

**Submission
No 20**

**INQUIRY INTO ALCOHOLIC BEVERAGES ADVERTISING
PROHIBITION BILL 2015**

Organisation: The ABAC Scheme Limited

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**Information paper to NSW Legislative Council's
Portfolio Committee No. 1 – Premier and Finance in
relation to an inquiry into the Alcohol Beverages
Advertising Prohibition Bill 2015**

The ABAC Scheme:

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Background

The ABAC Responsible Alcohol Marketing Code (the Code) and the associated Pre vetting and Complaints Management Systems form the quasi regulatory¹ ABAC Scheme.

The ABAC Scheme was developed in 1998 by agreement with all major Australian alcohol beverage manufacturing and marketing industry associations and key advertising, media and consumer bodies.

The Federal Government is also a key stakeholder being represented on the Management Committee of the Scheme and a Professor of Public Health, nominated by government, is part of all adjudication panels.

Under The ABAC Scheme, guidelines for advertising and packaging have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry.

Operation

The ABAC Scheme is responsible for:

- **The Code**² (first introduced in 1998 and substantially updated in 2004, 2009, 2014 and 2017) which regulates the content and placement of alcohol beverage advertising and packaging in Australia. Subject to regular review, the Code aims to reflect community expectations and changes in the media and advertising industries. The Code applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol beverage advertisements in emerging digital and social media, user generated content on alcohol company controlled digital and social media, point of sale advertisements and surrogate marketing over which an alcohol company has control.

The Code is not the only set of rules affecting alcohol advertising in Australia. Alcohol advertisements must also comply with relevant legislation and codes of practice including the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974), State Liquor Licensing Legislation, the Australian Association of National Advertisers (AANA) Code of Ethics, Commercial Television Industry Code of Practice and the Outdoor Media Association (OMA) Code of Ethics.

¹ Australian Government 2010, Best Practice Regulation Handbook, Canberra

² Annexure A: The ABAC Responsible Alcohol Marketing Code

- **The Alcohol Advertising Pre-vetting Service (AAPS)** which provides independent, confidential advice to advertisers on whether proposed alcohol marketing complies with the Code. This service is offered on a ‘user pays’ basis. The pre vetting service is a key component of the ABAC Scheme in that it identifies inappropriate alcohol marketing before it reaches the market.
 - AAPS pre vetters approve, reject or suggest modification to material submitted to them for pre vetting. The service is available to anyone marketing alcohol including marketers that are not a signatory to the Scheme.
 - AAPS has the support of major media associations that either require or encourage their members to check that an alcohol advertisement has AAPS approval prior to placement of advertisements.
 - Last year ABAC pre vetted more than 1,400 advertisements, names or packaging
 - AAPS Pre vetters are independent of the alcohol beverage industry.

- **The ABAC Adjudication Panel**, headed by Chief Adjudicator Professor Michael Lavarch, considers public complaints about alcohol marketing (including packaging) that fall within the jurisdiction of the Code.
 - The Advertising Standards Bureau (ASB) accepts all complaints in relation to all types of advertising. This avoids a duplication of entry points for advertising related complaints. In 2016 2.5% of all complaints received by the ASB related to alcohol. All alcohol related complaints received by the ASB are provided to the ABAC Adjudication Panel and the Panel considers all complaints that raise ABAC Code issues.
 - The ASB considers complaints insofar as they raise AANA Code of Ethics issues. The AANA Code of Ethics ensures all advertising is legal, decent, honest and truthful and prepared with a sense of obligation toward the consumer and society thus ensuring that there is a consistent standard for these issues across all advertising for every type of product.
 - The ABAC Adjudication Panel reports its decisions to the ASB, the ABAC Management Committee, the advertiser, and the complainant. Its decisions are also made publicly available through the ABAC website.
 - The Adjudication Panel and its deliberations are independent of the ABAC management committee and the broader alcohol and advertising industry.
 - The Adjudication Panel comprises:
 - the Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise,
 - a health sector Panelist, Professor Richard Mattick or Professor Louisa Jorm (both were appointed from a shortlist of health sector

professionals provided by the relevant Federal Minister responsible for alcohol issues or his or her nominee); and

- a Panelist with market research, media or advertising expertise, Jeanne Strachan or Debra Richards.

