



Guidance Notes - ABAC Responsible Alcohol Marketing Code

Overview

The ABAC Scheme is an initiative in quasi-regulation funded by industry and administered with the support of government. The key components of the Scheme are the ABAC Responsible Alcohol Marketing Code (Code), the Alcohol Advertising Pre-vetting Service (AAPS) and the ABAC complaints handling process (ABAC Adjudication Panel).

All marketing for alcohol beverages is required to comply with the ABAC as well as the Australian Association of National Advertisers' (AANA) Code of Ethics. In addition, where appropriate, alcohol advertisements must comply with other Codes of Practice such as the Commercial Television Industry Code of Practice, the Codes for Commercial Radio and the Outdoor Media Association Code of Ethics and Placement Policy.

Purpose of the Guidance Notes

The ABAC Management Committee has developed the following Guidance Notes to assist advertisers and agencies in interpreting the essential meaning and intent of the Code by providing clarification through definition, explanation or example. The Guidance Notes are not intended to replace or extend the provisions of the Code itself.

The Guidance Notes represent the opinions of ABAC's administrators and are based in part on previous decisions made by the independent ABAC Adjudication Panel. The ABAC website – www.abac.org.au – includes an advanced search facility that enables all adjudication decisions relating to a particular issue or provision to be located and accessed and may be useful in providing further understanding of the issues involved in a particular clause of the Code. Insofar as the Code contains new or amended provisions untested by the Panel, these Guidance Notes will evolve as those provisions are interpreted by the ABAC Adjudication Panel and precedent is set.

Notwithstanding the content of these Guidance Notes, the ABAC Pre-vetter remains the final arbiter on how the Code should be interpreted and applied at the pre-vetting stage. Likewise, the ABAC Adjudication Panel remains the final arbiter on how the Code should be interpreted and applied at the complaints adjudication stage.

Whilst ABAC Pre-vetters undertake to provide the best possible advice, any complaint regarding an alcohol advertisement will be assessed through the ABAC complaints handling process. It should be noted that successful pre-vetting does not serve as a guarantee or an argument that a complaint should be dismissed. The ABAC complaints handling process and the ABAC Pre-vetting Service are conducted separately by independent experts.

1. Preamble

The ABAC Responsible Alcohol Marketing Code is designed to ensure that alcohol is marketed in a responsible manner. Signatories to the Code are committed to ensuring that their marketing complies with the Code's spirit and intent.

The Code complements Australian legislation, the AANA Code of Ethics and media-specific codes relevant to the placement of marketing.

From time to time, the ABAC Scheme may publish best practice advice to industry. That advice does not form part of the Code but complements it by assisting industry to achieve high levels of responsibility in the management of its marketing.

Guidance Note: Section 1

Users of these Guidance Notes are strongly encouraged to work within both the spirit and the letter of the Code as it stands. Advertisers are reminded that examples, real or perceived, of attempts to circumvent the provisions of the Code threaten the industry's reputation for responsible regulation and are in direct conflict with the interests of industry and the wider community.

2. Application

- (a) The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
- brand advertising (including trade advertising)
 - competitions
 - digital communications (including in mobile and social media and user generated content)
 - Alcohol Beverage product names and packaging
 - advertorials
 - alcohol brand extensions to non-alcohol beverage products
 - point of sale materials
 - retailer advertising
 - Marketing Collateral
- (b) The Code does NOT apply to:
- (i) Materials or activities whose sole purpose is to educate about misuse or abuse of alcohol beverages and which do not include a company's product branding;
 - (ii) information in company annual reports, corporate public affairs messages or internal company communications;
 - (iii) the name or packaging of an Alcohol Beverage product, including the use of a trademark on a product which a supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in Australia prior to 31 October 2009;
 - (iv) point of sale Marketing Communications initiated by Alcohol Beverage retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol Beverages has no control over the point of sale Marketing Communication;
 - (v) Sponsorship.

Guidance Note: Section 2

Remit

The remit of the Code is set out in section 2 and must be read together with the section 5 definitions. The ABAC applies to marketing communications in Australia generated by or within the reasonable control of an alcohol beverage producer, distributor or retailer apart from the exceptions specified in Section 2(b).

Reasonable control

This term has been included in recognition that a brand may be included in a communication that is not generated by the brand owner and is not in the reasonable control of a brand owner.

Examples of marketing communications that are not likely to meet the reasonable control test are:

- *unauthorised product fan sites*
- *product placement over which a brand owner has no reasonable control*
- *user profiles of facebook fans that appear on a brand owners facebook page, as they are automatically updated on the brand owner's page whenever a user changes their profile*

Examples of marketing communications that are likely to meet the reasonable control test are:

- *brand extension (use of a brand on a non-alcohol beverage product)*
- *marketing communications by an agent or employee of a brand owner*
- *user generated content on a brand controlled social media site or page*
- *posts by a social media influencer where the brand has reasonable control over the post (for example pre-campaign influencer recruitment **and** post moderation of content)*
- *product placement where a company has reasonable control over the way in which their brand is portrayed*

Exceptions

Part (b) sets out clearly the limited circumstances in which the Code will not apply to a marketing communication by an alcohol beverage producer, distributor or retailer.

