



Report on the ABAC Responsible Alcohol Marketing Code Review

28 April 2023

Contents

1. Chair’s Statement	3
2. Background	4
3. Review Process:	7
a. Community Standards Research	7
b. Consultation	7
c. Submissions	7
d. Matters outside the scope of this Review	10
e. Additional Research & Considerations	11
f. Timeframes & Outcome	11
4. Key Issues	12
a. Code Coverage	12
b. Alcohol Alternatives	12
c. Australian Alcohol Guidelines	14
d. Humour	15
e. Negative portrayals of abstinence or refusal of alcohol	15
f. Responsibility Messaging	15
g. Responsibility Toward Minors	15
h. Sponsorship	19
i. Therapeutic Benefit	20
j. Vulnerable members of the Community	20
5. Drafting Changes	23
a. Preamble	23
b. Structure	23
c. Simplification	23
d. Clarity	24
e. Update	24
6. Summary of Code Changes	25
7. Revised ABAC Responsible Alcohol Marketing Code	27

1. Chair's Statement

It is ABAC's practice to conduct both whole of Code and targeted reviews of the ABAC Responsible Alcohol Marketing Code periodically. The most recent whole of Code review was completed in 2014 with a targeted review in relation to the placement of alcohol advertising in 2017. It is therefore timely to be undertaking a review of the whole Code. Marketing techniques, product innovation, regulatory frameworks and community expectations are continually evolving, and these changes are the key drivers for the scheduling of a periodic review.

In January 2022 ABAC commenced the review by seeking public submissions on all aspects of the Code. The 26 submissions received have provided an understanding of the range of stakeholder views and provided valuable insights. I acknowledge and thank everyone who lodged a submission for their insights and effort in helping ensure that all relevant issues were brought to the attention of the ABAC Management Committee ('the Committee').

The submissions represented a diverse range of stakeholders from Government and community health organisations through to media and alcohol industry associations and companies. A range of perspectives were presented, from a call for a ban on alcohol marketing, through to a view that the Code is too stringent. The Committee considered all issues raised in the submissions and this report outlines the Code Review process and provides a summary of the primary considerations. Many of the changes made to the Code and new initiatives arise from issues brought to the attention of the Committee in public submissions.

The Committee acknowledges that alcohol is a product that is regulated due to its potential to cause harm within the community. The objective of the Code and the Scheme as a whole is alcohol marketing consistent with the objectives of the National Alcohol Strategy for the reduction of harm from adult alcohol consumption and, specifically, does not encourage minors to consume alcohol. The Code has been reviewed with this objective in mind. With such diverse stakeholder views, not everyone will be satisfied with the outcome of this review. However, the Committee believes that important improvements have been made to what is an already effective and robust Code.

In reviewing and making changes to the Code, the Committee was mindful that the Code is part of a wider regulatory framework for alcohol marketing in Australia, and complements State and Territory Liquor Licensing laws that regulate the promotion of alcohol beverages, Food Standards requirements for the packaging of alcohol beverages and a range of advertising and media industry Codes. It is important that the Code complements and does not cut across other components of this framework. Since 1998 the ABAC Scheme has been an important contributor to responsible alcohol marketing in Australia. Data on the level and patterns of alcohol consumption indicate that the Code, pre-vetting service and complaints system have, together with the other regulatory components, had a positive impact.

A whole of Code review involves significant preparation, planning, consultation and research and I would like to thank the ABAC Chief Executive Officer for her key role in managing the project, the ABAC Chief Adjudicator for his important insights, and each member of the Committee for their careful consideration of the issues and thoughtful decision making.

Harry Jenkins
Chair of the ABAC Management Committee
28 April 2023

2. Background

The ABAC Responsible Alcohol Marketing Code (the Code) and the associated Pre-vetting and Complaints Management Systems form the not for profit regulatory ABAC Scheme. The Scheme has the aim of the marketing of alcohol beverages occurring responsibly and consistently with standards of good practice via regulation, education and advice.

The ABAC Scheme was developed in 1998 by agreement with all major Australian alcohol beverage manufacturing and marketing industry associations and key advertising, media and consumer bodies. Since 2004 the Commonwealth Government has been represented on the Scheme's management committee and each public complaint about alcohol marketing is adjudicated by a panel which includes a public health expert nominated by government. Under the ABAC Scheme, guidelines for marketing have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry.

ABAC is part of a shared regulatory framework of laws and industry codes of practice that regulate and guide the content and placement of alcohol marketing in Australia. This framework includes laws and codes that apply to the marketing of all products and services, such as Australian Consumer Law and the Australian Association of National Advertisers Code of Ethics, together with those that apply specifically to alcohol as a product, such as State and Territory liquor licensing laws and the ABAC Responsible Alcohol Marketing Code.

Operation

The ABAC Scheme is responsible for:

- **The Code** (first introduced in 1998 and substantially updated in 2004, 2009, 2014 and 2017) which regulates the content and placement of alcohol marketing in Australia. Subject to regular review, the Code aims to reflect community expectations and changes in the media and marketing industries. The Code applies to both traditional forms of advertising (television, radio, print, outdoor and packaging) as well as broader marketing in digital and social media, user generated content on alcohol company controlled digital and social media, influencer marketing and brand extensions.
- **The ABAC Pre-vetting Service** which provides independent, confidential advice to alcohol marketers on whether proposed alcohol marketing complies with the Code. This service is offered on a 'user pays' basis. The pre-vetting service is a key component of the ABAC Scheme in that it identifies inappropriate alcohol marketing before it reaches the market.
 - ABAC Pre-vetters are independent of the alcohol beverage industry.
 - ABAC pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting. The service is available to anyone marketing alcohol including marketers that are not a signatory to the Scheme.
 - The Service has the support of major media associations that either require or encourage their members to check that an alcohol advertisement has pre-vetting approval prior to placement of advertisements.

- **The ABAC Adjudication Panel** ('the Panel'), headed by Chief Adjudicator Professor Michael Lavarch, considers public complaints about alcohol marketing that fall within the jurisdiction of the Code.
 - The Panel and its deliberations are independent of the Committee and the broader alcohol and advertising industry.
 - The Panel comprises:
 - the Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise;
 - a health sector Panelist, Professor Richard Mattick or Professor Louisa Jorm (both were appointed from a shortlist of health sector professionals provided by the relevant Federal Minister responsible for alcohol issues or his or her nominee); and
 - a Panelist with market research, media or advertising expertise, Jeanne Strachan or Debra Richards.
 - Each quarter the Chief Adjudicator reports to the ABAC management committee on the operation of the Panel and submits an annual report on the Panel's operation for inclusion in ABAC's published annual report on the operation of the overall scheme.
- **Industry education** is an important part of ABAC's operations. ABAC educates the regulated community on the Code standards via regulation and advice together with an annual webinar and a range of resources that are freely available on its website, including:
 - **Guidance Notes** that assist in the interpretation of Code provisions;
 - **Packaging Compliance Guide** that assists manufacturers ensure their packaging does not have strong or evident appeal to minors;
 - **Best Practice for Responsible Digital Alcohol Marketing** that assists marketers and their agencies in the responsible management of their digital marketing;
 - **Compliance checklists** with links to helpful resources that assist marketers in navigating the unique restriction, targeting and affirmation technologies available across a range of digital platforms to direct marketing toward adults and away from minors; and
 - **Online training course and video series** that provides more in depth education via case studies and examples on how to achieve Code compliance.