- Each quarter the Chief Adjudicator reports to the ABAC Management Committee on the operation of the ABAC Adjudication Panel and the Chief Adjudicator submits an annual report on the Panel’s operation to the ABAC Management Committee for inclusion in its published annual report on the operation of the overall scheme. Annual reports are published to the ABAC website.

- **General operation of the scheme**

- The ABAC Rules and Procedures set out the agreed rules and procedures for the operation of the Scheme and are available on the ABAC website.
- The ABAC website includes scheme information and publications to assist alcohol beverage advertisers and agencies understand all aspects of the scheme and their obligations and to inform consumers about the scheme, in particular the ABAC standards and how complaints can be lodged. The ABAC website was set up in August 2007 and includes a search function for adjudication decisions.
- The three key features of the scheme result in alcohol beverage advertisers having four decision points in relation to advertisements and packaging:

1 st decision point	2 nd decision point	3 rd decision point	4 th decision point
Checked by company and advertising agency staff against the Code	Pre-vetted by non-company assessors using the AAPS service	Any complaints are referred (via the ASB) to the ABAC Chief Adjudicator	Where a complaint is upheld, company asked to withdraw or modify an advert within five business days

Management of the Scheme

The ABAC Management Committee manages and reviews the operations of The ABAC Scheme and considers amendments to the Code and scheme procedures with a view to:

- encouraging industry members, large and small, to participate in the quasi regulatory system;
- playing an active role to ensure an effective quasi regulatory system;
- monitoring the implementation of The ABAC Scheme and improving it where necessary;
- co ordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy and the Advertising Standards Bureau; and
- managing AAPS as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members in AAPS.

The ABAC Management Committee comprises:

- the Chief Executive Officer of the Brewers Association of Australia;
- the Chief Executive Officer of the Distilled Spirits Industry Council of Australia Inc;
- the Chief Executive Officer of the Winemakers Federation of Australia;
- the Chief Executive Officer of the Communications Council Limited;
- a representative of Australian Governments (Assistant Secretary of Commonwealth Department of Health).

The ABAC Management Committee is supported in its role by the ABAC Executive Officer.

The members of the ABAC Management Committee each represent a group of stakeholders in alcohol beverage advertising and packaging regulation. Any member of the Committee may raise issues for consideration by the Committee and the Committee in practice operates on a consensus basis.

The ABAC Management Committee meets at least four times a year and all issues raised by any member of the Committee or referred to the Committee by the ABAC Adjudication Panel or ABAC Pre vetters receives full consideration by the Committee.

Scheme Coverage

- Membership of, and compliance with the scheme is voluntary. However, the individual members of the Brewers Association of Australia, Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia have agreed to be bound by the Scheme. This means that the majority of alcohol advertising in Australia is regulated by the Scheme.
- Other companies that advertise alcohol, including retail chains, are encouraged to become direct signatories to the Scheme and to utilise the Pre vetting Service. Currently, Woolworths Liquor Group, Coles Liquor Group, Campari Australia, Coca Cola Amatil and Asahi Premium Beverages are all direct signatories to the scheme. Many non signatories currently use the Pre vetting Service and the scheme has the support of media associations.
- The alcohol industry (both signatories and non signatories) and advertising agencies have access to regular training sessions with the ABAC Chief Adjudicator and a pre vetter in Sydney and Melbourne where all aspects and obligations of the Code, Pre vetting Service and complaints scheme are explained. In addition, the ABAC pre vetters, alcohol beverage industry associations and ABAC executive officer are available to explain the Code and the scheme to alcohol beverage advertisers and their agencies.

Recent Initiatives

- **Community Standards Research** In accordance with ABAC's commitment to monitor and remain aligned or ahead of community expectations for alcohol advertising last year ABAC commissioned an update of community standards research carried out in 2013, that compared ABAC Panel decisions with community reactions to alcohol

marketing. The research was carried out independently by Colmar Brunton Social Research. Importantly 12 alcohol ads and packaging were tested and the unprompted reaction of the community was that 11 of the 12 ads were fine, while the Panel found that 7 of the 12 were in breach of the ABAC Code. This result highlights the high standards that ABAC sets for alcohol marketing that exceed community standards. It was also interesting to note that 64% of those surveyed had no concern or offence about advertising standards generally and 62% were not particularly concerned about alcohol advertising content.

