

# The ABAC Scheme

Annual Report 2006

presented by the  
Management Committee of The ABAC Scheme

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## Report from the ABAC Management Committee

After some years of implementing reform and refinement, 2006 was a year for consolidation of The Alcohol Beverages Advertising Code (ABAC) Scheme. There has been ongoing assessment of the operational impact of the changes that have been implemented and administrative arrangements have been strengthened.

New measures to allow non members of alcohol industry associations to become signatories of the code were utilised for the first time, ensuring the scheme maintained coverage of nearly all alcohol advertising undertaken by producers in Australia.

It was also a year in which the scheme demonstrated strength and the capacity to deliver against decisions of the adjudicator. Although there was little change to the absolute number of complaints upheld, they related to large advertising campaigns and resulted in changes by advertisers that were both expensive and extensive demonstrating compliance with, and strong commitment to, the scheme.

A number of these issues are addressed in more detail within this annual report.

There were also a number of changes within the management committee, in particular the departure late in the year of our Australian Government representative, Bruce Wight, and Australian Associated Brewers representative, Sam Hudson. We thank them for their work and welcome Virginia Hart and Stephen Swift in their roles respectively.

We also note the departure from the scheme of founding members the Liquor Merchants Association of Australia (LMA), reflecting the changing nature of their activities. There was no change to the coverage of the scheme from this due to the overlapping membership with remaining producer associations. We record our thanks to LMA and outgoing CEO Ross Burns in particular for many years of contribution.

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### Management Committee, The ABAC Scheme



**Stephen Strachan**  
(ABAC Chair 2006)  
Winemakers' Federation  
of Australia Inc



**Sam Hudson**  
Australian Associated Brewers Inc  
(to September 2006)



**Leslie Brydon**  
Advertising Federation  
of Australia



**Bruce Wight**  
Australian Government  
Department of Health & Ageing  
(to October 2006)



**Ross Burns**  
Liquor Merchants Association  
of Australia Inc  
(to November 2006)



**Stephen Swift**  
Australian Associated Brewers Inc  
(from October 2006)



**Gordon Broderick**  
Distilled Spirits Industry  
Council of Australia Inc



**Virginia Hart**  
Australian Government  
Department of Health & Ageing  
(from November 2006)

## Overview

**Australia has a quasi-regulatory system for alcohol advertising: Guidelines for advertising have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry.**

The ABAC Scheme is the centrepiece of Australia’s quasi-regulatory system and is administered by a management committee which includes industry, advertising and government representatives.

### From the consumer’s perspective

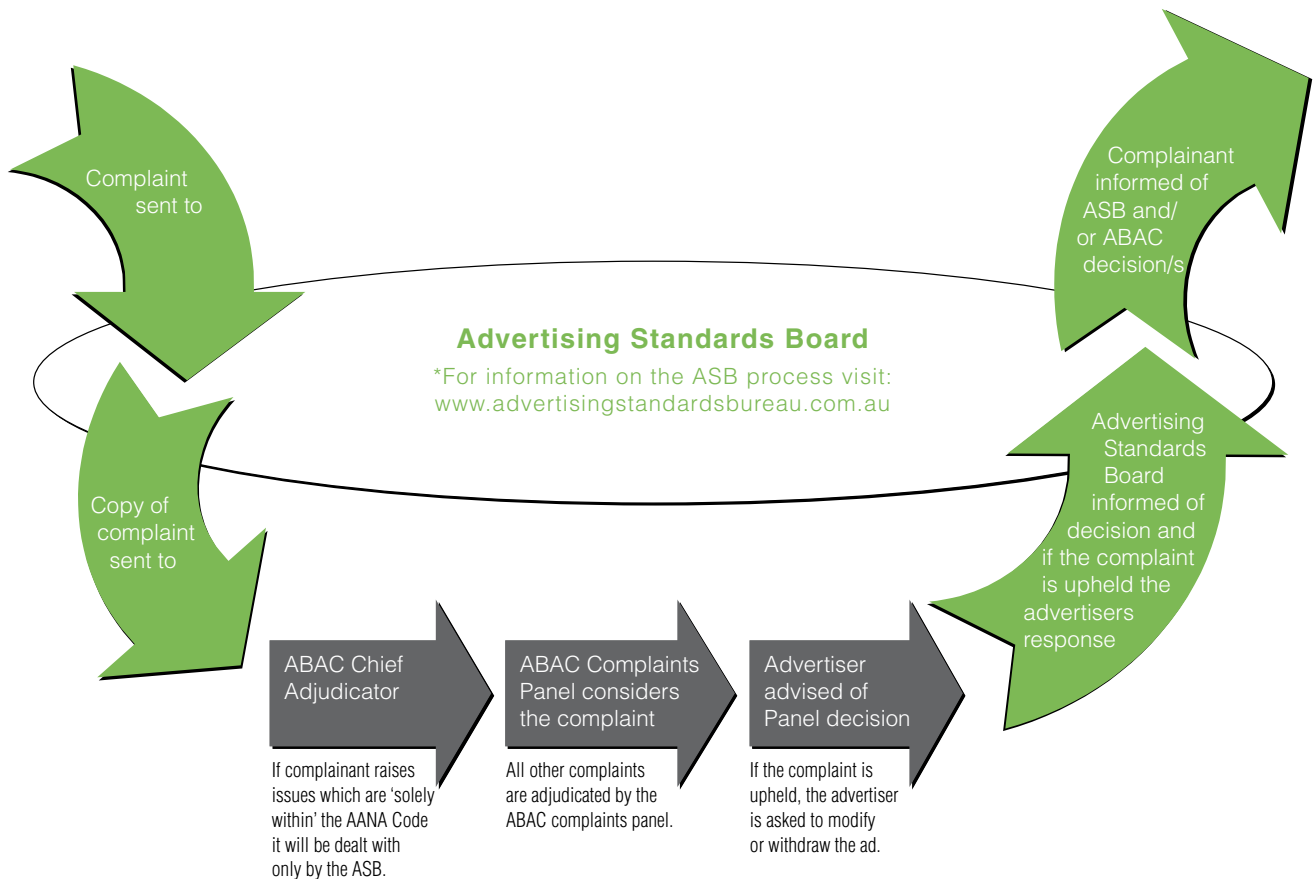
Australia has one of the most accessible complaints systems in the world, accepting complaints via email, letter or fax with no costs to the consumer.

