

# The ABAC Scheme

**Annual Report 2004**

presented by the Management Committee  
of The ABAC Scheme



# Contents

Section 1 Report from the ABAC Management Committee	3
Management Committee	3
Overview	4
Making a good scheme better	6
2004—Some numbers	7
General trends observed	8
A work in progress	9
Section 2 Report from the Chief Adjudicator	11
The external-regulatory system	11
Changes to the ABAC	12
Complaints in 2004	14
Issues arising in 2004	15
The Panel	16
Section 3 Alcohol Beverages Advertising Code	17
Definitions	17
Internet advertisements	18
Retail advertisements	18
Promotion of alcohol at events	18
Section 4 ABAC Rules and Procedures	21
Management	21
Adjudication	22



# Report from the ABAC Management Committee

This report seeks to increase community understanding of The ABAC Scheme. To this end some key documents of the Scheme—The ABAC Code, and Rules & Procedures—are reprinted here.

2004 saw a great many changes following a two-year review of alcohol advertising in Australia by industry and government.

Changes to the ABAC Code are described in the Chief Adjudicator's report to the Management Committee, which is reprinted in full. Other changes to The ABAC Scheme are described separately within this Annual Report.

Also, with the permission of the Administrators of The Alcohol Advertising Pre-Vetting System (AAPS), this report publishes consolidated figures on the pre-vetting of advertisements for the first time along with the figures for complaints received. Brief comments on these figures are also provided to assist with understanding.

2004 was a landmark year for The ABAC Scheme, ensuring that Australia leads the world in regulating alcohol advertising.

To ensure this continues, we regard The ABAC Scheme as a work in progress, and this report looks at the work currently being undertaken by Management Committee members to improve the scheme.

## ■ Management Committee, The ABAC Scheme



**Gordon Broderick**  
(ABAC Chair 2003 & 2004)  
Distilled Spirits Industry  
Council of Australia Inc



**Sam Hudson**  
Australian Associated  
Brewers Inc



**Leslie Brydon**  
Advertising Federation  
of Australia



**Stephen Strachan**  
Winemakers' Federation  
of Australia Inc



**Ross Burns**  
Liquor Merchants  
Association of Australia



**Bruce Wight**  
Australian Government  
Department of Health  
& Ageing

## ■ Overview

Australia enjoys vibrant beer, wine and spirits industries which are major contributors to both employment and the wider economy.

Both government and industry accept that alcohol beverage companies have a right to advertise their product to consumers. Both government and industry accept there are responsibilities that go hand-in-hand with this.

**Australia has a co-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 co-regulatory system and in turn, The Alcohol Beverages Advertising Code is the centrepiece of this scheme, setting out alcohol specific standards for advertising within Australia.

The ABAC Scheme is administered by a Management Committee which includes industry and government representatives. These representatives have no role in considering complaints against individual advertisements.

When complaints are received, they are referred to an independent Chief Adjudicator who chairs the Alcohol Beverages Advertising Adjudication Panel. Members of the alcohol beverage industry are specifically barred from serving on this Panel, to ensure its continued independence.

If a complaint is upheld by the Panel, companies are asked to either suitably modify or remove the particular advertisement within five business days. In 2004, this requirement was met in all cases, thus delivering 100 per cent compliance by companies with their obligations under The ABAC Scheme.

The Code is a living document within companies and in 2004 the Management Committee ran workshops in three key states to explain changes to the Code directly to company and advertising agency personnel.

To support compliance with The ABAC Code, industry associations also separately administer a 'user-pays' service (the Alcohol Advertising Pre-vetting System (AAPS)) which allows alcohol companies to have advertisements independently 'pre-vetted' against the Code by professional, arms-length assessors.

The ABAC Code is not the only set of rules affecting advertising in Australia. Advertising by alcohol beverage companies must also be consistent with other applicable laws and codes, for example:

- The Trade Practices Act
- The Australian Association of National Advertisers (AANA) Code of Ethics—which sets out general principles which apply to all advertising content
- The Commercial Television Industry Code of Practice—which sets out when alcohol beverages may, or may not, be broadcast on TV
- The Commercial Radio Codes of Practice—which sets out general standards for radio advertising
- State fair trading legislation

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. Complainants who request confidentiality will be granted it.

From the companies' perspective there are four potential decision points for alcohol advertising, as outlined in the opposite table.

