



## RULES AND PROCEDURES

### 1. Management Committee

- 1.1. The management and operation of The ABAC Scheme Limited (“the ABAC Scheme”) will be undertaken by a Management Committee consisting of:
  - 1.1.1. the Chief Executive Officer of the Brewers Association of Australia Inc or their nominee (“Brewers Association”);
  - 1.1.2. the Chief Executive Officer of Spirits and Cocktails Australia Inc or their nominee (“Spirits & Cocktails Australia”);
  - 1.1.3. the Chief Executive of Australian Grape & Wine Inc or their nominee (“AGW”);
  - 1.1.4. the Chief Executive Officer of Advertising Council Australia Ltd (“ACA”) or their nominee; and
  - 1.1.5. the Assistant Secretary responsible for alcohol issues at the Commonwealth Department responsible for health policy, or their nominee, as a representative of Australian Governments.
- 1.2. An Independent chair may be appointed to the Management Committee by the Directors of The ABAC Scheme, who have been appointed by the members that fund the appointment, following a recommendation by the Management Committee. The position of deputy chair (or chair in the absence of the appointment of an independent chair) will rotate between the Brewers Association, Spirits & Cocktails Australia and AGW representatives on an annual basis.
- 1.3. To manage and review the operation of The ABAC Scheme and to consider amendments to the ABAC Responsible Alcohol Marketing Code (“the Code”) and to the voluntary system of compliance with a view to:
  - 1.3.1. Encouraging industry members, large and small, to participate in the quasi-regulatory system;
  - 1.3.2. Playing an active role to ensure an effective quasi-regulatory system;
  - 1.3.3. Monitoring the implementation of The ABAC Scheme and improving it where necessary;
  - 1.3.4. Co-ordinating the development and completion of an annual report; and
  - 1.3.5. Managing the ABAC Pre-Vetting Service (“Pre-vetting”) as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members in Pre-vetting.
- 1.4. The Management Committee must meet at least four times a year.
- 1.5. Any of the members of the ABAC Management Committee may convene a meeting of the Management Committee which 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.
- 1.6. Code Signatories
  - 1.6.1. Industry participants who are not members of a Member of The ABAC Scheme are strongly encouraged to become Direct Code Signatories by applying to the ABAC Executive Officer, which application will be submitted for approval by the Management Committee.
  - 1.6.2. An application to become a Direct Code Signatory must be properly completed in the form from time to time determined by the Management Committee.

- 1.6.3. A Direct Code Signatory must pay the annual membership fees and any other fees for the current financial year or any part of that amount as the Management Committee may determine.
- 1.6.4. An application by an industry participant to become a Direct Code Signatory will be approved if:
  - (a) The applicant is an Eligible Code Signatory (as that term is defined in the Constitution of the ABAC Scheme);
  - (b) The applicant has undertaken to the ABAC Scheme that it will comply with any code or codes developed by the Management Committee and to comply with, and give effect to any decisions, opinions and recommendations of any panel, scheme or other mechanism developed by the Management Committee;
  - (c) Approved by a majority of votes cast on a resolution to admit the applicant as a Direct Code Signatory at the Management Committee meeting at which the application is considered;
  - (d) The applicant has paid the annual membership fees and any other fees required by rule 1.6.3.
- 1.6.5. A Direct Code Signatory may at any time by giving six months notice in writing to the Management Committee, revoke their status as a Direct Code Signatory, in which case all amounts (if any) owed by the Direct Code Signatory at that time are immediately due and payable.
- 1.6.6. The admission of an industry participant as a Code Signatory (either via membership of a Member of the ABAC Scheme or as a Direct Code Signatory) may be terminated by the Management Committee in its absolute discretion if:
  - (a) The Code Signatory ceases to be or to represent a producer, distributor or retailer of alcohol beverages; or
  - (b) The Management Committee forms the opinion that the conduct of the Code Signatory renders it undesirable that they continue to be a Code Signatory.
- 1.6.7. An industry participant who ceases to be a Code Signatory by operation of rule 1.6.5 or 1.6.6 will not be entitled to a refund of the annual membership fee (if applicable) or any other fees paid under rule 1.6.3.

## **2. Board of Directors**

- 2.1. The Directors of The ABAC Scheme have a responsibility to ensure that the company is adequately funded.

