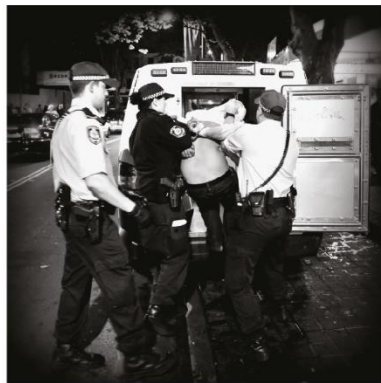




Submission: Review of the Liquor Promotion Guidelines



August 2018

About the NSW ACT Alcohol Policy Alliance

The NSW ACT Alcohol Policy Alliance (NAAPA) aims to reduce alcohol harm by ensuring that evidence-based solutions inform alcohol policy discussions in New South Wales (NSW) and the Australian Capital Territory (ACT). NAAPA currently has 47 member organisations from a range of fields including health, community, law enforcement, emergency services and research.

To contact the NAAPA secretariat email info@naapa.org.au or for more information about NAAPA visit www.naapa.org.au

The following are the NSW members of NAAPA:

- Foundation for Alcohol Research and Education (FARE)
- Network of Alcohol and Drug Agencies (NADA)
- Darlinghurst Resident Action Group (DRAG)
- Newcastle Community Drug Action Team
- Police Association of NSW
- Australian Medical Association (AMA) NSW
- The Royal Australasian College of Surgeons (RACS)
- Public Health Association NSW Branch
- Cancer Council NSW
- National Drug and Alcohol Research Centre (NDARC)
- Centre for Health Initiatives, University of Wollongong
- Hello Sunday Morning
- The Australasian College for Emergency Medicine (ACEM)
- Jewish House
- Inspire Foundation
- The Asia Pacific Centre for Crime Prevention Griffith University (Sydney)
- University of Newcastle
- Ulladulla Community Drug Action Team
- Drug and Alcohol Research and Training Australia (DARTA)
- Bondi Residents Association
- Noffs Foundation (NSW)
- St Vincent's Hospital
- Alcohol and Drug Foundation
- Health Services Union
- Pedestrian Council of Australia
- The Salvation Army NSW
- Awabakal Newcastle Aboriginal Co Operative Ltd
- The Royal Australasian College of Physicians (RACP)
- Byron Bay Youth Service
- NSW Nurses and Midwives Association
- 2011 Residents Association
- Bondi beach precinct
- CatholicCare Goulburn
- Mental Health Association of NSW
- The Royal Australian College of General Practitioners (RACGP)
- The Potts Point and Kings Cross Heritage Conservation Society
- Thomas Kelly Youth Foundation
- Australian Salaried Medical Officer's Federation NSW (ASMOF) NSW
- Australian Health Promotion Association (AHPA)

NAAPA Submission Liquor Promotion Guidelines

Contents

NAAPA Submission Liquor Promotion Guidelines	3
Contents.....	3
Summary	4
Recommendations	5
Section 1: Overarching framework – purpose, scope, enforcement and independence.....	7
Purpose of the Liquor Promotion Guidelines	7
Scope of the regulation.....	8
Enforcement of the Liquor Act and Liquor Promotion Guidelines	9
Industry interference in Government policy	11
Section 2: Response to questions in the Discussion Paper.....	14
Question 1 - Are the objectives of the Guidelines still appropriate, and do the Guidelines in their current form remain appropriate for securing those objectives?	14
Question 2 - Do the Guidelines effectively facilitate the responsible promotion of liquor at licensed venues, including takeaway liquor stores, in NSW?	15
Question 3 - Does the current Guideline format assist licensees in managing and addressing the risks associated with running liquor promotions?.....	15
Question 4 - Do the seven principles of undesirable liquor promotions and activities remain appropriate?	16
Question 5 - Are the examples of unacceptable promotions and harm minimisation measures included with each principle useful?	18
Question 6 - Do the Guidelines effectively capture harmful liquor promotions and practice by licenced venues, including takeaway liquor stores, in NSW?	18
Harmful discounting.....	19
Sponsorship.....	20
Catalogues.....	20
Question 7 - Do the guidelines effectively capture new forms of marketing and developing technologies, including social media?	21
Question 8 - Have the guidelines had any unintended positive or negative impacts on the community or industry?.....	24
References	25

Summary

Alcohol is one of the most heavily promoted products in the world.¹ It is also one of the most harmful. The primary purpose of alcohol advertising and promotion is to increase the sales of the products sold by alcohol companies.² Advertising and promotion of alcohol results in the normalisation of alcohol and an increase in consumption, thereby increasing the risk of alcohol harm. The entire premise of alcohol marketing and promotion is contrary to community standards.

The products sold by alcohol companies cause significant levels of harm in the New South Wales (NSW) community, with 13,624 emergency department presentations, 53,924 hospitalisations and 1,300 deaths every year.³ According to the World Health Organization (WHO), alcohol is a group one carcinogen and is a causal factor in more than 200 disease and injury conditions.⁴ These devastating numbers can be reduced through policies that address price, availability and, most relevantly for this review, the promotion of alcohol.

Considering the seriousness of the health challenge posed by alcohol promotion, this *Review of the Liquor Promotion Guidelines* is to be welcomed. The NSW ACT Alcohol Policy Alliance (NAAPA) thanks Liquor & Gaming NSW for the opportunity to provide feedback on the operation of the current Liquor Promotion Guidelines (the Guidelines) and suggestions for improvement, both with the Guidelines and their wider regulatory environment. Especially considering the history of previous reviews of the Guidelines and liquor promotions in general, NAAPA would like to acknowledge the open and transparent process that has been initiated for this review, and lend our strong support to its continuation.

NAAPA's submission is divided into two parts. In section one NAAPA explores the context of the Guidelines, looking to their ostensible purpose and the objectives of the wider legislative framework. Within that context, it is clear that the Guidelines are no longer fit for purpose. Their effectiveness has been undermined by their restricted application – only applicable to liquor licensees – and their inability to deal with problematic promotions. This is further compounded by an enforcement regime that lacks transparency and adequate sanctions. In closing this section of the submission, NAAPA explores potential reasons for these shortcomings, detailing the sorry history of industry involvement in previous reviews and decisions, at the expense of the wider NSW community.

In section two, NAAPA addresses the specific questions posed in the Discussion Paper. NAAPA draws attention to many of the problematic promotions currently undertaken in NSW, from booze-blazoned school busses through to pervasive shopper docket promotions and irresponsible deep discounting. NAAPA makes specific recommendations to address these issues with changes to the Guidelines and wider legislative framework.

In closing, NAAPA would like to note that this review is well overdue. In August 2014, in response to the review of the *Liquor Act 2007*, the NSW Government stated it would “task the Office of Liquor, Gaming and Racing with reviewing the Liquor Promotion Guidelines every three years commencing 2016”.⁵ It is now mid-way through 2018. With the pace of innovation in liquor advertising and marketing increasing every year, NSW cannot accept this tardy and piecemeal approach to the regulation of alcohol promotion. NAAPA would like to strongly suggest that alongside this review the NSW Government move to swiftly implement the recommendations from the Parliamentary Inquiry into the Alcohol Beverages Advertising Prohibition Bill 2015 and ensure that the entire regulatory system for alcohol promotions in NSW is independently reviewed every three years.