From the consumer's perspective there is just one 'doorway' for complaints, which triggers two independent but parallel processes, as outlined in the opposite diagram.

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
<b>IN 2004:</b> the ABAC MC held workshops in three capital cities, to educate company and advertising agency personnel about ABAC changes	<b>IN 2004:</b> the Winemakers Federation of Australia joined the pre-vetting service for the first time	<b>IN 2004:</b> Website advertising became a 'complainable matter' for the first time, and Guidelines for the promotion of alcohol at events were introduced.	<b>IN 2004:</b> There was 100 per cent compliance with this requirement



\* A complaint may be adjudicated by both the ASB and the ABAC against these two separate, but complementary codes.

## ■ Making a good scheme better

In July 2002 all Australian governments—meeting as the Ministerial Council on Drug Strategy—agreed to a review of Australia's regulatory system for alcohol advertising.

In August 2003, after consideration of a report, a sub-group of three Ministers was formed to meet with members of the ABAC Management Committee in order to work through suggested changes to The ABAC Scheme:

- The Hon Trish Worth, MP: Parliamentary Secretary to the Minister for Health & Ageing (Commonwealth of Australia)
- The Hon John Della Bosca, MLC—Special Minister of State (New South Wales)
- The Hon Bronwyn Pike MP, Minister for Health (Victoria)

In 2004, after six months of negotiations with government representatives, an agreement was reached for changes to the system which was set out in an exchange of letters between industry and government.

2005 sees a continuing roll out of the many changes to The ABAC Scheme and monitoring of their implementation.

Here is a summary of the major changes to The ABAC Scheme:

### 1 Changes to the ABAC Code

There are four major changes to the Code itself concerning the preamble, the internet, the Australian Alcohol Guidelines and promotions at events. These are described in the Chief Adjudicator's report.

### 2 Changes to the Management Committee

It was agreed that a government representative would join the Management Committee for the first time. In August 2004, Mr Bruce Wight of the Commonwealth Department of Health and Ageing took up this role.

There were also two changes to codify existing understandings within the Rules & Procedures, i.e.

- a) a commitment to a goal of all alcohol advertising complying with the spirit and intent of the code
- b) a definition of the role of the committee to 'manage and review' the scheme, with a minimum of four meetings a year.

The ABAC Management Committee met this minimum meeting requirement in 2004.

## 3 Industry coverage expanded

Nearly all alcohol producers or distributors are members of one or other of the industry associations which jointly administer The ABAC Scheme. In 2004, the Rules & Procedures were amended to allow 'non-members' to formally express their support for the first time, by becoming signatories to The ABAC Scheme.

Also, whilst the AAPS pre-vetting system is not administered by ABAC, from 2004 onwards members of the Winemakers' Federation of Australia now use AAPS for the pre-vetting of television and cinema advertising.

## 4 ABAC now assesses all complaints

Previously, the Advertising Standards Bureau (ASB) would refer a complaint to the ABAC Adjudication Panel when, in the ASB's view, the complaint raised issues pertaining to the ABAC Code. Alongside this, the ABAC Chief Adjudicator could also 'opt in' and consider a particular complaint, even when it was not formally referred to him by the ASB.

From now on, the ASB will have no decision to make within the ABAC complaints management process. The ASB serves as a one-stop 'post box' for complaints and automatically refers a copy of every complaint to ABAC for consideration. The two schemes then assess each and every complaint independently under their own, separate procedures.

Under ABAC procedures, complaints must be handled by the ABAC Adjudication Panel, except where the Chief Adjudicator determines that the issues raised are solely within the AANA Code of Ethics.

## 5 Changes to Adjudication Panel

There are two changes to the operations of the Alcohol Beverages Advertising Adjudication Panel itself.

The first is the appointment of an additional Panel member whose expertise is in public health issues. In 2004 Professor Fran Baum was appointed to the Panel.

The second is the adoption of a 30 day target for the processing of complaints, and the Management Committee appointed an administrator to assist the Chief Adjudicator with various administrative tasks, in an effort to assist meet this objective.

The Chief Adjudicator has raised some concerns with the practicalities of the 30-day requirement in his report, and these will be considered by the Management Committee in 2005.

## 6 Greater transparency

It is important that understanding of the good work of The ABAC Scheme increases and to this end the Management Committee will

- a) publish an Annual Report; and
- b) continue to host the ABAC Code on the websites of Management Committee members.

Currently, the ABAC Code is on the websites of the five associations who serve on the Management Committee.