## **3. Adjudication Panel**

- 3.1. An ABAC Adjudication Panel ("the Panel") will be formed to adjudicate upon complaints concerning alcohol beverage marketing communications in accordance with the procedures set out in Part 4 below.
- 3.2. Adjudication by the Panel will be in addition to any other legal right or remedy which may exist.
- 3.3. All Code Signatories, namely Direct Code Signatories and members of Brewers Association, Spirits & Cocktails Australia and Australian Grape & Wine will be asked to comply with any recommendation of the Panel.
- 3.4. The Chief Adjudicator of the Panel must prepare a report on the Panel's operations and recommendations made during the preceding year and provide a copy of that report to the Management Committee for inclusion in the ABAC Annual Report.
- 3.5. ABAC Adjudication Panelists ("Panelists") will be appointed by the Management Committee and will consist of:
  - 3.5.1. One (1) Panelist appointed as Chief Adjudicator. The Chief Adjudicator will have legal qualifications and experience.

- 3.5.2. At least two (2) Panelists appointed as Health Sector Panelists. The relevant Federal Minister with responsibility for alcohol issues, or his or her nominee, will be invited to nominate a shortlist of candidates with public health expertise to the Management Committee for consideration.
  - 3.5.3. At least two (2) Panelists appointed as General Panelists. General Panelists will have a minimum of ten years experience in the marketing, market research or media industries.
  - 3.5.4. One of the Panelists will be appointed by the ABAC Management Committee as deputy Chief Adjudicator to act as Chief Adjudicator if the Chief Adjudicator requests or is unavailable.
- 3.6. No Panelist may, at the time of or during the term of his or her appointment to the Panel:
- 3.6.1. be a current employee of a participant or member of the alcohol beverages industry; or
  - 3.6.2. have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.
- 3.7. Each of the Panelists will be appointed for an initial three (3) year term. The ABAC Management Committee may exercise its discretion to renew the appointment for a further period of time subject to assessment of skills fit and performance.

#### **4. Panel Procedures**

- 4.1. 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:
  - 4.1.1. a target of 30 business days on average for the handling of complaints, and
  - 4.1.2. a need to ensure privacy, where required by law, and
  - 4.1.3. any natural justice considerations.
- 4.2. All complaints received from Ad Standards will be considered within the ABAC complaints procedure and all decisions must be recorded in writing and communicated to the complainant.
- 4.3. The Chief Adjudicator will consider all complaints received from Ad Standards and when interpreting a complaint will use his or her discretion to identify all possible Code provisions raised. If the Chief Adjudicator decides that a complaint raises issues under the Code the complaint will be referred to the Panel unless the Chief Adjudicator decides that the complaint:
  - 4.3.1. raises issues fully considered and determined in an earlier determination in relation to a particular advertisement; or
  - 4.3.2. raises issues consistently dismissed by the Panel as not being in breach of the Code; or
  - 4.3.3. clearly falls outside the scope of the Code; or
  - 4.3.4. relates to a product's name or packaging that has been certified pursuant to paragraph 4.17; or
  - 4.3.5. is suitable for Expedited Resolution.
- 4.4. The Panel shall consist of three Panelists, one (1) of whom must be a Health Sector Panelist.
- 4.5. Panel decisions will be by a simple majority vote and no member of the Panel will have a casting vote.
- 4.6. Where a complaint is referred to the Panel for consideration, the Chief Adjudicator will, prior to consideration of the complaint by the Panel, notify the company responsible for the marketing communication ("the Marketer") of its referral to the Panel.
- 4.7. When the Panel considers a complaint, it should have before it:
  - 4.7.1. a copy of the complaint;