Management of the Scheme

The ABAC Management Committee ('the Committee') manages and reviews the operations of The ABAC Scheme and considers amendments to the Code and scheme procedures with a view to:

- encouraging industry members, large and small, to participate in the quasi-regulatory system;
- playing an active role to ensure an effective quasi-regulatory system;
- monitoring the implementation of The ABAC Scheme and improving it where necessary;
- co-ordinating the development and completion of an annual report with copies to be provided to the relevant Minister and Ad Standards; and

- managing the pre-vetting service as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members.

The Committee comprises:

- an Independent Chair - Mr Harry Jenkins
- Australian Government representative (Assistant Secretary, Commonwealth Department of Health) – formerly Ms Belinda Roberts, currently Ms Carolyn Paterson
- the Chief Executive Officer of the Brewers Association of Australia – Mr John Preston
- the Chief Executive Officer of Spirits & Cocktails Australia – Mr Greg Holland
- the Chief Executive Officer of Australian Grape & Wine – Mr Lee McLean
- the Chief Executive Officer of the Advertising Council Australia – Mr Tony Hale.

The ABAC Management Committee is supported in its role by the ABAC Chief Executive Officer.

The members of the Committee each represent a group of stakeholders in alcohol marketing regulation. Any member of the Committee may raise issues for consideration by the Committee and the Committee in practice operates on a consensus basis.

Scheme Coverage

- Membership of, and compliance with the scheme is voluntary. However, the individual members of the Brewers Association of Australia, Spirits & Cocktails Australia and Australian Grape & Wine have agreed to be bound by the Scheme.
- Other companies that market alcohol, including retail chains, are encouraged to become direct signatories to the Scheme and to utilise the Pre-vetting Service. Currently, Endeavour Group, Coles Liquor Group, Campari Australia, Coca Cola Europacific Partners, Asahi Beverages, Lion, Independent Brands Australia, Australian Distiller's Association members and Amazon Australia are all direct signatories to the scheme.
- The Scheme operates nationally and has an extensive reach throughout the alcohol industry. The Pre-vetting Service is available to and extensively used by both signatories and non-signatories, with in excess of 3,000 pre-vetting requests per annum in recent years. The Panel makes decisions on all marketing communications on which a complaint raising ABAC issues is received and in almost every case, alcohol marketers in Australia co-operate with the ABAC system and comply with Panel determinations. In the rare instances that voluntary compliance is not attained, the complaint is referred to the relevant State or Territory liquor licensing authority for consideration against its promotional guidelines.

3. Review Process

(a) Community Standards Research

Prior to commencing the Code review, ABAC commissioned quantitative research to explore current public perceptions of alcohol marketing and whether Panel decisions align with community views. Similar research has been conducted on 3 separate occasions and full reports are available [here](#).

An on-line survey of 1500 people (nationally representative of Australian adults) revealed the following key insights relevant to the current review:

- Most respondents (60%) said they had no concerns about alcohol marketing over the last 12 months. Less than a third (29%) said they were 'concerned', with only 7% 'very concerned'.
- The Code's content standards reflect community expectations for alcohol marketing and in some cases, are more conservative. Of the 24% of people that recall alcohol marketing in the last year that concerned them, their main concerns were already covered by the Code. There was strong support for current ABAC restrictions around promotion of alcohol to minors.
- Panel decisions aligned with, or were more conservative than, community views.

(b) Consultation

On 31 January 2022 ABAC published to its website a consultation paper seeking public submissions on the Code to assist the Committee with their periodic review. The Consultation paper was circulated to:

- State and Territory Health departments and more than 50 public health organisations via the Commonwealth Department of Health;
- Federal, State & Territory Ministers, including Health, Liquor Licensing, Police, Communications and Attorney-Generals;
- State & Territory Liquor Regulators;
- Alcohol, advertising and media industry associations (including non-signatory associations); and
- ABAC signatories and users of the Pre-vetting Service.

(c) Submissions

In response to the consultation paper:

- 26 submissions were received;
- 24 letters were received that provided acknowledgement, support for the ABAC system, requests for a meeting, informal feedback, and/or sought an update on the review outcome;
- a letter was received from 48 individuals across public health organisations and academic roles, who were not supportive of the ABAC system and therefore chose not to make submissions on this review.

All submissions were kept confidential in order to encourage frank and open dialogue.

Of the 26 submissions:

- 11 from health organisations (6 from State or Territory Health Departments and 5 from other public health organisations);
- 10 from alcohol industry companies or associations;
- 3 from advertising or media associations;
- 1 from a State Liquor Authority; and
- 1 from a State Minister with responsibility for Liquor Licensing.

The Committee wishes to record its appreciation to the individuals and organisations that took the time and effort to provide submissions to assist in the Code review. The submissions were comprehensive, informative and helpful in gaining an understanding of perspectives of a wide range of stakeholders and many made practical suggestions for the Code.

It was common ground across submissions that:

- alcohol misuse has the potential to cause harm in the Australian community;
- the content and placement of alcohol marketing should be regulated;
- that the aim of regulation of alcohol marketing is to support the reduction of harm caused by alcohol in the Australian community.

However, submissions diverged on the extent to which alcohol marketing contributes to alcohol related harm;

- research cited by the health sector suggests alcohol marketing has a causative role;
- research cited by the alcohol and advertising industry sectors points to alcohol consumption patterns trending toward more responsible use of alcohol in the Australian community, despite the advent of social media marketing and high levels of marketing in Australia;
- the health sector cited research on the highest level of alcohol induced death in 10 years;
- the industry sector cited research on incidents of harmful and binge drinking declining and attributed this to cultural change and ABAC's contribution to this positive cultural change, particularly with its strong standards relating to minors;
- the industry sector believes a ban on alcohol marketing would be anti-competitive (reducing new market entrants) and reduce consumer choice of a legal product in Australia; and
- the industry sector suggested alternate more effective measures in reducing alcohol related harm.

The *National Drug Strategy Household Survey, 2019* found:

- Rates of abstinence from alcohol increased from 7.6% in 2016 to 8.9% in 2019.

- The proportion of people exceeding the single occasion risk guideline has decreased from 29% in 2010 to 25% in 2019. The proportion of people exceeding the lifetime risk guideline has decreased from 21% in 2010 to 16.8% in 2019.
- In 2019, 21% of people had been a victim of an alcohol-related incident, however the number of people that reported that they had been physically abused in the previous 12 months by someone under the influence of alcohol decreased from 6.8% of males and 5% of females to 5.6% of males and 4% of females since 2016.
- Alcohol use is increasing for older people but declining for younger people. The average age of first consuming a full serve of alcohol has increased from 14.7 in 2001 to 16.2 in 2019.
- Compared with people in major cities people in remote and very remote parts of Australia were 1.5 times as likely to drink at levels that exceed the single occasion risk guidelines and 1.6 times as likely to exceed the lifetime risk guidelines. While Aboriginal and Torres Strait Islander people and gay, lesbian and bisexual people have higher proportions of risky drinking than non-indigenous and heterosexual people, there have been improvements between 2010 and 2019. In addition a growing proportion of pregnant women are abstaining from alcohol.