## ■ 2004—Some numbers



# 754

Number of alcohol adverts pre-vetted in 2004.  
Of these:

- 607 were accepted
- 63 were accepted after modification
- 84 were rejected
- only 23 received complaints



# 212

The number of complaints received in 2004  
(Note: 180 were for one advertisement).



# 23

The number of ads these complaints referred to.



# 8

The number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel.  
(All others fell solely within the AANA Code of Ethics covering general advertising issues).



# 3

The number of complaints upheld by the Panel.

# 0

Is the number of adverts which were not modified or withdrawn within five business days, after a complaint was upheld.

## ■ General trends observed

A decision on whether an individual advertisement complies with the ABAC Code will, by its very nature, involve a subjective judgement. For this very reason professional independent adjudicators are appointed, led by an able Chief Adjudicator, who provide considerable detail within written judgements.

Having set out the standards for alcohol advertising, and the process for managing complaints, it would be inappropriate for the Management Committee to seek to intervene in or comment on (other than to support) any specific decision of either the Chief Adjudicator or the Panel within this Annual Report.

However, the Management Committee is charged with an ongoing duty to manage and review The ABAC Scheme. So, here are some general comments on the complaints process for 2004 to assist in understanding the year in review.

- Figures cited in this Report cover the period March to December 2004, i.e. after the revised ABAC Code was introduced, by agreement between government and industry. The 2005 Annual Report will cover the full calendar year.
- **It just takes one:** A single ad can trigger a large number of complaints and therefore caution should be used in citing raw statistics for complaints, without explanation. An example of this occurred in 2004 when 85 per cent of complaints received were triggered by a single ad—a television commercial for Lion Nathan's Tooheys New beer. In this ad, a computer generated cane toad was hit back across the border from NSW to Qld with a golf club—and it is fair to describe a large number of the complaints as having come from people concerned with animal welfare. The ad was quickly discontinued. Apart from this, there were just 32 complaints against 23 ads—a very low number, reflecting the high awareness of the ABAC Code by industry in 2004.
- **Internet guidelines established:** Two single photographic images by the late Helmut Newton prompted complaints. Both complaints were upheld by adjudicators, and the advertiser altered their website to comply with the decision of the Panel. It is worth noting that these complaints—simply because they were the first under ABAC—provide valuable guidance to producers on how the ABAC standards can be applied to advertising on the internet: a medium which is considerably different from normal broadcast or print media and provides a particular challenge to regulators.
- **Pre-vetting has teeth:** The number of advertisements which were rejected or modified via the AAPS pre-vetting system is consistent with past years. Pre-vetting is a confidential user-pays service to advertisers and in 2004, eleven per cent of proposed advertisements were rejected outright, stopping them from ever being printed or broadcast. Thus proving that the pre-vetting service has real teeth—and continues to reinforce compliance with the ABAC Code.

## ■ A work in progress

The many changes to The ABAC Scheme arising from the 2004 government-industry agreement left the Management Committee with a lot of work to do throughout 2004/05.

In 2004, three workshops on the revised ABAC Scheme for company and advertising agency personnel were organised for the three key industry centres: Sydney, Melbourne and Adelaide.

In all, over 250 individuals participated in these workshops from the alcohol beverage industry and associated advertising agencies.

They were addressed by representatives of:

- The Australian Association of National Advertisers on the AANA Code of Ethics
- The ABAC Scheme on the Alcohol Beverages Advertising Code
- The Alcohol Advertising Pre-vetting System (AAPS).

These workshops show the strong commitment of the Management Committee to practical steps towards the goal of all advertising complying with the spirit and intent of the Code.

As with any industry, there will be staff turnover within both alcohol companies and advertising agencies. Planning by the ABAC Management Committee takes this into account.

In addition to workshop based high-intensity training for those who create alcohol advertising, the ABAC Management Committee has also published a general interest introductory brochure, explaining The ABAC Scheme. This is available on association websites.

This Annual Report will also serve to keep these issues top of mind amongst company decision makers and to increase general understanding of why Australia's co-regulatory model for alcohol advertising is the best in the world.



# Report from the Chief Adjudicator

2004 marked an important year for the Alcohol Beverage Advertising Complaints System. A revised Alcohol Beverage Advertising Code (ABAC) came into operation following a major review of the Code and the complaints management system by Australian Governments and Industry. The changes to the Code are detailed in this report.