Recommendations

1. That all liquor promotions in NSW, regardless of promoting entity, medium or method, must be subject to the principles set out in s102(2) of the *Liquor Act 2007*.
2. That the NSW Government advocate for the finalisation of the National Alcohol Strategy by the end of 2018 and commit to its implementation at state level.
3. That the NSW Government implement the recommendations of the Parliamentary Inquiry into the Alcohol Beverages Advertising Prohibition Bill 2015, including:
 - a. the issue of discounting promotions for alcoholic beverages on shopper dockets
 - b. appropriate restrictions and/or exclusions on alcohol advertising on all government infrastructure and property, particularly advertising to which children and young people are exposed
 - c. a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged.
4. That Liquor & Gaming NSW revise their enforcement procedures to proactively monitor and prosecute breaches of the Liquor Promotion Guidelines.
5. That Liquor & Gaming NSW ensure that complaints and investigations are made public in the form of an annual report. This should detail:
 - a. information about the promotion a complaint was made against and reasons for the complaint
 - b. the assessment made about the complaint and whether it was pursued by the authority
 - c. any submissions made by the relevant party (oral and written)
 - d. whether the promotion was allowed to continue, if it was removed voluntarily and if a notice was issued.
6. That all further development and revision of liquor promotions and marketing in NSW occur independently of the alcohol industry.
7. That an independent review of alcohol marketing and promotional activities is conducted every three years.
8. Liquor & Gaming NSW should expand the scope of the Liquor Promotion Guidelines and undertake legislative change to ensure principles of the Liquor Promotion Guidelines are applied to all alcohol promoters including licensees, tourism agencies, owners and manufacturers.
9. Develop the Liquor Promotion Guidelines in line with the Alcohol Advertising Review Board (AARB) code not the ineffective industry-led Alcohol Beverages Advertising Code (ABAC).
10. That the Liquor Promotion Guidelines are strengthened to ensure the principles are applied equally to both on-premise and off-premise licenses.
11. Maintain the principles-based approach but increase the scope of the Liquor Promotion Guidelines and set a new robust standard for other jurisdictions.
12. That the Liquor Promotion Guidelines are updated to include restrictions on the placement of alcohol promotions where children and young people are likely to be exposed and provide examples of unacceptable placement, including:

- a. promotions within a defined radius of a primary or secondary school, defined by the average walking distance of NSW children to school
 - b. promotions on public transport including bus shelters and train stations.
- 13.** Strengthen the language used throughout the Liquor Promotion Guidelines and provide additional examples of unacceptable liquor promotions.
- 14.** Prohibit promotions that perpetuate the normalisation of alcohol and provide examples under Principle 7 – Not in public interest, including:
 - a. promotions in grocery stores, including point of sale, shopper dockets and catalogues
 - b. promotions on public transport, including bus shelters and train stations
 - c. promotions linking alcohol and sport, including sponsorship of athletes and sporting events
 - d. promotions implying improved social outcomes
 - e. promotions implying improved health and/or wellbeing.
- 15.** Under Principle 5 – Extreme Discounts – remove the division between ‘unacceptable promotions’ and those that ‘require harm minimisation measures’ so that all examples are listed under ‘examples of unacceptable promotions’.
- 16.** That new provisions on the use of online and social media channels are included in the Liquor Promotion Guidelines.
- 17.** That Liquor & Gaming NSW commit to investigating and monitoring alcohol industry use of social media and emerging technologies in marketing and promotional activity.
- 18.** That the Liquor Promotion Guidelines prohibit alcohol marketing and promotions that are likely to appeal to young people, irrespective of whether they are also appealing to or targeted at adults.

Section 1: Overarching framework – purpose, scope, enforcement and independence

Purpose of the Liquor Promotion Guidelines

The *Liquor Act 2007 (NSW)* requires all persons who exercise functions under the Act, including licensees, to have due regard to:

- the **need to minimise harm** associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour);
- the need to **encourage responsible attitudes and practices** towards the promotion, sale, supply, service and consumption of liquor; and
- the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, **the amenity of community life**.⁶

These requirements apply to the promotion of alcohol in NSW by licensees, with s102 of the Act giving specific power to the Director General to restrict or prohibit undesirable promotions or activities. The *Liquor Promotion Guidelines NSW* (the Guidelines) fulfil the requirement in s102(4) for there to be “publicly available guidelines that indicate the kinds of activities or promotions that the Secretary would consider being the subject of a notice under this section”.

There is a clear need for alcohol promotion to be regulated. Alcohol is one of the most heavily promoted products in the world.⁷ The promotion of alcohol contributes to the normalisation of its use and reinforces the harmful drinking culture that currently exists in Australia.⁸ The Guidelines are therefore an essential plank in the NSW Government’s public health infrastructure.

Young people are particularly vulnerable to alcohol advertising, including liquor promotions. Exposure to alcohol marketing and promotion shapes young people’s attitudes towards alcohol consumption and behaviours. This is particularly concerning as alcohol marketing is more prolific than ever. Research shows that the more alcohol promotions young people are exposed to, the earlier they will start to drink and if they already drink, it increases the amount they will consume.^{9,10,11} As the NSW Parliamentary Inquiry into the *Alcohol Beverages Advertising Prohibition Bill 2015* (Alcohol Advertising Inquiry) found:

*The committee acknowledges that the alcohol and advertising industries have put forward sophisticated arguments as to why there is no causal link between advertising and consumption. However, the committee strongly rejects this view: the research clearly demonstrates that there are strong associations between exposure to alcohol advertising and young people’s early initiation to alcohol use and/or increased alcohol consumption. To put it simply, those exposed to alcohol advertising are more likely to drink, and to drink more. There can also be no doubt that advertising significantly contributes to the normalisation of alcohol consumption in our society, no more so than among children and young people.*¹²

The NSW Government, including Liquor & Gaming NSW, must seriously consider the negative consequences of liquor promotions in the development of their regulatory framework. Unfortunately, as elaborated below, in their current form the Guidelines do not fully serve their purpose and support the operation of the Act. They lack cohesion, preference promotions from certain licence types, and

fail to recognise the continuum of harm from alcohol marketing and promotions. Anchored in an outdated marketing world, they have made only tentative, inadequate steps towards new media and contemporary forms of promotion. The ambiguous language and laissez-fair approach towards enforcement further compounds these problems, meaning that in practice the Guidelines favour the interests of the alcohol industry over the NSW community.

Recommendation

1. That all liquor promotions in NSW, regardless of promoting entity, medium or method, must be subject to the principles set out in s102(2) of the *Liquor Act 2007*.

Scope of the regulation

While the aim of the Guidelines is admirable, their limited scope currently undermines their ability to achieve their purposes. In particular, their restricted application to promoters (only licensees) and types of promotion (see questions two and six in section two below) mean many problematic promotions are not in the scope of the current Guidelines. This needs to be addressed.

Young people's exposure to alcohol promotions is not restricted to licensed venues. Promotions are not more or less harmful because they come from a pub rather than a producer. As brands aggressively move into new avenues of promotion by encouraging co-creation of promotional material, using influencers and exploiting "fans", their efforts at building relationships and brand loyalty are flying under the regulatory radar. A regulatory system based on the entity making the promotion rather than the harm from the promotion is unsustainable in the modern marketing era and undermines the objectives of the Act. In future, it is essential that all entities involved in the promotion, distribution and sale of liquor in NSW comply with the Guidelines. NAAPA's concerns with the restricted application to only licensees are further explored in response to questions one and seven below.

In addition, the Guidelines require updating to ensure they tackle new promotion avenues and take seriously the impact of off-licence venues (responsible for nearly 80 per cent of all alcohol purchased in Australia).¹³ Social media promotions and sponsorship of sporting and cultural events are arguably the most pervasive forms of promotion in the current day, and yet as technologies and promotions have moved forward, the Guidelines have struggled to keep up. This is further explored in response to questions six and seven below.

The Discussion Paper states that:

It is not the intent of the review to examine broader issues around alcohol advertising or the related national framework. The review is focused on the Guidelines that apply in NSW, which provide guidance to NSW industry about the acceptable standards for promotions run by NSW based licensees.

However, by not considering the broader issues around alcohol advertising, Liquor & Gaming NSW are severely limiting the capacity of their own Guidelines in a new and emerging era of marketing.

Strong action from NSW is particularly important considering the parlous state of the national framework. Australia has been without a National Alcohol Strategy since 2011, and as such has lacked a strong and overarching national direction to stop the harm from alcohol. With promotion increasingly operating across state boundaries, the need for a coordinated national approach has never been greater. While the most recent Draft National Alcohol Strategy needs considerable improvement, it does acknowledge the issues of alcohol marketing and highlights the regulation of

promotions as a key opportunity for action. The NSW Government must advocate strongly at a national level to ensure that a National Alcohol Strategy is concluded before the end of the year, and must commit to implementing that strategy at state level. While waiting for this to be completed, NSW should seize the opportunity to implement strong regulation around the promotion of alcohol.

The inadequacies of the Guidelines and current regulation of liquor promotions were highlighted in the Alcohol Advertising Inquiry. The Committee's final report made the following recommendations relevant to this review:¹⁴

- That Liquor & Gaming NSW complete the review and finalisation of the updated NSW Liquor Promotion Guidelines by the end of 2018.
- That the NSW Government consider the issue of discounting promotions for alcoholic beverages on shopper docketts.
- That the NSW Government consider appropriate restrictions and/or exclusions on alcohol advertising on all government infrastructure and property, particularly advertising to which children and young people are exposed.
- That the NSW Government consider a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged.