In addition to specific suggestions in relation to Code drafting, a wide variety of general observations were made in submissions, including:

- Concerns regarding:
 - alcohol consumption in rural, remote and regional communities, and among vulnerable groups, such as minors, indigenous, pregnant/breastfeeding women and socio disadvantaged groups
 - Code placement and content standards not doing enough to limit exposure to minors
 - same day/rapid delivery of alcohol
- Observations that:
 - there are a range of alcohol harm reduction measures in Australia, including Government, Public Health and Drinkwise efforts to improve community attitudes toward alcohol use
 - community standards are impacted by cultural norms and given societal drinking patterns ‘prevailing community standards’ are unlikely to align with what we know to be responsible
 - the Code:
 - is important as one of a range of preventative health measures addressing health risk factors, such as risky drinking, and should not be watered down
 - continues to meet its stated objective of ensuring that alcohol is marketed in a responsible manner
 - is agile and evolves to address new marketing techniques, product innovation and stakeholder expectations

- operates consistently with the principles in Australia’s National Alcohol Strategy 2019-2028, particularly Goal 3: Reducing opportunities for availability, promotion and pricing contributing to risky alcohol consumption
 - is part of a wider complementary regulatory framework in Australia and globally, including consistency with State and Territory Liquor Licensing frameworks, and consistency is likely to result in stronger industry compliance with responsible marketing practices
 - is global best practice for alcohol marketing regulation and was a global pioneer in ensuring social marketing, influencers, and other new marketing techniques are captured by the Scheme
 - is one of the most stringent alcohol advertising codes globally, which can create problems for global companies that seek to introduce international campaigns and product packaging into the Australian market
 - meets or exceeds community expectations with JWS Research finding ‘there are no salient issues regarding alcohol advertising, packaging or labelling that are not already covered by the Code’
 - assists businesses of all sizes ensure their marketing is responsible and in-line with public views
 - is too restrictive in light of positive alcohol trends
- Suggestions that:
 - alcohol marketing should include simple and clear information developed by Government about the health risks of excess consumption and consumption during pregnancy
 - the Code should prohibit or regulate sponsorship or advertising of alcohol during sports
 - influencer marketing should be governed by the same standards
 - there should be specific regulation of zero alcohol beer, wines and spirits

(d) Matters outside the scope of this Review

There were several submissions that alcohol marketing should not be permitted, or its quantity reduced, and that self-regulation and voluntary codes are not effective in stemming inappropriate and irresponsible promotion of alcohol. While the Committee understands the points being made, the starting point for ABAC is that alcohol is lawful to be consumed by adults and marketed in Australia. Accordingly, these submissions are policy matters for Australian governments and outside the scope of this Review.

In addition, various issues were raised in relation to the operations and governance of ABAC. This review is confined to consideration of the Code standards. All submissions made in relation to ABAC operations and governance will be referred to a subsequent review of these aspects of the Scheme.

(e) Additional Resources & Considerations

In addition to the research undertaken by JWS Research and the consultation submissions, the ABAC Management Committee has had regard to a variety of resources and observations in undertaking its review of the ABAC Code standards, including:

- trends and observations arising from public complaints and Panel decisions on alcohol marketing;
- developments in alcohol marketing;
- ABAC Adjudication Panel and Pre-vetter feedback;
- global alcohol marketing codes;
- State and Territory liquor promotion guidelines;
- ABAC's objectives;
- National Alcohol Strategy;
- WHO Reports; and
- critiques of ABAC.

(f) Timeframes & Outcome

The process for the review of the Code was agreed by the Committee in December 2021, with public consultation opening in January 2022 and concluding in March 2022. There were several external factors that impacted on timeframes for completing the review, including:

- the 2022 Federal election, caretaker period and change of government; and
- the decision to extend Code coverage to all alcohol alternatives which required an additional targeted consultation with this industry sector, and changes to ABAC's governing documents.

The revised Code attached to this report was approved by the Committee for release on 28 April 2023. The transition for implementation of the new Code will be:

- Complaints received prior to 1 August 2023 will be considered against the existing Code.
- Complaints received between 1 August 2023 and 31 December 2023 will be considered against the new Code UNLESS the complaint relates to Part 4(c) of the revised Code OR relates to a marketing communication that has been continuously in market from 31 July 2023, with complaints meeting those two criteria being considered against the existing Code.
- All complaints received on or after 1 January 2024 will be considered against the new Code regardless of when the marketing communication entered the market.

Part 4(c) will have a longer implementation period due to changes required to established systems and procedures and the briefing of all media partners to effect this change.

4. Key Issues

The Committee held a series of meetings to consider the entire range of matters raised during the Code Review Process that are within the scope of this Review. Following is an overview of the key issues.

(a) Code Coverage:

The Code has significantly evolved since its commencement in 1998 and kept pace with emerging marketing techniques and media platforms. While initially focusing on traditional advertising conveyed via television, print, cinema, radio and outdoor media, it has evolved to cover new marketing techniques and media as they emerge.

The Code defines 'marketing communications' broadly in a way that ensures that new marketing techniques and all forms of media are covered. Coverage has extended to social media posts from 2009, user generated content from 2010 and influencer activity from 2017, as complaints were received about these emerging forms of marketing. Marketing generated by, for or within the reasonable control of an alcohol (and now alcohol alternative) producer, distributor or retailer is captured.

(b) Alcohol Alternatives:

Since the last Code review in 2017, there has been a dramatic increase in demand for alternatives to alcohol beverages that has seen significant growth globally in the marketing of beer, wine, or spirits that have less than 0.5% ABV ('Alcohol Alternatives'). Alcohol Alternatives have an alcohol content that ranges from 0.0 to 0.5% and is less than that which can appear in everyday goods such as orange juice or bakery rolls¹.

ABAC received and considered its first complaint in relation to marketing promoting an Alcohol Alternative in 2018. The current Code applies to beverages with at least 0.5% ABV, and alcohol brand extensions.

Brand extension marketing can typically arise in two ways. A 'line extension' is when a marketer extends existing branding to a new product within the same general category of product e.g. Diet Coke as an additional consumer choice to Coke. 'Category extension' is applying the branding known in one category of product to an entirely different type of product or service e.g. Virgin music branding extending to Virgin airlines. An Alcohol Alternative that shares its brand name with an alcohol brand is an example of a 'line extension'.

Over time the Panel has considered various brand extension marketing communications, although these amount to a very small proportion of the total number of Panel determinations. Examples have included both line and category brand extensions, notably:

- Determination 124/20 - VB category extension to a fragrance for men;
- Determination 118/19- Bundaberg Rum category extension to Egg Nog; and
- Determination 67/19 - Heineken line extension to a zero-alcohol beer.

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5421578/>

The Code has been designed to deal with alcohol beverage marketing and it has been more challenging for the Panel and the Pre-vetters to apply the Code standards to the marketing of a non-alcohol product. The Panel has taken the approach of applying a common-sense and spirit and intent approach to the applicable standard when assessing a brand extension marketing communication.

Regulation of Alcohol Alternatives raises novel issues, not just for ABAC, but for Food Standards and Liquor Licensing Authorities and the wider regulatory framework. Some of the competing considerations are:

- A product that encourages consumers to reduce their consumption of alcohol has the potential to reduce alcohol related harm in the community² and therefore there is an argument for permitting marketers to highlight the advantages of choosing these products, e.g. the ability to consume at times that would not be responsible were it an alcohol product.
- Care needs to be taken when promoting Alcohol Alternatives as the marketing could be interpreted as relating to an alcohol product, for example if it isn't clear the product is an alcohol alternative the messaging could suggest it is acceptable to drink alcohol and then drive.³
- Alcohol Alternatives have been described by some as a 'gateway' product for minors⁴, although there is limited available research on this topic.

