

**Advertising Standards
Authority's
Code for Advertising and
Promotion of Alcohol**

23rd August 2019

For more information please contact:
Jane Murray
NMH Public Health Service
Email: jane.murray@nmdhb.govt.nz
Phone: (03) 543 7805

Introduction

1. Nelson Marlborough Health (Nelson Marlborough District Health Board) (NMH) is a key organisation involved in the health and wellbeing of the people within Te Tau Ihu. NMH appreciates the opportunity to comment from a public health perspective on the Code for Advertising and Promotion of Alcohol.
2. NMH makes this submission in recognition of its responsibilities to improve, promote and protect the health of people and communities under the New Zealand Public Health and Disability Act 2000 and the Health Act 1956.

Question 1: Any inconsistencies between the draft code and current legislation?

3. This consultation on the standards for Advertising and the Promotion of Alcohol has limited itself to a review of the current ASA codes. These codes have been developed by an industry body and they are voluntary. Voluntary codes have been shown to be ineffective at restricting alcohol marketing.¹ Regulation that restricts alcohol marketing has been recommended by the Law Commission Review of the Regulatory Framework for the Sale and Supply of Liquor in 2010² and the Ministerial Forum on Alcohol Advertising and Sponsorship.³ This Forum was tasked with assessing the appropriateness of introducing new restrictions for regulating alcohol advertising and sponsorship. It considered existing measures under the Sale and Supply of Alcohol Act 2012 (the Act) and the codes and complaints processes managed by the Advertising Standards Authority.
4. NMH recommends that robust statutory regulations be developed rather than relying on industry voluntary self-regulation to protect our communities from harmful alcohol advertising and sponsorship.
5. The Government Inquiry into Mental Health and Addiction in 2019⁴ also recommended the adoption of regulation to restrict alcohol marketing. This

¹ (Noel, J. K., & Babor, T. F. (2017a). Does industry self-regulation protect young people from exposure to alcohol marketing? A review of compliance and complaint studies: Self-regulation complaint process. *Addiction*, 112, 51–56. <https://doi.org/10.1111/add.13432>).

² NZLC R114

³ 3 Ministerial Forum on Alcohol Advertising and Sponsorship: Recommendations on alcohol advertising and sponsorship. Wellington: Ministry of Health October 2014

⁴ 4 He Ara Oranga : Report of the Government Inquiry into Mental Health and Addiction Nov 2018

recommendation is also strongly promoted by the United Nations as a cost-effective policy to reduce alcohol harm⁵

6. The ASA code states that it has a particular emphasis on protecting children and young people and other vulnerable audiences. However both alcohol and advertising industries have a strong conflict of interest in their self-regulatory role.
7. It is our submission that the most effective way to provide these protections is to adhere to the recommendation of the forums, inquiries and reviews referenced above which all recommend Regulation that restricts alcohol marketing rather than continuing with the self-regulatory system and attempting to amend the current code.

Question 2: Do you agree with the wording of the draft code?

Rule 1 (a) Targeting adults: The content and placement of alcohol advertisements and promotions must target adult audiences.

8. The alcohol industries in New Zealand rely on heavy drinking for profits. Almost half (48%) of alcohol in New Zealand is consumed in heavy drinking occasions as defined by the World Health Organisation. Harm from alcohol is therefore not just confined to children under 18 years.⁶
9. NMH recommends that regulation that restricts alcohol marketing applies to all age groups. In order to protect the community, NMH recommends that alcohol advertising content be limited to objective product information only (origin, composition, production).
10. NMH recommends that Rule 1a is rewritten as "The content and placement of alcohol advertisements and promotions must protect the public from its glamorising and normalising impacts. Any advertisements must in particular not target children under 18 years"

Rule 1 (a): Guidelines

11. In relation to this Rule and in particular harm to children, the draft ASA guidelines would still allow marketing intended to make alcohol more appealing and palatable for anyone under 18years. The inclusion of the wording in the guideline

⁵ World Health Organization (Ed.). (2010). Global strategy to reduce the harmful use of alcohol. Retrieved from http://www.who.int/substance_abuse/activities/gsrhua/en/

⁶ Law Commission. (2009) *Alcohol in our lives: An issues paper on the reform of New Zealand's liquor laws*. Issues Paper 15.