There is just one ‘doorway’ for complaints—through the Advertising Standards Bureau (ASB)—which triggers two independent but parallel processes.

Complaints received from the ASB are all assessed by the chief adjudicator under The ABAC Scheme. In turn, complaints are referred on to the full Alcohol Beverages Advertising Adjudication Panel unless they relate solely to the Australian Association of National Advertisers (AANA) Code of Ethics. Complainants are informed of the referral or otherwise and sent a copy of the final determination.

Complainants who request confidentiality will be granted it and members of the alcohol beverage industry are barred from adjudicating and submitting complaints

**Figure 1: ABAC Complaint Management System**



### From the companies' perspective

There are four potential decision points for alcohol beverage producers undertaking advertising, as outlined in Figure 2 below.

These include internal company checks, independent pre-vetting of advertisements, assessment of any complaints under The ABAC and, if complaints are upheld, modification or withdrawal of advertisements.

The ABAC Scheme is not the only set of rules affecting advertising in Australia. Alcohol beverage

advertising must also be consistent with other applicable laws and codes, for example:

- the Trade Practices Act and state fair trading legislation
- the Australian Association of National Advertisers Code of Ethics
- the Commercial Television Industry Code of Practice
- the Commercial Radio Codes of Practice
- the Outdoor Advertising Code of Ethics.

**Figure 2: Decision points for companies**

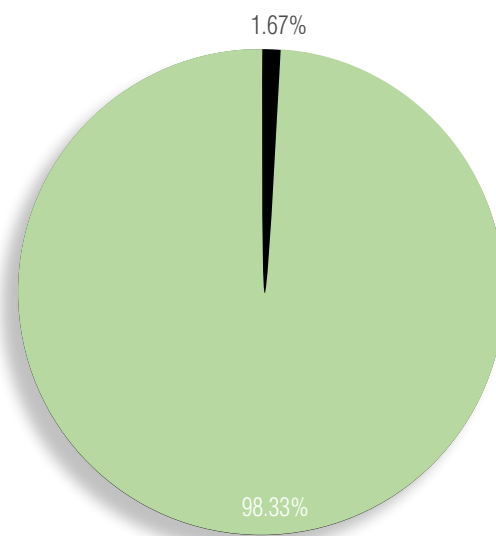
FOUR DECISION POINTS FOR COMPANIES			
1 <sup>st</sup> decision point	2 <sup>nd</sup> decision point	3 <sup>rd</sup> decision point	4 <sup>th</sup> decision point
Checked by company and advertising agency staff against the Code	Pre-vetted by non-company assessors using the AAPS service	Any complaints 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

### Extensive reach of The ABAC Scheme

Australia's alcohol beverage sector is a mature industry, within which there has been a gradual consolidation of brands over many decades.

One desirable consequence of this long-term trend is that a quasi-regulatory scheme such as The ABAC Scheme can achieve tremendous reach via a manageable number of signatories. Of the top 50 advertisers, which represents the vast majority of all advertising, more than 98 per cent of the spend is covered by companies using the ABAC system.