JWS Research sought community views on whether companies should be permitted to promote non-alcoholic beer, wine and spirits without the restrictions that apply to alcohol products. 47% of participants agreed with that statement, 24% of disagreed and the balance were unsure.

Most submissions in relation to Alcohol Alternatives, supported the current approach by the Panel, but with coverage beyond brand extensions to all alcohol alternatives and clarity within the Code on the manner in which the standards apply to these products. There was a general view that Alcohol Alternatives should not be marketed to minors and submissions were made that Alcohol Alternatives should be defined as less than 0.5% ABV to align with the threshold in the Food Standards Code for requiring a statement of the number of standard drinks.

On consulting directly with participants of the Alcohol Alternative industry, there was general alignment between the current voluntary approach taken by industry participants in relation to the promotion of alcohol alternatives and measures proposed by ABAC.

Globally, marketing codes have started to address the regulation of Alcohol Alternatives, and State Liquor Licensing authorities are starting to consider these issues⁵. While most Alcohol Alternatives

² <https://drinkwise.org.au/uncategorized/zero-low-and-mid-strength-alcohol-australian-consumers-prevalence-practices-and-attitudes/#>

³ <http://www.abac.org.au/wp-content/uploads/2019/10/67-19-Determination-Heineken-0.0-15-October-2019-.pdf>

⁴ Zero-alcohol beverages: Harm minimisation tool or gateway drink? Mia Miller, Simone Pettigrew & Cassandra J C Wright. Drug and Alcohol Review 2022 Mar;41(3):546-549. doi: 10.1111/dar.13359. Epub 2021 Aug 9.

⁵ <https://www.liquorandgaming.nsw.gov.au/news-and-media/are-liquor-free-drinks-a-gateway-to-alcohol-consumption>

are produced by alcohol companies who are already familiar with the Code standards, there are companies that do not also produce alcohol that will be covered by the ABAC Code for the first time.

The Committee took the view that when describing a product as 'beer', 'wine', 'spirits' or similar, equivalent concerns apply as for brand extensions, namely promoting products that have an association with alcohol to minors; or suggesting irresponsible alcohol use, such as drink 'beer' then drive. Accordingly the Code has been extended to cover all Alcohol Alternatives, but in a manner that recognises that these products do not contain any or minimal alcohol and therefore a different regulatory approach is required.

The Committee decided to:

- extend the Code's application to all Alcohol Alternatives
- develop a new Code provision for these products;
- require compliance with the Code standards relating to minors, Part 3(b) and 4 of the Code, in all circumstances;
- only require compliance with Part 3(a)(c) and (d) of the Code where the marketing/packaging:
 - fails to clearly and prominently identify the product as an Alcohol Alternative; or
 - also promotes an alcohol product (beyond a common brand name) or alcohol use.

(c) Australian Alcohol Guidelines:

Existing Code standards in Part 3(a)(i) prevent alcohol marketing from showing or encouraging alcohol consumption in a way that is inconsistent with the NHMRC Australian Alcohol Guidelines.

Several helpful suggestions were made in relation to this standard including:

- explicitly set out the NHMRC drinking level recommendations;
- explicitly outline that a marketing communication must not show or imply the consumption of alcohol by a woman who is pregnant or breastfeeding (this suggestion was made within both health and alcohol industry submissions);
- promotions should not use non-standard measures that encourage irresponsible drinking and are likely to result in intoxication; and
- restrict advertising which encourages excessive or rapid consumption of alcohol through same-day home deliveries.

While each of these suggestions are implicitly covered by the existing Code standard in Part 3(a)(i), the Committee decided that there was utility in highlighting these matters within either the Code or its Guidance notes. In particular, the Committee decided to amend Part 3(a)(i) of the Code to explicitly reference the first two points and to incorporate the second two points as examples within Guidance notes.

(d) Humour:

Humour is commonly used in alcohol marketing to engage with consumers, particularly within brand generated organic marketing via social media. More recently, complaints have been received where social media posts use humorous memes, imagery and captions that allude to irresponsible alcohol consumption. The existing Code standards in Part 3(a) currently cover these allusions, however, given the emergence of this issue, and the increase in new entrants to the alcohol industry, the Committee decided that there was utility in highlighting that amusing references to irresponsible alcohol consumption are not acceptable.

(e) Negative portrayals of abstinence or refusal of alcohol:

With the emergence of no and lower alcohol beer, wine and spirits that encourage moderation of alcohol consumption, industry submissions highlight that a standard that prohibits the portrayal of abstinence or the refusal of alcohol in a negative light, would help reinforce positive trends in moderation of alcohol consumption in Australia. While existing standards already cover this messaging, given the number of new entrants to the alcohol industry, there is value in signalling to the alcohol industry that this messaging in alcohol marketing is not acceptable.

(f) Responsibility messaging:

A submission was received that alcohol companies should not engage in public health messaging, and only include warnings of the risks of alcohol consumption, including to pregnant women.

The exception in Part 2(c)(i) of the Code has been previously included so that alcohol companies are not discouraged from promoting unbranded responsibility initiatives that may inadvertently breach ABAC standards through mentioning the behaviours that are being discouraged. No complaints have been received that have invoked this exception.

ABAC's role is to ensure that alcohol is marketed in a manner consistent with the responsible and moderate use of alcohol without targeting minors. A prohibition on alcohol companies educating on the misuse or abuse of alcohol would be inconsistent with that objective. ABAC neither mandates nor prohibits responsibility messaging, this is a matter for individual companies.

(g) Responsibility toward Minors:

Strong or Evident Appeal to Minors

Part 3(b) of the ABAC Code which addresses 'Responsibility toward Minors' is a key and essential component of the ABAC Code standards. In 2014, the Code standards were amended to define 'Strong or Evident Appeal to Minors', and guidance has since been commissioned to assist the Panel and Pre-vetters in understanding themes and characteristics that strongly appeal to 14 – 17 year olds. This provision, however, continues to be the most subjective and challenging provision for the regulated community and Panelists and Pre-vetters to apply. Additional clarity has been sought by the alcohol industry.

The ABAC Management Committee decided there is utility in incorporating the definition of 'Strong or Evident Appeal to Minors' into the substantive Code provision in Part 3(b)(i). The revised definition will remove duplication and update the components of the definition, based on the Panel's experience in applying the definition over the past 8 years and expert guidance provided in 2020 on themes and characteristics that strongly appeal to minors. A balance has been struck between including sufficient clarity in the Code without being so proscriptive that the definition risks becoming outdated. Additional clarity will be provided in Guidance notes.

It has been noted that there are items of alcohol packaging in market that include minimal alcohol cues, but where the packaging as a whole, does not resemble any drink popular with minors or have overall strong or evident appeal to minors, and therefore does not breach a Code standard. There is utility in an alcohol beverage clearly signalling to consumers that it contains alcohol, even if it does not have appeal to minors, so that consumers understand that the product they are purchasing or consuming contains alcohol. The question is, which part of the regulatory framework applying to alcohol packaging is responsible for this issue? The Committee decided that this issue is within the remit of the Food Standards authority which sets the technical requirements for information on food and beverage products, including in relation to alcohol content⁶.

