently, the ASA is only able to take formal action in cases of non-compliant advertising if there is a complaint about that advertisement. The Steering Group discussed the potential benefits of having an explicit formal process by which the ASA could proactively investigate issues, for example cases of repeated breaches of the Code by an advertiser. However, any formal process should complement rather than replace informal actions, in order that the flexibility and responsiveness of the system would not be compromised.

## **2.5 Independent audit, monitoring and research**

There is currently no independent audit or monitoring of the self-regulatory system. The ASA monitors the timeliness of the complaints system against agreed targets, and publishes all decisions about complaints on its website. The timeliness of the complaints system is also included in the ASA's Annual Report and in the quarterly reports to the Ministry for Culture and Heritage.

The lack of independent audit of various functions of the regulatory process was identified as a weakness in the consultation feedback. The Steering Group considers that formal, independent, systematic processes of audit and monitoring are necessary parts of the self-regulatory system. Independent audit and monitoring of the self-regulatory system should be introduced that would:

- Monitor the processes of the system
- Monitor the desired outcomes of the system (eg minimising exposure to young people).

This would involve a planned programme of research, based on the policy goals for the regulatory framework. A government agency should have responsibility for ensuring that this programme of research is developed, funded and undertaken. The results of the research should feed into the reviews of the regulatory system. The research programme should also aim to develop research capacity in the area of alcohol marketing. The planned review of the National Alcohol Strategy provides a vehicle for developing a coherent research agenda. Research should cover, *inter alia*, overall exposure by children and young people to alcohol advertising, product placement, and timing of advertisements.

## **2.6 A wider scope for the Code of Advertising Liquor**

International best practice shows that a self-regulatory system should cover not only pure advertising but all other forms of commercial or marketing communication (Health and Consumer Protection Directorate General 2006). Currently there are some gaps, as identified by the Steering Group and a number of stakeholders in the

Review, including industry bodies. The Steering Group considers that the CAL should:

- cover all forms of advertising media and marketing techniques
- be able to minimise exposure of children and young people to alcohol advertising
- be able to respond to emerging forms of advertising.

### **2.6.1 Inclusive coverage of the Code**

The most significant area for improvement is that the jurisdiction of the existing regulatory framework needs to be extended to include a wider range of marketing techniques across all media, including packaging, labelling, merchandising and all “in store” promotions and price promotions. The Steering Group agreed that the scope of any regulatory framework should be sufficiently broad and flexible to cover new and emerging media and vehicles for alcohol marketing. As noted earlier, the ASA has indicated its intention to broaden the jurisdiction of the ASA in relation to liquor promotion, and a code will be developed to cover naming, labelling, packaging and sales promotion of liquor products.<sup>17</sup> It should be noted, however, that responsibility for broadcast liquor promotion as part of programmes remains with the BSA.

### **2.6.2 Minimising exposure of children and young people**

Another key ‘coverage’ issue of concern to the Steering Group is the ability to minimise the level of exposure of children and young people to alcohol advertising. As outlined earlier, the Code currently controls the content of advertising, but not the overall exposure of children and young people to alcohol advertising messages. There is potential for introducing further controls on the placement and overall volume of advertising in order to minimise the exposure of children and young people.

### **2.6.3 Emerging technologies**

Advertising is an innovative, ever-changing and fast-moving industry. New and emergent technologies and modes of communication, as discussed in Chapter Five, will lead to changes in advertising practices and present challenges to regulators, whether self-regulatory or statutory. For these reasons, “future proofing” the system with regard to the expansion of new media is an important factor that should shape the regulatory system. The Steering Group considers that the regulatory system advertising should be able to deal with new technologies and emerging marketing trends and techniques in a timely way. This would involve ensuring the Code and

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<sup>17</sup> ASA’s submission to the Review.

the regulatory process were able to effectively deal with changes in media, and monitoring of the levels of different types of advertising.

#### **2.6.4 Non-broadcast sponsorship**

Although the ASA regulates the content of sponsorship advertising and non-broadcast sponsorship credits, it has indicated to the Steering Group that it will broaden the CAL to all forms of alcohol advertising, and includes packaging, labelling and promotion. Sponsorship is likely to be affected by the ASA's regulation of promotion. While the actual decision to sponsor people, events and activities will not be covered by the new code, promotion will be regulated and pre-vetted. This could mean that the alcohol sponsorship of youth orientated events could be affected as promotion of this sponsorship would be regulated by pre-vetting and be open to the complaints process.