3. Standards to be applied

(a) Responsible and moderate portrayal of Alcohol Beverages

A Marketing Communication must NOT:

- (i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
- (ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
- (iii) challenge or dare people to consume an Alcohol Beverage; or
- (iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.

Guidance Note: Section 3(a)

Responsible and Moderate Portrayal of Alcohol Beverages

Alcohol marketing cannot show or encourage:

- *excessive or rapid consumption of alcohol*
- *misuse or abuse of an alcohol beverage*
- *alcohol related irresponsible or offensive behaviour (eg violence, vandalism, providing alcohol to an animal)*
- *a challenge or dare to consume alcohol*
- *encouraging the choice of a beverage by emphasising its alcohol strength (exception for lower than typical alcohol strength products) or intoxicating effect*

Encouraging the choice of a particular alcohol beverage by emphasising its alcohol strength

There are two elements to this part of the standard:

- *emphasis of alcohol strength*
- *in a way that encourages a consumer to choose the product*

Alcohol strength of a product may be communicated in alcohol marketing and must be communicated on alcohol packaging (Food Standards requirement) but only in a secondary, factual and non-emotive way. The strength of the product must not be a dominant part of the communication. Marketers should also avoid descriptive words or imagery which draw attention to the strength of the product. Descriptions of the quality, production or taste of the product, such as 'premium', 'triple filtered' or 'crisp' can be used provided they are not associated with the strength of the product.

Australian Alcohol Guidelines

The 2010 Australian Guidelines to Reduce Health Risks from Drinking Alcohol advise that to reduce the lifetime risk of harm from alcohol-related disease or injury, healthy men and women should drink no more than 2 standard drinks on any day and to reduce the risk of alcohol related injury arising from a single occasion of drinking healthy men and women should drink no more than 4 standard drinks on a single

occasion. There can be no encouragement of consumption contrary to these guidelines.

(b) Responsibility toward Minors

A Marketing Communication must NOT:

- (i) have Strong or Evident Appeal to Minors;
- (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
- (iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - (A) they are not visually prominent; or
 - (B) they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment; or
- (iv) be directed at Minors through a breach of any of the Placement Rules.

Guidance Note: Section 3(b)

Strong or evident appeal to Minors

*There can be no strong or evident appeal to Minors. This is defined in Section 5 as meeting any one or more of the following tests. To breach section 3(b)(i) only **one** of these tests must be met.*

- *likely to appeal strongly to Minors*
- *specifically targeted at Minors*
- *having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult*
- *using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks*
- *using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors*

Whether material is in breach of any one of the above sub-points is determined looking at the material as a whole. Assessment requires a weighing up of factors such as the visual techniques, themes, age of actors and characters and overall look and feel.

Images of Minors

People who are or look under 18 may only be shown where:

- *they are in an incidental role only*
- *they are in a natural situation (for example a family socialising responsibly)*
and
- *there is no implication they will consume or serve alcohol*

Images of 18-24 year olds

There are restrictions on the use of images of 18-24 year olds that appear to be over 18 years of age that need to be considered carefully. The images may only be shown in marketing communications in the following circumstances:

- *if the images are not visually prominent they may be shown in any medium; **or***
- *if the image is visually prominent and is of a real person in a real scenario, rather than an image of a paid model or actor, it may appear in a marketing communication placed in either:*
 - *licensed premises that do not permit entry by Minors **or***
 - *in a non-alcohol specific age restricted digital platform. This is a digital platform that meets **all** of the following criteria:*
 - *non-alcohol specific – this is a digital platform that has not been set up for the purpose of promotion of an alcohol beverage, but for a wide variety of uses. Examples of non-alcohol specific digital platforms are Facebook, Youtube or Twitter. Examples of alcohol specific digital platforms are alcohol company or brand websites, **and***
 - *requires users to register by provision of date of birth and then login to use the platform, **and***
 - *is **also** able to hide the existence of alcohol pages from those registered as under 18 years of age - Facebook pages can use age restriction settings so that the page is not visible to users under the age of 18.*

Facebook pages **that elect to use all available age restriction controls** currently qualify as a non-alcohol specific age restricted digital platform as defined in the Code and therefore allow the use of images of visually prominent 18-24 year olds on their websites. Alcohol brand websites which require entry of a date of birth to enter the site do not fall within this narrow exception and may **not** include images of visually prominent 18-24 year olds. Alcohol marketers must be diligent in ensuring that a platform's age restriction controls meet the specific criteria and that age profiles are reliably obtained before including images of 18-24 year olds on that platform.