Images of Minors and 18-24 year olds

In relation to minors, the existing standard allows minors to be shown 'in an incidental role in a natural situation (for example, a family socialising responsibly), where there is no implication they will consume or serve alcohol'. One submission suggests the removal of this exception, while another is concerned by the terminology 'for example, a family socialising responsibly'. The Committee decided to simplify the clause but allowed a limited exception to remain, for example to allow a scene of a family dining in a licensed restaurant.

In relation to 18 – 24 year olds, a minor change has been made to simplify the clause and reflect the evolution of circumstances in which people are paid to promote alcohol, namely influencer marketing. In addition, the definition of age-restricted environment has been clarified and simplified, given some confusion as to its scope. The Committee will continue to monitor the development and efficacy of social media platform age restriction controls.

Placement Standards

The aim of the placement standards in the Code is to better direct alcohol marketing toward adult audiences and away from under 18 year olds. Five separate rules were developed and included in the Code in 2017, each of which must be adhered to. The placement standards draw on available technologies to ensure that alcohol marketers adopt the best available settings to ensure their advertising is being directed toward adults and away from minors. They have been drafted in such a way that as age restriction technologies improve and develop, their adoption by alcohol marketers continues to be a requirement. The placement standards are applied cumulatively, and also work together with the content rules in Part (b) to provide a multi-faceted set of protections.

A range of policy views were expressed in submissions received regarding ABAC's placement standards:

- Various submissions called for more protections of under 18s and other vulnerable groups from exposure to high levels of alcohol promotion across all media, particularly social media.
- A submission called for placement regulation to be confined to media industry associations. (As there is no digital media industry placement regulation relating to alcohol marketing, this suggestion was not considered to align with responsible alcohol marketing regulation.)
- Other submissions supported current restrictions and noted ongoing work by media and alcohol organisations in partnership with digital platforms to improve age restriction mechanisms and reduce the exposure of minors to alcohol marketing.

⁶ The Australian New Zealand Food Standards Code – Standard 2.7.1 Labelling of alcoholic beverages and food containing alcohol.

A range of research regarding placement of alcohol marketing was considered, including:

- A recent World Federation of Advertisers/Nielsen global study using child avatars found very low levels of alcohol advertising on the internet (0.82%) with even lower levels reaching minors (i.e. minors would need to view 420 different websites before being exposed to an alcohol ad).⁷
- Public health research in 2021 found that alcohol companies are not all activating available age restriction controls on their Facebook and Instagram accounts.⁸ This was also evident in research commissioned by ABAC in 2022⁹. (This is not a Code review issue as failure to activate available age restriction controls is covered by the existing Code standards, but is rather a compliance issue, for ongoing education initiatives and monitoring.)

In addition, submission and Panel observations relating to specific placement standards, highlighted the following issues for consideration by the Committee, which were decided as follows:

Sport exception in Commercial Television Industry Code of Practice (CTICP) (Placement Rule 1)

- Concerns were expressed about alcohol advertising during sports broadcasts. Linear television broadcasting rules are set by Freetv, in conjunction with a government agency, Australian Communication and Media Authority (ACMA).
- The Committee noted that this is an issue for Freetv Australia and ACMA.

Adult audience threshold (Placement Rule 3)

- Submissions sought changes to placement rule 3, which only permits alcohol ads to be placed where the programme's audience is reasonably expected to comprise at least 75% adults. At one end, stronger regulation was sought and at the other end, removal of this rule was sought in relation to television.
- The Committee noted that:
 - A recent ACMA Position paper states 'Audiences, especially younger audiences, are preferencing online, on-demand content, where different regulations apply and where measures traditionally used by broadcasters, such as time zoned based restrictions, are largely redundant, or less effective'.
 - The Australian population is ageing and comprises 78.3% adults as per the 2021 Census data.
 - New Zealand has recently increased the threshold for permissible alcohol advertising to an 80%+ adult audience.
 - A review of ABAC Panel decisions highlighted that the programme that received the largest number of complaints in relation to placement of an alcohol ad was a digital

⁷ <https://wfanet.org/knowledge/item/2022/03/29/Independent-study-shows-low-ad-exposure-to-alcohol-ads-online>

⁸ Pierce H, Vidler A-C, Stafford J, Keric D. Alcohol brands' use of age-restriction controls on Facebook and Instagram in Australia. Public Health Res Pract. 2022;32(2):331232109. First published 28 July 2021.

⁹ <http://www.abac.org.au/wp-content/uploads/2022/11/J01152-ABAC-Compliance-Audit-Outcomes.pdf>

broadcast of Legomasters, which, at the time of the complaint, included an audience of between 75 and 80% adults.

- The Committee considered all matters raised and decided to increase the threshold from a 75% to an 80% adult audience requirement for the placement of alcohol marketing.

Programmes & content that are primarily aimed at minors (Placement Rule 4)

- A submission was concerned that there are limitations on placement rule 4 that restricts alcohol marketing to programmes and content that does not primarily appeal to minors, as some of the most popular TV programs viewed by children are not primarily aimed at children.
- The Committee note that this placement rule is one part of a set of 5 placement rules and a comprehensive set of content standards that are all applied cumulatively. If a program is skewed toward minors, despite the fact it is not primarily aimed at minors, it is likely to breach placement rule 3. In addition, the advertising content itself is not permitted to have strong or evident appeal to minors.
- The Committee did not support a change to this standard.

Digital television broadcasts (Placement Rules 1-4)

- Complaints have been received by the Panel about alcohol advertising on digital connected television during times at which alcohol ads are not permitted via linear television. This highlights an inconsistency between the regulation of alcohol advertising across linear and digital broadcasts. Linear television is regulated by CTICP time of day restrictions (Placement Rule 1), audience composition restrictions (Placement Rule 3) and the type of programmes with which alcohol ads can be placed (Placement Rule 4). Digital television is not regulated by the CTICP (ie time of day restrictions) but is regulated by Placement Rule 3 & 4 together with Placement rule 2, which requires available age restriction controls to be applied to exclude minors from receiving alcohol ads.
- Industry submissions have called for ABAC to ask the commercial television industry to better educate television users on the differences in the delivery of advertising via linear and digital television so there is less confusion about the way in which advertising is regulated via the two different systems. ABAC will draw this issue and the request in industry submissions to the attention of Freetv Australia.
- In addition, ABAC will also set up a working group of technical experts in digital alcohol marketing to explore best practice for ensuring digital television broadcasts via connected television are directed toward adults and away from minors for incorporation within the ABAC Digital Alcohol Marketing Best Practice.

Direct delivery of alcohol marketing (placement Rule 5)

- A review of Placement Rule 5 highlighted that it could be supported by a requirement to ensure that EDMs offer and honour opt out requests to support vulnerable members of the community.
- In addition, a recent Panel decision recommended strengthening the Code by including a specific requirement to prevent a flyer promoting alcohol being handed to a minor.

- The Committee decided to adopt both of those recommendations.

The Committee was satisfied that overall, the existing ABAC placement rules are comprehensive, sound and reflect global best practice, however, would be strengthened by the changes outlined above to Placement Rules 3 and 5.

Additional ABAC measures regarding the placement of alcohol marketing

ABAC is committed to an ongoing focus on monitoring and encouraging industry compliance with the placement rules. New industry compliance resources have recently been developed and there will be ongoing industry education, encouraging industry participants to self-monitor and encouragement to digital platforms to continue improving the age restriction technologies used to exclude minors from receiving alcohol marketing. The International Alliance for Responsible Drinking has an ongoing global project with major social media platforms that is working toward improving age restriction and age targeting capabilities and protections to reduce exposure of minors to alcohol marketing on digital platforms.