### **2.7 Stakeholder engagement**

As identified in best practice guidelines, stakeholder engagement is an important part of an effective self-regulatory regime for alcohol advertising. The system needs to ensure that the public interest is adequately represented. There is potential for the public interest to be represented at various points in the regulatory process, including in:

- The complaints process
- Reviews of the Code (through both public consultation and the appointment of members on review panels)
- Adjudication bodies (eg through the appointment of independent members)
- Monitoring of the system.

The Steering Group observed that debates about alcohol advertising tend to take place in silos. This situation is an obstacle to resolving issues and producing outcomes that have widespread acceptability. It is a challenge for the regulatory system to reflect societal expectations of alcohol advertising when there is no consensus on a 'vision' for alcohol advertising or how to regulate it.

The Steering Group considers that the opportunity for meaningful public interest representation and engagement in the self-regulatory processes should be strengthened. This is likely to require the active involvement of a government agency.

# Chapter Eight: Conclusions, Options and Recommendations

This section presents the Steering Group's overall conclusions and recommendations to the Government. This section summarises:

- the strengths of the current regulatory system
- the gaps identified in the current system and how these could be addressed
- the preferred regulatory system for alcohol advertising
- the Steering Group's recommendations.

## 1. Strengths of the current regulatory system

The key strengths of the current regulatory system are:

- it is a relatively low-cost system compared with government regulation
- there is a high level of compliance by industry participants when a complaint is upheld
- it is able to adapt easily and respond in a timely way to emerging issues
- the ASCB and ASCAB have a majority of public members
- a significant proportion of complaints are upheld
- all decisions are published.

### 1.1 Gaps in the current regulatory system and how these could be addressed

The Steering Group identified the following features of the current system that should be strengthened:

- The Industry is largely accountable for the whole system with limited opportunity for influence by the Government
- There is no legislative framework
- There are no enforcement powers in cases of persistent or serious non-compliance
- The system is not underpinned by clear policy goals
- The system relies on complaints to identify and address breaches of the rules, with no facility for proactive investigation of potential breaches
- There is a lack of systematic, independent monitoring, audit and research of the system processes and outcomes
- The jurisdictional scope does not extend to all forms of commercial promotion and marketing communications

- Public consultation during previous reviews of the Code of Advertising Liquor has not elicited a diverse range of views from stakeholders.

## 2. Preferred regulatory model

As outlined in Chapter Six, the Steering Group considered a range of regulatory options to address the identified gaps or weaknesses in the current system. The range of options include various possible combinations involving components of both self-regulation and government regulation. There are four broad models:

- Voluntary self-regulation
- Enforced self-regulation
- Co-regulation
- Government regulation.

The Steering Group carefully considered the different models and their advantages and disadvantages. When considering whether changes to the regulatory system for alcohol advertising would be desirable, the Steering Group focused on the roles and functions of the system - setting the rules, applying and interpreting the rules, compliance, enforcement, and monitoring. Individual members of the Steering Group held different views about which model might optimally deliver on the changes agreed by the Group. After considerable debate, the Steering Group concluded that a move to co-regulation or full government regulation of alcohol advertising through a statutory body is not warranted at this time, for the following reasons:

- the proposed changes and desired outcomes could potentially be implemented within a system of enforced self-regulation as long as there is a willingness by participants to make the changes proposed
- the strengths of the current system could be compromised if the Government attempted to legislate for all the detailed rules for alcohol advertising
- it would result in a much reduced flexibility and ability to deal with issues as they arise
- the current willingness to participate and level of compliance by industry participants would be diminished; this risks displacement and exploitation of loopholes that is would likely become increasingly significant with time as the up-take of technologies such as broadband increases
- it would shift much of the cost of the system from industry to Government, and adversely affect the efficiency of the system.

Therefore, the Steering Group considers that a regulatory system based on a model of enforced self-regulation is the most appropriate at this time. It should be reiterated that, while the conclusions and recommendations reflect the consensus of

the Group, there were diverse views in the Steering Group, and that several members felt strongly that a more stringent regulatory system is warranted.

