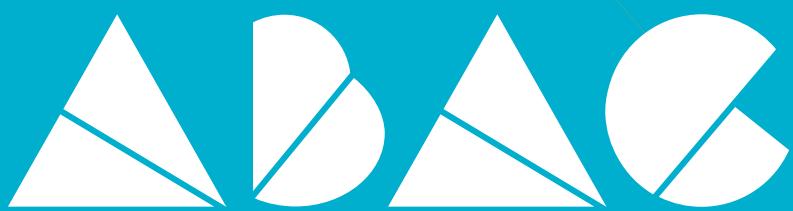


Annual Report

2012



THE
ABAC
SCHEME
LIMITED

presented by the
Management Committee of the **ABAC** Scheme

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Report from the ABAC Management Committee

The Alcohol Beverages Advertising Code sought to highlight in 2012 its delivery of a robust regulatory framework for alcohol advertising.

One of the great strengths of the ABAC Management Committee is the inclusion of government representation, which changes the nature of the system from self-regulatory to quasi-regulatory. This adds an extra layer of accountability, and reinforces the importance of the Code reflecting community expectations in the oversight of alcohol advertising in Australia.

The government representation—representing the federal, state and territory governments in Australia—means that government participates in the management of ABAC, as a member of the ABAC Management Committee and therefore, plays a role in the development of the Code and its rules and procedures and nominates public health experts to the ABAC adjudication panel.

The three alcohol producer associations greatly appreciate the ongoing contribution of the government representative to ABAC.

One of the greatest unknown features about ABAC is actually one of our greatest assets, the pre-vetting service. The pre-vetting of advertisements against the Code is compulsory for all signatories to ABAC which covers 90 per cent of all alcohol advertising in Australia, and is used by many non-signatories as well.

Pre-vetting is undertaken by an independent assessor to ensure an advertisement is in compliance with the Code. In 2012, over 1200 advertisements, names or packages were pre-vetted with nearly 1000 being accepted as compliant.

Pre-vetting, while adding an additional layer of compliance for an advertiser, is ABAC's pre-emptive regulatory barrier to minimise the potential for any non-compliant advertisements to be shown in public.

To assist marketing teams and advertising agencies with pre-vetting, ABAC holds training sessions, with the 2012 sessions seeing a significant increase in attendance.

It is important to note that even if an advertisement has received a clearance from pre-vetting, it can still be the subject of a complaint and considered by the adjudication panel.

The independence of the adjudication panel, headed by Professor the Hon Michael Lavarch AO, is another critical component of the success of the ABAC framework. A single complaint can trigger the consideration of an alcohol advertisement by the adjudication panel that comprises the Chief Adjudicator, a public health expert and a marketing expert.

The adjudication panel again considered a wide range of alcohol advertisements in 2012. Pleasingly, alcohol complaints made up only 1.47 per cent of all advertising complaints in 2012 which is down from an average of approximately 4 per cent over the previous five years.

The vast majority of the advertisements considered by the panel were found to be in compliance with the Code, which is very encouraging. Of the small number of advertisements (7) that were held in breach, every advertiser agreed to modify or withdraw the advertisement or packaging.

In 2012, the ABAC Management Committee acknowledged that we needed to improve our communication so that community and decision makers are more aware of the robust nature of the Code and its operations.

*Report from
the ABAC
Management
Committee
(continued)*

The ABAC Management Committee is always very mindful of ensuring we are meeting the expectations demanded of a regulatory body. As such, we continually monitor our Code and our operations to ensure we meet the standards expected of us. Assessment undertaken in 2012 has included social media, extending coverage to the alcohol retail sector, and gathering a better understanding of community responses to the ABAC Scheme. We look forward to progress on this work during 2013.

On behalf of the Management Committee, we commend the work of all those involved in delivery of ABAC services with particular acknowledgement to the Chief Adjudicator, Professor the Hon Michael Lavarch AO and the ABAC Executive Officer, Jayne Taylor.