- 40 ABAC signatories
- 10 Non-ABAC signatories



**Figure 3: The ABAC Scheme—coverage of advertising spend (top 50 alcohol advertisers)**

## 2006—some numbers compared

Pre-vetting		2005	2006
Number of Alcohol Advertisements pre-vetted		761	936
Of the advertisements pre-vetted:	Number that were accepted	641	701
	Number that were accepted subject to conditions	34	53
	Number that were rejected	86	182

Complaints		2005	2006
Number of complaints received:		105 <sup>1</sup>	53 <sup>2</sup>
Number of Advertisements these complaints referred to:		29	26
Number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel: (i.e. complaints that fell within the code – all others fell solely within the Australian Association of National Advertisers Code of Ethics covering general advertising issues. See <a href="http://www.advertisingstandardsbureau.com.au">www.advertisingstandardsbureau.com.au</a> for further information)		17 <sup>3</sup>	9 <sup>4 5</sup>
Number of complaints upheld:		2	2

<sup>1</sup> 54 complaints were for one advertising campaign.

<sup>2</sup> These figures refer to complaints received by ABAC Adjudication Panel in 2006. An additional 29 complaints dated 2006 were received by the Adjudication Panel in 2007. These complaints will be displayed in the 2007 numbers.

<sup>3</sup> Three of these determinations were made in 2006 that referred to complaints received in 2005. All of these determinations were dismissals.

<sup>4</sup> An additional advert resulted in an ASB determination and full withdrawal of the ad obviating the need for an ABAC determination.

<sup>5</sup> Two of these determinations were made in 2007 against advertisements received in 2006 (both determinations were dismissals).

### Observations

- The level of complaints between the two years was fairly static, when adjusted for the 54 complaints received for one advertisement in 2005.
- The pre-vetter net tightened considerably between the two years. In 2006, almost 20 per cent of proposed advertisements were rejected, up from 13 per cent in 2005.
- The pre-vetters receive advertisements in three different stages—in story board, preliminary and final stage. The advertisements may go through substantial changes through this process and it can stretch out over 12 months or more depending on the development of an advertising campaign. For this reason, it can be difficult to track the exact number of advertisements submitted and resubmitted with variations, although the end result is full and rigorous review of all advertisements submitted.

## Continual improvement

### Making a good scheme better

Over the many years since its formation the role and scope of the ABAC Scheme has expanded considerably. It has gone from a purely industry self regulatory scheme to include government in a quasi-regulatory arrangement, extended its reach into new forms of media and incorporated the Alcohol Advertising Pre-vetting Scheme into its fold.

With these changes, along with the increasing expectations of government and the community, have come higher costs—all of which are borne by industry—and greater administrative burdens.

Such costs will be increased by the addition of new measures, such as the proposed Retailer Alert Scheme, which will expand the reach of ABAC to encompass naming and packaging of products and is currently with the Australian Competition and Consumer Commission for consideration.

In light of these growing costs and expectations, the management committee has initiated steps towards the adoption of new funding formulas, new legal structures, new use of information technology and, importantly, improved professional support. Further, the management committee initiated the appointment of an alternate public health representative to the adjudication panel, to ensure that a representative is always available.

It is hoped these arrangements will assist the management committee to more adequately meet the demands of both the scheme and its stakeholders by providing additional resources to the tasks of meeting timelines, maintaining accurate data, improving efficiencies for users of the scheme (advertisers, complainants, pre-vetters, adjudicators and the management committee) and enhancing reporting standards.

Changes will be introduced throughout 2007 which the management committee expects will provide demonstrable benefits to meeting the expectations of our diverse stakeholder base, including governments and the community.

### Making non-members count

One of the changes to the ABAC Rules and Procedures implemented as a result of the Ministerial Council on Drug Strategy (MCDS) review in 2004 was to create scope to include as signatories non-members of the industry associations who traditionally provide The ABAC Scheme with its wide industry coverage.

In 2006 this change proved to be fortuitous. Whilst it had previously been unnecessary to utilise this provision, due to the near total coverage of alcohol advertising provided by the inclusion of all members of the ABAC industry associations, the resignation of a major member from one of the industry associations saw the signatory provisions utilised for the first time.

This company's coverage by ABAC was able to be maintained in a seamless manner, ensuring the coverage of the scheme across nearly all alcohol advertising in Australia was continued.

The management committee has sought to improve consultation on the oversight of the scheme with such signatories and other major members through a commitment to an annual workshop bringing together major advertisers, pre-vetters, adjudicators and the management committee. The first such workshop was held in December.