- 4.7.2. a copy of the marketing communication (in the case of product names and packaging either a sample or picture of the product or a fair description);
  - 4.7.3. any correspondence from the Marketer, either in response to the complaint, or any questions/issues raised with it by the Chief Adjudicator; and
  - 4.7.4. any other materials the Chief Adjudicator deems fit.
- 4.8. The Chief Adjudicator may decide that a complaint is suitable for Expedited Resolution if:
- 4.8.1. the marketing communication appears to be in breach of the Code given the issues raised in the complaint;
  - 4.8.2. the complaint and marketing communication do not raise issues of broader significance to the understanding of Code provisions or the operation of the ABAC scheme;
  - 4.8.3. the marketing communication that is the subject of the complaint is not a product name or product packaging; and
  - 4.8.4. the marketer accepts that the Code provision(s) raised by the nature of the complaint have not been complied with.
- 4.9. An Expedited Resolution is a decision to uphold a complaint taken by the Chief Adjudicator alone and involves consideration of:
- 4.9.1. a copy of the complaint;
  - 4.9.2. a copy of the marketing communication; and
  - 4.9.3. correspondence or other confirmation from the marketer that the relevant Code provision(s) have not be complied with.
- 4.10. If a complaint is upheld about the content of a marketing communication (excepting product names, product packaging and marketing collateral (as defined in the Code)) the Marketer must:
- 4.10.1. withdraw, discontinue or modify the marketing communication as soon as possible and no later than five (5) business days after the determination (noting that published print material is not able to be withdrawn but must be discontinued or modified prior to further publication and that a widespread outdoor campaign may take longer than 5 business days to withdraw but will be withdrawn as quickly as possible);
  - 4.10.2. advise the Chief Adjudicator within five (5) business days of their intended action and timeframes in respect of the marketing communication; and
  - 4.10.3. not reinstate the unmodified marketing communication at any time.
- 4.11. If a complaint is upheld about the placement of a marketing communication the Marketer must:
- 4.11.1. withdraw, discontinue or modify the placement of the marketing communication as soon as possible and no later than five (5) business days after the determination (noting that published print material is not able to be withdrawn but must be discontinued or modified prior to further publication);
  - 4.11.2. take all reasonable precautions to ensure that the marketing communication will not again be placed in the location, time or manner that was found to breach the Placement Rules in the Code; and
  - 4.11.3. advise the Chief Adjudicator within five (5) business days of their intended action and timeframes in respect of the placement of the marketing communication.
- 4.12. If the Panel upholds a complaint about a product's name or packaging, then a provisional determination must be provided to the Marketer, who will be able to seek a rehearing of the provisional determination, by providing a formal written response and further submission within ten (10) business days of receipt of the provisional determination. All or part of this appeal period may be waived by the Marketer and will be deemed to have been waived upon receipt of a formal written response to the provisional determination.
- 4.13. The onus is on the Marketer to demonstrate to the Chief Adjudicator that a product name or trademark was in use in the Australian market prior to 31 October 2009. The

Marketer may do so at any stage of the process prior to the end of the period the Supplier has to seek a rehearing of a provisional determination

- 4.14. After considering any material provided by the Marketer, or after the elapse of ten (10) business days from the date that the provisional determination is provided to the Marketer, the Panel is free to issue a final determination whenever it deems fit.
- 4.15. If the Panel makes a final determination upholding a complaint about a product name, product packaging or marketing collateral (as defined in the Code), the Marketer must:
  - 4.15.1. cease further orders for production of the product name, product packaging or marketing collateral immediately;
  - 4.15.2. ensure the product name, product packaging or marketing collateral is modified so as to be consistent with the Panel's determination within 3 months after notification;
  - 4.15.3. advise the Panel within five (5) business days as to their intended action and timeframes in respect of the product name, product packaging or marketing collateral; and
  - 4.15.4. not reinstate the unmodified product name, product packaging or marketing collateral at any time.
- 4.16. Decisions of the Panel, and the response (if any) of the Company, must be advised to Ad Standards and the Management Committee, within five (5) business days after:
  - 4.16.1. in the case where the Panel has not upheld the complaint, the date of the Panel decision; or
  - 4.16.2. in the case where the Panel has upheld the complaint, the date the response is received (or due) from the marketer pursuant to paragraphs 4.8, 4.9 and 4.13.
- 4.17. If a Marketer fails to comply with clauses 4.8, 4.9 or 4.13, ABAC may:
  - 4.17.1. notify relevant State Liquor Licensing authorities, media platforms, media associations, Government, media and other relevant organisations of the Marketer's failure to support the Panel's decision; and
  - 4.17.2. where the Marketer is a Code signatory, terminate the Marketer's admission as a Code signatory pursuant to clause 1.6.6(b).
- 4.18. A record of all decisions must be maintained to assist with establishing statistical patterns over time for use in drafting the Annual Report etc.
- 4.19. Where a Marketer modifies a product name or packaging the Panel determined is in breach of the Code, then it may put proposals for doing so before two pre-vetters for consideration.
  - 4.19.1. The pre-vetters must ensure that any such proposal(s) are dealt with in a timely and confidential manner.
  - 4.19.2. The pre-vetters shall determine whether the proposed modifications bring the product name and/or packaging into line with the Code (not just the section(s) on which the original complaint and determination hinged). Where the pre-vetters do not both agree that the proposed modifications bring the product name and/or packaging in line with the Code certification may not be given for that name and/or packaging.
  - 4.19.3. Where the pre-vetters have certified that modifications to naming and/or packaging are sufficient to bring it in line with the Code, then the Panel will not consider any further complaints against the product so modified. Any minor modifications to the packaging (e.g. bar codes, use-by dates, date or place of manufacture, grape sources etc.) will be deemed to not alter the compliant status of the product. Complaints in respect of marketing communications in which the name and/or packaging is featured will still be considered by the Adjudication Panel.