Denita Wawn

ABAC Chair 2012

The ABAC Scheme Management Committee



Stephen Strachan (until May 2012) **Paul Evans** (from June 2012)

Gordon Broderick

Janette Dunn
(until April 2012)

Colleen Krestensen
(from April 2012)

Margaret Zabel

Denita Wawn
(ABAC Chair)

Overview

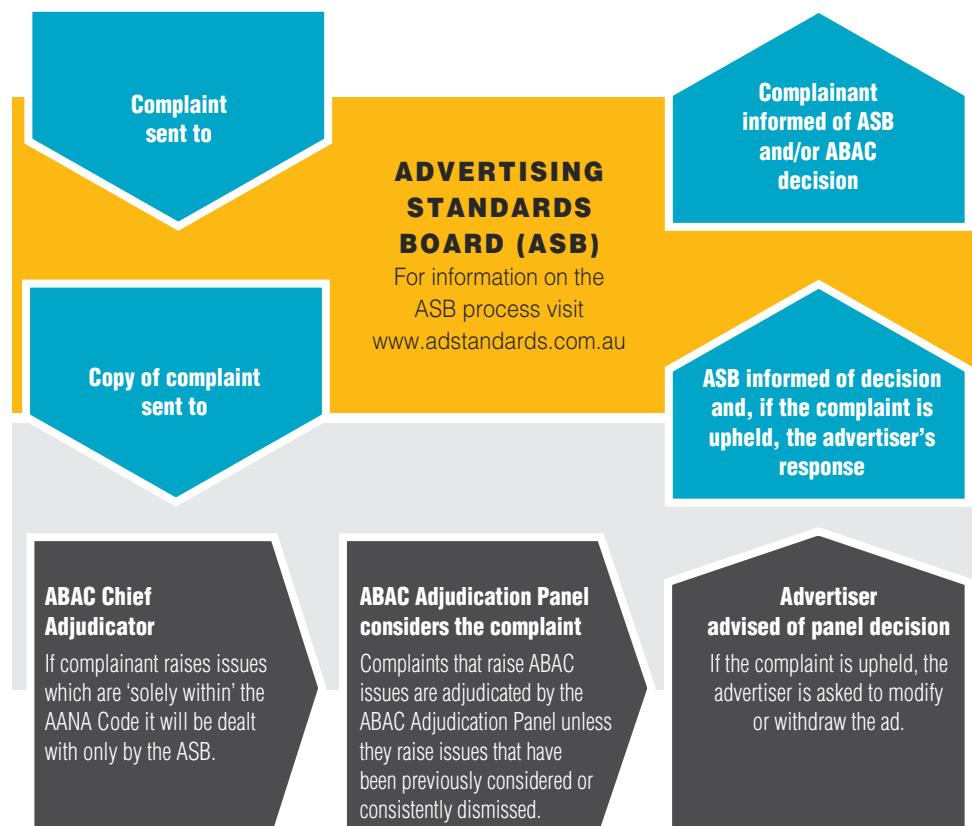
Australia has a quasi-regulatory system for alcohol advertising: Guidelines for advertising have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry. The ABAC Scheme is the centrepiece of Australia's quasi-regulatory system and is administered by a Management Committee which includes industry, advertising and government representatives.

Operations

The ABAC Scheme is responsible for:

- The Code (first introduced in 1998 and substantially updated in 2004) which regulates the content of alcohol advertising and packaging in Australia, and alcohol promotion at events. Subject to regular reviews, the Code reflects community expectations and changes in the media and advertising industries.
- The Alcohol Advertising Pre-vetting Service (AAPS) which provides confidential advice to advertisers on whether proposed alcohol advertisements comply with the Code. This service is offered on a 'user pays' basis.
- The ABAC Adjudication Panel (the Panel), headed by Chief Adjudicator Professor the Hon Michael Lavarch AO, considers public complaints about alcohol advertisements and packaging that fall within the ambit of the Code. The Panel reports its decisions to the ASB, the ABAC Management Committee, the advertiser and the complainant. Its decisions are also made publicly available through the ABAC website. The Panel and its deliberations are independent of the Management Committee and the broader alcohol and advertising industry.

