



Guidance Notes - ABAC Responsible Alcohol Marketing Code

Overview

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

All marketing for alcohol and alcohol alternatives is required to comply with the ABAC as well as the Australian Association of National Advertisers' (AANA) codes including the AANA Code of Ethics. In addition, where appropriate, marketing must comply with legislation, such as the Competition and Consumer Act 2010 and the Australia New Zealand Food Standards Code, as well as other codes such as the Commercial Television Industry Code of Practice, the codes for Commercial Radio and the Outdoor Media Association Alcohol Advertising and Placement Policy.

Purpose of the Guidance Notes

The ABAC Management Committee has developed the following Guidance Notes to assist marketers and agencies in interpreting the essential meaning and intent of the Code by providing clarification through definition, explanation or example. **Links have been included throughout the Guidance notes to relevant Panel decisions or other resources wherever text is underlined.** The Guidance Notes are not intended to replace or extend the provisions of the Code itself.

The Guidance Notes represent the opinions of ABAC's administrators and are based in part on previous decisions made by the independent ABAC Adjudication Panel. The ABAC website – www.abac.org.au – includes an online training course, educational videos on each Part of the Code and an advanced search facility that enables all adjudication decisions relating to a particular provision to be accessed and may be useful in providing further understanding of the issues involved in a particular clause of the Code. These Guidance Notes will evolve as provisions are interpreted by the ABAC Adjudication Panel and precedent is set.

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

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

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.

Guidance Note: Part 1

The Preamble outlines the intent of the Code and highlights the wider regulatory framework that applies to alcohol marketing in Australia.

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

2. APPLICATION

- (a) 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.

Guidance Note: Part 2

Scope

The scope of the Code is set out in Part 2 and must be read together with the Part 8 definitions. The Code applies to marketing communications for Alcohol or Alcohol Alternatives, in any media, generated by, for, or within the reasonable control of an Alcohol or Alcohol Alternative producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions specified in Part 2(b).

The Code applies differently to Alcohol and Alcohol Alternative marketing communications. Parts 3 and 4 of the Code apply in full to Alcohol marketing communications. However, the Code applies in a different way to Alcohol Alternative marketing communications, as explained in Part 5 of the Code.

Alcohol is defined as a beverage or related consumable product (ice block, vapour etc) containing more than 0.5% alcohol by volume. There are a variety of household goods that may exceed 0.5% ABV due to the re-fermentation process, such as orange juice or bread.

ABAC has never received a complaint about these products and it is not within the spirit and intent of the Code to extend to these products.

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

- has an appearance and style commonly associated with Alcohol;
- 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.

Generated by, for or within reasonable control

These terms recognise that a brand may be included or referenced in a communication that is not generated by, for or within the reasonable control of the brand owner and is therefore outside the scope of the Code.

Examples of marketing communications that are not likely to meet the generated by, for or within reasonable control test are:

- unauthorised product fan sites;
- unauthorised product placement; and
- product reviews or mentions that do not result from payment or reward.

Examples of marketing communications that are likely to meet the generated by, for or within reasonable control test are:

- marketing communications by an agent or employee of a brand owner;
- user generated content on a brand controlled social media site or page;
- posts by a social media influencer where posts referencing a brand were generated by the brand's engagement with the influencer (such as through payment or the provision of free product to the Influencer);
- marketing arising from a Sponsorship Agreement;
- product placement where a company has generated the promotional activity by its engagement with the content creator or has reasonable control over the way in which their brand is portrayed; and
- cross category brand promotion (such as use of an Alcohol or Alcohol Alternative brand on a product unrelated to alcohol, such as shoes, or iced coffee).

The Code is platform neutral and applies to all different media types, including new and emerging media.

Discernible and Direct Link to Australia

Alcohol is a global product and the internet is global in its reach. In contrast, the ABAC Scheme is limited in its reach to marketing which is linked to Australia. This means the Scheme and the remit of the Panel do not extend to every alcohol marketing item which can be accessed in Australia over a global digital platform. Panel explanation [here](#).

Exceptions

Part 2(b) sets out clearly the limited circumstances in which the Code will not apply to a marketing communication by an alcohol or alcohol alternative producer, distributor or retailer.