"Sweet, colourful, mild-tasting products that may appear to be for children or young people or products that may cause confusion with confectionery or soft drinks" suggests that the harm from alcohol advertising only comes from children or young people confusing alcohol with a soft drink. It does not acknowledge that the harm comes from the promotion of alcohol itself.

12. NMH recommend that the draft Guidelines 1 and 2 for Rule 1a are replaced with

The extent to which an advertisement or promotion content and placement does or does not target adults is determined by having regard to context and the following criteria:

- a. Alcohol advertising content should be limited to objective product information only (origin, composition, production).
- b. No product that is designed to be attractive to anyone under 18 years old shall be allowed.
- c. Cultural icons, sporting heroes (individuals or teams), social media influencers, popular or easily recognisable celebrities, children or young people should under no circumstances appear or be used in any alcohol advertisements, promotions, or alcohol sponsorship advertisements.

Rule 1 (a) Guideline 3: The expected average audience at the time or place the advertisement appears is predominantly adults

13. Harm from alcohol is not just confined to children under 18 years. Almost half (48%) of alcohol in New Zealand is consumed in heavy drinking occasions at levels likely to cause harm.⁷ There is also increasing and sufficient evidence that alcohol causes cancer.⁸ Alcoholic beverages are classified by the International Agency for Research on Cancer (IARC) as a Group 1 carcinogen (carcinogenic to humans). Regulation that restricts alcohol marketing must apply to all age groups to protect the public from its glamorising and normalising impacts.
14. NMH supports the recommendation of the Ministerial Forum on Alcohol Advertising and Sponsorship³ that alcohol advertising is banned where 10% or more of the audience is younger than 18 years and that the onus of proving the audience composition rests with the media buyers.

⁷ Ibid

⁸ Conner J, et al., (2016) *Alcohol Attributable cancer deaths under 80 years of age in NZ Drug & Alcohol Review* (2

15. The Forum noted that the estimated current population in NZ under 18 years is 25%. Therefore taking care to ensure that advertisements target adults by assessing whether 25% or fewer of the expected audience will be under 18, imposes no limitation on the proportion of the expected audience.

16. NMH recommends that guideline 3 (page 11) is rewritten as

Advertisers need to demonstrate that care is taken when evaluating the expected impact prior to the placement of alcohol advertisements and promotions to ensure they target adults and protect the public from its glamorising and normalising impacts

Measures to determine if children or young people are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following:

- a. Where 10% or more of the expected audience will be children and / or young people;
- b. Content with significant appeal to children and / or young people such programmes, artists, playlists, video, movies, and magazines;
- c. Locations/events where children and / or young people gather.

The onus of proving the audience composition rests with the media buyers.

Guideline (page 12, bullet point 1): Children or Young People may appear in alcohol advertising and promotion but only in situations where they would naturally be found, for example, a family meal, provided there is no direct or implied suggestion they will consume the alcohol.

17. Research indicates harm from consumption of alcohol by adults in the presence of children. A systematic review of parenting and adolescent alcohol use published in the Australian and New Zealand Journal of Psychiatry in 2010 clearly showed, that drinking any amount of alcohol in front of your children, no matter how "responsibly" consumed, leads to earlier onset of alcohol consumption in those children, and heavier consumption of alcohol by those children⁹.

⁹ Ryan, S., Jorm, A., & Lubman, D. (2010). Parenting factors associated with reduced adolescent alcohol use: a systematic review of longitudinal studies. Aust NZ J Psychiatry, 44(9): 774-783.