## 5. ABAC Pre-Vetting Service

- 5.1. The ABAC Pre-vetting Service assesses whether alcohol beverage marketing communications conform to the *ABAC Responsible Alcohol Marketing Code* (“the ABAC Code”).
- 5.2. Signatories to the ABAC Scheme and their agencies must pre-vet specific categories of marketing communications against the ABAC Code as set out in the following table. The table also sets out those categories for which pre-vetting is optional, although encouraged.

<b>Media Category</b>	<b>ABAC Pre-vetting requirements</b>
TV	Must pre-vet
Outdoor	Must pre-vet
Cinema	Must pre-vet
Radio	Must pre-vet
Print	Optional
Digital	Optional
Point of Sale	Optional
Marketing Collateral	Optional
Names & Packaging	Optional
Retail Price Advertisements (refer paragraph 5.2)	Optional for all media
Placement	Optional for all media

- 5.3. Non-Signatories to the ABAC Scheme and their agencies may use the ABAC pre-vetting service to assess whether marketing communications conform to the ABAC Code.
- 5.4. Retail Price Advertisements must comply with the spirit and intent of the ABAC Code but are not required to be pre-vetted. Retail Price Advertisements are marketing communications by retailers which contain no material relating to or concerning the attributes or virtues of alcohol beverages or the retail outlet except:
- 5.4.1. the name of a retailer or retailers offering alcohol beverages for sale;
  - 5.4.2. information about the price or prices at which those beverages are offered for sale;
  - 5.4.3. the brand name or names of alcohol beverages offered for sale;
  - 5.4.4. the type and/or style of the alcohol beverages offered for sale;
  - 5.4.5. 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;
  - 5.4.6. the location and/or times at which the alcohol beverages are offered for sale; and
  - 5.4.7. such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published.

In addition, where a retailer has received pre-vetting approval for a marketing communication template they may change the name, image and price of a product featured in that communication without requiring pre-vetting approval for that limited change.

- 5.5. Pre-vetters have no public role in representing the ABAC Scheme. Their role is to provide pre-vetting services. Any inquiries or correspondence from third parties to pre-vetters must be referred to the ABAC Executive Officer or ABAC Management Committee to be dealt with.
- 5.6. To encourage the frank exchange of views within The ABAC Scheme, any opinion expressed by a pre-vetter in respect to a matter which is submitted for pre-vetting is confidential to the producer, their industry association (if applicable), the pre-vetter and the ABAC Executive Officer, except that the Panel will be advised of and report on the pre-vetting status of a marketing communication referred to in a complaint .

- 5.7. There will be a minimum of two pre-vetters within the ABAC Pre-vetting Service, appointed by the Management Committee.
- 5.8. No pre-vetter may, at the time of or during the term of his or her appointment:
  - 5.8.1. be a current employee of a participant or member of the alcohol beverages industry; or
  - 5.8.2. have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.
- 5.9. Pre-vetters must have a minimum of ten years marketing communications experience in brand management or promotion.
- 5.10. Each of the pre-vetters will be appointed for a three (3) year term. The ABAC Management Committee may exercise its discretion to renew the appointment for a further period of time.
- 5.11. Where appropriate, all services provided by Pre-vetters (including pursuant to paragraph 4.16) are to be funded on a user-pays basis by those industry members seeking pre-vetting of alcohol marketing communications.
- 5.12. The ABAC Directors are to be responsible for the setting of any retainers and hourly rates for pre-vetters and approving any related expenses. Further, the Directors are to ensure that a system is in place for the orderly collection of debts incurred through use of the pre-vetting service.