Liquor & Gaming NSW are to be congratulated on promptly addressing the first recommendation in this review.

While acknowledging that some of these recommendations would require the legislative intervention of the NSW Government, any reform to the Guidelines will not be fully effective without the implementation of the broader suite of reforms. All liquor promotions in NSW, regardless of promoting entity or method, should be subject to the principles set out in s102(2) of the *Liquor Act 2007* to prevent undesirable promotions. More specifically, Liquor & Gaming NSW should advocate strongly to the NSW Government for the implementation of the above recommendations, and the NSW Government should move promptly towards implementation.

Recommendation

2. That the NSW Government advocate for the finalisation of the National Alcohol Strategy by the end of 2018 and commit to its implementation at state level.
3. That the NSW Government implement the recommendations of the Parliamentary Inquiry into the Alcohol Beverages Advertising Prohibition Bill 2015, including:
 - a. the issue of discounting promotions for alcoholic beverages on shopper docketts
 - b. appropriate restrictions and/or exclusions on alcohol advertising on all government infrastructure and property, particularly advertising to which children and young people are exposed
 - c. a strategy to phase out alcohol sponsorship in sport over time, in a way that ensures sporting clubs and organisations are not financially disadvantaged.

Enforcement of the Liquor Act and Liquor Promotion Guidelines

Any regulatory restrictions are undermined without swift and certain mechanisms to facilitate compliance. Rules are only as good as their enforcement mechanisms. To effectively minimise alcohol harm and uphold the principles of the Act, Liquor & Gaming NSW must ensure that promotions and

activities abide by the seven principles of the Guidelines as set out in s102(2), are in line with community expectations, and consistent with harm minimisation. This includes proper monitoring and enforcement through a transparent and accountable system.

Weaknesses and inconsistencies in the application and enforcement of liquor legislation undermine efforts to minimise alcohol harm. As outlined on page seven of the Discussion Paper, there has been a significant decline in the number of notices issued for undesirable liquor promotions. However, from the available information, it is impossible to tell if there has been an increase in compliance or whether undesirable promotions are simply not being prosecuted. Similarly, without a public record of complaints and resolutions, it is impossible to judge the severity of the cases reported or the prevalence of repeat offenders.

In Liquor & Gaming NSW's appearance before the Alcohol Advertising Inquiry, Mr Paul Newson Deputy Director stated: "We get hundreds and hundreds of complaints and every complaint goes to a complaints assessment committee."¹⁵

There does not appear to be a public record of these assessments and determinations. All determinations, even informal assessments of a complaint, should be publicly recorded.

Mr Newson also stated that when actioning complaints:

*We have to observe natural justice. We contact the relevant party, we give them an opportunity to make any submissions. If it is an immediate matter, that might be oral submission. If we still form the view that it is a promotion that is undesirable or that is in some way encouraging misuse or abuse we restrict or ban the promotion.*¹⁶

The two-phase system, where licensees are given the opportunity to withdraw offensive promotions after notification and thus escape sanction has the possibility of encouraging licensees to adopt an "apologise later" attitude towards promotions, rather than taking proactive steps to ensure harm minimisation.

In the future, Liquor & Gaming NSW should commit to making all complaints and investigations public, demonstrate an active approach towards monitoring and prosecuting breaches and revise sanctions to ensure they remain appropriate and reflect the severity of community harm.

Recommendation

- 4.** That Liquor & Gaming NSW revise their enforcement procedures to proactively monitor and prosecute breaches of the Liquor Promotion Guidelines.
- 5.** That Liquor & Gaming NSW ensure that complaints and investigations are made public in the form of an annual report. This should detail:
 - a. information about the promotion a complaint was made against and reasons for the complaint
 - b. the assessment made about the complaint and whether it was pursued by the authority
 - c. any submissions made by the relevant party (oral and written)
 - d. whether the promotion was allowed to continue, if it was removed voluntarily and if a notice was issued.

Industry interference in Government policy

To serve the purpose of the Act, regulatory processes should be transparent, facilitative and timely. NAAPA welcomes the fact that this current consultation process has been clear, transparent and open to community stakeholders. Liquor & Gaming NSW is to be congratulated for this improvement in processes.

In the present consultation, proactive steps must be taken to prioritise the community interest over the interests of the alcohol industry. This is particularly crucial as redress for the inappropriate influence that the alcohol industry has previously had on these policies (see case studies one and two below).

The primary purpose of alcohol marketing is to increase sales, thereby increasing the amount of alcohol consumed, by increasing the number of people drinking alcohol or increasing the amount of alcohol consumed by existing consumers.¹⁷ The entire premise of alcohol advertising and promotion is contrary to community health standards. The regulation of liquor promotions and the development of codes and standards should be independent of the alcohol industry, as their primary concern is increasing their profit margin, not the health and wellbeing of communities.

The UN Secretary General stated in 2017 that vested interests routinely interfere with health policymaking, including lobbying against the implementation of recommended interventions, working to discredit proven science and pursuing legal challenges to oppose progress.¹⁸ According to the United Nations, “industry interference is one of the commercial determinants of health,^a a concept that extends to governmental policies and practices such as trade promotion”.¹⁹ Former Director-General of the World Health Organization (WHO) Dr Margaret Chan has also stated:

When industry is involved in policy-making, rest assured that the most effective control measures will be downplayed or left out entirely. This, too, is well documented, and dangerous. In the view of WHO, the formulation of health policies must be protected from distortion by commercial or vested interests.²⁰

Industry should not be involved in any form of policy development or regulation. This is supported by a recent study published last week, finding three primary themes used by the alcohol industry in Australia to undermine harm reduction policies:

1. The legitimisation of alcohol as an important social and economic product.
2. The portrayal of the industry as trustworthy and benign.
3. The strategic embedding of alcohol in various facets of everyday life.²¹

As seen in the following case studies, when the alcohol industry has been involved in the development of NSW alcohol policy and regulation, specifically promotion policies, they have undermined the purposes and objectives of the Act. It is paramount that Liquor & Gaming NSW address industry interference not only in the Guidelines but throughout all regulatory processes and alcohol policy more generally.

^a The commercial determinants of health are the commercial conditions, actions and omissions that affect health. Commercial determinants arise in the context of the provision of goods or services for payment and include commercial activities, as well as the environment in which commerce takes place. Commercial determinants can have a beneficial and/or detrimental impact on health.

Case Study 1 – Review of the 2009 Liquor Promotion Guidelines

During 2012 and 2013, Liquor & Gaming NSW, then called the Office of Liquor, Gaming & Racing (OLGR), reviewed the Guidelines without public consultation, deliberately excluding public health and community stakeholders. In May 2013, NAAPA was informed that the *Liquor Promotion Guidelines 2009* were being reviewed and updated in consultation with members of the alcohol industry. NAAPA wrote to the Director General of the NSW Department of Trade and Investment requesting to be involved in the consultation process and development of the updated guidelines. This request was denied.

Former member of the NSW Upper House, Dr John Kaye subpoenaed the draft versions of the Guidelines and the correspondence between the Minister, OLGR and liquor industry stakeholders. Copies of the documents can be found in Appendix 1. These documents clearly showed that successive drafts had been substantially weakened to suit the commercial interests of off-premise licensees, Coles and Woolworths.

For example, a previous draft version included the following text under principle 1:

It is important that any material associated with liquor promotions (whether or not these contain images appealing to minors) is not placed in areas which are predominately used by minors or where significant numbers of minors may spend time, such as near school play centres or video arcades.

This was removed following letters from Coles, Liquor Stores Association NSW, Distilled Spirits Industry Council Australia (DSICA) and Diageo:

- Coles Liquor (5 October 2012 letter): “We question how the Guidelines would deal with the situation where a licensed premise is located or has consistently advertised in a location and a facility such as a play centre or video arcade that is opened later? We believe that the first user rights apply in this situation.”
- Liquor Stores Association NSW (5 October 2012 letter): “The wording under 'additional information' needs further clarification as it may result in potential issues arising when, for example, 'a business that is predominantly used by minors (e.g. Child care centre or video arcade) opens in an area or shopping complex where there is already an existing licensed premises.”
- DSICA (5 October 2012 letter): “In the Additional information text, the issue of location of the promotion is raised, where the advice is given that promotions should not be ‘near schools, play centres and video arcades.’ This part of the guidelines might be improved by providing a clearer idea of what would be considered as ‘near’ in practical terms.”
- Diageo (10 October 2012 letter): “In the Additional Information text, the statement that promotions should not be ‘near schools, play centres and video arcades’ should be also clarified.”

