

**Report to NABIC by ABAC Directors**

**5 September 2014**

**The ABAC Scheme Limited**

**Background**

The ABAC Responsible Alcohol Marketing Code and the associated Pre-vetting and Complaints Management Systems form the quasi-regulatory ABAC Scheme.

The ABAC Scheme was developed in agreement with all major Australian alcohol beverages’ 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 marketing, including 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 ABAC Responsible Alcohol Marketing Code** (first introduced in 1998 and substantially updated in 2004 and 2014) which regulates the content of alcohol beverage marketing 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 marketing in emerging digital and social media, user generated content on alcohol company controlled digital and social media, point of sale advertisements, surrogate marketing over which an alcohol company has control, marketing collateral and packaging. The ABAC Guidance notes have been developed to assist advertisers and agencies in interpreting the Code.

In addition to the Code, Best Practice Guidelines in relation to digital marketing of alcohol have been developed by ABAC in consultation with industry and approved by the ABAC Management Committee. These guidelines provide guidance to industry on best practice in digital marketing to encourage consistency and responsibility in digital marketing of alcohol. These guidelines are not, however, considered as part of the complaints system. There is the potential for further guidelines to be developed in consultation with industry surrounding discreet sensitive areas of alcohol promotion that are not appropriate for inclusion in the Code.

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), Fair Trading 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.

* **The Alcohol Advertising Pre-vetting Service (AAPS)** which provides confidential advice to advertisers on whether proposed alcohol marketing complies with the Code. This service is offered on a ‘user pays’ basis.
	+ AAPS pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting.
	+ AAPS has the support of media associations that either require or encourage their members to check that an alcohol advertisement has AAPS approval prior to placement of advertisements.
	+ In recent years more than 1000 advertisements, names or packaging are considered by AAPS each year.
	+ 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 ambit 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. 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 unless it is an issue that has been consistently dismissed by the Panel or an issue within an advertisement that has already been considered by the Panel.
	+ The ASB considers complaints insofar as they raise AANA Code of Ethics, Food and Beverages Code or other codes that they administer. The AANA Code of Ethics seeks to ensure that all marketing communications are legal, decent, honest and truthful thus ensuring that there is a consistent standard for matters such as discrimination, exploitation, violence, health and safety 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 ABAC Adjudication Panel and its deliberations are independent of the ABAC management committee and the broader alcohol and advertising industry.
	+ The ABAC 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.
	+ In 2012 48% of alcohol complaints received resulted in an ABAC determination. In recent years the ABAC Adjudication Panel has made between 35 and 45 determinations each year.
	+ 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.
* **General operation of the scheme**

* + The ABAC Rules and Procedures outline the agreed rules and procedures for the operation of the Scheme.
	+ 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 is also an important resource for marketers as it includes all ABAC publications, a search function for past adjudication decisions, information about the AAPS system and includes a facility to lodge AAPS applications online.
	+ ABAC undertook community standards research in 2012/13 to evaluate the Code and Panel decisions against community expectations and standards.
	+ ABAC has undertaken a television campaign as a community service announcement to raise awareness of the ABAC scheme.
	+ The three key features of the scheme result in alcohol beverage advertisers having four decision points in relation to advertisements and packaging:



**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 all relevant stakeholders including 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 Executive Director of the Brewers Association of Australia & New Zealand;
* the Executive Director of the Distilled Spirits Industry Council of Australia Inc;
* the Chief Executive of the Winemakers Federation of Australia;
* the Chief Executive of the Communications Council Limited;
* a representative of Australian Governments nominated by the relevant Federal Minister or Parliamentary Secretary responsible for alcohol issues.

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 marketing 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 Australian Government representative reports to each ABAC meeting after consultation with a sub-committee of the Intergovernmental Committee on Drugs (IGCD) set up for that purpose and also reports to that sub-committee following each ABAC meeting.

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 & New Zealand, 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 non-member signatories to the Scheme and to utilise the Pre-vetting Service. Both Coles Liquor Group and Woolworths Liquor Group are non-member 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 annual 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.
* The ABAC Adjudication Panel made 36 determinations resulting from 2013 complaints of which 4 were upheld and in each case the advertiser agreed to withdraw or modify the marketing so as to comply with the ABAC standards.

**Current Issues**

The ABAC Scheme is currently undertaking a review of its corporate governance and operations. Consultation by the independent consultant conducting the review with industry representatives has been scheduled for 23 September 2014. A number of issues will be considered including:

* Appointment of an independent chair
* ACCC authorisation of the scheme and a possible retailer alert scheme
* Raising awareness of the ABAC Scheme within the community (there are limitations on ABAC’s ability to communicate its achievements by reason of strict external and internal communication protocols that take into account sensitivities associated with government involvement in the scheme)
* Structure of the Scheme
* Funding mechanisms and adequacy of resourcing of the Scheme
* Enforcement mechanisms to ensure compliance
* Potential for periodic monitoring of alcohol marketing
* Possibility of greater ASB involvement in the complaints adjudication process

Further information about The ABAC Scheme, including Annual Reports and Adjudication decisions are publicly available on the ABAC website, [www.abac.org.au](http://www.abac.org.au).

ABAC Directors

5/9/14