The apparent age of the talent in an advertisement will often be a subjective test. To avoid ambiguity, the pre-vetter will always take a conservative view of the apparent age of the talent. Therefore, agencies should do likewise, irrespective of the actual age of the talent.

Directed to Minors (Placement Rules)

This provision was implemented on 1 November 2017 to expand the standards to responsible placement of alcohol marketing. The provisions represent accepted practice in the alcohol industry for taking reasonable steps to ensure alcohol marketing is directed to adults and does not appear in media for children and young people and media where children and young people make up a significant proportion of the audience. ABAC has also published a best practice guide that addresses

content management and placement in digital media and assists alcohol marketers to manage their marketing responsibly in this medium.

There are five placement rules for alcohol marketing:

- *Must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies.* Alcohol marketers must ensure they comply with the Outdoor Media Association Alcohol Guidelines and alcohol provisions in the Commercial Television Industry, Australian Subscription Television & Radio and Commercial Radio Codes of Practice. It is important to note that the definition of a Commercial for Alcoholic Drinks in the Commercial Television Industry Code of Practice (CTICP) is narrower than the definition of alcohol marketing communications in the ABAC Code. This means that commercial television stations may not automatically apply the alcohol restrictions to marketing that promotes alcohol in an incidental manner (for example, product placement, brand extensions to non-alcohol products or joint marketing for a variety of products including alcohol). As these forms of marketing are captured by the ABAC, alcohol marketers must ensure their placement agencies instruct commercial television stations to apply the alcohol restrictions to these forms of marketing.
- *A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.* The intent of the rule is that available age restriction controls be used. Such controls are available for alcohol marketing websites to which access can be restricted by use of age affirmation requirements. While the Code does not specify which requirements are to be used, given the constant change in technical capabilities, best practice is that the highest level of restriction be used to minimise the opportunity for minors to access the marketing. The placement of alcohol marketing communications on third party platforms, sites and accounts is more problematic given the considerable variety in age restriction capabilities and practices adopted by those operators. The intent of the rule is that minors be excluded from viewing alcohol marketing communications but as a practical reality this cannot be achieved with current technologies. As a result the rule does not require that a platform not be used if age restriction controls are not available, nor does it require a third party platform, site or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used (e.g. news sites or influencer accounts). By way of example, while a social media influencer is not required to age restrict their entire account before posting an alcohol promotion, both the influencer and other people promoting the alcohol product on the influencer's account must be over 25 years of age, the influencer's account must have an audience that is more than 75% adult and if the influencer has the ability to age restrict the individual post that promotes alcohol, they must do so. The obligation of marketers is to consistently test the capability of the third party platform, site or account to restrict access to minors and apply every available technology to do so. Digital platforms are constantly evolving and regular requests must be made to ensure that all age restriction controls available at a particular point in time are being utilised. Consistent information can sometimes be difficult to obtain from digital platforms and ABAC recommends

that alcohol marketers keep a written record of the advice received in the event of a complaint. There are circumstances where a minor may register for a platform with an incorrect date of birth or log in via a parent's device but these are parental control issues and outside the reasonable control of alcohol marketers.

- There are media platforms for which age restriction controls capable of excluding Minors from the audience are not currently available but audience composition data is usually available. Examples include free to air television, radio, cinema, print and digital media platforms (including streaming platforms such as Optus Sport, Netflix, Stan etc). In these circumstances international best practice is to minimise exposure to Minors by only placing alcohol marketing where the media or platform has a similar or higher proportion of adults in its audience than the proportion in the general population (at least 75% adult audience). Marketers are responsible for obtaining reliable, up-to-date, audience composition data, where available, to satisfy themselves (and in the event of a complaint, the ABAC Panel) as to reasonable expectations of audience composition. ABAC acknowledges that the nature and precision of audience data available to marketers varies between media but marketers are encouraged to make best use of the data available to them to identify the audience of a medium, platform or content (for example this could include available data for a platform where the content is similar). Where audience data is unavailable or unreliable, the Panel will assess likely audience composition based on data for similar platforms or content or if unavailable will apply a common-sense approach based on an assessment of the media content and other available information. In relation to outdoor advertising where advertisements are visible to the general public, including in community spaces via billboards, and on public transport, signatories observe supplementary protections, to recognise that there can be higher concentrations of minors in the vicinity of certain advertising sites. In particular, in addition to the universal content requirements of the ABAC Code which protects against appeal to minors in any event, signatories apply the OMA policy which requires OMA members and ABAC signatories to ensure alcohol advertising is not placed on fixed signs that are located within a 150 metre sight line of a primary or secondary school (save licensed premises).
- May not be placed with programs or content primarily aimed (i.e. obviously directed) at Minors (examples are advertising before or during a children's cartoon or a children's movie or within a magazine targeted at teenagers)
- May not be sent to a Minor via electronic direct mail. Alcohol marketers must ensure that all electronic direct mail databases are reliably age verified to only include adults. There may be circumstances where a minor is on an age verified list as they have entered an incorrect date of birth or age but this is again a parental control issue and outside the reasonable control of alcohol marketers.