Additionally, OLGR initially proposed a ban on promotions involving “discounts of greater than 50 percent off the normal retail price”. Subsequent lobbying by Woolworths, Coles and their peak body Liquor Stores Association, successfully caused the exclusion to be dumped and replaced with a much less restrictive and vague requirement – that harm minimisation measures be applied to this kind of promotion. This case study clearly shows how the intent of the Guidelines was undermined by industry

influence. A copy of the proposed Liquor Promotion Guidelines before industry interference can be found at Appendix 2.

Case Study 2– Investigation into Shopper Dockets

Shopper docket are coupons or vouchers for free or discounted products, predominantly alcohol or petrol products, printed at the bottom of supermarket shopping receipts. In relation to alcohol, these docket are used to promote alcohol discounts, such as two-for-one offers. Both big retailers (Woolworths and Coles) use shopper docket to promote alcohol.

In 2013, OLGR conducted a six-month investigation into shopper docket promotion following several customer complaints. A timeline of events relating to OGLR’s investigation can be found in Appendix 3. On 25 March 2013, the Director of Compliance Paul Newson (now Deputy Secretary Liquor, Gaming & Racing) wrote to Coles and Woolworths informing them that their promotional activities “present an increased risk of encouraging the misuse and abuse of liquor” and inviting them to “show cause” as to why a notice to “restrict or prohibit the licensee from carrying on or permitting these activities should not be issued”.

As part of this investigation, OLGR sought an independent report from an expert in health and marketing, Professor Sandra Jones, Director of the Centre for Health Initiatives, University of Wollongong. This report cautioned that promotions which lead people into buying more alcohol than they had originally intended are likely to increase consumption and that this is particularly the case for young people.²² The report also notes that shopper docket, and other linkages between liquor and everyday grocery items, send a message to consumers, particularly children and young people, that alcohol is a normal everyday product.

Following the six month investigation, OLGR concluded that shopper docket were “likely to encourage the misuse and abuse of liquor”.²³ The agency consequently recommended that shopper docket promoting discounted alcohol should be banned. Regrettably, the Director General of OLGR decided not to support his agency’s recommendations, thus allowing this harmful practice to continue.

The documents listed in Appendix 3 reveal the ongoing interference from members of the alcohol industry to undermine the regulatory process. This interference is seen in the documents when a briefing note is sent to the Director General stating that “the Woolworths correspondence appears to be a calculated attempt to undermine ongoing regulatory inquiries and quash OLGR’s capacity to ventilate regulatory activities of public interest”.

Recommendations

- 6.** That all further development and revision of liquor promotion and marketing in NSW occur independently of the alcohol industry.
- 7.** That an independent review of alcohol marketing and promotional activities is conducted every three years.

Section 2: Response to questions in the Discussion Paper

Question 1 - Are the objectives of the Guidelines still appropriate, and do the Guidelines in their current form remain appropriate for securing those objectives?

The key objectives of the Guidelines are to:

- Provide clarity on unacceptable liquor promotions and activities;
- Provide guidance as to what is considered by the Secretary when determining whether a liquor promotion or activity is irresponsible or undesirable and may be subject to a restriction or ban or other regulatory action;
- Provide guidance on harm mitigation measures that may reduce the risk of harm associated with irresponsible or undesirable liquor promotions or activities; and
- Assist in the development of a sustainable and responsible liquor industry, by defining clear expectations for the conduct of liquor promotions.

The objectives of the Guidelines remain appropriate, but their effectiveness is hindered by their limited reach and scope. NAAPA has concerns that the guidelines as they stand are too restrictive and are not effective at capturing harmful marketing practices.

The Guidelines aim to be consistent with other national codes such as the Alcohol Beverages Advertising Code (ABAC). However, the ABAC is an industry regulated code that has faced repeated criticism for its narrow application and its inability to deal with harmful promotions. In response to the failings of the industry scheme, the Alcohol Advertising Review Board (AARB) was established to provide an independent and transparent assessment of alcohol advertising complaints. Examples of the problematic approach of ABAC include the exclusion of sponsorship as a form of advertising and its inability to deal with offensive “fan” sites on social media.

Another shortfall of the Guidelines is that they only apply to holders of a liquor licence. In contrast, numerous companies promote alcohol, from manufacturers to tourism authorities. The levels of harm that may arise from these promotions are no less because they come from a non-licensed promoter. All businesses involved in the sale of alcohol within NSW, including brand owners, producers and venues, should comply with the Guidelines.

The pervasive nature of alcohol marketing is evidence of the ineffective regulation under the current Guidelines. As highlighted in the submission to this review from the McCusker Centre for Action on Alcohol and Youth, complaints made to the AARB show that promotions that appeal to minors, sexualised advertising and heavy discounting remain problems in NSW. There should be legislative change so that the standards of the Guidelines include producers, manufacturers and distributors.

Recommendations

8. Liquor & Gaming NSW should expand the scope of the Liquor Promotion Guidelines and undertake legislative change to ensure principles of the Liquor Promotion Guidelines are applied to all alcohol promoters including licensees, tourism agencies, owners and manufacturers.

9. Develop the Liquor Promotion Guidelines in line with the Alcohol Advertising Review Board (AARB) code not the ineffective industry-led Alcohol Beverages Advertising Code (ABAC).

Question 2 - Do the Guidelines effectively facilitate the responsible promotion of liquor at licensed venues, including takeaway liquor stores, in NSW?

NAAPA, an alliance of NSW community members, public health groups, emergency services and local resident groups, is not satisfied that the Guidelines effectively facilitate responsible liquor promotions by NSW licenced venues, including takeaway liquor stores. This is because they fail to take into consideration placement, they fail to properly assess public interest criteria, and they fail to protect children and young people from exposure. This is further explained in the responses to Question 4 and Questions 6 – 8.

The current Guidelines are predominately focused on promotions that may take place at an on-licence premise (for example a bar, pub or hotel), and they fail to appropriately regulate promotions within the contemporary advertising market. The Guidelines should not be restricted to promotions at licensed venues. They should encompass all liquor promotions no matter the business type or location/ placement of the promotion.

In their current form, the Guidelines provide leniency for certain licence types, in particular, takeaway liquor stores. This is at odds with the regulatory framework. This preferencing to off-premise licences implies that on-premise promotions are more harmful. However, off-premise licensees are responsible for nearly 80 per cent of all alcohol purchased in Australia²⁴ and according to the NSW risk-based licensing system they are considered high-risk venues. It is therefore appropriate that their promotions be treated with equal importance.

Recommendations

10. That the Liquor Promotion Guidelines are strengthened to ensure the principles are applied equally to both on-premise and off-premise licenses.

Question 3 - Does the current Guideline format assist licensees in managing and addressing the risks associated with running liquor promotions?

The current format provides some assistance for licensees in managing and addressing the risks associated with running liquor promotions. However, as highlighted in the responses to questions one and two, the Guidelines are limited in their reach and therefore effectiveness. Changes to the Guidelines, as set out in the recommendations of this submission, would provide better assistance for licensees as well as the broader community by further outlining why liquor promotions are harmful and what is considered irresponsible advertising and promotion of alcohol.

The current principles-based approach is appropriate as it is less limiting than a prescriptive legislative approach and can be adapted with emerging media and marketing tactics. A principles-based approach provides a framework for promoters, the community and the regulator to assess whether to prohibit or restrict the irresponsible advert or promotion.

In order for the Guidelines to be a useful document to promoters, it is important to support the principles-based approach by providing specific examples of the types of promotions that would contravene the principles of the Guidelines and therefore the Act.

In addition, NAAPA considers that there should be further refinement of the criteria to determine whether to prohibit or restrict the irresponsible advertising and promotion of alcohol. These criteria should cover issues like the nature of the promotion and how it may encourage liquor consumption, promotional price of the alcohol product, duration of the promotion, implications of the promotion for public safety and amenity and the exposure of children to the promotion (not just likely appeal to children).

Recommendation

- 11.** Maintain the principles-based approach but increase the scope of the Liquor Promotion Guidelines and set a new robust standard for other jurisdictions.