Importantly, the ABAC Digital Alcohol Marketing Best Practice will soon be reviewed with a working group of technical experts to ensure best practice advice to industry is up to date and to explore and educate industry on interest based and other ad targeting restrictions that may be available to direct alcohol marketing away from minors and other vulnerable members of the community. Submissions raising concerns about vulnerable groups will be considered as this work is undertaken.

(h) Sponsorship:

Several submissions have raised the exception in the Code in relation to Sponsorship. While the Code excludes from coverage the commercial sponsorship agreement itself (including naming rights at events and the inclusion of the brand name and/or logo on participants uniforms), all other promotional material generated by, or within the reasonable control of the brand, that arises from that sponsorship, is currently within Code coverage. For example, brand advertising referencing the sponsorship in any medium, branded merchandise and brand advertising at the event (beyond solely logo and name). This ensures that advertising at and about the event meets the Code standards. This will be clarified in the Code.

A concern was raised in one submission that the Code would not prevent alcohol sponsorship of a junior sporting team. While a complaint has not been received about an alcohol brand sponsoring a junior sporting team, the Committee agreed that such an outcome would be contrary to the aim that alcohol marketing is not targeted toward minors.

The issue of the existence of alcohol advertising in sport and other cultural events is outside ABAC's jurisdiction, impacting upon Governments (including health, communications, tourism and sport/recreation) and also sporting associations and individual clubs both in Australia and globally.

After careful consideration of this issue, the Committee decided that the most appropriate course for addressing concerns would be to develop a Sponsorship Best Practice Guide for the alcohol industry, which is the group that the Code regulates. A Guide will be developed that will send a clear message to the alcohol industry to proactively take care to ensure that its sponsorship arrangements are responsible and do not target minors.

(i) Therapeutic Benefit

A submission was made that Part 3(c)(iv) should also reference 'health' alongside 'therapeutic'. While the Panel has always interpreted 'therapeutic' as including a reference to 'health', clarity of language is important and so the change will be made.

A request was also made to reference the health requirements in the FSANZ Code in this provision. It was decided that the FSANZ requirements would be referenced in the Guidance Notes to alert alcohol marketers to other regulatory requirements.

During the pandemic, there was an increase in complaints about alcohol marketing suggesting alcohol as a coping mechanism. These complaints were assessed by the Panel and a variety of decisions were made, some of which found that alcohol marketing suggested alcohol as a suitable coping mechanism in breach of this Code standard. Two examples of pandemic related marketing were tested by community standards research. Community views were found to align with Panel decisions.

While the existing provisions in Part 3(c) have been found by the Panel to prevent suggestions that alcohol is a suitable coping mechanism for any difficulty in life, the Committee decided that there is utility in stating this explicitly in the Code.

(j) Vulnerable members of the community:

Submissions raised concerns in relation to the impact of alcohol advertising on vulnerable members of the community, including dependent drinkers, people living in rural and remote communities and pregnant and breastfeeding women.

The Panel has outlined in a recent determination¹⁰ the way in which the regulatory regime applying to alcohol marketing treats vulnerable communities and individuals. In summary:

- Public policy such as the National Alcohol Strategy accepts that while alcohol is a lawful product, its misuse causes social, health and economic harm.
- Overall alcohol consumption levels are decreasing but some communities and contexts witness higher levels of alcohol related harm compared to the population as a whole. People with co-occurring mental health conditions such as depression are recognised as individuals at risk.
- Public policy seeks to minimise the risk of harmful alcohol use and it is recognised that alcohol marketing is a factor potentially contributing to risky alcohol use. Hence, marketing should meet regulatory requirements to minimise this risk.
- The regulation of alcohol marketing is a shared responsibility with government regulators, such as liquor licensing authorities and self-regulation initiatives such as the ABAC Scheme each playing a part.
- Express regulatory obligations on alcohol marketers are not specifically directed to at risk groups and communities (beyond under 18-year-olds) but are generally directed at alcohol related behaviours eg excessive consumption, and drink driving or depictions about the

¹⁰ <http://www.abac.org.au/wp-content/uploads/2022/05/31-22-Determination-Carlton-Draught-19-May-2022.pdf>

impact of alcohol e.g. suggesting alcohol is needed for success in life or alcohol offers a health benefit.

The Code consists of standards that go to the content of alcohol marketing and, since 2017, placement rules that seek to limit the exposure of minors to alcohol marketing irrespective of the content of the marketing. The Code contains express provisions that reflect minors are an 'at risk' group in relation to alcohol related harm. Part 3 (b) of the Code is entitled 'Responsibility towards Minors' and provides that the content of alcohol marketing must not have strong or evident appeal to minors. Also minors and young adults under the age of 25 are generally not to appear in alcohol marketing. The Code Placement Rules endeavour to limit the exposure of minors to alcohol marketing including the requirement that age restrictions controls be used when marketing is carried over digital media platforms.

In contrast, the Code does not expressly refer to any other 'at risk' group, apart from the inclusion of references to pregnancy and breastfeeding in Part 3(a)(i) of the revised Code. Rather the more generally framed standards apply, such as, alcohol marketing must not:

- Encourage the misuse or abuse of alcohol (Part 3 (a)(i)).
- Encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol (Part 3 (a)(ii)).
- Encourage the choice of higher strength products (Part 3 (a)(iv)).
- Suggest that the consumption of alcohol may create or contribute to a significant change in mood or environment (Part 3 (c)(i)).
- Suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation (Part 3 (c)(iv)).

The lack of express placement standards going to alcohol marketing and responsibility towards vulnerable groups does not mean it is acceptable for alcohol marketers to 'target' those groups. For instance, if an alcohol ad can be fairly understood as:

- seeking to encourage a person to use alcohol to cope with depression, the ad would be encouraging the misuse or abuse of alcohol (in breach of Part 3 (a)(i)); or
- suggesting alcohol consumption creates a significant change in mood (in breach of Part 3 (c)(i)); or
- suggesting alcohol consumption offers a therapeutic benefit (in breach of Part 3 (c)(iv)).

The benchmark for assessing the consistency of an alcohol marketing communication with an ABAC standard as required by Part 7 of the revised Code is the probable understanding of the marketing item by a 'reasonable person'. This benchmark seeks to align the understanding of the Code with commonly held values, opinions and life experiences, or in other words, prevailing community standards. This means the test is not from the standpoint of a person who holds individual views or particular sensitivities (even if entirely understandable at an individual level) but not shared by a majority of the community.

The Committee considered whether any additional standards could or should be included in the Code to address the concerns about exposure to alcohol advertising by vulnerable groups in the community. The Committee noted that while Minors are a group that are a distinct and identifiable

sector of the population, other vulnerable groups are not as readily identifiable and are scattered among groups with a variety of ages, locations and other characteristics. This makes it difficult to separate these groups from the general population when placing advertising. In addition, care needs to be taken that profiling does not occur.

Self-Exclusion

While not a complete answer, there are steps users of social media platforms can take to limit, if not exclude, alcohol advertising from being served to them while using the platform. An account holder can apply settings on their account to see 'fewer ads' of particular categories including gambling and alcohol.

ABAC's Digital Best Practice Guide will be updated to highlight these options, and advice on these options will be shared with policy makers and Drinkwise, with a view to raising awareness of the option to self-exclude from the receipt of alcohol advertising on certain social media platforms.