Commitments have also been given to ensure that consultation occurs with signatories before any major changes to the scheme are adopted.

The inclusion of signatories has required the management committee to consider the long term funding of the scheme, which has traditionally been funded by levies on the industry associations involved. A new funding mechanism ensuring fair contributions by signatories who are not members of industry associations is expected to be adopted in 2007.

### Making determinations count

Traditionally, complaints about alcohol advertising relate predominantly to the AANA Code of Ethics—to matters of so called 'taste and decency' rather than issues that relate to the content of The ABAC and alcohol matters specifically. Further, where complaints under ABAC have been upheld, they have usually related to a discrete advertisement rather than impacting on a broad campaign.

In 2006 this trend was broken, with one complaint in particular being upheld that had ramifications for an extensive advertising campaign rather than a single advertisement. This determination impacted on television, cinema, billboard and print advertising.

The impact of this determination can be considered in two ways. Firstly, it demonstrated that the scheme can deliver compliance against the spirit and intent of the code. At significant expense, the advertiser accepted the decision of the adjudication panel and set about modifying its campaign, which required them to withdraw, modify and resubmit advertisements across several different mediums.

In accordance with the ABAC Rules and Procedures the advertiser advised the management committee within five days of their intention to modify the advertisements and kept the management committee advised of progress in achieving these modifications. While electronic advertisements were withdrawn quickly, this experience highlighted challenges in billboard advertising, where the cooperation of owners, site managers and painting contractors to change billboards can result in delays. This is an issue that future management committees may wish to raise with representatives of the outdoor advertising industry.

Secondly, this determination demonstrated the need for the management committee to ensure lessons are shared throughout the system from complaints that are upheld. We owe it to advertisers and the public to ensure that, so far as is practicable, pre-vetters are interpreting the code in a manner that is consistent with adjudicators, to ensure that offending advertisements are not released in the first place.

In the main this has worked well, but to strengthen the consistency of interpretation by the two arms of the ABAC Scheme—pre-vetters of proposed advertisements and adjudicators of complaints—the management committee has instituted an automatic notification from the chief adjudicator to all pre-vetters whenever a complaint is upheld, to ensure that pre-vetters reflect the interpretations given to the code by the adjudication panel.



# Report from the Chief Adjudicator

## **During 2006 the ABAC Adjudication Panel has continued to assess and determine public complaints on alcohol beverage advertising.**

The overview of the year can be summarised as follows:

- The number of public complaints received about alcohol beverage advertising has been reasonably constant over recent years.
- The 2004 reforms to the ABAC Scheme has seen the number of complaints proceeding to a panel determination increase, when measured against the pattern prior to 2004; however
- The clear majority of public complaints raise solely issues of taste, decency and sexism within the frame of the AANA Code of Ethics and are subject to the determination process of the ASB.
- The operation of the pre-vetting process invariably means that the panel deals with a proportion of 'hard cases' which rely on judgment calls upon which reasonable people can disagree.
- The 'hard cases' most often raise sections (a) and (c) of the ABAC. These sections in particular should be periodically reviewed to ensure that the provisions are meeting the expectations of the community on good standards in alcohol beverage promotion.

The year witnessed a change in the support structures for the panel. The panel is supported by an executive officer who provides, on a part-time basis, services to the panel such as the processing of complaints, including the organisation of panel meetings, record-keeping and maintaining the complaints catalogue. Ms Kate Mellick resigned from the role in October 2006 to take up a new position and Ms Sam Hudson assumed the role for the balance of the year. I record my appreciation to Kate for her work and to Sam for assistance to the panel.

I also thank the panel members, Professor Fran Baum, Ms Liz Dangar and Ms Jeanne Strachan for their constructive contribution to the determination process.

## **Complaints dealt with in 2006**

The ABAC Scheme operates by way of a cooperative arrangement with the Advertising Standards Board (ASB). The ASB operates a generic complaints scheme about advertising in Australia and assesses public complaints against the AANA Code of Ethics. The ASB acts as the receiving point for all public complaints about alcohol advertising, which are then referred to the ABAC Panel for processing.

The arrangement with the ASB, in general terms, means that all alcohol advertising complaints are initially assessed by the ASB and the chief adjudicator of the ABAC Adjudication Panel to determine if the complaint raises issues under the AANA Code of Ethics or the ABAC, or both codes. If a complaint raises solely code of ethics issues, then the complaint is dealt with by the ASB. If the complaint raises ABAC issues, then the ABAC Panel will make a determination on the complaint. In some cases, both the ASB and the ABAC Panel will make a decision about the complaint, as issues are raised under both codes.