Question 4 - Do the seven principles of undesirable liquor promotions and activities remain appropriate?

The seven principles of undesirable liquor promotions and activities remain appropriate, but they are inadequately applied across the spectrum of promotions. The following case study provides an example of a liquor promotion conducted by a NSW licensee that is in breach of the current principles, and acts as an example of areas where further work is required to ensure that the principles are applied in an effective matter.

Case Study 3 – Unacceptable liquor promotion of a school booze bus

The NSW Liquor Promotion Guidelines do not currently protect minors through the placement of a liquor promotion. This is out of step with the alcohol industry's own guidelines produced by ABAC, which include some placement protections for minors, albeit not enforceable.

On the morning of Friday 6 July 2018, school bus 3034 was covered in a whole-of-bus advert for The Bavarian which consisted of a continuous row of larger-than-life pints of beer along at least two sides of the bus. Text in the advert included "BEERS BY THE BUSLOAD", "17 BEERS ON TAP" and The Bavarian logo.

The 3034 bus is a school bus which travels from Ingleburn to Minto Station and stops at Ingleburn High School; Sackville Street Public School; Benham Road opposite the Grange Public School, and the Kabbarli Early Learning Centre, Guernsey Avenue. It is a designated school bus for school children.

This liquor promotion contravenes principle 7 of the [NSW Liquor Promotion Guidelines](#) because it is not in the public interest on the grounds of 'decency', 'risk of detriment to the community at large', and the fact that it 'inappropriately targets vulnerable groups'.



It is indecent for a school bus to be covered in a whole-of-bus advertisement for alcohol which is a class one carcinogen, a product which damages the developing brain²⁵, and a product which is illegal to supply to minors.

This liquor promotion 'inappropriately targets vulnerable groups' because it appears on a school bus for use exclusively by minors. Minors are a vulnerable group because drinking alcohol from a young age can damage the developing brain²⁶ and increase the risk of experiencing alcohol-related problems later in life.²⁷

This liquor promotion creates 'risk of detriment to the community at large' because it increases the risk that minors will incur disease or injury as a result of drinking alcohol. Evidence clearly shows that young people's exposure to alcohol marketing increases their alcohol consumption and increases their likelihood to start drinking earlier.^{28, 29, 30}

Promotions like this are many and varied and are not effectively enforced under the current Guidelines.

The School Booze Bus is an excellent example of an undesirable liquor promotion undertaken by a licensed venue in the growing market of outdoor advertising. Outdoor alcohol advertising is extensive, has features that appeal to children, and instils the idea that consumption of the alcohol product is associated with positive personality traits and success.³¹

The advertising industry has described outdoor advertising as "always on, delivering messages 24 hours a day, seven days a week".³² It cannot be switched off and the entire community is exposed, making it impossible to control who sees alcohol ads.

The revised Guidelines should include measures to protect minors and other vulnerable groups through placement restrictions prohibiting: (i) promotions within a defined radius of a school, as recently introduced in Victoria through the Liquor and Gambling Legislation Amendment Bill 2018; and (ii) promotions on all public transport.

The distance should be based on evidence as to the distance children typically walk to school in the NSW. This would assist in the enforcement of unacceptable promotions and be in step with

community expectations and measures recently put in place in other jurisdictions such as Western Australia. The Western Australian Government recently announced that it will implement a state-wide ban on alcohol advertising on all public transport and transport waiting areas.³³

Recommendations

12. That the Liquor Promotion Guidelines are updated to include restrictions on the placement of alcohol promotions where children and young people are likely to be exposed and provide examples of unacceptable placement, including:
 - a. promotions within a defined radius of a primary or secondary school, defined by the average walking distance of NSW children to school
 - b. promotions on public transport including bus shelters and train stations.

Question 5 - Are the examples of unacceptable promotions and harm minimisation measures included with each principle useful?

Overall NAPPA considers that the Guidelines would be improved with a greater diversity of examples and with clearer language. Examples of alcohol promotions not in the public interest include those that suggest alcohol is associated with positive health and wellbeing outcomes (for example, sport sponsorship, alcohol and exercise, alcohol as an essential part of socialising and interaction). Please see questions four and six for further examples. Additionally, in an environment where online liquor sales have seen rapid growth, the Guidelines should provide specific examples of unacceptable promotions as guidance in an emerging marketplace.

For greater clarity on unacceptable promotions, the Guidelines should provide as many examples as possible. This would assist promoters as well as the broader community.

Recommendations

13. Strengthen the language used throughout the Liquor Promotion Guidelines and provide additional examples of unacceptable promotions.

Question 6 - Do the Guidelines effectively capture harmful liquor promotions and practice by licenced venues, including takeaway liquor stores, in NSW?

The limited scope of the current Guidelines has been discussed at length in this submission. Currently, there are numerous forms of promotions not covered by the Guidelines including, point of sale (POS) promotions, shopper docket, sponsorship of sporting and cultural events, promotions on public transport and promotions in shopping and grocery catalogues.

These promotional activities normalise alcohol and encourage its sale and consumption as part of everyday life and routine daily activities. It is well known that alcohol causes considerable amounts of harm to the community and these irresponsible promotions that are not effectively captured under the Guidelines, perpetuate the normalisation of alcohol consumption and inadvertently add to the harm.

According to the World Health Organization, alcohol consumption is a causal factor in more than 200 disease and injury conditions.³⁴ Alcohol is associated with a risk of developing health problems such as mental and behavioural disorders, including alcohol dependence, major non-communicable diseases such as liver cirrhosis, some cancers and cardiovascular diseases, as well as injuries resulting from violence and road crashes and collisions.³⁵ In NSW, alcohol is responsible for 53,933 hospitalisations and 1,289 deaths every year.³⁶ Alcohol is a group one carcinogen, as classified by the WHO's *International Agency for Research on Cancer*.³⁷ In Australia, it is estimated that 5,070 cases of cancer (or five per cent of all cancers) are attributable to alcohol each year.³⁸

Promotions that perpetuate the normalisation of alcohol are just as harmful as those that encourage rapid intoxication. They contribute to long-term harm and prevent cultural change. Liquor & Gaming NSW have a responsibility to protect the community from alcohol harm and disassociate alcohol consumption from everyday living. Liquor promotions must be appropriately restricted in light of the overwhelming evidence supporting the negative health effects of alcohol consumption. This can be achieved by updating and properly enforcing the Guidelines to restrict the following promotions.

Harmful discounting

Liquor promotions that centre heavily on price as an enticement to purchase the product should be specifically identified as harmful promotions in the Guidelines and be strictly prohibited, regardless of "harm minimisation" measures.

There is an inverse relationship between the price of alcoholic beverages and levels of consumption and harm.³⁹ Currently, Liquor & Gaming NSW does not have in place appropriate regulations to restrict the discounting of products. Many examples of harmful discounts described in the Guidelines are allowed to proceed as long as 'harm minimisation measures' are taken into account. This is not an appropriate mitigation of alcohol harm as it enables harmful promotions to continue in an environment of very limited enforcement.

Discounting mechanisms include bundle deals where you get a discount for the more product purchased, POS promotions which encourage impulse purchases at the checkout, and 'buy some get some free' offers (including on shopper dockets) that induce an emotional response for getting something for 'free'. These types of promotions influence purchasing decisions and often result in individuals buying more alcohol than they planned to.⁴⁰

In NSW, 76 per cent of adults have been influenced by a promotion when purchasing alcohol, including buying a particular type of alcohol because of a discounted price, buying more alcohol than originally planned because of a discount, buying a particular product because of a shopper docket promotion and buying a particular product because of a free gift or giveaway.

POS refers to promotional materials found within or on the exterior of licensed premises at the point where an alcohol purchase is made (for instance, happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices). POS promotions involving price or volume discounts have been found to be particularly effective in encouraging the purchase of increased volumes of alcohol.^{41,42} POS liquor marketing is "ubiquitous" and "aggressive".⁴³ In Sydney, for example, takeaway liquor stores host an average of 30.2 POS promotions per outlet.⁴⁴

Shopper dockets are liquor promotion vouchers located on supermarket shopping receipts. A prominent theme in shopper docket promotions is "buy some get some free". Due to the fact that if alcohol is present in the home it is generally consumed and that receiving something for 'free' elicits an emotional response, this type of promotion has the potential to encourage excessive consumption of alcohol.⁴⁵ Shopper dockets and other linkages between liquor and everyday grocery items send a

message to consumers, particularly children and young people, that alcohol is a normal everyday product. As discussed in Section 1 of this submission, OLGR previously conducted an investigation into shopper dockets, determining that the promotion should be banned. Unfortunately, this recommendation is yet to be introduced.

