

MULTI-AGENCY REVIEW OF THE REGULATORY FRAMEWORK FOR ALCOHOL ADVERTISING

Purpose

This report outlines details of the multi-agency review of the regulatory framework for advertising.

Background

During 2005, alcohol advertising was on the agenda of the Ministerial Committee on Drug Policy, following Cabinet approval (LEG Min (05) 3/5) of the Government's response to the Health Select Committee's report on the petition of Dr Viola Palmer and 2,869 others (2002/119). The petition expressed concern about alcohol advertising in New Zealand and requested action by the Government.

The Government's response was to ask the Inter-Agency Committee on Drugs (IACD) to prepare a paper for the Ministerial Committee on Drug Policy (MCDP) exploring the need for a Government-led review of the regulatory regime for alcohol advertising and outline options for such a review.

At its meeting on 14 June 2005, the MCDP considered the IACD's recommendations and agreed that there was a need for a Government-led review of the regulatory framework for alcohol advertising, and the preferred type of review was an officials review. The Inter-agency Committee on Drugs (IACD) was asked to report back with further details about such a review.

A report was prepared by the Ministry of Health in consultation with a sub-committee of the IACD and other government agencies that indicated an interest in being involved. The report set out the scope and structure of the proposed review. At its meeting on 13 December 2005, the Ministerial Committee on Drug Policy (MCDP) agreed to the recommended multi-agency review.

Policy context

The focus of the Government's alcohol policy is harm minimisation and culture change. One of the 13 priority population health objectives of the *New Zealand Health Strategy* is "minimising harm caused by alcohol and illicit and other drug use to both individuals and the community". Reducing drug and alcohol harm is also one of the five issues for priority inter-sectoral action identified in *Opportunity for All New Zealanders* (2004), the Government's 'big-picture' summary of its social policy.

Research has shown a connection between alcohol advertising and the beliefs and behaviours of young people.¹ Alcohol advertising has the effect of reinforcing cultural norms. In turn, the wider societal culture of drinking is a strong determinant of youth drinking culture.

¹ For example, Casswell S, Zhang J F (1998) Impact of liking for advertising and brand allegiance on drinking and alcohol-related aggression: a longitudinal study. *Addiction*. Aug; 93 (8): 1209-17. For a summary of research worldwide, see Babor T et al, (2003) *Alcohol: no ordinary commodity – research and public policy*, Oxford Medical Publications.

'Responsible marketing' is a demand reduction objective of the Government's alcohol strategy.² The Culture Change Programme focuses on changing New Zealand's drinking culture from one that accepts intoxication as a social norm to one where bingeing and intoxication are seen as unacceptable. Alcohol industry groups have indicated support for the Culture Change Programme.

Problem Definition

The problem to be addressed by the review is whether or not the current system for regulating alcohol advertising is in harmony with the aims of Government and is robust enough to achieve desired outcomes and, if not, what must be done to achieve this.

The review will need to address specific problems and issues with alcohol advertising in New Zealand such as the large amount of sponsorship and advertisements young people are exposed to. A description of these problems was outlined in a report to MCDP³. A detailed list will be included in the project brief. The review will assess whether improvements can be implemented within the current voluntary self-regulatory framework or if consideration will need to be given to altering the framework.

Issues

Both policy-makers and industry groups agree that alcohol advertising needs to be regulated. What is not agreed is how best to regulate and to what extent. A balance needs to be achieved between the need for public health and wider social objectives to be met, the need to allow for freedom of expression under the Bill of Rights Act, and individual and parental rights and responsibilities.

Further, the review will need to apply the principles of proportionality and fairness so that the resulting regulatory framework is not out of proportion to the potential and real harms associated with advertising alcohol.

The resulting framework will also need to be justifiable in relation to advertising frameworks for other products. Alcohol is a regulated, psychoactive drug with a high level of public acceptance of its use and misuse. In this way it can be seen as different from most other products. Alcohol advertising practices may also differ from those of other products.

Review structure and roles

A steering group will oversee the review and develop recommendations for the lead Minister, Hon Damien O'Connor, Associate Minister of Health. The steering group will produce an interim report and a final report to Minister O'Connor and MCDP, as well as a progress report at each quarterly MCDP meeting.

A working group will review evidence, develop and assess options, prepare reports for the steering group and organise consultation.

² *National Alcohol Strategy 2000-2003*, Ministry of Health 2001. The strategy will be updated following the revision of the National Drug Policy.