### **3. Recommendations regarding the regulation of alcohol advertising**

**The Steering Group recommends that:**

1. the system for alcohol advertising in New Zealand be based on self-regulation but with a number of changes to strengthen and improve it, in particular a legislative framework (recommendations 2 to 8);
2. the scope of the regulatory system for alcohol advertising be extended to include all forms of liquor promotion and marketing communications;
3. the body responsible for administering the self-regulatory system have powers to formally investigate, where appropriate, breaches of the alcohol advertising rules;
4. there be a coherent legislative framework underpinning the regulation of alcohol advertising that includes the following public policy goals:
  - To ensure alcohol advertising does not conflict with or detract from the need for responsibility and moderation in liquor consumption
  - To minimise overall exposure of alcohol advertising to children and young people under the minimum legal purchasing age;
5. the regulatory system be backed up by legislative sanctions that can be invoked in specific circumstances, in particular in instances of serious or persistent non-compliance;

These sanctions could be invoked by the body responsible for administering the regulatory system by referring cases of serious or persistent non-compliance to the government agency responsible for applying the sanctions.

6. there be both internal monitoring processes that are independently audited, and external, independent monitoring of the outcomes of the regulatory system;

The external monitoring of the system should be the responsibility of a government agency, although it may be carried out by an external non-government organisation.

7. there be a planned programme of research on alcohol marketing to inform ongoing monitoring and periodic reviews of alcohol marketing: given the range of factors that contribute to alcohol-related harm, this research should be part of a broad programme of planned research into alcohol use and misuse and alcohol-related harm;
8. that the organisations responsible for administering the regulatory system explore new ways of engaging with the community so as to elicit a wider range of views during reviews of the regulatory system;

This recommendation was also signalled by the independent review panel in 2003. The panel recommended that the process for the next review be modified “with the objective of involving dialogue between interest groups representative of the various facets of our multi-cultural society. It is envisaged that techniques such as focus groups and joint research could be utilised.” This last point about joint research is in line with the Steering Group’s Recommendation 7 regarding research.

## **4. Alcohol sponsorship**

The ASA regulates non-broadcast sponsorship advertising and credits by the alcohol industry through Principle 5 of the CAL. The BSA regulates sponsorship of television and radio programmes by the alcohol industry. Restrictions include that alcohol sponsors of television programmes can only use brand and logo and not a sales message.

The Steering Group found insufficient evidence to determine whether restrictions on sponsorship by the alcohol industry are warranted at the present time. However, the Steering Group acknowledged that there are concerns about the exposure of young people to alcohol products and brands and that further action is warranted at this time. Two areas for further action were identified:

- Research on alcohol sponsorship
- Voluntary actions by national, regional and local organisations.

### **4.1 Research on alcohol sponsorship**

Given the lack of information in this area, further research is important. Research should place particular emphasis on organisations with youth membership so as to investigate the exposure of young people to alcohol sponsorship. Research could consider, *inter alia*:

- all forms of support including cash, equipment (including branded clothing) and in-kind support
- the value of sponsorship for arts and sports clubs
- whether or not youth members were provided with club kit with alcohol brand logos and the visibility of alcohol sponsorship at clubs with members under the age of 18.

Preliminary research commissioned by the Steering Group indicated that sponsorship by the alcohol industry might account for no more than 20 percent of total sponsorship and while this sponsorship is highly valued, further research would give a better idea of the importance of the contribution made by the liquor industry. Further research could also investigate alternative sources of sponsorship for arts and sports organisations and events.

Consideration should be given to the inclusion of a question about alcohol sponsorship expenditure in the annual New Zealand Enterprise Survey undertaken by Statistics New Zealand.

## **4.2 Voluntary actions by national, regional and local organisations**

There is an opportunity at this time for organisations and/or event organisers to respond voluntarily to the concerns about alcohol sponsorship, by developing voluntary codes, possibly in conjunction with the liquor industry. Appropriate government agencies could lead a process of engagement and dialogue with organisations that have alcohol sponsorship in order to raise awareness and assist with the development of voluntary codes.