Another self-exclusion option is in relation to email direct marketing, and the ability to unsubscribe. While offering an unsubscription option is a legal requirement¹¹ a clause will be included in Part 4(e) of the revised Code to make it a requirement not to send alcohol advertising via electronic direct mail where a person has sought self-exclusion.

Interest Based Targeting

It is evident from responses received to complaints, that alcohol companies are currently using 'interest based targeting' to ensure that responsible targeting and exclusion of advertising is occurring, ie directing away from vulnerable groups¹². This can be done through the selection of appropriate inclusions and exclusions for targeting campaigns, ie excluding topics such as 'depression' or 'pregnancy' and including topics such as 'DIY' or 'fishing'. The effectiveness of the exclusion depends on the categorisation of content by the platform, however, it is a useful step that can be taken to minimise the risk of exposing minors and other vulnerable groups.

Due to changes in Privacy legislation, the ability to target advertising is changing, and as the choice of categories to include or exclude is a very subjective area, the ABAC Management Committee decided that a technical working group should be set up to develop guidance within the ABAC Digital Best Practice Guide on the use of these tools to ensure alcohol ads are not targeted to those vulnerable in relation to alcohol use.

Expanding the content standards

As explained in the recent Panel determination, the content standards already offer protection for vulnerable individuals, and Part 3(a)(i) will be expanded to specifically prevent depictions of alcohol consumption while pregnant or breastfeeding. However, a key area that arose during the COVID-19 pandemic was a concern about promoting alcohol as a coping mechanism. The Committee has decided that, while any such suggestion implicitly breaches existing Code standards (as demonstrated by Panel decisions during the pandemic), it would be useful for the Code to explicitly highlight that such a suggestion is not acceptable in alcohol marketing. Accordingly, Part 3(c)(iv) of the revised Code explicitly prohibits a suggestion in alcohol marketing that alcohol consumption helps overcome problems or adversity.

¹¹ Spam Act 2003

¹² <http://www.abac.org.au/wp-content/uploads/2022/05/31-22-Determination-Carlton-Draught-19-May-2022.pdf> & <http://www.abac.org.au/wp-content/uploads/2017/12/116-17-Determination-Vodka-Cruiser-21-12-17.pdf>

5. Drafting Changes

The Code has also been consolidated, simplified and redrafted to remove repetition and extraneous provisions and ensure it uses simple and clear language.

(a) Preamble:

A submission was made that:

- the Code's objectives are not clearly defined, are too vague and are subjective (this view was also expressed in a research article.¹³);
- that 'responsible marketing' requires further definition, including industry's responsibility to reduce, and not contribute to the harms of excess alcohol use; and
- the Preamble uses the words 'spirit and intent' when describing a signatory's commitment instead of signatories committing to the specific wording in the Code.

In addition it was suggested that the complaints process is referenced within this part of the Code.

The ABAC Management Committee believes that:

- the Code's general objective of 'responsible marketing' is clearly developed and defined through both the headings and detailed standards set out in Parts 3-5; and
- the reference to 'spirit' **and** 'intent' is important and has enabled the Code to remain relevant and evolve as marketing changes and to prevent perverse outcomes.

However, it is important that all stakeholders understand the Code and its intentions and therefore amendments have been made to the Preamble to increase clarity.

(b) Structure:

The Code has been restructured to separate out and highlight the specific provisions that apply to placement of alcohol marketing and also Alcohol Alternatives.

(c) Simplification:

There was a degree of duplication across Part 2(a) and the relevant definitions which has been simplified with no substantive change to the way the provisions operate.

Part 3(a)(i) and (ii) include a degree of overlap and have therefore been simplified to exclude repetition.

Parts 3(c)(i) and (iii) have been simplified to remove unnecessary terms and provide greater clarity.

¹³ Belinda Reeves, 'Regulation of Alcohol Advertising in Australia: Does the ABAC Scheme Adequately Protect Young People from Marketing of Alcohol Beverages', (2018) 97 QUT Law Review Vol. 18 Issue 1, 109.

(d) Clarity:

The Panel's approach in relation to geographic limitations of coverage has been incorporated into the definition of a marketing communication to improve clarity.

The definition of Alcohol has been broadened given alcohol beverages are evolving into different products including frozen beverages and foods.

A definition of Point of Sale Marketing has been included in the Code to improve clarity on the extent of the exception in Part 2(c)(iv) as requested in a submission.

A definition of Influencer has been included, given new references to this form of marketing in the Code.

There was a misconception in some submissions about Part (d). While one submission considered the clause was too strict and more conservative than community views as noted in the JWS Research report, another submission raised a concern that the ABAC Code was inconsistent with 'Don't Drink and Drive messaging'. While the laws in Australia permit some alcohol consumption prior to driving a motor vehicle, Part (d) does not permit any alcohol consumption to be shown in alcohol marketing or directly implied before driving, or other activities that are safer to undertake without the consumption of alcohol, i.e. swimming, traversing a cliff, or operating machinery. This will be clarified in the Guidance Notes in relation to this provision.

(e) Update:

The list of examples of marketing communications that the Code applies to has been updated to reflect changes in the alcohol marketing landscape.

6. Summary of Code Changes

Part 1: Preamble

- Additional detail on the Code's purpose, including alignment with the National Alcohol Strategy.
- Additional detail on the wider regulatory framework for alcohol marketing in Australia.
- Inclusion of a link for lodging a public complaint, and the rules that govern the process for the adjudication of complaints.

Part 2: Application

- Definition of alcohol expanded to explicitly cover consumable products that are not 'beverages' in liquid form.
- Expansion of the Code, beyond alcohol products and brand extensions of alcohol products, to all alcohol styled beverages with less than 0.5% ABV, defined as 'Alcohol Alternatives'.
- Clearer definitions of Alcohol Marketing Communication, and Alcohol Alternative Marketing Communication in Part 8, including as to geographical coverage of the Code and clarity as to which parts of the Code apply to each of these types of marketing communications.
- Updates to the list of examples of marketing communications and media that the Code applies to, including clarity that Code application is media neutral.
- Updates to and inclusion of new definitions in Part 8.

Part 3(a): Responsible and moderate portrayal of Alcohol (Content Standards)

- Expand Parts 3(a)(i) and (ii) to reflect Panel precedent that prevents depictions that treat as amusing irresponsible consumption of alcohol.
- Expand Part 3(a)(i) to provide clarity on Australian Alcohol Guideline recommendations, including a specific reference to preventing depictions of alcohol consumption while pregnant or breastfeeding.
- Include a prohibition on portraying the refusal of alcohol or choice of abstinence in a negative light.

Part 3(b): Responsibility toward Minors (Content Standards)

- Include an updated and clearer definition of 'Strong or Evident Appeal to Minors' within the body of the Code standard.
- Simplify Part 3(b)(ii) in relation to depictions of Minors.
- Update Part 3(b)(iii) in relation to depictions of 18-24 year olds to expand the reference to paid models and actors to include Influencers (with an associated definition in Part 8) and improve the clarity of this provision and the associated definition of Age Restricted Environment in Part 8.

Part 3(c): Responsible depiction of the effects of Alcohol (Content Standards)

- Simplify the drafting of Part 3(c)(i).
- Amend Part 3(c)(iii) to provide clarity as to the meaning of this provision.
- Expand Part 3(c)(iv) to simplify drafting and provide greater clarity as to the meaning of 'therapeutic benefit' as determined by the Panel, namely, that this includes a health or mental health benefit, including the suggestion that alcohol be used to overcome problems or adversity.