In 2006 the ASB referred some 54 complaints dealing with 26 individual alcohol advertisements to the ABAC Chief Adjudicator. Of these complaints, the majority raised solely issues under the AANA Code of Ethics and as a result the complaints were dealt with under the ASB processes. In contrast, the panel made nine (9) determinations in 2006, on which seven (7) complaints were dismissed and two (2) upheld.

A review of these determinations shows:

- Four (4) dealt with television advertisements, while two (2) related to outdoor advertising and one (1) each to print and radio advertising
- Multiple sections of the ABAC were considered with sections (a) and (c) being the most frequent.

## *Report from the Chief Adjudicator (continued)*

### Issues for consideration

#### **1. Interplay between the ASB and ABAC schemes**

The AANA Code of Ethics and the ABAC deal with different, but complementary, issues. In general terms, the code of ethics goes to matters of taste and decency in advertising, as well as to issues of sexism and racism. In contrast, the ABAC goes to the responsible use of alcohol and ensuring that alcohol advertising does not encourage irresponsible use of the product.

The ASB, in administering the code of ethics, covers a wide range of products and most advertising mediums. The ASB acts as a 'one stop shop' for the receipt of public complaints about advertising, and for alcohol advertising the ASB plays the role of a receiving and referral agent of complaints to the ABAC Adjudication Panel.

The interplay between the ASB and the ABAC schemes is critical and comes into focus in a number of ways, for instance:

- The ABAC Adjudication Panel begins its processes upon the referral of public complaints about an alcohol ad from the ASB. Accordingly, the ABAC scheme is reliant on the receipt and referral processes of the ASB operating effectively.
- Alcohol advertisements are subject to both the AANA Code of Ethics and the ABAC and decisions on complaints are streamed for decision by the ASB and/or the ABAC Adjudication Panel, depending on whether the complaint raises code of ethics or ABAC issues. Accordingly, any mismatch between the coverage of the two schemes and the practices of the two decision-making processes has a potential to be problematic.

During 2006, the ASB Secretariat has been helpful and cooperative in dealings with the ABAC Executive Officer. This professionalism of the ASB is much appreciated; however, some issues have emerged.

Unfortunately some 29 alcohol complaints received in 2006 by the ASB were not subsequently received by the ABAC Executive Officer until 2007. In understanding how this problem arose, it appears that in some cases it occurred because of the changeover in the ABAC executive officer role and complaints being forwarded to an incorrect email address. In some other cases, it appears that the complaints were not referred on at all to the ABAC Executive Officer.

To ensure that this occurrence is never repeated, new measures have been instigated to cross-check the receipt of complaints by the ASB and the ABAC Executive Officer. These measures ensure that both bodies undertake monthly reconciliations of complaints received and referred.

A further issue with the interplay of the ASB and the ABAC scheme is the varied coverage of the two schemes. The ASB does not extend to complaints about advertising on the internet; whereas the ABAC scheme does include this medium. This means that a complaint about an alcohol internet ad which raises code of ethics issues will not be determined by the ASB.

The ABAC Management Committee has resolved that all alcohol ad complaints should be considered and not dismissed purely because a particular advertising medium is not within the scope of the ASB scheme. Accordingly, in the case of internet advertisements, this means that the ABAC Adjudication Panel can potentially be called upon to decide on code of ethics issues. This is not particularly desirable, as it is the ASB which has the background and experience of applying the 'community standards' which are the essence of assessing if an ad offends the code of ethics on matters of taste and decency.

The ABAC Adjudication Panel is not generally called upon to make these particular assessments and it does not have the benefit of considering the large number of complaints which raise code of ethics issues and which are the staple of ASB determinations. This means that there is the potential for the ABAC Adjudication Panel to have a quite different sense of the prevailing 'community standards' and reach quite different conclusions to those the ASB might reach.

This would be overcome if the ABAC Adjudication Panel considered all complaints about alcohol advertisements, as it would deal with a sufficient number of code of ethics issues to develop a consistent and logical method of applying 'community standards' in code of ethics matters. It is understood this course of action was considered, but not ultimately adopted, following the major review of the ABAC system in 2003–2004.

The best course would seem to be that the ASB should extend its coverage to include internet advertising, at least as far as alcohol advertising is concerned. Given the growth in internet promotion of products and the common practice of an ad featuring both on the internet and through another medium, such as television or print, the potential for this divergence in the coverage of the two schemes to become a serious problem is very real.

## **2. Interplay between the ABAC pre-vetting process and the complaints process**

The ABAC Scheme consists of two separate elements, namely a pre-vetting process and the complaints process. The pre-vetting process and the complaints process are properly quite separate functions and are carried out by different people. The common theme between the two processes is that both are making judgments about the meaning of the ABAC provisions.