To improve the implementation of the standards in the Code and the operation of the public complaints system a number of changes took place during the year. These changes included:

- The addition of a public health expert, Prof. Fran Baum, to the Complaints Panel.
- The addition of a government representative to the ABAC Management Committee.
- The provision of a part time administrator, Ms Kerry Battersby, to assist in the operation of the Complaints Panel.

All complaints are referred to both the Advertising Standards Bureau (ASB) and The ABAC Scheme to be dealt with under their separate procedures. In the case of The ABAC Scheme, it falls to me as Chief Adjudicator to refer complaints on to the ABAC Complaints Panel and I can only do otherwise where a complaint raises issues which are solely within the province of the AANA Code of Ethics. In total the ABAC Complaints Panel dealt with eight of the 23 advertisement complaints received in 2004.

While only 23 Alcohol advertisements attracted complaints, a number of these advertisements received multiple complaints bringing the total of alcohol advertisement complaints to 212. A discussion about the number and trends in complaints is contained in this report.

I wish to record my appreciation to my fellow panel members, the scheme administrator Kerry Battersby and the ABAC Management Committee for their contribution towards the work of the complaints system in 2004.

**Professor Michael Lavarch**  
Chief Adjudicator—Alcohol Beverages  
Advertising Adjudication Panel

## ■ The external-regulatory system

Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulate and guide the content and, to some extent, the placement of advertisements. Currently, alcohol advertising is subject to both:

- a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB), and
- an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme.

In addition, the commercial television industry Code of Practice places limits on the broadcast of 'direct advertisement for alcoholic drinks'. Such advertisements are generally only to be broadcast in 'M', 'MA' or 'AV' classification periods or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays.

In general terms the laws which apply to advertising are found in the *Trade Practices Act, 1974* (Commonwealth) and State fair trading laws. In addition, state laws dealing with the licensing and operation of alcohol outlets may contain provisions which impact on marketing activities involving alcohol beverages.

The codes of practice applying to alcohol beverage advertising operate at two levels. The AANA Advertiser Code of Ethics applies to all advertising and is not product specific. The ABAC is an alcohol specific code.

The AANA Code of Ethics in general terms deal with issues of taste, decency and the portrayal of sexist or racist messages. Historically the great majority of complaints about alcohol beverage advertising raise matters which are solely under the ambit of the AANA Code of Ethics.

The ABAC in contrast reflects the public policy considerations which concern the use of alcohol beverages. As such, the ABAC aims to establish standards for advertising which do not undermine the responsible use of alcohol.

Because of the public policy considerations and the involvement of government in the setting of the content of the ABAC and its operation, it is fair to characterise the ABAC Scheme as a co-regulatory model. The parties who are covered by the standards of the ABAC are confined to the members of the four peak alcohol industry bodies, who are the industry participants in the scheme. This represents the vast majority of alcohol industry participants, but does not cover general retailers who in some states are able to sell alcohol products.

The ASB and the ABAC both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

The Chief Adjudicator of the ABAC then determines if the complaint raises issues, which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Complaints Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.

## ■ Changes to the ABAC

Alcohol advertising has been subject to codes of practice for many years. The current system came into operation in July 1998 with the launch of the ABAC and the complaints management system. The Code and the complaints system was updated in 2004. This update followed a

review undertaken by an intergovernmental committee on drugs under the direction of the Ministerial Council on Drug Strategy. The code changes were agreed by governments and the peak industry bodies and came into effect in May 2004.

The changes to the ABAC are set out below.

### Preamble

In the Preamble to the Code, the Industry Associations take on a commitment to the Code. The Code makes it clear that alcohol beverage companies expect advertisements to adhere to the spirit and intent of the Code, not just the letter of it.

A new paragraph was added to the Preamble:

*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.*

This paragraph is borrowed from the equivalent alcohol advertising code operating in New Zealand. It reflects a major health policy aspiration, i.e. that alcohol advertising should not be seen to encourage risky or underage drinking. The concept of moderation is an important theme throughout the ABAC.

### Definitions

A new definition for the' Australian Alcohol Guidelines' is included. The guidelines are defined as the document published by the National Health & Medical Research Council (NHMRC) entitled 'Guidelines for everyone (1-3)'.

### Standards

Sections a) to g) of the Code contain the standards which advertisements are to satisfy.