³ 'Alcohol Advertising and Options for Review', a discussion document for the MCDP by the IACD, May 2005.

The review will consult identified stakeholder reference groups from industry, non-government, community and other organisations. An officials reference group will provide specialist advice on cross-sectoral issues. Additionally, the steering group's draft proposals will undergo a formal public consultation.

Appendix 1 shows more details of roles and the structure of the review.

Goal of review

The current goal of the Code for Advertising Liquor (CAL) is: "to ensure that liquor advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by minors."

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

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

This places a strong emphasis on public health and wider societal wellbeing, aligning the goal with Government alcohol policy and wider social policy. The third bullet point emphasises limiting the overall amount of alcohol advertising reaching children and young people, as well as prohibiting advertisements that target them.

Scope of "Advertising"

There is no universally agreed definition of what constitutes "advertising". However, the ASA's Codes Booklet states that for the purposes of the Codes, "the word "advertisement" is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief political viewpoint or opportunity."⁴

In the spirit of the above definition, and in order to be effective in achieving its goal, the review should consider a broad spectrum of methods and media used to advertise alcohol. A wide scope will also highlight the amount and variety of advertising messages and the implications this has for policy-making, and will enable possible displacement effects to be addressed.⁵

The following is a list of aspects of advertising that the review will take into account. The inclusion of packaging, liquor-branded merchandise and product placement makes the scope broader than the jurisdiction of the ASA.

- the content of advertisements

⁴ ASA, Codes Booklet, www.asa.co.nz, Page 16.

⁵ Displacement occurs when tightening the control on one type of advertising results in an increase in another type of advertising.

- the media for advertisements, eg broadcast advertising, print media, electronic and interactive media
- placement, ie when and where the advertisements appear, (including the internet, magazines, cinema, bus stops and billboards) and under what limitations
- sponsorship
- packaging (as it relates to advertising)
- point-of-sale promotions
- point-of-sale material
- competitions and give-aways, loyalty cards
- product placement
- liquor-branded merchandise
- guerilla marketing and viral marketing⁶
- health warnings in advertisements.

Ultimately, some forms of advertising pose greater challenges for regulation, enforcement and monitoring than others. For example, stronger sponsorship regulation may have far-reaching financial implications for communities and the Government.

Packaging and merchandise are not “advertising” per se, but because they can be used as media for advertising, it is necessary to include them in the scope of the review. Packaging often incorporates advertising techniques and references to sponsored activities, and is an important way that new customers learn about new alcohol products, particularly bottled products. Packaged products on supermarket shelves and t-shirts, caps and bags are all highly visible to children and young people.

The significance of packaging in the advertising environment is shown by the CAL’s prohibition on the advertising of products that fail to comply with the *National Guidelines on the Naming, Packaging and Merchandising of Alcoholic Beverages* (ALAC, 2000). These guidelines were originally part of an agreement between ALAC and a number of organisations. The ASA can and has acted to limit the advertising of products that breach these guidelines (following their inclusion in the CAL). However, the ASA does not have jurisdiction over actual packaging or merchandise because they are not produced by advertisers or media companies.

Appendix 2 shows existing jurisdiction and controls on each of the advertising aspects to be included in the scope of the review.

Scope of “Regulatory Framework”

The term ‘regulatory framework’ includes all aspects of the regulatory system as follows:

- pre-vetting of advertisements
- the Code for Advertising Liquor
- areas of responsibility, accountability and enforcement
- complaints and appeals
- ongoing review, monitoring and evaluation
- research/information needs

⁶ The terms “guerilla marketing” and “viral marketing” refer to the newer types of marketing that utilise inexpensive, non-traditional media, such as on-line competitions and text messages.

- education of stakeholders and the public
- relevant legislation
- relationship between alcohol advertising and broadcasting regulations about promotion.

Recommendations may be made in regard to processes, structures, organisations, specific rules about advertising, and amendments to legislation.

Criteria

Identified options for solving specific problems will be evaluated against the following criteria:

- Effectiveness – the extent to which the policy will contribute towards achieving the goal
- Efficiency – resource considerations, cost-effectiveness, timeliness
- Fairness – any restrictions on freedoms must be justifiable and proportionate under the Bill of Rights Act.

At the stage when policy options for a regulatory framework are being developed, the above criteria will need to be expanded to include specific objectives.