There can be a misconception arising from the exception in part 2(b)(v) that the Code does not apply to Sponsorship Activity. That is not the case. The Code applies to all Sponsorship Activity, except the Agreement itself, 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).

Determinations have been made on whether a variety of marketing activities that arise from a Sponsorship Agreement meet the Code standards, including images of sponsored individuals on an alcohol brand website and Instagram accounts, in-stadium marketing including live announcements referencing a brand, product placement in sponsored digital video activations, product placement in a sponsored free to air television series, on field advertising, posts on a sponsored parties social media account that promote the sponsoring alcohol brand, brand promotion during a sponsored radio segment and television advertisements promoting a sponsorship.

Short educational video on application of the Code - available [here](#)

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 beverages) or the intoxicating effect of alcohol.

Guidance Note: Part 3(a)

Alcohol marketing cannot show, encourage or treat as amusing:

- excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day) - this cannot be explicitly shown, encouraged, directly implied or treated as amusing – for example, use of non-standard measures or rapid delivery cannot be referenced in a manner which encourages the excessive consumption of alcohol;
- alcohol consumption while pregnant or breastfeeding;
- rapid consumption of alcohol (eg sculling, straight arming, shots, shotgunning or a shoeey);
- misuse or abuse of alcohol;
- Alcohol related irresponsible or offensive behaviour (eg violence, illegal behaviour, attending work while affected by alcohol use and vandalism);
- a challenge or dare to consume alcohol
- portraying the refusal of alcohol or choice of abstinence in a negative light;
- encouraging the choice of a beverage by emphasising its alcohol strength (exception for lower than typical alcohol strength products) or alcohol's intoxicating effect

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

There are two elements to this part of the standard:

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

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

Short educational video on Part 3(a) with examples- available [here](#)

(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.

Guidance Note: Part 3(b)

Strong or evident appeal to Minors

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

- specifically target Minors;
- have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
- create confusion with confectionery, soft drinks or other similar products such that the marketing communication is likely to appeal strongly to Minors (note – other similar products is not intended to include Alcohol Alternatives); or
- use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

Whether material is in breach of any one of the above sub-points is determined looking at the material as a whole. Assessment requires a weighing up of factors such as the visual techniques, themes, age of actors and characters and overall look and feel. Some of the factors that may indicate a marketing communication could have strong appeal to minors are:

- Depictions of activities or products typically undertaken or used by minors;
- Creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- Inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong appeal to minors);
- Use of a music genre and artists featuring in youth culture;
- Bright/playful/contrasting colours;
- Illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- Aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- Style of humour relevant to the life stage of a minor (as opposed to humour more appealing to adults);

- Authentic use of language and expressions used more by minors than adults;
- Novelty or collectible attributes; and
- Relatable animated characters (as opposed to animations nostalgic to an older audience or more sophisticated animations which have no relevance to minors).

In contrast the following factors can indicate a marketing communication is unappealing to minors:

- Unrelatable environments;
- Sophisticated designs, fonts and imagery;
- Unrelatable nostalgia; and
- Darker or bland colours.

'Minors' covers younger children and teenagers up to the age of 17, and material strongly appealing to a 12 year old can be quite different to that appealing to a 15 or 16 year old. For example, imagery commonly found in a picture book may strongly appeal to children but not teenagers, while a young music artist with a significant teenage fan base may strongly appeal to teenagers but not children. Likewise, it is not just 'cute and cuddly' imagery that strongly appeals to minors. For example, a scary Halloween image may have strong appeal to minors.