Recognising the importance of a proper understanding of the approach adopted by the pre-vetting assessors in carrying out their role, the ABAC Adjudication Panel has moved to increase its engagement with the pre-vetting process. At first instance, this has involved a conference between the chief adjudicator and the scheme pre-vetting assessors to consider panel decisions made in 2006, which have upheld complaints about advertisements which have been approved through the pre-vetting process.

It is planned to expand this level of engagement so as to ensure both panel members and the pre-vetting assessors identify differences in code interpretation and discuss the methodology each adopt in making decisions. Clearly, it is important for the integrity of the ABAC Scheme that stakeholders, both from industry and the public, have confidence that the ABAC will be applied in a consistent, methodical manner, properly informed by the public policy aspiration of responsible alcohol promotion.

It is hoped that the resources available to the scheme will enable this level of engagement between the pre-vetting and the complaints process to deepen and expand over the next 12 months.

### 3. Sections (a) and (c) of the ABAC

The panel has sometimes used a 'traffic light' analogy to explain the type of matters on which it will be called upon to make decisions. In this analogy, advertisements which are in the 'green light' category are uncontroversial and will not attract credible complaints. 'Red light' advertisements which clearly offend the ABAC standards will not survive the pre-vetting process and will not be broadcast or published in the first place (noting a very small number of advertisers are not signatories to the ABAC Scheme and will on occasion produce advertisements which would not survive a pre-vetting process).

The highly problematic determinations deal with 'yellow light' advertisements which are approved through pre-vetting but which remain 'on balance' decisions. These are advertisements upon which reasonable persons, if asked to apply the ABAC standards, may well reach different conclusions about compliance. While not exclusively, these advertisements will often involve issues under sections (a) and (c) of the ABAC.

Section (a) provides in part that alcohol advertising must present a mature, balanced and responsible approach to the consumption of alcohol beverages and must not encourage excessive consumption, under-age drinking or misuse of alcohol.

Section (c) deals with advertisements suggesting that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment. The ABAC will be breached if an ad does suggest that alcohol has created a change in mood and if the advertisement depicts the consumption or presence of alcohol being a cause or contributor to success in life, including business, social and/or sexual success.

These two provisions have featured in panel determinations which invariably required quite difficult 'on balance' judgments and which, on occasions, the panel has not been able to reach a consensus

decision. Equally, it is decisions on these two sections which are most likely to attract adverse comment from either industry representatives or those who advocate strict controls on alcohol availability and promotion.

The panel is very conscious that its reasons for a determination need to be fully explained and that consistency in decision-making is of vital importance, particularly for advertisers required to develop advertising campaigns which are compliant with the ABAC standards. Invariably, however, each decision on sections (a) and (c) ultimately turns on an individualised judgment on the particular ad.

Measures are well advanced to assist understanding of the panel's decisions through the listing of all panel determinations on an ABAC website and through the development of guidelines to accompany the ABAC. These are welcome initiatives taken by the panel's management committee.

It would also be valuable to periodically review the ABAC provisions to assess if the provisions are meeting the expectations of the various stakeholders to the scheme. For instance, if there was a concern about the use of sexual imagery in alcohol advertising, then section (c) could be amended to prohibit the use of sexual imagery, rather than the current provisions which allow sexual imagery but not the suggestion that alcohol is a contributor to sexual success.

The actual terms of the ABAC are not a responsibility of the panel. It is the panel's role to fairly, impartially and to the best of its ability apply the ABAC to the complaints and the advertisements which come before the panel. Review of the ABAC provisions is a matter for the management committee and key stakeholders from government, industry and the public.

**Professor Michael Lavarch**

Chief Adjudicator

Alcohol Beverages Advertising Adjudication Panel

# Alcohol Beverages Advertising Code

## Preamble

Australian Associated Brewers Inc, the Distilled Spirits Industry Council of Australia Inc, the Winemakers Federation of Australia and the Liquor Merchants Association of Australia Ltd are committed to the goal of all advertisements for alcohol beverages, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

The Code is designed to ensure that alcohol 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 underage persons.

The conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

## Definitions

For the purpose of this Code—

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**adult** means a person who is at least 18 years of age;

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**alcohol beverage** includes any particular brand of alcohol beverage;

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**adolescent** means a person aged 14-17 years inclusive;

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**Australian Alcohol Guidelines** means the electronic document 'Guidelines for everyone (1-3)' published by the National Health & Medical Research Council (NHMRC) as at 1<sup>st</sup> January 2004.

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**child** means a person under 14 years of age; and

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**low alcohol beverage** means an alcohol beverage which contains less than 3.8% alcohol/volume.

