

## The ABAC Scheme: RULES AND PROCEDURES

(as at 5 March 2010)

### 1. Management

#### 1.1 Management Committee

The management and operation of The ABAC Scheme will be undertaken by a Management Committee consisting of –

- (a) the Executive Director of the Brewers Association of Australia and New Zealand Inc or their nominee (“Brewers Association”);
- (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 Chief Executive of The Communications Council Limited or their nominee.
- (e) 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 Brewers Association, DSICA and WFA 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 The ABAC Scheme and to consider amendments to the Code and to the voluntary system of compliance 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 Ministerial Council on Drug Strategy and the Advertising Standards Bureau (“ASB”); and
- Managing the Alcohol Advertising Pre-Vetting Service (“AAPS”) as an effective mechanism to support and strengthen the aims of The ABAC Scheme 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 Brewers Association, DSICA, 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 has a responsibility to ensure that The ABAC Scheme is adequately funded.

## 2. Adjudication

### 2.1 Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel

An Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel ("the Adjudication Panel") will be formed to adjudicate upon complaints concerning:

- advertisements for alcohol beverages, and
- naming and packaging for alcohol beverages.

Complaints made to the Advertising Standards Bureau will be referred to the ABAC Scheme for consideration under the relevant complaints procedure.

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

### 2.2 Code Signatories

All Code Signatories, including members of Brewers Association, DSICA and WFA will be asked to:

(a) in respect of advertising: agree to comply with any recommendation of the Adjudication Panel that they not publish or broadcast or permit to be published or broadcast any advertisement which the Panel decides does not comply with the Code; and

(b) in respect of product names and/or packaging: agree to act in good faith to uphold the principles of The ABAC Scheme in considering recommendations of the Adjudication Panel relating to this section of the Code.

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 Adjudication Panel

The Adjudication 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 Adjudication 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 Adjudication 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 of a participant or member of the alcohol beverages industry; or
- (b) have been an employee of a participant 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 Adjudication Panel will have a casting vote.

## 2.5 Indemnity of Adjudication Panel Members

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

## 2.6 Annual Report

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

## 3.0 Complaints Procedures for Advertising

(The complaints procedures for naming and packaging are described in Section 4.)

The complaints procedures for advertising are as follows:

- (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 under The ABAC Scheme (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 Adjudication Panel for adjudication and the Health Sector representative will sit on the Adjudication 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. The ABAC Adjudications Panel will not consider any issues raised under the AANA Code of Ethics unless the ASB refuses to consider those issues
- (e) If the Adjudication Panel decides that the complaint should be upheld the advertiser or its agency must advise the Adjudication 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 ASB and the ABAC Management Committee, within five (5) business days after –
  - (i) in the case where the Adjudication Panel has not upheld the complaint, the date of the decision of the Adjudication Panel; or
  - (ii) in the case where the Adjudication 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.

#### 4.0 Complaints procedures for naming and packaging

- (a) The ABAC Management Committee has a duty to oversee that the process for handling complaints for naming or packaging is running efficiently, and in performing this duty must have regard to:
  - (i) The efficient handling of complaints, and
  - (ii) A need to ensure privacy, where required by law, and
  - (iii) Any natural justice considerations.

*All complaints to be considered*

- (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) If the complaint also relates to advertising, the complaint will also be considered under Section 3 of the Rules & Procedures.
- (d) The Chief Adjudicator will look at all complaints against naming and packaging (received by the ASB) to determine if the complaint raises issues under the ABAC Code.
- (e) If it is so determined the complaint will be referred to the Adjudication Panel for consideration.
- (f) Where a complaint is referred to the Adjudication Panel for consideration, the Chief Adjudicator will, prior to consideration of the complaint by the Adjudication Panel, notify the Supplier of the complaint and its referral to the Adjudication Panel.
- (g) For the purposes of Section 4 of the Rules & Procedures, a "Supplier" is deemed to be either:
  - (i) the Australian named manufacturer; or
  - (ii) the Australian distributor(s) of the Product either as shown on the labelling or packaging of the Product or otherwise identified in good faith by the Chief Adjudicator on the information available to him or her.

*Materials to be supplied to the Adjudication Panel*

- (h) When the Adjudication Panel considers the complaint, it should have before it:
  - (i) a copy of the complaint
  - (ii) either a copy of the product name and/or packaging or product or product material in question, or a fair description of both (and the text of any determination issued by the Adjudication Panel should stipulate which)
  - (iii) any correspondence from the Supplier, either in response to the complaint, or any questions/issues raised with it by the Chief Adjudicator.
  - (iv) any other materials the Chief Adjudicator deems fit.

*Review processes*

- (i) If the Adjudication Panel decides to uphold the complaint, then a provisional determination must be provided to the Supplier, who will be able to seek a rehearing of the provisional determination, by providing a formal written response and further submission within ten (10) business days of receipt of the provisional determination.
- (j) All or part of this appeal period may be waived by the Supplier, and will be deemed to have been waived upon receipt of a formal written response to the provisional determination.

- (k) After considering any material provided by the Supplier, or after the elapse of ten (10) business days from the date that the provisional determination is provided to the Supplier, the Adjudication Panel is free to issue a final determination whenever it deems fit.
- (l) When a complaint has been upheld against a product's name or packaging, the Supplier must advise the Chief Adjudicator within five (5) business days of being informed of the Adjudication Panel's decision, as to whether they intend to either discontinue or modify the affected product.
- (m) The onus is on the Supplier to demonstrate to the Chief Adjudicator that a product name or trademark was in use in the Australian market prior to 31 October 2009. The Supplier may do so at any stage of the process prior to the end of the five (5) business day period the Supplier has to respond to a final determination.

#### *Agreement to modify name or package*

- (n) Where a Supplier has agreed to modify the affected product, then it may put proposals for doing so before the Chief Adjudicator for consideration. The Chief Adjudicator must ensure that any such proposal(s) are dealt with in a timely and confidential manner.
- (o) The Chief Adjudicator shall determine whether the proposed modifications bring the product name and/or packaging into line with the Code (not just the section(s) on which the original complaint and determination hinged) and will have the discretion to consult with the Adjudication Panel on any such proposal.
- (p) Where the Chief Adjudicator has certified that modifications to naming and/or packaging are sufficient to bring it in line with the Code, then the Adjudication Panel will not consider any further complaints against the product so modified. Any minor modifications to the packaging (e.g. bar codes, use-by dates, date or place of manufacture, grape sources etc.) will be deemed to not alter the compliant status of the product.

## **5.0 Alcohol Advertising Pre-Vetting Service (AAPS)**

### **5.1 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 of Ethics. 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 of Ethics.

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 ABAC 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.

## 5.2 Appointment of Pre-Vetters

There will be a minimum of two pre-vetters within the AAPS Service, 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 of a participant or member of the alcohol beverages industry; or
- (d) have been an employee of a participant 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 ABAC Scheme. These provisions may be varied by the Management Committee.

## 5.3 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.