Along with strengthening the Guidelines, the *Liquor Act 2007* must also be amended to include provisions that limit harmful price discounting such as banning shopper docket liquor promotions and prohibiting the promotion and sale of alcohol at half or less than half of the usual price. POS promotions that encourage impulse purchases with the intention of ‘up-selling’ should also be restricted. These types of promotions must be added to the ‘examples of unacceptable promotions’ on page eight of the Guidelines. Ceasing harmful price discounting will reduce risky alcohol consumption and discourage risky practices such as preloading by minimising the price differential between on- and off-licence premises.

Sponsorship

Sponsorship is a clear form of advertising, marketing and promotion of a brand or product. Yet it is completely excluded from the Guidelines as well as other national codes such as the ABAC. The ABAC specifically states that sponsorship is not considered a form of advertising and therefore is not included under the code. This dereliction of duty makes it even more imperative that the NSW Government step-in and protect children from the exposure of alcohol marketing and promotions during sporting and cultural events.

Licensed venues and alcohol companies sponsor music festivals, cultural and sporting events, celebrities and sports stars. These events are attended by children and young people, and many of the stars at the events are idolised by children and young people. Their association with a harmful and unhealthy product like alcohol normalises drinking behaviours and the perception that you need alcohol to enjoy life. NAAPA is not calling for stopping the sale and consumption at these events, however, their prolific and unrelenting promotion must stop.

The association of alcohol with sport is particularly problematic. Alcohol sponsorship of sport has an impact on both players and spectators. Alcohol ads are seen on player’s jerseys, on signage, the field and even the replay screen. Alcohol sponsorship of sport means that alcohol ads are everywhere and do not come under any restrictions or regulations. Alcohol sponsorship of sport is associated with hazardous drinking by those playing the sport⁴⁶ and communicates strong messages about alcohol brands and drinking that are absorbed by children.

While playing sport should be encouraged among children, the promotion of alcohol in association with sport, should not. Sport is a health promotion activity and its association with an unhealthy product such as alcohol is counter-intuitive at best and harmful at worst. The promotion of alcohol in association with sport contravenes principle seven – not in the public interest – as it links alcohol (a group one carcinogen and a major contributor to the burden of disease) to health and physical activity. The NSW Government has the power to ban alcohol sponsorship and promotions at NSW stadiums and sporting events and should immediately start this phased removal in order to protect children and young people.

Catalogues

Liquor promotions in shopping catalogues are another example of harmful promotions that are not effectively covered under the current Guidelines. This type of promotional activity encourages alcohol as an everyday product and a regular household grocery staple like milk and bread. This is incredibly

inappropriate due to the overwhelming evidence of the negative health impacts of alcohol consumption.

Catalogue promotions remain a popular marketing method and key informant for consumers regarding alcohol promotions. A recent study from Roy Morgan Research found that catalogues are the most influential advertising and promotional media for alcoholic beverages. Consumers use catalogues the most for informing their purchasing decisions (38 per cent) followed by the internet (31 per cent), with newspapers and television barely used to inform decisions (4 per cent and 3 per cent respectively).⁴⁷ This is problematic as one in eight catalogues display alcohol promotions on pages with non-alcohol products.⁴⁸ Placing alcohol products in the same catalogue, let alone on the same page as non-alcohol products promotes the view that alcohol is part of your everyday grocery purchases.

Catalogue promotions are also frequently linked to special events such as Mother's Day and Christmas Day and often incorporate marketing themes like 'Footy Finals Specials' conveyed through images and text.⁴⁹ This normalisation of alcohol promotes an unhealthy relationship and assumption that alcohol needs to be involved in all social aspects of our lives. Another problematic component of catalogues is their prolific use of price-based promotions to drive purchases. The most commonly used themes associated with alcohol promotions in shopping catalogues are value for money (for example, '20% off' and 'buy one get one free' – 97.9 per cent of catalogues), sporting events (for example, footy season and world cup – 29.8 per cent) and seasonal events (for example, Christmas, Mother's Day – 28.7 per cent).⁵⁰

Liquor & Gaming NSW has a responsibility to disassociate alcohol from everyday purchases. This can be achieved by banning alcohol promotions from shopping catalogues.

Recommendations

14. Prohibit promotions that perpetuate the normalisation of alcohol and provide examples under Principle 7 – Not in public interest, including:
 - a. promotions in grocery stores, including point of sale, shopper dockets and catalogues
 - b. promotions on public transport, including bus shelters and train stations
 - c. promotions linking alcohol and sport, including sponsorship of athletes and sporting events
 - d. promotions implying improved social outcomes
 - e. promotions implying improved health and/or wellbeing.
15. Under Principle 5 – Extreme Discounts – remove the division between 'unacceptable promotions' and those that 'require harm minimisation measures', so that all examples are listed under 'examples of unacceptable promotions'.

Question 7 - Do the guidelines effectively capture new forms of marketing and developing technologies, including social media?

The Guidelines do not effectively capture old forms of marketing such as print media let alone the new forms of outdoor marketing and online technologies. The marketing sector is continuing to grow and develop and the regulatory environment, particularly in the alcohol marketing space, is not keeping up.

The Guidelines state that they “aim to be consistent with other codes and guidelines relating to alcohol promotions and advertising, such as the Alcohol Beverages Advertising (and Packaging) Code, the Australian Association of National Advertisers Code of Ethics and the National Health and Medical Research Council Australian Guidelines to Reduce Health Risks for Drinking Alcohol”. However, public health advocates have argued for years that these Codes are inadequate to address marketing on social media and are slow to respond to new and emerging technologies. The current Guidelines do not adequately capture advertising that falls outside traditional media.

Businesses are encouraged to use social media because people use social media regularly, creating an opportunity for business owners to reach their customers and reach them using a forum that many prefer. The Queensland Government for example recognises the power of social media for business and provides advice about using social media for business marketing purposes.⁵¹ Social media marketing enables businesses to reach large audiences in a very cost-effective manner.⁵²

What is good for other businesses is good for licensed venues.

Licensed venues are already communicating with their patrons using social media for a variety of reasons such as promoting events, promoting products, engaging with their patrons and encouraging them to visit their venues. The Lord Nelson at The Rocks is on twitter (@LordNelsonBrew), Facebook (@LordnelsonBrewery), Instagram (lordnelsonbrewery) and YouTube (Lord Nelson Brewery), and patrons can subscribe to their newsletters. The Munich Brauhaus, named the most violent venue in Sydney in May 2018, is also on Facebook (@MunichBrauhaus) and Instagram (munichbrauhaus), it too keeping in touch with patrons by email. Different communication channels allow venues to reach specific audiences.

Alcohol brands are finding ways to circumvent the ABAC. Alcohol advertisers use social media to engage with young people, encourage them to use their experiences to co-create promotional material, build relationships and loyalty to the brand, reinforce alcohol culture, and to normalise consumption. Brands are able to take advantage of this engagement to expand their reach, strengthen their marketing efforts by peer promotion so that the promotion comes from trusted sources of information. An example of the types of activities that have been observed include ‘fan pages’ on Facebook. These are Facebook pages that have ostensibly been set up by fans of a particular product, but an examination of the sites suggest that they are being financially supported by an entity, either person or company.

Brands also use key influencers to help promote their brand. For example, a brand might identify some key people that have a substantial social media following. They then invite them to an event where they are encouraged to post favourable content to their followers. These posts generally involve pushing alcohol in a heavily branded environment.

This type of marketing and promotion falls under the radar of regulatory efforts, including the Guidelines. It is very effective in reinforcing drinking culture and is almost sinister in its ability to disguise their intent as simply sharing fun experiences that happen to involve alcohol. The very reason these opportunities are available is to further promote alcohol consumption and branding.

If brands are engaging in this type of activity, it won’t be long before licensed venues will be doing the same, if they are not doing this already.

Already on-license venues are taking advantage of tools that use mobile phone technology that allow them to detect when people are in the vicinity of their venue. Venues can target messages to patrons encouraging them to come to their venues and let them know of any events or promotions that are

on offer. These messages are only targeted at people that are near the venue and are otherwise undetected.

