

Supplementary
Submission
No 20a

INQUIRY INTO ALCOHOLIC BEVERAGES ADVERTISING PROHIBITION BILL 2015

Organisation: The ABAC Scheme Limited

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

Supplementary Submission

The ABAC Scheme Supplementary Submissions

The ABAC Scheme wishes to comment on the following statements made about the Scheme during the inquiry hearings.

1. *Ms STAFFORD: I thank the Committee for providing the opportunity to participate via teleconference. The McCusker Centre is a non government organisation committed to reducing harm from alcohol among young people. The work of the centre is directed towards raising awareness of the magnitude of alcohol harm among young people, the evidence based approaches we know can work and the need to act without delay. We coordinate the Alcohol Advertising Review Board in partnership with Cancer Council Western Australia in response to concerns about the **ineffectiveness of alcohol marketing self-regulation, which includes the Alcohol Beverages Advertising Code Scheme or ABAC**. Our Alcohol Advertising Review Board accepts and reviews complaints from the Australian community free of industry influence with the aim of highlighting the weaknesses of the self regulatory system and encouraging governments to implement independent legislative controls on alcohol marketing. (Transcript 1 December 2017 p31)*

We highlight the measures of the effectiveness of ABAC referred to by Professor Lavarch at pages 10-11 of the transcript:

- **The level of co-operation and compliance with ABAC Panel decisions. In the 19 years of ABAC's operation on only one occasion has an alcohol marketer not acted on an adverse determination.**
- **In 2016, alcohol marketers ran marketing material through the ABAC pre-vetting service more than 1,400 times prior to going public. Almost 16% of that material was either rejected or only accepted subject to conditions.**
- **Only a small percentage of advertising complaints received by the Advertising Standards Bureau in 2016 related to alcohol (2.5%)**

In addition, we highlight research carried out in 2013 and 2017 by Colmar Brunton Social Research that demonstrates that the ABAC Adjudication Panel is generally more conservative than community expectations. In 2017, 12 alcohol advertisements that were the subject of recent ABAC decisions (7 upheld and 5 dismissed) were tested. The unprompted reaction of participants was that only 1 of the advertisements was considered unacceptable by a majority of respondents. This contrasts with the ABAC Complaints Panel finding 7 of the advertisements did not meet the ABAC Code standards.

2. *Ms STAFFORD: I will add to Ms Ferguson's comments. Education, legislation and regulation have significant roles in trying to reduce harmful alcohol and changing the drinking culture. It is very hard for health promotion messages and well designed education campaigns to have the desired impact when **there are very few controls over alcohol marketing** and the budgets of alcohol companies to market their products are so enormous that they dwarf any kind of health promotion budget. It is very hard for health promotion messages to come through in a context that is saturated with alcohol promotion managers. (Transcript 1 December 2017 p36)*

For the reasons outlined in our submission and evidence at the hearing we believe the statement that ‘there are very few controls over alcohol marketing’ is incorrect. There are occasions when global advertising campaigns do not receive ABAC approval to be shown in Australia due to the ABAC regulatory controls being stricter than in other similar international jurisdictions.

3. *Mr JUSTIN FIELD: That would be useful. I grew up in Central Queensland and it was a league town and everyone got Broncos jerseys when they finally came to town. I am not sure if they had alcohol advertising on them at the time. Do you know if there are restrictions on kids' sizes of sporting paraphernalia not being able to have the brands of alcohol sponsors of clubs?*

Ms FERGUSON: I am not aware of any formal restrictions, but we do understand that the children's apparel does not have the VB logo on the front. That is not to say that they are not wearing the larger size clothing or still holding the scarf, the flags and football and everything else that goes with it. I am not aware of any formal restrictions. (Transcript 1 December p40)

There is a formal restriction on alcohol branding on merchandise for minors. The ABAC Code Standard in Part 3(b)(i) of the ABAC Code provides that alcohol marketing must not have strong or evident appeal to minors and defines strong or evident appeal to minors as including “(v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors”.