Part 4: Placement Standards

- For clarity, these standards have been moved from Part 3(b)(iv) which incorporates a definition, to a standalone Part of the Code.
- The threshold for placement of a marketing communication within the scope of the Code has been increased from an audience reasonably expected to comprise 75% adults to an audience reasonably expected to comprise 80% adults.
- These standards have been expanded to prevent a marketing communication being delivered by hand to a Minor, or via electronic direct mail to a person that has sought to be excluded from the marketer's mailing list.

Part 5: Alcohol Alternative Standards to be Applied

- This new Part of the Code outlines the manner in which the ABAC content and placement standards apply to Alcohol Alternatives.

ABAC Guidance notes have been updated to reflect Code and other changes referenced in this report.

7. Revised ABAC Responsible Alcohol Marketing Code



REVISED ABAC RESPONSIBLE ALCOHOL MARKETING CODE

1 PREAMBLE

The aim of the ABAC Responsible Alcohol Marketing Code is marketing consistent with the objectives of the National Alcohol Strategy for the reduction of harm from adult alcohol consumption and, specifically, does not encourage minors to consume alcohol. The Code consists of a comprehensive set of good practice standards for the content and placement of marketing communications.

The Code complements National, State and Territory laws applying to alcohol marketing and other industry codes relating to the content and placement of marketing, such as, the Australian Association of National Advertisers Code of Ethics.

Signatories to the Code are committed to their marketing complying with the terms of the Code's content and placement standards as well as the spirit and policy intent of the Code.

Public complaints in relation to an Alcohol or Alcohol Alternative Marketing Communication may be lodged [here](#). The [ABAC Rules & Procedures](#) outline the process in relation to the adjudication of complaints.

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.

2 APPLICATION

(a) Parts 3 and 4 of the Code APPLY to all Alcohol Marketing Communications.

Part 5 of the Code APPLIES to all Alcohol Alternative Marketing Communications.

Examples of marketing communications and media the Code applies to include, but are not limited to:

- (i) product names and packaging;
- (ii) brand advertising (including alcohol retailer advertising, Influencer marketing, user generated content, marketing arising from a Sponsorship Agreement and trade advertising);
- (iii) product placement;
- (iv) Marketing Collateral;
- (v) competitions and other brand activations;
- (vi) cross category brand promotion;
- (vii) advertorials; and
- (viii) any medium whatsoever, including without limitation cinema, internet, outdoor, print, radio, television, telecommunications, digital or other direct-to-consumer media including new and emerging technologies.

(b) Notwithstanding Part 2(a), the Code does NOT apply to:

- (i) materials or activities whose sole purpose is to educate about misuse or abuse of Alcohol 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 a 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 1 August 2023 for an Alcohol Alternative (excluding products that have an Alcohol variant) and prior to 31 October 2009 for Alcohol;
 - (iv) Point of Sale Marketing initiated by Alcohol retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol has no reasonable control over the Point of Sale Marketing;
 - (v) Sponsorship Agreement.
-

3 CONTENT STANDARDS TO BE APPLIED

(a) Responsible and moderate portrayal of Alcohol

An Alcohol Marketing Communication must NOT:

- (i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:
 - (A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day); or
 - (B) Alcohol consumption while pregnant or breastfeeding;
- (ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;
- (iii) challenge or dare people to consume Alcohol or portray the refusal of Alcohol or choice of abstinence in a negative light; or
- (iv) encourage the choice of a particular Alcohol product by emphasising its alcohol strength (unless emphasis is placed on the Alcohol product's low alcohol strength relative to the typical strength for similar products) or the intoxicating effect of Alcohol.

(b) Responsibility toward Minors

An Alcohol Marketing Communication must NOT:

- (i) have Strong or Evident Appeal to Minors, in particular;
 - (A) specifically target Minors;
 - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
 - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
 - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors
- (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role and there is no implication they will consume or serve Alcohol; or
- (iii) depict in a visually prominent manner:
 - (A) paid models, actors or Influencers that are and appear to be Adult but are under 25 years of age; or
 - (B) other people that are and appear to be Adult but are under 25 years of age UNLESS the depiction has been placed within an Age Restricted Environment.

(c) Responsible depiction of the effects of Alcohol

An Alcohol Marketing Communication must NOT:

- (i) suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment;
- (ii) show (visibly, audibly or by direct implication) the consumption or presence of Alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
- (iii) suggest that the success of a social occasion depends on the presence or consumption of Alcohol; or
- (iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

(d) Alcohol and Safety

An Alcohol Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of Alcohol 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.

4. PLACEMENT STANDARDS TO BE APPLIED

- (a) An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing and an Alcohol Alternative Marketing Communication must comply with code provisions regulating the placement of Alcohol Alternative marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).
- (b) Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.
- (c) If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults (based on reliable, up-to-date Australian audience composition or social media follower data, if such data is available).
- (d) An Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- (e) An Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication must not be delivered directly to:
 - (i) a Minor by hand (except where the communication primarily relates to a matter unrelated to alcohol, for example, a shop receipt or a dining voucher);
 - (ii) a Minor by electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age); or
 - (iii) any person that has sought removal from the marketer's mailing list.

5. ALCOHOL ALTERNATIVE STANDARDS TO BE APPLIED

- (a) An Alcohol Alternative Marketing Communication must comply with Parts 3 (b) and 4 of the Code.
- (b) An Alcohol Alternative Marketing Communication must also comply with Parts 3 (a), (c) and (d) of the Code if it:
 - (i) fails to clearly and prominently identify the product as an Alcohol Alternative; or
 - (ii) also promotes an Alcohol product (beyond a common brand name) or Alcohol use.

6. NO FAULT BREACH

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

7. 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 Part 8 below.

Headings do not expand the Code.

8. DEFINITIONS

In this Code:

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
- age-restricted account or post within a social media platform 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 means a beverage or related consumable product (ice block, vapour etc) containing more than 0.5% alcohol by volume.

Alcohol Alternative means a beverage that is at or less than 0.5% alcohol by volume that:

- has an appearance and style commonly associated with Alcohol; and
- uses a brand or descriptors commonly associated with Alcohol, such as, beer, wine, spirit or other; and
- is not a beverage commonly understood as non-alcoholic, such as fruit juice, soft drink, flavoured milk or other which fall outside the Code remit.

Alcohol Alternative Marketing Communication means a marketing communication for an Alcohol Alternative, in any media, generated by, for, or within the reasonable control of an Alcohol Alternative producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

Alcohol Marketing Communication means a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

Australian Guidelines to Reduce Health Risks from Drinking Alcohol means the guidelines published by the National Health & Medical Research Council 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 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.

Influencer means a third party endorser who shapes audience attitudes through a variety of methods, including, blogs, posts, the use of social media, and other streaming platforms.

Marketing Collateral means material to promote a brand and support the sales and marketing of Alcohol or an Alcohol Alternative, including but not limited to, Point of Sale Marketing, gifts with purchase, competition prizes and branded merchandise.

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

Point of Sale Marketing means promotional material located within retail premises, which is directed at and visible only to customers within the premises. It does not include promotional material positioned so that it is visible to people outside the retail premises.

Sponsorship Agreement means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a producer, distributor or retailer of Alcohol or an Alcohol Alternative 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 product or outlet. Sponsorship Agreement 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).