



## **RULES AND PROCEDURES**

### **PUBLIC COMPLAINTS AND ABAC ADJUDICATION PANEL**

#### **Part 1 – Purpose, Authority and Principles**

##### **1.1 Purpose**

These Rules outline the procedures for managing public complaints under the ABAC Responsible Alcohol Marketing Code (Code) and govern the operation of the ABAC Adjudication Panel (Panel).

##### **1.2 Authority**

These Rules are made under the ABAC Constitution, which establishes the Panel and provides for the Management Committee to have governance oversight of the complaints process.

##### **1.3 Objectives**

The objectives of these Rules are to:

- (a) ensure the efficient, transparent and fair consideration and determination of complaints;
- (b) promote consistency and accountability in decision-making; and
- (c) uphold the independence and integrity of the Panel.

##### **1.4 Guiding Principles**

In administering these Rules, the Chief Adjudicator and Panel will have regard to:

- (a) the aim of the ABAC Scheme for marketing consistent with the harm minimisation objectives of the National Alcohol Strategy;
- (b) procedural fairness;
- (c) privacy and confidentiality of complainants; and
- (d) timeliness – with an indicative target for determination of 60 business days for product name/package complaints and 30 business days for other complaints.

## **Part 2 – Complaint Handling Procedures**

### **Lodgement and Initial Assessment**

#### **2.1 Receipt and triage of complaints**

- (a) All complaints received are referred to the Chief Adjudicator.
- (b) The Chief Adjudicator conducts a triage to assess if the complaint:
- concerns a marketing communication within the jurisdiction of the ABAC Scheme; and
  - raises an issue within the ambit of the Code, and if so
  - identifies all relevant provisions of the Code raised by the complaint.
- (c) The Chief Adjudicator will refer a complaint within the jurisdiction of the ABAC Scheme that raises an issue under the Code to the Panel, unless it is not suitable for referral under clause 2.2.

#### **2.2 Grounds for Non-Referral**

A complaint may be rejected from referral to the Panel if the Chief Adjudicator decides it:

- (a) raises issues about a marketing communication already considered and determined in an earlier determination;
- (b) raises issues that have been previously considered by the Panel and clearly dismissed as not in breach of the Code;
- (c) raises an issue that is clearly not a breach of the Code, and a decision would have no precedential value;
- (d) should be referred to another complaints adjudication forum;
- (e) relates to a product name or packaging certified under clause 3.9;
- (f) is suitable for Expedited Resolution; or
- (g) is appropriate for Informal Resolution.

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### **Alternative Resolution Pathways**

#### **2.3 Expedited Resolution**

- (a) The Chief Adjudicator may resolve a complaint through Expedited Resolution if:
- the marketing communication seems to breach the Code concerning the issue raised in the complaint;
  - the issue or marketing communication does not have broader interpretive significance for the Code or the operation of the ABAC Scheme; and
  - the Marketer accepts an expedited breach determination.

(b) The Chief Adjudicator's decision constitutes a determination to uphold the complaint.

(c) The decision is based on:

- the complaint;
- the marketing communication; and
- the Marketer accepting an expedited breach determination.

## **2.4 Informal Resolution**

(a) A complaint (or part thereof) can be informally resolved in relation to a social media post that is more than six months old and has not been promoted by the account holder in the previous six months.

(b) Under Informal Resolution:

- the Marketer is notified of the complaint;
- the Marketer voluntarily removes the post; and
- the outcome is recorded for statistical purposes.

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## **Part 3 – Panel Consideration and Determination**

### **3.1 Notification to Marketer**

The Marketer will be notified when a complaint is referred to the Panel and will have seven business days to respond.

### **3.2 Materials before the Panel**

In assessing the complaint, the Panel will consider:

- (a) the complaint;
- (b) the relevant marketing communication or packaging sample;
- (c) any material from the Marketer responding to the complaint; and
- (d) any other materials deemed relevant by the Chief Adjudicator.

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## **Upheld Complaints – Marketing Content**

### **3.3 Compliance obligations**

If a complaint about the content of a marketing communication is upheld, the Marketer must, within five business days:

- (a) withdraw or modify the marketing communication- note that:
  - published print material that cannot be withdrawn must be discontinued or modified before further publication.;

- a widespread outdoor campaign may take longer than five business days to withdraw, but it will be withdrawn as quickly as possible; and
- Marketing Collateral often cannot be withdrawn, but further orders and distribution are to be ceased immediately.

(b) inform the ABAC Complaints Officer of the planned actions and timeframes; and

(c) agree to not reinstate the unmodified material.

### **Upheld Complaints – Marketing Placement**

**3.4** If a complaint about the placement is upheld, the Marketer must, within five business days:

(a) withdraw, discontinue or modify the placement. Note that published print material that cannot be withdrawn must be discontinued or modified before further publication;

(b) take precautions to avoid repetition of the breach; and

(c) notify the ABAC Complaints Officer of the planned actions and timeframes.

### **Upheld Complaints – Name or Packaging**

#### **3.5 Provisional determination**

A provisional determination will be issued to the Marketer, who may seek a rehearing within ten business days by written submission.

#### **3.6 Pre-existing product name , packaging or trademarks**

The Marketer bears the onus of demonstrating pre- 31 October 2009 (Alcohol) or pre-1 August 2023 (Alcohol Alternative) use to the Chief Adjudicator in accordance with Part 2 (b) (iii) of the Code.

#### **3.7 Final determination**

After considering any submissions or expiry of the ten days, the Panel may issue a final determination.

#### **3.8 Compliance Requirements**

If a complaint about a name or packaging is upheld, the Marketer must:

(a) cease further production orders immediately;

(b) ensure modifications are made within three months;

(c) notify the ABAC Complaints Officer within five business days of the planned actions and timeframes; and

(d) not reinstate the unmodified version.