A selection of examples of themes and imagery found to contribute to strong or evident appeal to minors:

- Use of characters from Little Miss children's books;
- A meme with an image of Elsa from the children's movie, Frozen;
- Images of beverages or brands commonly consumed by children in marketing or on packaging, such as a cartoon milk carton, a juice box, milos, cornflakes, cupcakes/ freakshakes/ desserts and iceblocks;
- Use of confectionery, fairy cake, fruit, juice, milkshake, juice box, juice bar, icecream, iceblock or soft drink references in product names, packaging or marketing for those products together with insufficient alcohol cues;
- Use of imagery relatable to minors, such as unicorns, Star Wars characters, cartoon style lamb, range of animals and a teddy bear;
- Suggestion of alcohol consumption in a high school setting;
- Themes and motifs likely to resonate more strongly with a younger rather than older audience;
- Influencer under 18 posting about a free alcohol product they were sent;
- The use of a skateboard in certain contexts;
- Targeting new university students during 'O' week;
- Marketing collateral reminiscent of children's toys;
- Kid's party/activity themes; and
- Use of anthropomorphised animals.

Short educational video on Part 3(b)(i) with examples- available [here](#)

Images of Minors

People who are or look under 18 may only be shown where they are in an incidental role only **AND** there is no implication they will consume or serve alcohol.

Examples of marketing that failed to meet Part 3(b)(ii):

- A post showing girls that look under 25 years of age and possibly under 18;
- Website image of children wearing merchandise;
- A post of a father with his children holding their family wine range;
- A meme showing girls sitting in a high school canteen with alcohol superimposed in front of them;

Images of 18-24 year olds

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

- if not visually prominent they may be shown in any medium; **or**
- if visually prominent and a real person in a real scenario (i.e. the person is not a model, actor, Influencer, or [brand ambassador/owner](#) that has received a financial or other reward from the brand – the Panel has found this to include reposts of unrewarded user generated content and a bartender serving a drink), they may appear in a marketing communication placed either:
 - within licensed premises that do not permit entry by Minors **or**
 - an age restricted account or post within a social media platform that meets **all** of the following criteria:
 - requires users to register for the platform by provision of their full date of birth and then login to use the platform, **and**
 - is **also** able to hide the existence of any alcohol related pages, sites and content from those registered as under 18 years of age.

Facebook, Instagram and YouTube accounts **that elect to use all available age restriction controls** currently qualify as an age restricted environment as defined in the Code and therefore allow the use of images of visually prominent 18-24 year olds that are not paid models, actors, Influencers or brand ambassadors/owners. Alcohol brand websites which require entry of a date of birth to enter the site and social media platforms which do not offer the high levels of age restriction described in this definition, do not fall within this narrow exception and may **not** include images of visually prominent 18-24 year olds. Alcohol marketers must be diligent in ensuring that a platform's age restriction controls meet the specific criteria, that age profiles are reliably obtained, and that the person shown is not a paid model, actor, Influencer or brand ambassador/owner before including 18-24 year olds.

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

Examples of marketing that failed to meet Part 3(b)(iii):

- Image of a young man of an unknown age that is assessed as under 25 in a post that was not age restricted;
- Image of a sponsored 24 year old athlete in an age restricted post;
- Images of under 25 year olds with alcohol on a restaurant website;
- Influencer post of an under 25 year old; and
- Images of under 25 year olds with a direct financial interest in the brand and a public profile in an age restricted post.

Short educational video on Part 3(b)(ii) and (iii) with examples- available [here](#)

(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.

Guidance Note: Part 3(c)

A marketing communication cannot show or directly imply alcohol as having any causal relationship with improvement in mood, personal success, the success of an occasion, a therapeutic (health, or mental health) benefit, being needed to relax or helping overcome problems or adversity.

There is no intention to prevent showing alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform a mood, environment or social occasion or directly contribute to success. A variety of contributors may be shown, but alcohol cannot be one of them. Similarly, there is no intention to restrict showing alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion it has caused or contributed to their circumstance. It is also possible to show the presence of alcohol in a romantic situation provided there is no suggestion it has caused or contributed to the achievement of sexual or other success.

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

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

Examples of marketing that failed to meet Part 3(c):

- Introducing alcohol at the time a person's mood and environment improves;
- Describing the product as 'double the happy';
- Elevating a Christmas celebration with the introduction of alcohol;
- A post that referenced consuming beer to cure feelings of sadness;
- A meme suggesting wine will help when handling sugar-high kids;
- A post suggesting alcohol consumption as a coping mechanism for Covid lockdowns;
- A post suggesting alcohol consumption will improve your confidence;
- Instagram video using alcohol to demonstrate sexually provocative behaviour;
- A post suggesting the product is guaranteed to get you matches on Tinder;
- A product name, Social Lube;
- Suggesting a product as suitable if you are 'keen to impress on your first date' and want to 'Stay on top of your game';
- Suggesting a champagne shower to take a celebration to the next level;
- Suggesting alcohol to hydrate;
- Promoting alcohol with hemp as helping with brain, skin or heart health; and
- The statement 'Keep Calm, drink wine. 2020 is nearly over'.