18. A Scottish report¹⁰ specifically looked at the effect of non-addicted adults on their children's alcohol consumption and found that negative impacts on children were found at all levels of parental alcohol consumption. The report concluded that "such impacts can begin from relatively low levels of parental alcohol consumption."
19. NMH recommends that no child should appear in any alcohol advertisements incidentally or otherwise.

Guideline (page 12, bullet point 4) Current cultural icons, sporting heroes (individuals or teams) or celebrities that are easily recognisable and / or popular with children and young people may only be used in alcohol advertisements and promotions placed in age-restricted environments

20. Regulation is needed to ensure that advertisers do not use sports stars, cultural icons and celebrities that appeal to anyone under 18 years to avoid the normalising of alcohol. In reality this voluntary code has been ineffectual in limiting the amount of alcohol advertising associated with sporting teams and events, music festivals. This type of promotion is prominent in advertising in retail outlets, roadside signage, television, radio and social media platforms.
21. NMH submits that no current cultural icons, sporting heroes (individuals or teams) or celebrities that are easily recognisable and / or popular with children and young people may be used in alcohol advertisements and promotions in any environments, not just age restricted ones.
22. In addition, NMH recommends that non-restricted areas including public transport, movie theatres, sporting events/venues, cultural events/venues, and the exterior of alcohol outlets, should not be venues for alcohol advertising, nor should be any other public places accessible to young people within 500 metres of any school.

Guideline (page 12, bullet point 5): Broadcasted alcohol advertisements on linear television and on radio must not appear to dominate the viewing or listening period.

23. NMH support the recommendation of the Forum³ that alcohol advertisements including alcohol sponsorship should be excluded from 5.00 am to 9.30 pm and that this restriction should also apply to free to air, on demand, subscription (live and repeat) services and advertising placed on social media.

¹⁰ Institute of Alcohol Studies (2017) *Like sugar for adults - the effect of non-dependent parental drinking on children & families* October 2017

24. NMH consider that 9.30 pm to be a conservative estimate of the time of evening when youth up to 18 years will watch media, many will continue later than 9.30 pm.
25. The Forum³ noted that "research indicates that the volume and frequency of exposure to alcohol advertising is important" and they recommended that additional controls should be introduced. Further, the findings indicate that exposure may be equally if not more important than content. Research found a cumulative effect of exposure meaning that the more times young children are exposed to alcohol advertising and sponsorship the greater the impact it is likely to have on their initiation to consumption and patterns of drinking.^{11,12}
26. NMH recommend that to protect children and young people and other vulnerable audiences, the guidelines should reduce exposure to all audiences by reducing the length and frequency of alcohol advertisements.

Rule 1 (b) Alcohol Consumption Guidelines (page 13): Alcohol advertisements and promotions must demonstrate responsibility and moderation in alcohol consumption. Alcohol advertisements and promotions must not portray or represent as irresponsible, harmful or excessive the amount of alcohol consumed or the way drinking is portrayed. For example;

- a. Rapid or frequent consumption*
- b. Peer pressure to consume*
- c. Refusal of alcohol is portrayed as a weakness*

27. NMH recommend that this guideline includes restrictions on advertisements portraying alcohol being consumed in the presence of children under 18 years as evidence indicates harm from consumption of alcohol by adults in the presence of children^{4,5}
28. NMH also submit that this guideline should reflect the increased risk of cancers associated with consuming even low rates of alcohol. The portrayal of alcohol being used to relax or unwind implies that this activity carries no risk because of the proviso added that it is consumed in moderation. There is increasing evidence that for some cancers there is no safe level of alcohol consumption.