The new addition to the Code is Section g) which states:

*g) Advertisements for alcohol beverages must not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.*

## Internet advertisements

An important extension of the Code is in its coverage of internet advertising. The required standard for advertisements outlined in Sections a) to g) of the Code now apply 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. Banner advertising of such products on third party sites is also subject to the Code.

The expansion of new media was a key issue canvassed by the intergovernmental inquiry. The change to the Code means that internet advertising is to comply with the Code and complaints about internet advertising will fall within the jurisdiction of the ABAC Complaints Panel. In 2004, internet advertising was not subject to the pre-vetting system.

## Promotion of alcohol at events

This is an entirely new part of the Code, which includes event based promotions for the first time. It extends the coverage of the Code from advertising to promotions at events. The new provision states:

*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 applies to the following areas:

- advertising
- sales promotion staff
- promotional materials
- third parties
- public education

## Advertising

Alcohol advertising at the event must not target underage persons and abide by the spirit and intent of the Code.

## Sales promotion staff

- 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
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age.

## Promotional materials

- 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

The Code states—

*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.*

## ■ Complaints in 2004

From March to December, 2004, the ASB forwarded to the ABAC Complaints Panel a total of 212 complaints, 180 of which were for the same advertisement (a television commercial for Lion Nathan's Tooheys New Beer screened during the Rugby League State of Origin).

These 212 complaints concerned a total of 23 advertisements. Out of the 212 complaints, only eight were determined as raising issues under the ABAC. Of the eight complaints, three were upheld and five were dismissed by the ABAC Complaints Panel.

The three complaints upheld concerned the following advertisements:

- Internet advertising—an image entitled 'Foaming Glass' for Boag Premium Lager appearing on the J. Boag & Son website
- Internet advertising—an image entitled "Woman on the Stairs" for Boag Premium Lager appearing on the J. Boag & Son website
- A press advertisement for Angove's St Agnes Brandy.

The great majority of complaints about alcohol advertising raise issues which are solely within the scope of the AANA Code of Ethics. Information on the outcome of the complaints dealt with under the AANA Code of Ethics can be found in the Advertising Standards Bureau's 'Review of Operations' published annually.

Of the eight complaints dealt with by the ABAC Complaints Panel, issues were raised under Section a (3 occasions), Section c (i) (5 occasions), and Section d (2 occasions). These Sections are set out below.

Section a) of the Code, whereby "advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages."

Section c) (i) where "advertisements for alcohol beverages must not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly 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."

Section d) "Advertisements for alcohol beverages must 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."

## ■ Issues arising in 2004

This year represented an important new stage in the operation of the ABAC and the complaints management system. While it is for the scheme's management committee to review and monitor the operation of the system, the Complaints Panel makes the following observation on the scheme's operation.

### Maintaining timeframes

The ABAC Complaints Panel aims to determine complaints within 30 days of the receipt of the complaint from the ASB. It is often difficult to satisfy this goal because of:

- the need to properly identify the advertisement and advertiser the complaint is about
- the need to await receipt of the advertisement to frame the questions to be directed to the advertiser to obtain a response to the complaint
- the logistics of drawing together Panel members to hear the complaints when all members are part-time and have competing demands on their time
- the desire of the Panel to produce detailed written determinations which fairly set out the issues raised in the complaints.

The Management Committee should consider if it would prefer much shorter written determinations (similar to the decisions of the ASB) in order to reduce timeframes in determining complaints.

### Multiple Complaints

As mentioned, while 212 complaints were received in 2004, only 23 advertisements were involved. At present the process for determining if a complaint is to be dealt with under the AANA Code of Ethics, the ABAC or both is as follows:

- All complaints are received by the ASB which forwards them to the Chief Adjudicator for assessment as to whether the issues raised are solely within the AANA Code of Ethics.
- The Chief Adjudicator examines the wording of the complaint only. No assessment of the advertisement is undertaken.
- As nearly all complaints are not framed with reference to either the ABAC or AANA Code of Ethics, the assessment of the complaint goes to judging the 'sense' or 'essence' of the complainant's concern.

The vast majority of complaints do not raise issues about the responsible consumption of alcohol, but rather about the portrayal of women or issues of good taste. In this way, the product being advertised is less of a concern to the complainant than the way it is advertised.

Some advertisements attract a large number of complaints. The practice of the ASB appears to be that once a determination is made, all subsequent complaints about the same advertisement are considered and resolved by the single determination. In contrast, the practice of the The ABAC Scheme is to review each complaint individually, even though the clear sense of previous complaints about the same advertisements is that it raises issues solely under the AANA Code of Ethics.