Similar marketing tactics are used by soft drink companies to target young people where the companies paint themselves as cool and fun, and encourage young people to like and share the advertisements to their friends.⁵³

These types of activities also enable businesses to collect data on their prospective and existing customers. It enables them to build their databases to learn more about the people that engage with them and their preferences, and identify their target audiences. This information enables them to better market their product or brand to attract and retain new and existing customers.

This type of marketing is not regulated under the current guidelines. Furthermore, children and young people are regularly exposed to these types of online marketing. Many social media sites have minimum age standards however this does not stop children from using these platforms. The minimum age to open an account with Facebook, Snapchat, Instagram, Pinterest etc. is 13 years of age. However, this does not stop children from inputting a fake age to circumnavigate these 'restrictions'.

Case Study 4 – Alcohol promotions using Snapchat

A recent complaint upheld by Advertising Standards Authority (ASA) in the UK was Diageo's Captain Morgan Snapchat lens. ⁵⁴ The paid lens was seen in June 2017 and featured a cartoon pirate that turned the users face into Captain Morgan, with two glasses of rum and coke clinking together and voiceovers of "live like the Captain" and people cheering.

The ASA felt that the advert was of particular appeal to people under 18 and was directed at people under 18. This was based on the premise that the childlike cartoon of a pirate would very likely appeal to those under 18 and the lack of adequacy surrounding age-gating mechanisms.

As part of ASA's decision they cited Ofcom (the UK communications regulator) research from 2016 that showed despite Snapchat having a minimum used age of 13, 34 per cent of children aged 8 to 11 years used Snapchat. Based on this information ASA felt that it was not possible to control who viewed the Captain Morgan lens and therefore it was likely that the ad could be seen by those under 18. This decision was upheld on 3 January 2018 and has resulted in Diageo suspending the use of Snapchat advertising internationally.

Licensed venues can also purchase and design Snapchat filters to promote the venue, an event or their products. The Guidelines do not have an appropriate restriction to cover this form of advertising.

Recommendations

- 16.** That new provisions on the use of online and social media channels are included in the Liquor Promotion Guidelines.
- 17.** That Liquor & Gaming NSW commits to investigating and monitoring alcohol industry use of social media and emerging technologies in marketing and promotional activity.

Question 8 - Have the guidelines had any unintended positive or negative impacts on the community or industry?

The Guidelines have had unintended negative impacts on exposure of children and young people to alcohol marketing and promotions. As outlined in this submission exposure to alcohol marketing influences attitudes and beliefs about drinking, increases initiation of drink and increases the amount of consumption. Children and young people are particularly vulnerable to alcohol marketing.

The current Guidelines have attempted to put in place restrictions on young people's exposure, however, they do not go far enough. The use of phrases like 'predominantly targeted to minors' and 'primarily appeal to minors' are too narrow. These phrases echo wording used in the ABAC, which has been found to be too narrow to effectively protect children and young people.⁵⁵ The ABAC states that alcohol ads can only be placed where the audience is at least 75 per cent adults, yet only 22 per cent of the population are children with less than 10 per cent aged 10-17 years. The ABAC only applies to advertising during programs that are 'directed primarily to children'. This fails to include not only sport but programs such as Master Chef, Modern Family and the Simpsons which are the most popular among children.

By echoing the words of ABAC, the NSW Liquor Promotion Guidelines are failing to protect children and young people. Liquor & Gaming NSW must do more to address the exposure of children and young people to alcohol marketing. The Guidelines must provide examples under Principle 1 that detail types of promotions appealing to young people, irrespective of whether they also appeal to adults.

Additionally, vague language such as "care should be taken" and "consideration should be given" in the Guidelines creates ambiguity and doubt about the meaning and intent of the Guidelines. This has positive implications for the alcohol industry but negative consequences for the community as the burden of proof rests unfairly on their shoulders.

The Guidelines also include harmful statements like:

It is recognised that the consumption of alcohol occurs in many different contexts and circumstances, and that there may be different risks associated with promotional activities in different licensed premises.

This implies that the potential for short-term harm, such as alcohol poisoning and violence, is more dangerous than long-term harm, such as cancer and diabetes, despite the same ultimate outcomes.

The Guidelines could have positive impacts on the community by setting an example for other jurisdictions. However, this can only be achieved by implementing the recommendations of the Alcohol Advertising Inquiry and prioritising harm minimisation, and the health and welfare of the NSW community over business interests.

The entire regulatory framework for alcohol marketing needs to be redeveloped, although in the absence of this there are actions that NSW should undertake. NSW can take a leadership role in alcohol advertising, just as it once did in the tobacco space and continue to do for physical activity and nutrition.

Recommendations

18. That the Liquor Promotion Guidelines prohibit alcohol marketing and promotions that are likely to appeal to young people, irrespective of whether they are also appealing to or targeted at adults.

References

- ¹ Jernigan, D. (2010). The extent of global alcohol marketing and its impact on youth. *Contemp Drug Probl.* 37:57–89.
- ² Pan American Health Organisation (2017). Technical note: Background on alcohol marketing regulation and monitoring for the protection of public health. Washington, D.C.: PAHO & WHO.
- ³ New South Wales Health (2017). NSW health stats. Retrieved from: http://www.healthstats.nsw.gov.au/IndicatorGroup/indicatorViewList?code=beh_alc&topic=topic_alcohol&name=AlcoholTopic
- ⁴ World Health Organization. (2015). Alcohol: Fact sheet. Geneva: World Health Organization.
- ⁵ New South Wales Government. (2014). *NSW Government response to the “statutory review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007*. Retrieved from the Liquor and Gaming NSW website: http://www.liquorandgaming.nsw.gov.au/Documents/liquor/law-and-policy/GovernmentResponse_StatutoryReview_LA_GALAA.pdf p41.
- ⁶ Section 3(2) Liquor Act 2007 (NSW)
- ⁷ Jernigan D. (2010). The extent of global alcohol marketing and its impact on youth. *Contemp Drug Probl.* 37, 57–89.
- ⁸ Australian Medical Association (2012). *Alcohol Marketing and Young People: Time for a new policy agenda*. Canberra: AMA
- ⁹ Anderson, P., De Bruijn, A., Angus, K., Gordon, R., & Hastings, G. (2009). Impact of alcohol advertising and media exposure on adolescent alcohol use: a systematic review of longitudinal studies. *Alcohol and Alcoholism* 44, 229-243.
- ¹⁰ Jones, S. and Magee, C. (2011). Exposure to alcohol advertising and alcohol consumption among Australian Adolescents. *Alcohol Alcsm.* 46(5), 630-637.
- ¹¹ Snyder, L.B., Milici, F.F., Slater, M., Sun, H., and Strizhakova, Y. (2006). Effects of alcohol advertising exposure on drinking among youth. *Archives of Pediatrics and Adolescent Medicine* 160(1), 18-24.
- ¹² NSW Legislative Council Portfolio Committee No. 1 – Premier and Finance (2018). Report 46 – March 2018. Alcoholic Beverages Advertising Prohibition Bill 2015. Sydney, Australia.
- ⁸ Euromonitor International. Passport – Alcoholic drinks in Australia. June 2017.
- ¹⁴ NSW Legislative Council Portfolio Committee No. 1 – Premier and Finance (2018). Report 46 – March 2018. Alcoholic Beverages Advertising Prohibition Bill 2015. Sydney, Australia.
- ⁸ NSW. Legislative Council Portfolio Committee No. 1 – Premier and Finance. 1 December 2017. 5. (Mr Paul Newson, Deputy Director Liquor & Gaming NSW)
- ⁸ NSW. Legislative Council Portfolio Committee No. 1 – Premier and Finance. 1 December 2017. 5. (Mr Paul Newson, Deputy Director Liquor & Gaming NSW)
- ¹⁷ Pan American Health Organisation (2017). *Technical note: Background on alcohol marketing regulation and monitoring for the protection of public health*. Washington, D.C.: PAHO & WHO.
- ¹⁸ UN Secretary General (December 2017). *Progress on the prevention and control of non-communicable diseases*. Retrieved 20/07/2018 from: https://ncdalliance.org/sites/default/files/resource_files/UNSG%20Report%20on%20NCDs%20December%202017%20A.72.662%20SG%20report.pdf
- ¹⁹ UN Secretary General (December 2017). *Progress on the prevention and control of non-communicable diseases*. Retrieved 20/07/2018 from: https://ncdalliance.org/sites/default/files/resource_files/UNSG%20Report%20on%20NCDs%20December%202017%20A.72.662%20SG%20report.pdf
- ²⁰ Chan, M (2013). *Opening address at the 8th Global Conference on Health Promotion, Helsinki*. Retrieved 20/07/2018 from: http://www.who.int/dg/speeches/2013/health_promotion_20130610/en/
- ²¹ Pettigrew, S., Hafekost, C., Jongenelis, M., Pierce, H., Chikritzhs, T., Stafford, J. (2018). Behind closed doors: The priorities of the alcohol industry as communicated in a trade magazine. *Frontiers in Public Health* 6. doi: 10.3389/fpubh.2018.00217