Figure 1
ABAC Complaint Management System



From the consumer's perspective

Australia has one of the most accessible complaints systems in the world, accepting complaints via email, letter or fax with no costs to the consumer. There is just one 'doorway' for complaints—through the Advertising Standards Bureau (ASB)—which triggers two independent but parallel processes. Complaints received from the ASB are all assessed by the chief adjudicator under The ABAC Scheme. In turn, complaints that raise ABAC Code issues are referred on to the full ABAC Adjudication Panel unless they raise issues about an advertisement that have been previously considered or issues that have been consistently dismissed by the Panel. Complainants are informed of the referral or otherwise and sent a copy of the final determination. Complainant's who request confidentiality will be granted it and members of the alcohol beverage industry are not involved in the adjudication process.

From the companies' perspective

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

These include 1) internal company checks, 2) independent pre-vetting of advertisements, 3) assessment of any complaints under the ABAC Scheme and, 4) if complaints are upheld, modification or withdrawal of advertisements.

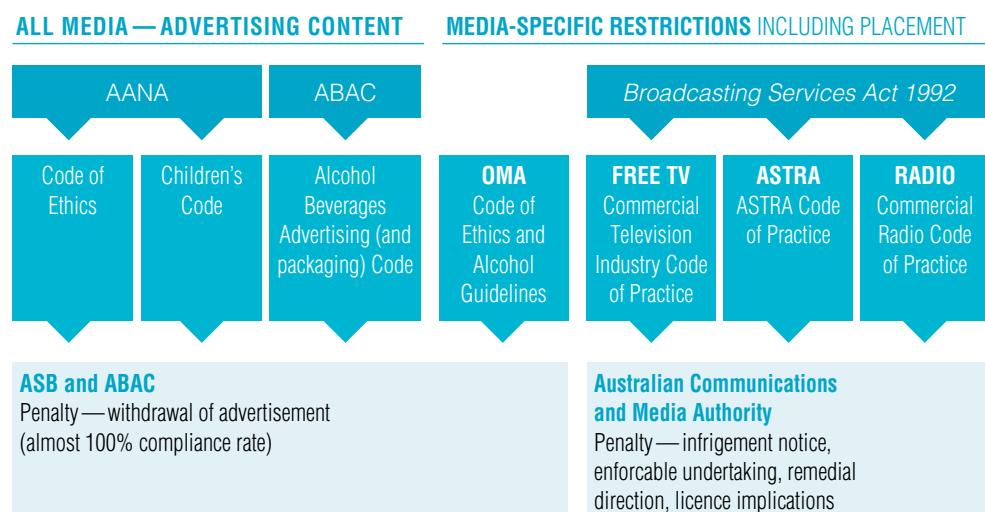
The ABAC Scheme is not the only set of rules affecting advertising in Australia. Alcohol beverage advertising must also be consistent with other applicable laws and codes, for example:

- the Federal Competition and Consumer Act and State Fair Trading legislation
- the Australian Association of National Advertisers Code of Ethics
- the Commercial Television Industry Code of Practice
- the Commercial Radio Codes of Practice
- the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

Figure 2
Four decision points
for companies

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

Alcohol Advertising Regulation in Australia



Source: Australian Association of National Advertisers

2012—some numbers compared

Pre-vetting	2010	2011	2012
Number of advertisements, names and packaging pre-vetted	1050	1059	1229
Of the advertisements pre-vetted:			
Number that were accepted	929	938	978
Number that were accepted subject to conditions	44	39	59
Number that were rejected	77	82	192

Complaints	2010	2011	2012
Number of complaints received	87	119	98
Number of advertisements and packaging these complaints referred to	38	74	63
Number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel (i.e. complaints that resulted in a Panel determination)	41	63	53
Number of determinations from complaints received that year	31	45	36
Number of complaints upheld (at least in part)	15	20	7
Number of determinations upholding complaints	11	15	7

Observations

- Advertising complaints resulting in a determination took, on average, 20 business days to be completed (last year 25).
- All companies agreed to withdraw or modify advertisements or packaging referred to in upheld complaints.