(c) Responsible depiction of the effects of alcohol

A Marketing Communication must NOT:

- (i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
- (ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
- (iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement; or
- (iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Guidance Note: Section 3(c)

There can be no portrayal of the presence of alcohol as having any causal relationship with mood change, a celebration, success of any kind, a therapeutic benefit or being necessary to relax.

There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success. Similarly there is no intention to restrict the depiction of alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion that it has caused or contributed to their circumstance. It is also possible to depict the presence of alcohol in a romantic situation provided there is no suggestion it has caused or contributed to the achievement of sexual or other success.

A marketing communication must not suggest that consuming the product is beneficial for a person's health or wellbeing but may make claims about nutritional content such as calories, sugar or carbohydrate levels and compare this information with other alcohol products.

It should be noted that the presence of alcohol includes any elements of the product or brand (such as packaging or brand marks) intended to represent the product.

(d) Alcohol and Safety

A Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

Guidance Note: Section 3(d)

There is no intention to exclude every association between alcohol and activities that, for safety reasons, require a high degree of alertness or physical co-ordination; however any such association must not depict the consumption of alcohol taking place before or during the engagement in any such activities. The types of activities

that have been found to require a high degree of alertness or physical co-ordination include:

- *responsibility for a large barbecue fire (however tending a barbecue did not fall within this category)*
- *person in control of a motor vehicle, including directing the driver (but not passengers)*
- *traversing a clifftop near the edge*

Showing consumption of alcohol is more than just actual drinking and includes language and images which invoke consumption.

4. No Fault Breach

A breach of this Code that is reasonably unforeseeable or outside the reasonable control of the Marketer or their agency will be classified as a no fault breach.

Guidance Note: Section 4

It is for Marketers to satisfy themselves that they have taken appropriate steps to comply with the ABAC Code. Where a Marketer or its agency satisfies the ABAC Panel that it took all reasonable steps to correctly and adequately brief a third party medium or body as to the execution or placement of a marketing communication in compliance with the ABAC Code but an error was made by that third party resulting in a breach of the ABAC Code, the breach will be recorded as a “no fault breach”. A “no fault breach” will not be included in the list of breaches published on the ABAC website and in the ABAC Annual reports.

An example may be where a television network incorrectly classified a program for children as a program for adults resulting in placement of an alcohol ad with children’s content. This would be a breach of the ABAC but is outside the control of the marketer and is therefore a “no fault breach”.

5. Interpretation

Compliance of a Marketing Communication with the Code is to be assessed in terms of the probable understanding of the Marketing Communication by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole.

Capitalised terms have the meanings set out in section 6 below.

Headings do not expand the Code.

Guidance Note: Section 5

For the purposes of the ABAC Code, and as it is applied in Australian law, the test of the reasonable person is intended as a reflection of the standards and attitudes of contemporary Australian society. The test of the reasonable person exists specifically to ensure the perceived views and standards of the broader community prevail over those of any individual or minority group. In relation to the context in which alcohol is presented in advertising, we have adopted the test of the reasonable person as it is reflected in widely observed and accepted practice and public opinion, to determine where, when, by whom and how alcohol consumption is portrayed.

The headings in section 3 are not separate standards but only instructive as to the aims of each set of standards.

6. Definitions

In this Code:

AANA Code of Ethics means the Australian Association of National Advertisers Code of Ethics.

ABAC Scheme means The ABAC Scheme Limited.

Adjudication Panel means the panel convened to adjudicate a complaint received by the ABAC Scheme.

Adult means a person who is of legal purchase age in Australia.

Age-Restricted Environment means:

- licensed premises that do not permit entry by Minors; or
- a non alcohol-specific age-restricted digital platform (including, for example, a social media website or application) which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as an Adult.

Alcohol Beverage means a beverage containing at least 0.5% alcohol by volume.

Australian Alcohol Guidelines means the electronic document 'Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)' published by the National Health & Medical Research Council ("NHMRC") as at 1st January 2010.

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

Code means this ABAC Responsible Alcohol Marketing Code.

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Collateral means material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

Minor means a person who is under 18 years of age and therefore not legally permitted to purchase an Alcohol Beverage in Australia.

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy)
- (ii) A Marketer must utilise Available Age restriction Controls to exclude Minors from viewing its Marketing Communication.
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up-to-date audience composition data).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).