## Advertisements for alcohol beverages must

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly—
  - i) must not encourage excessive consumption or abuse of alcohol;
  - ii) must not encourage under-age drinking;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly—
  - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
  - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
  - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly—
  - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;

- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly—
- i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
  - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- i) the brand name or names of alcohol beverages offered for sale;
  - ii) the type and/or style of the alcohol beverages offered for sale;
  - iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
  - iv) the location and/or times at which the alcohol beverages are offered for sale; and
  - v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

## Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and

## Internet advertisements

The required standard for advertisements outlined in (a) to (g) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.

## Retail advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except—

- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and
- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

### **Third parties**

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

### **Public education**

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.

# ABAC Rules and Procedures (December 2005)

## 1 Management

### 1.1 Management Committee

The management and operation of the Alcohol Beverages Advertising Code (“The ABAC Scheme”) will be undertaken by a Management Committee consisting of—

- (a) the Executive Director of the Australian Associated Brewers Incorporated or their nominee (“AAB”);
- (b) the Executive Director of the Distilled Spirits Industry Council of Australia Inc or their nominee (“DSICA”);
- (c) the Chief Executive of the Winemakers Federation of Australia or their nominee (“WFA”);
- (d) the Executive Director of the Liquor Merchants Association of Australia Limited or their nominee (“LMA”);
- (e) the Executive Director of the Advertising Federation of Australia or their nominee.
- (f) a Representative of Australian Governments with a nominee put forward by the relevant Federal Minister for consideration by the other members of the Management Committee, who will be appointed for a one (1) year term but will be eligible for re-appointment by the Management Committee.

The position of Chairman will rotate between the AAB, DSICA, WFA and LMA representatives on an annual basis. The Chairman will arrange for the provision of secretarial services to the Management Committee.

### 1.2 Role

To manage and review the operation of ABAC and to consider amendments to ABAC and to the voluntary system of compliance with ABAC with a view to:

- Encouraging industry members, large and small, to participate in the self-regulatory system;
- Playing an active role to ensure an effective self-regulatory system;
- Monitoring the implementation of the ABAC system and improving it where necessary;
- Co-ordinating the development and completion of an annual report with copies to be provided to the Ministerial Council on Drug Strategy and the Advertising Standards Board; and
- Manage the Alcohol Advertising Pre-Vetting Scheme as an effective mechanism to support and strengthen the aims of ABAC and to encourage participation by industry members in AAPS.

### 1.3 Meetings of the Management Committee

The Management Committee must meet at least four times a year.

Any of the representatives of the AAB, DSICA, LMA or WFA may convene a meeting of the Management Committee which, if not a telephone meeting, must be held by giving not less than fourteen (14) days prior written notice of the meeting to the other members of the Management Committee.

### 1.4 Funding

The Management Committee will be funded equally by the AAB, DSICA, WFA and LMA.



## 2 Adjudication

### 2.1 Alcohol Beverages Advertising Adjudication Panel

An Alcohol Beverages Advertising Adjudication Panel (“the Panel”) will be formed to adjudicate upon complaints concerning advertisements for alcohol beverages which are made to the Advertising Standards Board established by the AANA and referred to the Panel for adjudication.

Adjudication by the Panel will be in addition to any other legal right or remedy which may exist.

### 2.2 Code Signatories

All members of AAB, DSICA, WFA and LMA will be asked to agree to comply with any recommendation of the Panel that they not publish or broadcast or permit to be published or broadcast any advertisement which the Panel decides does not comply with ABAC.

Non-members are strongly encouraged to become Code signatories, by filling out a form approved by the Management Committee for the purpose, which are to be available through the appropriate industry association.

### 2.3 Disputes between Competitors

The Panel will have no role in the adjudication of a complaint by an alcohol beverages manufacturer about the advertising of a competitor. Such competitive complaints will be dealt with by the Advertising Claims Board established by the AANA.

### 2.4 Appointment of the Panel

The Panel will be appointed by the Management Committee and will consist of three (3) regular members and two (2) reserve members.

The Management Committee will appoint a Health Sector representative as one of the three regular members of the Panel. A shortlist of three candidates for this position will be supplied by the relevant Federal Minister to the Management Committee for consideration.

The Management Committee will appoint one (1) member of the Panel as the Chief Adjudicator of the Panel.

No member of the Panel may, at the time of or during the term of his or her appointment to the Panel—

- (a) be a current employee or member of the alcohol beverages industry; or
- (b) have been an employee or member of that industry during the period of five (5) years prior to the date of his or her appointment.

Each member of the Panel will be appointed for a one (1) year term but will be eligible for re-appointment.

Determinations of the Panel will be by a simple majority vote and no member of the Panel will have a casting vote.