Report from the Chief Adjudicator

Introduction

The ABAC adjudication process has been in operation since 1998. In comparative terms, it is feasible to assess the demand placed on the adjudication process from 2005 onwards. This is when the scope and reach of the ABAC was expanded to include the internet and the role of the Adjudication Panel was increased to consider more complaints *vis-à-vis* the sister complaints process operated by the Advertising Standards Board (ASB). In the last five years, the Panel has annually made in the order of 35 to 40 determinations from a reasonably stable number of complaints ranging from around 90 to 120 received each year.

While the headline statistics indicate relative stability, underneath these figures has been profound change in the way in which all products, including alcohol, have been marketed. Most significantly, this change relates to the avenues opened up by developments in communications technology. Digital media has enabled advertisers to individualise their relationship with their customers in a manner which was not possible through older broadcast mediums such as television.

Invariably, this has meant that the Panel has been required to make judgments about the application of the ABAC to advertising conducted through mediums which did not exist when the Code was designed. In 2012, the Panel was called upon to decide whether the music streaming site Spotify fell within the scope of the ABAC Scheme and whether the alcohol product marketing engaged via the site was fairly able to be characterised as 'alcohol beverage advertising' for the purposes of the ABAC.

In large measure, the broad principles of good practice which are contained in the Code and which are not specific to the medium by which an advertisement is conveyed, has enabled the Scheme to accommodate the changes in communication technology. Nonetheless, these technological changes, together with differing marketing techniques, and the inevitable shifts in community expectations regarding advertising standards, make it timely for the ABAC system to be reviewed in a comprehensive manner. An 'in principle' decision to undertake such a review was made in early 2013. This is a development which the Adjudication Panel very warmly welcomes.

In a number of respects, 2012 was a reasonably steady year for the Panel. A total of 36 determinations relating to advertisements received during the year were made. As has been the experience in recent years, a significant proportion of the determinations related to advertisers who were not signatories to the ABAC Scheme.

The majority of advertisements from non-signatories which come before the Panel relate to alcohol retail outlets. While the major alcohol retailers, such as those owned by the supermarket chains Coles and Woolworths, cooperate with the Panel processes, the fact that the retailers as a group are not party to the ABAC scheme is a limitation on the overall effectiveness of the Scheme.

The membership of the Panel has been stable over a period of time, but in 2012 a new member, Professor Louisa Jorm, was appointed to the Panel. Professor Jorm is the Foundation Professor of Population Health at the University of Western Sydney and brings a valuable perspective to the Panel's work. Professor Jorm replaces Professor Fran Baum, who served on the Panel from October 2004 to May 2012. I express my appreciation to Professor Baum for her dedication to her role over the 7 years she served on the Panel.

Issues for consideration

This year saw a continuation of the pre-vetter/ Panellist training sessions for the Scheme. This session brings together all Panellists and pre-vetters to discuss experiences in working within the Scheme and in interpreting the Code provisions. This is an important initiative supported by the Scheme's Management Committee and assists in achieving consistency in the interpretation of Code provisions. Consistency is critical for both advertisers wishing to comply with the spirit and intent of the Code and for the public in having confidence that Code provisions are being satisfied.

I also participated in workshops run in Melbourne and Sydney for employees of alcohol companies and staff of advertising agencies. These briefing and educative sessions have been held on a bi-annual basis and provide a good opportunity for staff to be updated on developments in alcohol advertising public policy, together with key Panel decisions and concepts.

1 Alcohol advertising by alcohol retailers

As mentioned, the Panel has over time made a large number of determinations which have flowed from the advertising by alcohol retailers. The ABAC Scheme was constructed to capture advertising by the owners of alcohol beverage brands, distributors and manufacturers. While this group comprise the significant majority of advertising dollars spent in Australia, there has been a notable shift with alcohol retailers advertising more extensively and some alcohol retail outlets promoting their own branded alcohol products. In 2012, nearly a quarter of all Panel determinations came from advertisements by alcohol retailers. It's been the longstanding view of the Adjudication Panel that the strength of the Scheme would be enhanced if retailers as a block joined into the governance arrangements for the Scheme and utilised pre-vetting mechanisms. It's pleasing to note that discussions seeking to achieve this outcome have been progressing.