4. *Ms STAFFORD: All of the ABAC directors represent the alcohol industry and of the management committee three of the five management committee representatives are alcohol industry executives. It is almost solely developed and run by the alcohol industry. We can see that they have developed some provisions that suit how they want to market. (Transcript 1 December p43)*

The ABAC Directors are only responsible for the funding and ASIC requirements of the scheme. The ABAC Management Committee, which is responsible for the management of the scheme, operates on a consensus basis. Changes to the Code are developed with input from and must be approved by the Government representative (Commonwealth Department of Health Assistant Secretary responsible for alcohol issues).

5. *The Hon. ADAM SEARLE: You mention the ABAC Scheme, but the ABAC Scheme is of very limited scope. It is a very short code of conduct about very broad standards and whether advertising meets those standards. I am not in any way denigrating it but it has a very limited function. (Transcript 1 December p45)*

We disagree that the ABAC Code is of limited scope. It covers the majority of alcohol marketing in Australia, keeps pace with emerging media, is continually reviewed and regularly updated and represents international best practice in alcohol marketing regulation in similar jurisdictions. A review of the ABAC Annual Report and Year in Review for 2016 illustrates the broad reach of the scheme.

6. *Dr LIM: I can do that. In terms of other ways that people can access it, it depends on the platform. **Some platforms do not have age gating—for instance, I believe on Instagram anyone of any age can follow an alcohol brand.** There is also a lot of unofficial sharing. There are posts created by individuals who may or may not be officially associated with the brand. (Transcript 5 December p3)*

We wish to clarify that Instagram does have an age gating mechanism for alcohol marketing.

7. *The CHAIR: Have you done some research on ABAC itself, on its policies and its method of operation?*

Dr LIM: No.

The CHAIR: You seem to be critical of them.

*Dr LIM: **I think that they do very rarely reject advertisements that are reported to them and I think the concept of having the industry regulating their own content is very flawed and problematic.***

*The CHAIR: **On page 5 of your submission you said that ABAC dismisses most complaints.***

Dr LIM: Yes.

The CHAIR: Is there any justification in their policy for dismissing those complaints?

*Dr LIM: **They review each claim as it comes through and the usual decision is that the claim is invalid. For example, say I report something because I think that this ad promotes alcohol as a way of increasing your social success, they review it and they just say, "We don't think it does".***

The CHAIR: What is the problem then with ABAC? Are they too close to the alcohol industry?

Dr LIM: I think so. It is all self regulated. I think it is concerning that they definitely could be biased in that sense.

The CHAIR: Because you do state in your submission, "There was extensive international evidence showing that self regulation is ineffective". Can you supply further information to support that claim?

Dr LIM: I could take that question on notice and provide more information at a later stage.

The CHAIR: Could you comment briefly on it now?

Dr LIM: Not really. I cannot really say much more than is in the submission.

(Transcript 5 December p4)

All ABAC Panel decisions are available on the ABAC website and it is not correct to say that they rarely reject advertisements or that their usual decision is that the complaint is invalid. In 2016 30% of ABAC Panel determinations upheld the complaint finding the advertisements in breach of the ABAC Code standards.

It is also not correct to say that the ABAC review the complaint and don't provide a reason for dismissing a complaint as alleged by Dr Lim. ABAC Panel decisions all provide a detailed explanation of the Panel's consideration of the complaint and advertisement. The Panel decisions are lengthy, detailed and thorough documents and we invite the committee to review a sample of decisions that are all available on the ABAC website.

8. *The Hon. BEN FRANKLIN: Thank you very much for being here, Dr Lim. I would just like to ask about a few different things. The first is in terms of ABAC. You said that ABAC basically, in your mind, is controlled by the industry. But is it not the case that the body that actually adjudicates on any complaints or concerns consists of Michael Lavarch, a professor and a former Labor Attorney General; a health sector panellist—either Professor Richard Mattick or Professor Louisa Jorm; and a panellist with market research, media or advertising experience?*

*Dr LIM: Yes, that is true, **but it is all funded by the alcohol industry and I think that if someone is being funded by the alcohol industry you would have to question their conflicts of interest and their bias.***

The Hon. BEN FRANKLIN: I will respectfully disagree with you on that one. (Transcript 5 December p5 6)

The ABAC Complaints Panelists are all qualified and skilled professionals in their areas of expertise and are not influenced by the alcohol industry.

Alan Ferguson
Chair, ABAC Management Committee
21/12/17