The Steering Group believes that national bodies, especially national sporting bodies, could show proactive leadership in this area by developing codes aimed at minimising youth exposure to alcohol sponsorship and reducing the likelihood of harmful drinking as a result. National and regional organisations should also use their networks to strongly encourage local clubs to adopt any codes and implement associated actions.

Territorial authorities that have responsibility for approving some events held in their regions could also develop codes around event sponsorship. Councils are already developing and implementing alcohol strategies and could include in these policies relating to sponsored events.

## **4.3 Recommendations regarding alcohol sponsorship:**

**The Steering Group recommends that:**

9. there be a planned programme of research on alcohol sponsorship. This should include:

- total expenditure (including both monetary support and the provision of equipment and facilities)
- the value of such sponsorship to both sponsoring and sponsored organisations
- the exposure of young people to sponsorship messages;

This research should link with the proposed programme of alcohol research in recommendation 7.

10. national sporting and other organisations and event organisers take a responsible position on alcohol sponsorship by developing voluntary codes that aim to reduce the exposure of young people to alcohol products and alcohol brands and reduce the likelihood of harmful drinking;

#### **4.4 Review of the recommendations**

##### **The Steering Group recommends that:**

11. the implementation of actions outlined in recommendations 2 to 10 be reviewed in two years time to ensure that sufficient progress has been made in implementing the recommended system improvements. If there is insufficient progress in implementing recommendations 2 to 10, a move to co-regulation or full government regulation should be considered;

The review should also examine any new research on alcohol advertising and sponsorship. In the case of sponsorship, any voluntary codes should be reviewed to determine their effectiveness as non-regulatory means of monitoring and restricting the exposure of young people to alcohol sponsorship.

If the research on sponsorship demonstrates a significant association with alcohol consumption, then there would be a strong case for including sponsorship in the regulatory regime to ensure that the Government's policy goals can be met.

### **5. Implications of the recommendations**

The key recommendation – to create a legislative framework for the regulation of alcohol advertising – will require an amendment to current legislation. The Sale of

Liquor Act is an appropriate legislative vehicle, and the recommended changes could be included with any legislative amendments arising from the current Review of the Sale and Supply of Liquor to Minors, which is due to report mid-2007. The legislation should be sufficiently broad to allow for moves to more restrictive forms of regulation should this be found to be required at any subsequent review.

Besides legislation to make the public policy goals explicit, the ASCB should also be mandated as the primary authority for adjudicating complaints about alcohol advertising. Other roles and relationships should be made clear in either legislation or in Memoranda of Understanding between government agencies and other organisations undertaking roles in the regulatory process, and these should be readily accessible by the public.

While this Review was in progress, the Board of the ASA informed the Steering Group that it was taking steps towards extending its jurisdictional scope to include the naming, labelling and packaging of liquor products, and promotions. A new self-regulatory body parallel to the ASCB will be formed to deal with these aspects. It is anticipated that the result will be a new Code for Liquor Marketing that will incorporate guidelines on alcohol sponsorship. Submissions received by the Steering Group indicate that the ASA's decision to broaden its scope is supported by many in the liquor industry.

The Steering Group's recommendations will increase the overall cost of the alcohol advertising regulatory system. Many of these costs will be borne by industry, including:

- Administering a system that covers a wider scope, including a new self-regulatory body as envisaged by the ASA
- Undertaking more extensive internal monitoring and independent audit
- Conducting formal investigations if required
- Undertaking wider consultation during reviews.

Other recommendations have cost implications for the Government, namely:

- Making legislative amendments to incorporate the recommended legislative framework
- Developing and administering a process to invoke sanctions if indicated
- Funding and administering external independent monitoring
- Developing and funding research programmes on alcohol advertising and sponsorship.

However, the Steering Group believes that the additional costs will result in a system that delivers better outcomes but is still relatively efficient.

## **6. Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill**

The Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill, which has been reported back to Parliament by Select Committee and is on hold until 1 May 2007, recommends two changes to the existing regulation of alcohol advertising:

1. to change the 'watershed' time for broadcast alcohol advertising from 8:30pm to 10pm
2. to expand the BSA's jurisdiction, under the Broadcasting Act 1989, so that it covers broadcast liquor advertising, thereby effectively shifting the responsibility for broadcast alcohol advertising from the ASA to the BSA.