In addition, alcohol producers should be aware of Australia New Zealand Food Standards Code labelling restrictions in relation to representations regarding health benefits. Refer Part 1.2 and Part 2.7 of the Australia New Zealand Food Standards Code.

Short educational video on Part 3(c) with examples- available [here](#)

(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.

Guidance Note: Part 3(d)

This clause requires a number of elements to be met:

- The consumption of alcohol must be shown or directly implied - this is more than just actual drinking and includes audio, language and images which invoke consumption;
- The actual or implied consumption must occur before or during an activity; and
- The activity must require a high degree of alertness or physical co-ordination.

There is no intention to exclude every association between alcohol and activities that, for safety reasons, require a high degree of alertness or physical co-ordination; however, any such association must not show or directly imply the consumption of alcohol before or during the engagement in any such activities, or where it appears that such an activity is likely to occur. The provision does not prevent showing the consumption of alcohol after such activities, where it is very clear that the activity has ended for that day.

The types of activities the Panel have found require a high degree of alertness or physical co-ordination include:

- operating a motor vehicle;
- person in control of a motor vehicle, including directing the driver;
- operating a boat;
- cycling;
- mountain biking;
- traversing a cliff top;
- snowboarding;
- swimming or while in a jacuzzi;
- surfing;
- scuba diving;
- wakeboarding;
- circus tricks;
- on a construction site;
- roller-skating;
- skateboarding; and
- responsibility for a large barbecue fire (however tending a barbecue did not fall within this category).

Australian drink driving laws do permit the consumption of a small quantity of alcohol before driving on a full licence. However, when promoting an Alcohol product there is a zero tolerance for the depiction of any Alcohol consumption before driving or other activities that require a high degree of alertness or physical co-ordination, consistent with Government health and safety messaging that it is not safe to drink before driving.

Short educational video on Part 3(d) with examples- available [here](#)

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 marketing list.

Guidance Note: Part 4

Placement rules were first incorporated into the Code on 1 November 2017 to expand the Code beyond content standards to also include standards for the responsible placement of alcohol marketing. The provisions represent accepted practice in the alcohol industry for taking reasonable steps to ensure alcohol marketing is directed to adults and does not appear in media for children and young people and media where the audience is skewed toward children and young people. ABAC has also published a best practice guide that addresses content management and placement in digital media and assists alcohol marketers to manage their marketing responsibly in this medium.

There are five placement standards for alcohol marketing and they must all be observed:

- **Must comply with codes regulating the placement of alcohol and alcohol alternative marketing published by Australian media industry bodies.**
 - Alcohol ads can only be shown on free to air linear television broadcasts between 5:00am and 8:30pm if they are with a live sporting event broadcast, on the weekend/public holidays with a sports program or 12-3pm on a school day (Commercial Television Industry Code of Practice) – Note – the Commercial Television Industry Code of Practice does not apply to digital television broadcasts, and the time of day restrictions do not apply to this medium;
 - Alcohol ads must not be shown on a fixed billboard within 150m sightline of a school (Outdoor Media Association Alcohol Guidelines); and
 - The intellectual and emotional maturity of the intended audience must be taken into account when scheduling alcohol advertisements on subscription television (Subscription Television Code).

It is important to note that the definition of a Commercial for Alcoholic Drinks in the Commercial Television Industry Code of Practice (CTICP) is narrower than the definition of alcohol marketing communications in the ABAC Code. This means that commercial television stations may not automatically apply the alcohol restrictions to marketing that promotes alcohol in an incidental manner (for example, product placement, brand extensions to non-alcohol products or joint marketing for a variety of products including alcohol). As these forms of marketing are captured by the ABAC, alcohol marketers must ensure their placement agencies instruct commercial television stations to apply the alcohol restrictions to these forms of marketing.