-
- ²² Jones, S.C. (2013). *Expert report on “shopper docket” alcohol promotions*. Report prepared for the New South Wales Office of Liquor, Gaming and Racing. Retrieved 03/08/3018 from: <http://drinktank.org.au/wp-content/uploads/2014/05/Document-17b-2.pdf>
- ²³ Giorgi, C. & Ferguson, A. (2014). *Shopper dockets: The OLGR investigation*. Retrieved 03/08/3018 from: <http://drinktank.org.au/2014/05/shopper-dockets-the-olgr-investigation/>
- ⁸ Euromonitor International. *Passport – Alcoholic drinks in Australia*. June 2017.
- ²⁵ National Health and Medical Research Council (2009). *Australian guidelines to reduce the health risks from drinking alcohol*. Canberra: Commonwealth of Australia.
- ²⁶ National Health and Medical Research Council (2009). *Australian guidelines to reduce the health risks from drinking alcohol*. Canberra: Commonwealth of Australia.
- ²⁷ Grenard, J.L., Dent, C.W., Stacy, A.W. (2013). Exposure to alcohol advertisements and teenage alcohol-related problems. *Pediatrics* 131(2).
- ²⁸ Lobstein T., Landon J., Thornton N., and Jernigan D. (2015). *The association between alcohol marketing and youth alcohol consumption: A systematic review for Public Health England*. UK Health Foundation, London.
- ²⁹ Anderson P., De Bruijn A., Angus K., Gordon R., and Hastings G. (2009). Impact of alcohol advertising and media exposure on adolescent alcohol use: A systematic review of longitudinal studies. *Alcohol and Alcoholism* 44(3), 229-243.
- ³⁰ Smith L., & Foxcroft D. (2009). The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: Systematic review of prospective cohort studies. *BMC Public Health* 9(51).
- ³¹ Jones, S.C., Phillipson, L. & Barrie, L.R. (2010). ‘Most men drink... especially like when they play sports’: Alcohol advertising during sporting broadcasts and the potential impact on child audiences. *Journal of Public Affairs*, 10 (1-2), 59-73.
- ³² Outdoor Media Association. *Annual Report 2014*. Sydney (Australia): Outdoor Media Association; 2015.
- ³³ Government of Western Australia. (2018). End in sight for alcohol advertising on public transport. Media release, 29 June 2018 <https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/06/End-in-sight-for-alcohol-advertising-on-public-transport.aspx>
- ³⁴ World Health Organization. (2015). *Alcohol: Fact sheet*. Geneva: World Health Organization.
- ³⁵ World Health Organization. (2015). *Alcohol: Fact sheet*. Geneva: World Health Organization.
- ³⁶ New South Wales Health (2017). NSW health stats. Retrieved from: http://www.healthstats.nsw.gov.au/Indicatorgroup/indicatorViewList?code=beh_alc&topic=topic_alcohol&name=AlcoholTopic
- ³⁷ World Health Organization International Agency for Research on Cancer (2012), Consumption of Alcoholic Beverages, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans Volume 100E*. Available from: <<http://monographs.iarc.fr/ENG/Monographs/vol100E/mono100E-11.pdf>> [Accessed 16 August 2016].
- ³⁸ Winstanley, M., Pratt, I., Chapman, K., Griffin, H., Croager, E., Olver, I., Sinclair, C and Slevin, T. (2011). *Alcohol and cancer: a position statement from Cancer Council Australia*. *Medical Journal of Australia*: 194 (9): 479-482.
- ³⁹ Wagenaar, A.C., Salois, M.J., & Komro, K.A. (2009). Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies. *Addiction* 104: 179-190.
- ⁴⁰ Jones, S.C. & Smith, K.M. (2012). The effect of point of sale promotions on the alcohol purchasing behaviour of young people in metropolitan, regional and rural Australia. *Journal of Youth Studies* 14 (8):885-900.
- ⁴¹ Jones, S.C. & Smith, K.M. (2011). The effect of point of sale promotions on the alcohol purchasing behaviour of young people in metropolitan, regional and rural Australia. *Journal of Youth Studies* 14(8): 885-900.
- ⁴² Kuo, M., Wechsler, H., Greenberg, P. & Lee, H. (2003). The marketing of alcohol to college students: the role of low prices and special promotions. *American Journal of Preventive Medicine* 25(3): 204-211.
- ⁴³ Jones, S.C., Barrie, L., Robinson, L., Allsop, S. & Chikritzhs, T. (2012). Point-of-sale alcohol promotions in the Perth and Sydney metropolitan areas. *Drug and Alcohol Review* 31: 803–808.
- ⁴⁴ Jones, S.C., Barrie, L., Robinson, L., Allsop, S. & Chikritzhs, T. (2012). Point-of-sale alcohol promotions in the Perth and Sydney metropolitan areas. *Drug and Alcohol Review* 31: 803–808.
- ⁴⁵ Jones, S.C. (2013). *Expert report on “shopper docket” alcohol promotions*. Report prepared for the New South Wales Office of Liquor, Gaming and Racing. Retrieved from www.drinktank.org.au

-
- ⁴⁶ O'Brien, K., *et al.* (2011). Alcohol Industry and Non-Alcohol Industry Sponsorship of Sportspeople and Drinking. *Alcohol Alcsm.* 46 (2): 210-213.
- ⁴⁷ Roy Morgan (2017). Catalogues the media most useful for alcoholic beverages. Finding no. 7554. Australia.
- ⁴⁸ Johnston, R., Stafford, J., Pierce, H. & Daube, M. (2016). Alcohol promotions in Australian supermarket catalogues. *Drug and Alcohol Review.* 2016 Australasian Professional Society on Alcohol and other Drugs.
- ⁴⁹ Johnston, R., Stafford, J., Pierce, H. & Daube, M. (2016). Alcohol promotions in Australian supermarket catalogues. *Drug and Alcohol Review.* 2016 Australasian Professional Society on Alcohol and other Drugs.
- ⁵⁰ Johnston, R., Stafford, J., Pierce, H. & Daube, M. (2016). Alcohol promotions in Australian supermarket catalogues. *Drug and Alcohol Review.* 2016 Australasian Professional Society on Alcohol and other Drugs.
- ⁵¹ Business Queensland Using social media to market your business: the basics Viewed on 30 July 2018 at <https://www.business.qld.gov.au/running-business/marketing-sales/marketing-promotion/online-marketing/social-media>
- ⁵² Lyfe Marketing Blog (2018) 15 reasons why marketing through social media is a must for every small business Viewed on 30 July 2018 at <https://www.lyfemarketing.com/blog/marketing-through-social-media/>
- ⁵³ Whitson R (2018) Study reveals the tactics soft drink companies use to market to young people Viewed on 30 July 2018 at <http://www.abc.net.au/radio/adelaide/programs/worldtoday/study-reveals-the-tactics-companies-use-to-market-soft-drinks/9944180>
- ⁵⁴ Advertising Standards Authority UK. (2018). ASA Ruling on Diageo Great Britain Ltd. Retrieved 4 January 2018 from <https://www.asa.org.uk/rulings/diageo-great-britain-ltd-a17-390017.html>
- ⁵⁵ Australian National Preventive Health Agency. Alcohol advertising: the effectiveness of current regulatory codes in addressing community concern. Canberra: Commonwealth of Australia; 2014. Available from: www.fare.org.au/wp-content/uploads/Alcohol-Advertising-Final-Report-30-April-2014.pdf

NSW ACT ALCOHOL POLICY ALLIANCE (NAAPA)

www.naapa.org.au

info@naapa.org.au

(02) 6122 8600

ISBN: 978-0-6482739-9-8