The Steering Group considered these two issues specifically. The television watershed is an important limitation on the placement of alcohol advertising and gives a signal that alcohol-related harm is an important matter for Government to consider. However, there are other potential limits on advertising that merit consideration in future. These include a discontinuation of outdoor advertising in areas that are highly visible to children (eg near schools), and also limits on placement of alcohol advertisements in programmes or publications of which the target audience includes a specified percentage of children and young people under 18. The Steering Group recommends that placement controls of this kind be considered in future reviews once research on the exposure of children and young people to alcohol advertising is available.

### **The Steering Group recommends that:**

12. If the television advertising watershed time is to be considered by Parliament, the time recommended by the Steering Group is 9.30pm rather than 10pm;

This would align with the beginning of the later 'adults only 9:30 pm' television viewing time. The Steering Group notes that there has been little advertising on the free-to-air television channels between 8:30pm and 9pm since the watershed was lowered, and none in 2006.

13. Responsibility for broadcast liquor advertising remain with the ASA within a strengthened system, as outlined in recommendations 1 to 11.

## **7. Final comments and other areas for possible action**

The Steering Group makes these recommendations strongly aware of the broader context of alcohol-related harms and responses to these harms. The Steering Group has concluded that alcohol advertising has a small but significant impact on alcohol consumption, and that it plays a role in shaping the culture drinking.

However, alcohol advertising is but one determinant of drinking behaviour. Other significant factors are price, access, availability, service practices, law enforcement and parental, peer and other social influences (see figure 1). All these determinants are modifiable and all need to be considered as part of a comprehensive approach to reducing alcohol-related harm.

The Steering Group also identified one specific action that is beyond the direct scope of this Review but which could be considered by the Review of the Sale and Supply of Liquor to Minors. Supermarkets and other grocery outlets, because of their central role in supplying food to the population, can be expected to show a high standard of social responsibility. Liquor products should be sold and promoted in a way that is sensitive to the potential impact on children, young people and people recovering from alcohol dependency problems.

This could be addressed through an amendment to the Sale of Liquor Act to insert a new section 154B requiring liquor promotions by off-license premises to be socially responsible. This would make the law consistent with section 154A, which is aimed at on-license premises, would strengthen efforts by the ASA to broaden its scope, and would empower local authorities to regulate the way off-licence premises promote and display liquor products.

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# Glossary

**Code of Advertising Liquor (CAL)** is the voluntary code by which sets the standards for alcohol advertising in New Zealand.

**Enforced self-regulation** refers to mandatory compliance with codes developed by self-regulation.

**Co-regulation** occurs when the rules that govern market behaviour are developed, administered and enforced by a combination of government agencies acting under legislative requirements and people whose behaviour is to be governed

**Government regulation** includes not only legislation but other transparent instruments such as Ministerial decrees, formal agreements, memoranda of understanding, licensing, contracts, registration and certification of organisations, certification of non-state codes and appointment of members of non-state organisations.

**Guerrilla marketing** refers to innovative, low-cost “do-it-yourself” methods of marketing. Sometimes the target audience is unaware that they have been marketed to.

**Inter-Agency Committee on Drugs (IACD)** – a committee of officials from relevant government agencies with responsibility for ensuring that policies and programmes developed by government agencies are consistent and mutually supportive. The IACD also makes recommendations to the MCDP on new policy initiatives.

**Ministerial Committee on Drug Policy (MCDP)** – a committee of government ministers charged with reviewing progress in implementing the NDP, and deciding which new policy initiatives should be implemented.

**Regulation** in the context of this Report means the process of making rules that govern behaviour. It includes voluntary and mandatory instruments. The important factor is that the regulatory instrument sets standards and influences compliance (Ministry of Consumer Affairs 2005). A code of practice is the most common regulatory instrument used by non-state actors.

**Self-regulation** refers to those regulatory schemes that obtain their legitimacy through voluntary adoption by the industry rather than being imposed through the coercive power of the state (Ministry of Consumer Affairs 2005). Self-regulation occurs within a legislative framework, for instance laws on fair trading and broadcasting. However, legislation is in the background, and there is otherwise no or little Government involvement.

**Viral marketing** is a form of marketing that encourages people to pass a marketing message to other people (eg by forwarding emails).