



ABAC Responsible Alcohol Marketing Code Review

Consultation Paper – 31 January 2021

ABAC Responsible Alcohol Marketing Code Review

The [ABAC Responsible Alcohol Marketing Code](#) (the Code) aims to encourage the marketing of alcohol beverages responsibly and consistently with community standards.

The ABAC Scheme Management Committee periodically reviews the Code to ensure it continues to meet objectives as the alcohol, media and advertising industries and community expectations all evolve and its terms are simple, practical and clear.

Consultation will be undertaken to assist the ABAC Management Committee to review the Code, and where necessary make changes. This Review will be confined to the Code standards and coverage.

Consultation

The ABAC Management Committee invites submissions in response to this consultation paper from all interested parties by 5pm on Friday, 11 March 2022 to info@abac.org.au.

Submissions are invited to inform the review by the ABAC Management Committee and to ensure that a range of views representative of key stakeholders can be considered in a revision of the Code. This consultation paper includes the existing Code provisions together with discussion questions relevant to specific parts of the Code and concludes with a general discussion question.

All submissions must include:

- the organisation or interest group represented by the submission;
- the name of the person making the submission; and
- contact details, including a telephone number and email address.

Background

The Code was first introduced in 1998 and substantially updated in 2004, 2009, 2014 and 2017. It regulates the content and placement of alcohol beverage marketing (including packaging) in Australia. Subject to regular review, the Code aims to reflect community expectations and changes in the media and advertising industries. The application of the Code Standards is explained in the [ABAC Guidance Notes](#). Periodic community standards research is commissioned by ABAC, most recently last year, and can be accessed [here](#).

The Code includes regulation of both the content and placement of alcohol marketing communications. Content regulation is platform neutral. The Code applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol beverage advertisements in emerging digital and social media, user generated content on alcohol company controlled digital and social media, point of sale advertisements, product placement, influencer activity and brand extensions over which an alcohol company has reasonable control. Placement regulation covers all media platforms in the most effective manner practically available to the particular media platform and aims to direct alcohol advertising toward adults and away from minors.

The Code is not the only set of rules affecting alcohol advertising in Australia. Alcohol advertisements must also comply with relevant legislation and codes of practice including the Competition and Consumer Act 2010, State Liquor Licensing Legislation, the Australian Association of National Advertisers (AANA) Code of Ethics, Commercial Television Industry Code of Practice and the Outdoor Media Association (OMA) Code of Ethics. In reviewing its Code, ABAC is mindful that it operates in a shared regulatory environment.

ABAC RESPONSIBLE ALCOHOL MARKETING CODE

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.

Discussion Questions:

- 1. Does the Code continue to meet its stated objective? If not, why not?**
- 2. Does the objective outlined in the Preamble need to be amended? If so, explain how and why it should be amended?**

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.*

Discussion Questions:

3. **Is the coverage of the Code clearly defined by Part 2 and associated definitions in Part 6? If not, explain where clarification is required.**
4. **Is the extent of coverage of the Code to alcohol marketing communications appropriate given the shared regulatory environment? If not, explain how Code coverage should be revised.**

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.*

(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:*
 - *they are not visually prominent; or*
 - *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.*

(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.*

(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.

Discussion Questions:

- 5. Are the Code standards in Part 3 and associated definitions in Part 6 clearly understood? If not, explain which provisions require clarification and specific areas of confusion.**
- 6. Are any changes required to the standards in Part 3 of the Code? If so, please explain the basis for any changes suggested.**
- 7. Should any additional standards be included? If so, please explain the standard and the reasons it should be included.**

4 NO FAULT BREACH

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

Discussion Question:

- 8. Are any changes required to the No Fault Breach clause? If so, please explain the basis for any changes suggested.**

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.

Discussion Question:

- 9. Are any changes required to the Interpretation clause? If so, please explain the basis for any changes suggested.**

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 being an Adult.*

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

Australian Alcohol Guidelines means the 'Australian Guidelines to Reduce Health Risks from Drinking Alcohol' published by the National Health & Medical Research Council ("NHMRC") in 2020.

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 Communications.*
- (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, if such data is available).*
- (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).

Discussion Question:

- 10. Are any changes required to the Code definitions in Part 6? If so, please explain the basis for any changes suggested.**

General Discussion Question:

- 11. Do you have any general comments on the content and structure of the Code? If so, please explain the basis for any comments.**