

**Submission & Information paper to ACCC Digital
Platform's Inquiry**

The ABAC Scheme:

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ACCC Digital Platforms Inquiry Final Report

This submission relates to material included in the Final Report that was not referenced in the Preliminary Report or Terms of Reference. In particular:

- Recommendation 6 which proposes a process to implement harmonised media regulatory framework (p31-32) now includes an additional matter to be included in the framework:
 - Advertising restrictions: a consistent system of advertising restrictions across all delivery platforms, including online and offline channels.
- Box 4.5 Case Study – Alcohol Advertising Restrictions (p195)
- “The Foundation for Alcohol Research and Education submits that the current self-regulatory system for alcohol advertising has been found to be ineffective and that the regulatory framework must be underpinned by independent, well-funded and authoritative governance and enforcement, with appropriate penalties to incentivise compliance” (p205)

Submission

ABAC is an effective quasi-regulatory framework for alcohol advertising. We draw to your attention the following features of ABAC:

- content regulation is media platform neutral
- placement regulation covers all media platforms in the most effective manner practically available to the particular media platform
- aligned with community standards ([Colmar Brunton research](#) in 2013 and 2017)
- responsive (frequently monitored and reviewed with significant Code changes in 2004, 2009, 2014 and 2017)
- monitored by the public through the accessible and free complaints process
- transparent (ABAC website includes all adjudication decisions and regular reports)
- clear, accepted and understood by a majority of the alcohol and advertising industry ([20+ years of operation](#))
- no cost to the public or Governments
- proactive pre-vetting service prevents irresponsible promotions entering the market (in 2018 1751 marketing communications checked and 228 rejected)
- independent:
 - complaints adjudication process (operated by Professor Michael Lavarch AO and includes a member with public health expertise nominated by Health Minister or nominee)
 - Chair of Management Committee
 - Government representative to Management Committee
 - Panelists

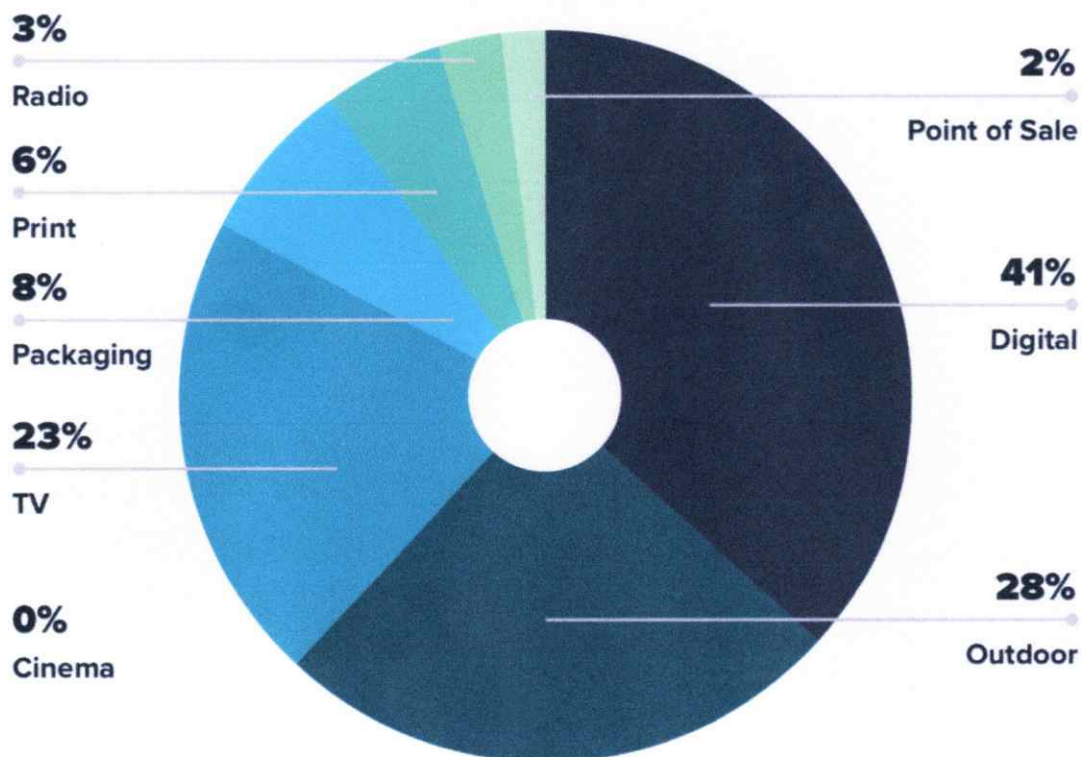
- Pre-vetters
- Executive Officer
- efficient (in 2018 complaints were resolved within an average of 22 business days)
- Australian Government input via representation on the ABAC Management Committee and Panel public health member appointments
- voluntary compliance by ABAC signatories (>95% producer media spend and >75% retailer media spend)
- compliance is incentivised by:
 - financial implications of removal of advertising found to breach the Code – this is a meaningful sanction that has resulted in multi-million dollar television advertisements being removed from the Australian market
 - reputational implications of being publicly named as breaching responsible alcohol marketing standards – list of breaches published on the ABAC website, Quarterly Reports and Annual reports
- State Liquor Licensing regimes have similar responsible marketing requirements to ABAC with statutory underpinning and in the event of non-compliance by an advertiser the complaint is referred to the relevant liquor licensing body to consider against their promotional guidelines