- **Available Age Restriction Controls must be applied to exclude Minors from viewing Alcohol and Alcohol Alternative Marketing Communications.** The intent of the rule is that age restriction controls be used whenever available. For example:
 - age affirmation on websites;
 - age exclusion for programmatic placement of ads;
 - age restriction settings on social media platforms; and
 - age restriction settings for individual posts by Influencers or sponsored third parties.

The highest level of restriction available must be used to minimise the opportunity for minors to access the marketing. The rule does not require that a platform not be used if age restriction controls are not available, nor does it require a third party platform, site or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used (e.g. restaurants, news sites or a sponsored third party's account). In these circumstances the account must have a reasonably expected audience that is more than 80% adult and if the third party has the ability to age restrict the individual post that promotes alcohol, they must do so. The obligation of marketers is to consistently test the capability of the third party platform, site or account to restrict access to minors and apply every available technology to do so. Digital platforms are constantly evolving and regular requests must be made to ensure that all age restriction controls available at a particular point in time are being utilised. Consistent information can sometimes be difficult to obtain from digital platforms and ABAC recommends that alcohol marketers keep a written record of the advice received in the event of a complaint. It is acknowledged that there are circumstances where a minor may register for a platform with an incorrect date of birth or log in via a parent's device but these are parental control issues and outside the reasonable control of alcohol marketers. In addition, social media platforms are increasingly using AI and other tools to identify where incorrect age profiles have been set up by a user and to flag the user as under 18, thereby improving the efficacy of age restriction controls.

- **There are media platforms for which effective age restriction controls capable of excluding Minors from the audience are not currently available, but audience composition data is usually available.** Examples include free to air television, radio, cinema, broadcast print and digital media platforms (including digital connected television, streaming platforms such as Optus Sport, Netflix, Stan etc). In these circumstances international best practice is to minimise exposure to Minors by only placing alcohol marketing where the media or platform has a similar or higher proportion of adults in its audience than the proportion in the general population. ABAC has considered Australian demographic age data and set this threshold at an 80% or more adult audience. Marketers are responsible for obtaining reliable, up-to-date audience composition data, where available, to satisfy themselves (and in the event of a complaint, the ABAC Panel) as to reasonable expectations of audience composition. ABAC acknowledges that the nature and precision of audience data available to marketers varies between media but marketers are encouraged to make best use of the data available to them to identify the reasonably expected audience of a medium, platform or content (for example this could include available data for a

platform where the content is similar). The actual audience data when an ad is shown is never available at the time of making a placement decision, however data for earlier episodes or seasons of a particular programme, digital platform data or social media follower data at the time an advertisement is placed will be relevant. Data is generally available for television (linear and digital), radio, social media platforms and social media Influencer followers. Where audience data is unavailable or unreliable, the Panel will assess likely audience composition based on data for similar platforms or content or if unavailable will apply a common-sense approach based on an assessment of the media content and other available information. In relation to outdoor advertising where advertisements are visible to the general public, including in supermarkets, community spaces via billboards, and on public transport, signatories observe supplementary protections, to recognise that there can be higher concentrations of minors in the vicinity of certain advertising sites. In particular, in addition to the universal content requirements of the ABAC Code which protect against the content of alcohol advertisements having a strong or evident appeal to minors in any event, signatories apply the OMA policy which requires OMA members and ABAC signatories to ensure alcohol advertising is not placed on fixed signs that are located within a 150 metre sight line of a primary or secondary school (save for advertising at licensed premises).

This provision does not place restrictions on the location products are available for purchase.

- **May not be placed with (during or immediately adjacent to) programs or content primarily aimed (i.e. obviously directed) at Minors.** Examples are advertising before or during a children's or teenager's linear or digital television program, linear or digital radio segment, Youtube video, game/app or within a magazine targeted at teenagers.
- **May not be delivered directly to a Minor by hand or electronic direct mail or to anyone who has sought removal from a marketer's mailing list.** Alcohol and alcohol alternative marketers must have reliable systems in place to prevent flyers being hand delivered to minors and to prevent electronic direct mail databases including minors. There may be circumstances where a minor is on an age verified list as they have entered an incorrect date of birth or age but this is a parental control issue and outside the reasonable control of alcohol marketers. To ensure that vulnerable members of the community are not exposed to direct marketing, it is important that alcohol and alcohol alternative companies offer the option to opt out of a mailing list and honour all such requests.