#### **3.9 Certification of modified packaging**

(a) Modified product name and/or packaging may be submitted to two pre-vetters for certification.

- (b) Both must agree that the modifications bring the product name and/or packaging into compliance.
  - (c) Minor modifications to the packaging (e.g. date or place of manufacture, grape sources etc) will not void the certification;
  - (d) Once certified, complaints solely about the certified product name and/or packaging will not be referred to the Panel .
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## **Part 4 – Communication and Enforcement of Panel Determinations**

### **4.1 Communication of Panel determinations**

Panel determinations and the Marketer's response to a determination must be provided to Ad Standards and the Management Committee within five business days of the relevant decision or response date.

### **4.2 Non-compliance**

If a Marketer fails to comply with an upheld determination, ABAC may:

- (a) notify relevant liquor regulators, media platforms, industry bodies and media; and
  - (b) where a Code Signatory, terminate its admission under Clause 7.3 (e).
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## **ABAC PRE-VETTING SERVICE**

## **Part 5 – Purpose, Authority and Principles**

### **5.1 Purpose**

These Rules outline the procedures for the ABAC Pre-vetting Service (Pre-vetting).

### **5.2 Authority**

These Rules are made under the ABAC Constitution, which establishes Pre-vetting and provides for the Management Committee to have governance oversight of Pre-vetting.

### **5.3 Objectives**

The objectives of these Rules are to:

- (a) ensure the efficient assessment of marketing against the Code;
- (b) promote consistency in decision-making; and
- (c) uphold the independence and integrity of Pre-vetting.

### **5.4 Guiding Principles**

In administering these Rules, Pre-vetting will have regard to:

- (a) the aim of the ABAC Scheme for marketing consistent with the harm minimisation objectives of the National Alcohol Strategy;
  - (b) privacy and confidentiality of marketing communications submitted; and
  - (c) timeliness – with an indicative target of no more than four business days from submission of material.
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## **Part 6– Pre-vetting Requirements**

### **6.1 Mandatory Signatory Pre-Vetting**

Code Signatories and their agencies must seek pre-vetting of marketing communications placed in the following media:

- Television
- Outdoor
- Cinema
- Radio

### **6.2 Optional Signatory Pre-vetting**

Code Signatories and their agencies are not required, but are encouraged to seek pre-vetting of packaging and marketing communications placed in the following media:

- Print
- Digital
- Point of Sale
- Marketing Collateral
- Retail Price Advertisements
- Pre-vetting clearance where only the name, image and price of product changes

### **6.3 Non-Signatory Pre-vetting**

Non-Code Signatories and their agencies are encouraged to seek pre-vetting of their marketing communications and packaging.

### **6.4 Confidentiality**

Pre-vetter opinions are confidential to the producer, their industry association (if applicable), ABAC staff/contractors, and the Panel for reporting purposes.

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## CODE SIGNATORIES

### Part 7– Code Signatories

#### 7.1 Authority

These Rules are made under the ABAC Constitution, which provides for Code Signatories and for the Management Committee to have governance oversight of the participation of Code Signatories.

#### 7.2 Code Signatories

A Code Signatory must have agreed to be bound by any codes developed by the Management Committee and to comply with Panel decisions and may be either:

- A member of an industry association that is a member of ABAC (Member Code Signatory); or
- A company or Alcohol industry association approved by the Management Committee (Direct Code Signatory).

#### 7.3 Admission

- (a) A prospective Direct Code Signatory may apply to the ABAC Chief Executive Officer in a properly completed form determined by the Management Committee.
- (b) A Direct Code Signatory must pay the relevant fee (or part thereof).
- (c) An application to become a Direct Code Signatory will be approved if:
  - it is a company or Alcohol industry association the Management Committee has approved as an eligible Code Signatory;
  - has undertaken to be bound by any codes developed by the Management Committee and to comply with Panel decisions;
  - approved by a majority of votes cast on a Management Committee resolution to admit the application; and
  - has paid the fee referred to in Clause 7.3(b).
- (d) A Direct Code Signatory may revoke their status as a Direct Code Signatory on giving 6 months notice in writing, at which time any amounts owed are immediately due and payable.
- (e) An admission of a Code Signatory may be terminated, without the refund of any fees paid or due, by the Management Committee in its absolute discretion if:
  - The Code Signatory ceases to be or to represent a producer, distributor or retailer of Alcohol or Alcohol Alternatives; or
  - The Management Committee forms the opinion that their conduct renders it undesirable that they continue to be a Code Signatory.

## Part 8– Definitions

**ABAC Adjudication Panel (Panel)** means the panel established to adjudicate a complaint received by the ABAC Scheme.

**ABAC Pre-Vetting Service (Pre-vetting)** means the service established by the ABAC Constitution to assess marketing communications at any stage of development against the Code.

**ABAC Responsible Alcohol Marketing Code (Code)** means the set of good practice standards for the content and placement of marketing communications developed by the Management Committee.

**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.

**Chief Adjudicator** means the individual responsible for the operation of the ABAC Adjudication Panel.

**Expedited Resolution** means the process outlined in Clause 2.3

**Informal Resolution** means the process outlined in Clause 2.4

**Management Committee** means the committee with oversight of ABAC processes established by the ABAC Constitution.

**Marketer** means a producer, distributor or retailer that disseminates marketing communications for Alcohol or Alcohol Alternatives.

**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.

**Retail Price Advertisements** means retailer marketing communications which contain no material relating to the attributes of the product or retail outlet except:

- Retailer name, location and opening times
- Product price
- Product brand, name and style
- Image of packaging