¹¹ Gordon, R., Harris, F. Mackintosh, A. M, & Moodie, C. (2011). *Assessing the cumulative impact of alcohol marketing on young people's drinking: Cross-sectional data findings*. *Addiction Research and Theory*, 19(1), 66-75;

¹² Lin, E., Caswell, S., You, R. & Huckle, T. (2012). *Engagement with alcohol marketing and early brand allegiance in relation to early years of drinking*. *Addiction Research & Theory*, 20(4), 329-338

29. NMH recommends that this guideline also includes criteria that is reflective of the risks associated with even moderate amounts of alcohol.
30. NMH advocate that it should be compulsory to include warnings in alcohol advertisements of the harm of alcohol especially in regards to there being no safe limit for alcohol in pregnancy.

Principal 3 Alcohol Sponsorship Advertisements (page 16)

31. Alcohol sponsorship advertisements must clearly and primarily promote the sponsored party
32. The forum³ focused on issues associated with advertising and sponsorship. NMH recommends that their eleven recommendations to reduce youth exposure through sponsorship and advertising are adopted,

Reducing Youth Exposure Through Sponsorship

- a. Ban alcohol sponsorship of all streamed and broadcast sports
- b. Ban alcohol sponsorship of sports [long-term]
- c. Ban alcohol sponsorship (naming rights) at all venues
- d. Ban alcohol sponsorship of cultural and music events where 10% or more of participants and audiences are younger than 18
- e. Introduce a sponsorship replacement funding programme
- f. Introduce a targeted programme to reduce reliance on alcohol sponsorship funding

Reducing Youth Exposure Through Advertising

- g. Ban alcohol advertising during streamed and broadcast sporting events
- h. Ban alcohol advertising where 10% or more of the audience is younger than 18
- i. Further restrict the hours for alcohol advertising on broadcast media
- j. Continue to offset remaining alcohol advertising by funding positive messaging across all media
- k. Introduce additional restrictions on external advertising on licensed venues and outlets

33. In addition, the Forum's three recommendations to strengthen the current system of co regulation should also be adopted. Voluntary codes have been shown to be ineffective at restricting alcohol marketing¹

Strengthening The Current System Of Co-Regulation

- a. Establish an independent authority to monitor and initiate complaints about alcohol advertising and sponsorship
- b. Establish a mechanism to identify and act on serious or persistent breaches of advertising standards
- c. Establish a multi-stakeholder committee to periodically review and assess Advertising Standards Complaints Board decisions and pre-vetted advertising

Question 3: Are there any aspects of alcohol advertising and promotion standards that are not captured in this draft code?

34. According to the Advertising Standards Complaints Board there is a maximum six-week turn-around period for the complaint procedure. There is no requirement for the advertisement to be withheld during this time therefore by the time the complaints procedure and sometimes the appeal procedure is undertaken, the advertisement has usually finished. This effectively means that any advertiser in breach of the code receives no penalty.
35. NMH recommend that complaint processes are amended to allow for 1) quicker assessment of breaches of the codes and 2) withdrawal of advertisements whilst complaint and appeals processes are undertaken. Until the time that alcohol sponsorship is prohibited, we recommend that alcohol sponsorship advertisements in breach of Code requirements be immediately removed rather than reconsidered as alcohol advertisements.
36. NMH recommend that a penalty system be introduced for breaches of the current codes. Advertisers and media found to breach the Code must face significant financial penalties as well as a meaningful suspension period during which the advertiser is not permitted to place new advertisements.

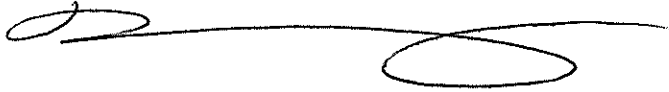
Conclusion

37. In summary we have made recommendations on the draft voluntary code but to best protect communities our recommendation is that voluntary industry self-

regulation of alcohol advertising is abandoned and replaced by robust statutory regulations.

38. NMH thanks the Advertising Standards Authority for the opportunity to comment on Code for Advertising and Promotion of Alcohol.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Peter Bramley
Chief Executive

Peter.bramley@nmdhb.govt.nz