Work Programme

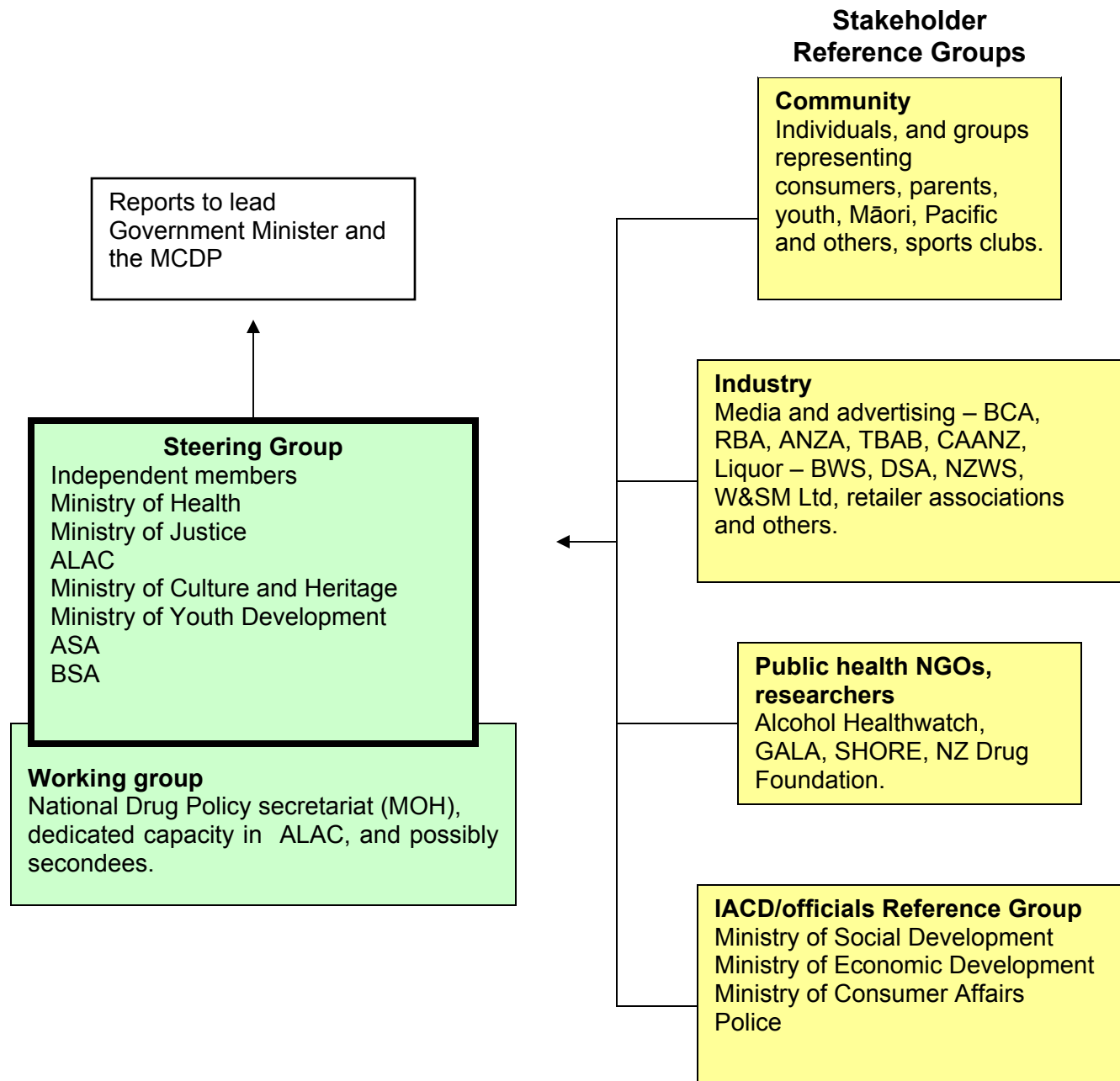
The review will proceed through the following stages.

1. Identify any areas in which the current regulatory framework does not meet the Government's policy goals for alcohol advertising. Identify possible solutions with input from key stakeholders.
2. Where necessary, develop options for enhancing the regulatory framework and/or other options. Information about the advertising environment in New Zealand will need to be gathered, along with evidence for policy options. Research projects may need to be commissioned.
3. Develop a consultation document summarising the issues and setting out the various options. Seek Cabinet approval to consult.
4. Issue a public consultation document and invite submissions. As well as a general press release and newspaper advertisements, details will be posted on agency websites and targeted at stakeholder networks. Key stakeholders will be written to. Public forums are not planned.
5. Analyse submissions and amend proposals accordingly.
6. Produce a final report with recommendations to lead Minister and MCDP.