Short educational video on Part 4 - available [here](#)

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.

Guidance Note: Part 5

The Code applies to Alcohol Alternatives in a more limited manner than Alcohol products. While all of the Code standards apply to Alcohol Marketing Communications, Part 5 explains the circumstances in which various Code standards will apply to Alcohol Alternative Marketing Communications.

Essentially, all Alcohol Alternative marketing communications must comply with Part 3(b) and 4 of the Code (Responsibility toward Minors and Placement Standards), however the other Code standards only apply where either the marketing [fails to clearly identify the product as an Alcohol Alternative](#) (i.e. the marketing could be seen as promoting alcohol), or the ad is also promoting an alcohol product or alcohol use, through its words, imagery or reasonable implication (noting that simply sharing a common brand name with an alcohol product will not of itself cause these other Code standards to apply).

Alcohol Alternatives are defined as 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.

This is a new standard introduced in 2023, and further guidance and examples will be provided as relevant Panel determinations are made.

Short educational video on Part 5 - available [here](#)

6. NO FAULT BREACH

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

Guidance Note: Part 6

It is for marketers to satisfy themselves that they have taken appropriate steps to comply with the ABAC Code. Where a marketer or its agency satisfies the ABAC Panel that it took all reasonable steps to correctly and adequately brief a third party medium or body as to the execution or placement of a marketing communication in compliance with the ABAC Code but an error was made by that third party resulting in a breach of the ABAC Code, the breach will be recorded as a “no fault breach”. A “no fault breach” requires steps to be taken remedy the breach and applies the same timeframes as an ordinary breach but will not be included in the list of breaches published on the ABAC website and the determination acknowledges that the breach was caused by matters outside the reasonable control of the alcohol marketer.

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

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 section 6 below.

Headings do not expand the Code.

Guidance Note: Part 7

In applying Code standards material is assessed according to the following criteria.

- **Probable understanding of the marketing:**

The most likely interpretation will be adopted rather than any possible interpretation.

- **By a reasonable person:**

The values, opinions and life experiences common in a majority of the community is the benchmark. A person who holds an alternate interpretation of a marketing communication is not 'unreasonable', but possibly their interpretation would not be shared by a majority of the community.

- **To whom the material is likely to be communicated:**

The Panel will consider who could have been exposed to an alcohol advertisement when assessing the view of the reasonable person. Alcohol packaging is a form of promotion and while minors can't purchase the product, they may still view it online, when accompanying adults shopping, in homes or restaurants. It is the level of appeal of the packaging to a minor that is relevant. Alcohol packaging is a marketing communication that is likely to be communicated to all age demographics.

- **Taking its content as a whole:**

When assessing the content of any marketing it will be viewed as a whole and context will be considered, i.e. an outdoor billboard would generally be viewed as a cursory glimpse, while a print advertisement would be viewed in more detail. In the case of alcohol packaging, the test is the overall understanding that a reasonable person would gain by a cursory viewing of the packaging. This means that the larger text, colouring and most prominent design features will be most influential. For instance, it cannot be expected that an average consumer will pick up an individual can, turn it around a full 360 degrees and study it in fine detail. Assessing the consistency of marketing and packaging with Code standards is a case-by-case exercise in which imagery, use of characters and context is important in deciding the overall impact of the marketing.

The headings in Part 7 are not separate standards but only instructive as to the aims of each set of standards.

Short educational video on interpretation of the Code - available [here](#)

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, or a retailer website or application that is primarily a sales platform for a range of separately owned brands (noting sales are regulated by liquor licensing legislation), 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 primarily visible to customers within the premises. It does not include promotional material positioned so that it is primarily directed to people outside the retail premises, e.g. a poster on a window facing out of the store.

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).