Importantly, in its 21 years of operation ABAC has kept pace with changes in technology and the way in which media businesses now operate and has proven to be adaptable to new services, platforms and technologies:

- **2004** – ABAC Code coverage was extended to internet advertising and the Panel began to make decisions about alcohol company websites.
- **2009** – The ABAC Panel made its first decisions about alcohol marketing placed on third party internet sites and organic marketing via social media platforms, finding that this marketing (initially Facebook pages) must meet the ABAC standards.
- **2010** - The ABAC Panel made its first decision about user generated content on a social media platform (Facebook) finding that this content is within the reasonable control of the page owner and must meet the ABAC standards or be removed.
- **2011** - The ABAC Panel made its first decision about an edm (email marketing campaign) promoting alcohol, finding that this form of marketing must meet the ABAC standards.
- **2012** - The ABAC Panel made its first decision about advertising on the music sharing platform, Spotify, finding that this advertising must meet the ABAC standards.
- **2013** - A guide was developed for alcohol marketers and their agencies on best practice in the management of digital alcohol marketing to encourage consistency and a high level of social responsibility in this emerging media.
- **2014** – ABAC Code amendments formally recognised that social media and user generated content must meet ABAC standards. The ABAC Panel made its first decision about Twitter posts promoting an alcohol product, finding that this content must meet the ABAC standards.
- **2015** - The ABAC Panel made its first decision about advertising on Youtube finding that promotional content on this platform must meet the ABAC standards.
- **2016** – ABAC’s Digital Alcohol Marketing Best Practice Guide was reviewed and updated. The ABAC Panel made its first decision about advertising on Instagram, finding that this advertising must meet the ABAC standards.

- **2017** – ABAC Code coverage extended to placement of alcohol marketing – largely in response to a lack of regulation of digital platforms. The ABAC Panel decided that the following emerging alcohol promotion techniques must meet ABAC standards:
 - Shazam platform
 - Social media influencers on Instagram
 - Product placement
- **2018** – ABAC’s Digital Alcohol Marketing Best Practice Guide was reviewed and updated to provide guidance to industry on best practice for social media influencer marketing.
- **2019** – ABAC has been communicating with digital platforms for many years seeking responsibility improvements. It has more recently provided input to the International Alliance for Responsible Drinking (IARD) which is currently working with global digital platforms to improve responsibility in digital alcohol marketing through age restrictions and targeting, consumer choice opt outs for alcohol ads and other measures. We understand that most digital platforms have age restriction mechanisms and some have implemented consumer choice opt outs for alcohol marketing.

MEDIA ATTRACTING A DETERMINATION



Extract: 2018 ABAC Annual Report

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 Code²** (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.

- **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.

¹ Australian Government 2014, The Australian Government Guide to Regulation, Canberra p28

² Annexure A: [The ABAC Responsible Alcohol Marketing Code](#)

- 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 received more than 1,750 requests for the pre-vetting of alcohol marketing communications 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.
 - Ad Standards accepts all complaints in relation to all types of advertising. This avoids a duplication of entry points for advertising-related complaints. In 2018 2.3% of all complaints received by Ad Standards related to alcohol. All alcohol related complaints are provided to the ABAC Adjudication Panel and the Panel considers all complaints that raise ABAC Code issues.
 - Ad Standards considers complaints insofar as they raise AANA Code of Ethics issues. The AANA Code of Ethics object is to ensure that all advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors 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 Ad Standards, 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.
- Regular independent research on community expectations of alcohol advertising is undertaken to ensure the Code reflects current community standards.
- 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 Ad Standards; 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 Spirits & Cocktails Australia;
- the Chief Executive Officer of Australian Grape & Wine;
- 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, Spirits & Cocktails Australia and Australian Grape & Wine 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, Endeavour Drinks Group, Coles Liquor Group, Campari Australia, Coca Cola Amatil, Asahi Premium Beverages, Lion Cider and Independent Brands Australia 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 free annual training webinars with the ABAC Chief Adjudicator and a pre-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.

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


Harry Jenkins AO
Chair, ABAC Management Committee

27/8/19



ABAC RESPONSIBLE ALCOHOL MARKETING CODE

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 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 an Adult.

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.

Available Age Restriction Controls means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a third party platform, website or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used to place a Marketing Communication.

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 Placement Policy).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (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).