### 2.5 Complaints Procedure

- (a) The ABAC Management Committee has a duty to oversee that the process for handling complaints is running efficiently, and in performing this duty must have regard to:
  - (i) A target of 30 days on average for the handling of complaints, and
  - (ii) A need to ensure privacy, where required by law, and
  - (iii) Any natural justice considerations.
- (b) All complaints received from the ASB will be considered within the ABAC complaints procedure and all decisions must be recorded in writing for statistical purposes.

- (c) (i) The Chief Adjudicator will look at all complaints received from the ASB to determine if the complaint raises issues which are solely within the province of the AANA Code of Ethics.
- (ii) If it is so determined the complaint will not normally be further considered by ABAC (and will be handled by the ASB in accordance with their own procedures) excepting
- (iii) Where the Chief Adjudicator exercises his or her discretion to refer the complaint to the Adjudication Panel notwithstanding his or her determination that it raises issues which are solely within the province of the AANA Code of Ethics.
- (d) In all other cases (including 2.5(c)(iii)) the complaint will be referred on to the ABAC Adjudication Panel for adjudication and the Health Sector representative will sit on the Panel for all adjudications. Copies of the advertisement against which a complaint has been lodged will also be provided to Adjudication Panel members to assist them with their deliberations.
- (e) If the Panel decides that the complaint should be upheld the advertiser or its agency must advise the Panel within five (5) business days as to whether the advertiser agrees to modify the advertisement or its use must be discontinued.
- (f) Decisions of the Panel, and the response (if any) of the advertiser/agency, must be advised to the Advertising Standards Board and the ABAC Management Committee, within five (5) business days after—
  - (i) in the case where the Panel has not upheld the complaint, the date of the decision of the Panel; or

- (ii) in the case where the Panel has upheld the complaint, the date the response is received (or due) from the advertiser/agency pursuant to paragraph (e) above.

- (g) A record of all decisions must be maintained to assist with establishing statistical patterns over time for use in drafting the Annual Report etc.

## 2.6 Indemnity of Panel Members

If a complaint made to the Advertising Standards Board and referred to the Panel is from an advertiser, advertising agency, government agency or statutory authority, the AANA must ensure that the members of the Panel receive the benefit of the indemnity provided to the advertising Standards Board by the complainant.

## 2.7 Funding

The costs of the Panel will be met by AAB, DSICA and WFA and LMA in proportion to each industry group's Australian advertising expenditure as a proportion of total Australian alcohol advertising expenditure.

## 2.8 Annual Report

The Panel must prepare a report summarising the complaints received and dealt with by the Panel and the recommendations made to the Advertising Standards Board during the preceding year and provide a copy of that report to the Management Committee.

### 3 Alcohol Advertising Pre-vetting Scheme (AAPS)

#### 3.1 Role of AAPS

Individual alcohol beverage producers may use the AAPS pre-vetting service to assess whether proposals conform to either or both of the following codes the Australian Association of National Advertisers Code of Ethics (AANA) or the Alcohol Beverages Advertising Code (ABAC).

For beer producers and spirits producers all advertisements for alcohol beverages (excluding internet advertisements) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code. For wine producers all television and cinema advertising should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code.

For all producers pre-vetting for the promotion of alcohol at events or internet advertisements is optional.

Pre-vetters have no public role in representing the scheme. Their role is to provide pre-vetting services. Any inquiries or correspondence from third parties to pre-vetters must be referred on to the relevant industry association or ABAC Management Committee to be dealt with.

To encourage the frank exchange of views within the Scheme, any opinion expressed by a pre-vetter in respect to a matter which is submitted for pre-vetting is confidential to the producer, the pre-vetter and the representative of their respective industry association.

#### 3.2 Appointment of Pre-vetters

There will be a minimum of two pre-vetters within the AAPS Scheme, appointed by the Management Committee.

No pre-vetter may, at the time of or during the term of his or her appointment to the Panel—

- (c) be a current employee or member of the alcohol beverages industry; or
- (d) have been an employee or member of that industry during the period of five (5) years prior to the date of his or her appointment.

Each of the three pre-vetters will be appointed for a three (3) year term and will be eligible for re-appointment after a minimum period of one (1) year out of the Scheme. These provisions may be varied by the Management Committee.

#### 3.3 Funding

Where appropriate, AAPS is to be funded on a user-pays basis by those industry members seeking pre-vetting of advertisements.

The Management Committee is to be responsible for the setting of any retainers and hourly rates for pre-vetters and approving any related expenses. Further, the Management Committee is to ensure that a system is in place for the orderly collection of debts incurred through use of the pre-vetting service by producers.