2 Non 'Advertising' forms of alcohol marketing

The ABAC Scheme is specifically targeted at alcohol advertising. Advertising through the placement of advertisements via newspapers, radio, television and the internet, however, is only part of the total marketing effort undertaken by the owners of alcohol product brands. Other marketing in the form of sponsorship, such as of sporting or community events or through the placement of products in mainstream entertainment, periodically come before the Panel following a public complaint.

While the Panel applies a spirit and intent approach to the reach of the ABAC Scheme, it is unable to extend the Scheme into areas which are clearly not intended to be covered through the design of the Scheme. It would be highly desirable for the issues of alcohol marketing at its widest to be considered in the forthcoming review of the ABAC Scheme.

3 Code provisions

Also to be considered within the scope of the forthcoming review will be the operation of individual code provisions. As mentioned, the broad based and principle nature of the Code provisions have enabled them to be moulded to different types of alcohol advertising

via various medium. A second critical issue, however, is whether the actual terms of the Code, as interpreted since the Panel commenced operation in 1998, continue to meet community expectations of good alcohol advertising practice.

Of particular note is the Code provisions relating to underage drinking and the requirement that advertisements not have strong or evident appeal to children or adolescents. A significant proportion of complaints received by the Panel raise issues which enliven these provisions within the Code. This reflects a genuine concern in the community that alcohol should only be available to adults and that under aged persons should not be targeted by alcohol advertisers.

A range of the Panel decisions in this area often raise matters of judgment upon which reasonable people might disagree. It is clearly problematic to assess that an advertisement is legitimately being marketed towards say a 20-something audience, while not having 'strong or evident appeal' to a 17-year-old.

The Panel welcomes a careful consideration of the current provisions and their application by the Panel in various decisions to assess if the Code and the Panel is meeting policy aspirations in this area.

Conclusion

In operational terms, the complaints process has performed well in 2012. Target timeframes have been satisfied in making decisions, advertisers have cooperated with Panel processes and the important relationship with the ASB has worked well. The Scheme's Management Committee has provided monitoring of the Panel's work without impinging on the independence of the decision making processes.

In large measure, the operational effectiveness of the complaints process can be attributed to the Scheme's Executive Officer, Jayne Taylor, who I thank together with my fellow Panel Members.

Professor The Hon Michael Lavarch AO

Chief Adjudicator
ABAC Adjudication Panel

The ABAC Scheme

Alcohol Beverages Advertising (and Packaging) Code

Preamble

Brewers Association of Australia and New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers' Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia, other than point of sale material produced by alcohol beverage retailers, and all naming and packaging of alcohol beverages comply with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising, naming and packaging 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, name or packaging 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 or product material is directed and other persons to whom the advertisement or product material 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 *Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)* published by the National Health & Medical Research Council (NHMRC) as at 1 January 2010.

child means a person under 14 years of age; and

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

PART 1

Standards to be applied to advertisements for alcohol beverages

Advertisements for alcohol beverages must –

- a** present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i** must not encourage excessive consumption or abuse of alcohol;
 - ii** must not encourage under-age drinking;
 - iii** must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv** must only depict the responsible and moderate consumption of alcohol beverages;
- b** not have a strong or evident appeal to children or adolescents and, accordingly –
 - i** adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii** children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii** adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c** not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i** must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii** if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii** must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d** not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i** any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii** any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e** not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f** comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g** not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h** not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Internet advertisements

The required standard for advertisements outlined in (1)(a) to (h) 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; and
- v such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

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

Promotion of alcohol at events

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

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

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

PART 2 Standards to be applied to the naming and packaging of alcohol beverages

- 1 The naming or packaging of alcohol beverages (which is also referred to within these standards as ‘product material’) 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 product material must be over 25 years of age and be clearly depicted as adults;
 - ii children and adolescents may only appear in product material in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii adults under the age of 25 years may only appear as part of a natural crowd or background scene;
 - c not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
 - d not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
 - e not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
 - f not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
 - g not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.
- 2. These standards, (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the 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 a State or Territory of Australia prior to 31 October 2009.**

www.abac.org.au