Timeframe

The review is expected to be completed by the end of 2006.

Review of the regulatory framework for alcohol advertising structure and roles



Advertising aspect	Jurisdiction and existing controls
The <i>content</i> of advertisements	Code of Advertising Liquor (CAL)
The <i>media</i> for advertisements, eg broadcast advertising, print media, electronic and interactive media	CAL for all types - including advertisements portraying liquor packaging or merchandise but not in relation to the actual packaging or merchandise. BSA also has codes for TV and radio programming, including a section specific to liquor. The codes are: the <i>Free-to-air Television Code of Practice</i> , the <i>Code of Broadcasting Practice for Pay Television</i> and the <i>Code of Broadcasting Practice for Radio</i> (these codes all contain the same rules in relation to liquor). NZTBC has developed <i>Guidelines for the Promotion of Liquor in Sports Programmes</i> .
<i>Placement</i> of ads, ie when, where the ads appear, (including the internet, magazines, cinema, billboards) and under what limitations	The only specific limitation on placement is for TV – none between 6 am and 8.30 pm. After 8.30 pm, (the time for the commencement of programmes classified Adults Only) no more than 6 minutes per hour is allowed for TV liquor advertising, and no more than one ad per commercial break. In addition, the CAL requires that all liquor advertising not be directed at minors (including placement).
Sponsorship	No limitations on what may be sponsored. Principle 5 of the CAL contains rules on sponsorship credits and sponsorship advertisements. BSA responsible for sponsorship credits that appear during broadcast events, eg televised sports matches and sponsorship of programmes (eg Montana Sunday Theatre)(Standard 11 of the <i>Free-to-air Television Code of Practice</i>).
Packaging (as it relates to advertising)	Principle 2 of the CAL states that products being advertised must comply with the <i>National Guidelines on the Naming, Packaging and Merchandising of Alcoholic Beverages (ALAC)</i> , and the ASCB has upheld complaints about advertising of products in breach of the guidelines. However because the ASA has no jurisdiction over the packaging industry, there is a lack of enforcement of the <i>National Guidelines</i> , and non-compliant packaging is common.
Point-of-sale promotions	Section 154A of the Sale of Liquor Act 1989 makes it an offence to conduct an alcohol promotion that is “intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent”. This is aimed at point-of-sale promotions. The <i>National Protocol on Alcohol Promotions (ALAC)</i> defines acceptable and unacceptable promotions. It is part of bar managers’ host responsibility to have policies on alcohol promotions. Public Health officers are involved in enforcing Section 154A.

	The CAL does not contain reference to the advertising of pricing strategies or to the national protocol.
Point-of-sale material	Eg signage, leaflets. Leaflets and brochures are covered by the CAL.
Competitions and give-aways, loyalty cards	Covered by CAL principles, but no specific rules. Section 154A and the <i>National Protocol on Alcohol Promotions</i> also applies. The Gambling Act 2003 also lists liquor as a banned prize in sales promotion schemes relating to gambling. It is also a breach of the Sale of Liquor Act to give away liquor with a purchase on unlicensed premises (deemed to be sale of liquor on unlicensed premises).
Liquor-branded merchandise	Other than the sponsorship rules, there appears to be no regulation of the sale of liquor-branded merchandise. Retailers may have guidelines on this.
Product placement	BSA rules on programming apply. Also, the NZTBC's guidelines for sports programmes prohibits the broadcast of "premeditated staging of athletes holding packaged liquor products for television."
Guerilla marketing	A catch-phrase for any newer type of 'below-the-line' advertising using low-cost, non-traditional media, eg DIY online promotions, and PR stunts, events and competitions. Some methods are surreptitious, eg by word-of-mouth or graffiti. CAL applies in theory but difficult to regulate or enforce.
Viral marketing	A type of guerilla marketing, it usually refers to text messages, online or word-of-mouth types. Covered by the CAL but difficult to enforce.
Health warnings in advertisements	There is currently no policy in New Zealand. Note: a health warning in an advertisement is different from a health warning requirement for labeling. ALAC is in the process of applying to Food Standards Australia NZ to amend the Australia NZ Food Standards Code to require warning labels on packaging aimed at pregnant women. Under the Trans-Tasman Mutual Recognition Agreement, products that meet the standards of one country can be sold in the other unless there are exemptions.