- **Extension of the Code to placement of alcohol marketing** - From 1 November the Code not only sets standards to ensure the content of alcohol marketing is responsible, it also includes a set of placement rules that ensure that alcohol marketing is not placed where the audience is skewed toward an under 18 audience. The rules are:
 - Alcohol marketers must comply with existing media specific codes ie no outdoor ads within 150m of a school & limits on when alcohol ads can be placed on free to air television broadcasts (not between 5am & 8:30pm unless with certain sports broadcasts)
 - Use age restriction controls available on a media platform to exclude minors from the audience (ie facebook)
 - Audience to be at least 75% Adult
 - No alcohol ads with programs or content primarily aimed at under 18s.
 - No email/mobile marketing to be sent to Minors (exception where Minor provides incorrect date of birth)

Further information about The ABAC Scheme, including Annual Reports and Adjudication decisions are publicly available on the ABAC website, www.abac.org.au.

Alan Ferguson
Chair, ABAC Management Committee
20/10/17

ABAC RESPONSIBLE ALCOHOL MARKETING CODE

(Effective 1 November 2017)

1 PREAMBLE

The ABAC Responsible Alcohol Marketing Code is designed to ensure that alcohol is marketed in a responsible manner. Signatories to the Code are committed to ensuring that the content of their marketing complies with the Code's spirit and intent.

The Code complements Australian legislation, the AANA Code of Ethics and media-specific codes relevant to the placement of marketing.

From time to time, the ABAC Scheme may publish best practice advice to industry. That advice does not form part of the Code but complements it by assisting industry to achieve high levels of responsibility in the management of its marketing.

2 APPLICATION

(a) The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

- brand advertising (including trade advertising)
- competitions
- digital communications (including in mobile and social media and user generated content)
- Alcohol Beverage product names and packaging
- advertorials
- alcohol brand extensions to non-alcohol beverage products
- point of sale materials
- retailer advertising
- Marketing Collateral

(b) The Code does NOT apply to:

- (i) materials or activities whose sole purpose is to educate about misuse or abuse of alcohol beverages and which do not include a company's product branding;
- (ii) information in company annual reports, corporate public affairs messages or internal company communications;
- (iii) the name or packaging of an Alcohol Beverage product, including the use of a trademark on a product which a supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in Australia prior to 31 October 2009;
- (iv) point of sale Marketing Communications initiated by Alcohol Beverage retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol Beverages has no control over the point of sale Marketing Communication;
- (v) Sponsorship.

3 STANDARDS TO BE APPLIED

(a) Responsible and moderate portrayal of Alcohol Beverages

A Marketing Communication must NOT:

- (i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
- (ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
- (iii) challenge or dare people to consume an Alcohol Beverage; or
- (iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.

(b) Responsibility toward Minors

A Marketing Communication must NOT:

- (i) have Strong or Evident Appeal to Minors;
- (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
- (iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment; or
- (iv) be directed at Minors through a breach of any of the Placement Rules.

(c) Responsible depiction of the effects of alcohol

A Marketing Communication must NOT:

- (i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
- (ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
- (iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement; or
- (iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

(d) Alcohol and Safety

A Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

4 NO FAULT BREACH

A breach of this Code that is reasonably unforeseeable by or outside the reasonable control of the Marketer or their agency will be classified as a no fault breach.

5 INTERPRETATION

Compliance of a Marketing Communication with the Code is to be assessed in terms of the probable understanding of the Marketing Communication by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole.

Capitalised terms have the meanings set out in section 6 below.

Headings do not expand the Code.

6 DEFINITIONS

In this Code:

AANA Code of Ethics means the Australian Association of National Advertisers Code of Ethics.

ABAC Scheme means The ABAC Scheme Limited.

Adjudication Panel means the panel convened to adjudicate a complaint received by the ABAC Scheme.

Adult means a person who is of legal purchase age in Australia.

Age-Restricted Environment means:

- licensed premises that do not permit entry by Minors; or
- a non alcohol-specific age-restricted digital platform (including, for example, a social media website or application) which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as being 18 years of age or over.

Alcohol Beverage means a beverage containing at least 0.5% alcohol by volume.

Australian Alcohol Guidelines means the electronic document 'Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)' published by the National Health & Medical Research Council ("NHMRC") as at 1st January 2010.

Code means this ABAC Responsible Alcohol Marketing Code.

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Collateral means material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

Minor means a person who is under 18 years of age and therefore not legally permitted to purchase an Alcohol Beverage in Australia.

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience.

- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up-to-date audience composition data, if such data is available).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).