The Management Committee should consider if the current practice of confining assessments of complaints to the matters raised in the complaint should be retained. With multiple complaints, it is possible that this practice could lead to several determinations about the single advertisement being required.

## ■ The Panel

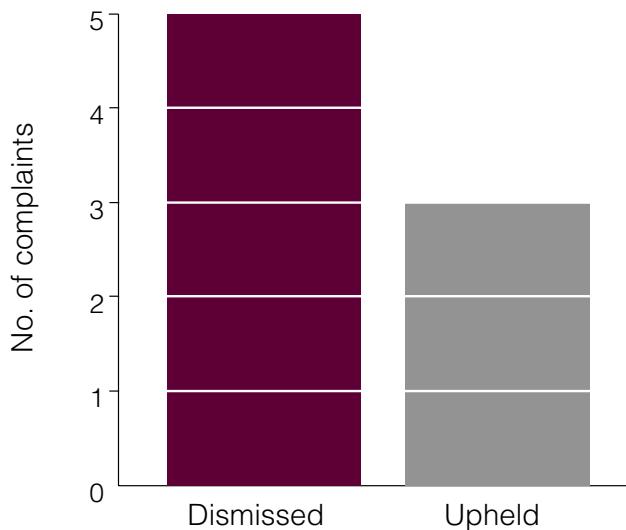
**Prof Michael Lavarch**, Chief Adjudicator. Prof Lavarch is a former Commonwealth Attorney General and currently Dean of the Faculty of Law, Queensland University of Technology. Prof Lavarch has participated in all eight ABAC Determinations in 2004.

**Ms Jean Strachan**, Managing Director of Invview Pty Ltd, a market research consultant. Ms Strachan is a qualitative researcher, greatly experienced in social and commercial research. Ms Strachan has participated in eight ABAC Determinations in 2004.

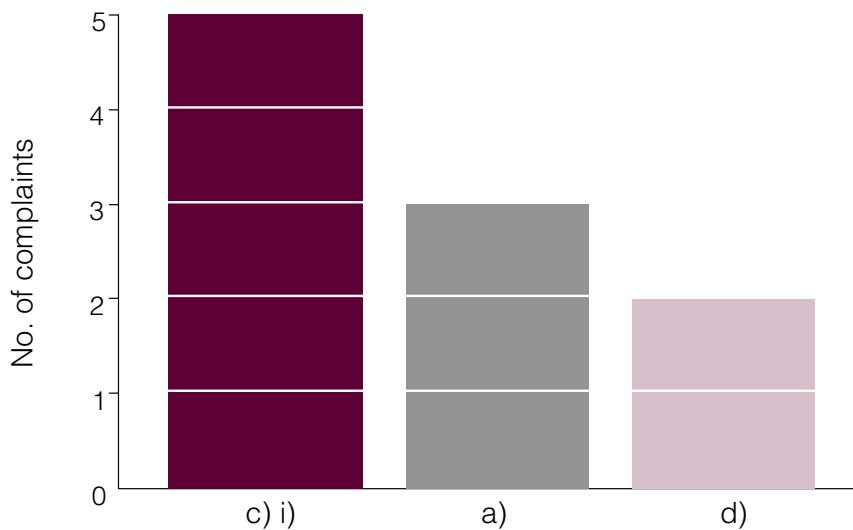
**Ms Elizabeth Dangar**, has a 30 year background in research marketing and advertising. Ms Dangar is a fellow of the Australian Market Research Society. Ms Dangar has participated in two ABAC Determinations in 2004.

**Prof Fran Baum**, Head, Department of Public Health, Flinders University and Director, South Australian Community Health Research Unit. Prof Baum joined the Panel in October 2004, and has participated in seven ABAC Determinations.

## Outcome of determinations



## Sections of the Code most subject to complaint



# 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—

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

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

**adolescent** means a person aged 14–17 years inclusive

**Australian Alcohol Guidelines** means the electronic document ‘Guidelines for everyone (1–3)’ published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

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

**low alcohol beverage** means an alcohol beverage which contains less than 3.8 per cent 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
  - 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.

## ■ 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:

- 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
- 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
- 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

## 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; and
- 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.

### 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
- 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
  - ii) a need to ensure privacy, where required by law
  - 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.

