

# ANNUAL REPORT

2018

# CHAIR REPORT

**On the day I commenced the role of Chair of the ABAC Management Committee, ABAC celebrated 20 years of responsible marketing regulation in Australia. Over those years ABAC has provided an effective but flexible framework within which standards for responsible alcohol marketing are set and regularly evaluated. A report published in July outlines the significant development of the Scheme over the past 20 years and illustrates the way in which the Scheme has responded to changes in community expectations and the significant evolution in the media landscape.**

Since my appointment in June, I have been encouraged that those responsible for ABAC have continued their serious intent to ensure that the scheme operates effectively. In addition I am now fully aware the ABAC operates in a marketing landscape that is ever changing. Our challenge is to keep pace with changes in the digital media landscape. ABAC addresses this by monitoring complaints, listening to feedback from the public and industry and engaging with relevant media associations and platforms. In 2018 ABAC updated the ABAC Digital Best Practice to provide guidance on best practice for alcohol marketing via social media influencers.

With the challenges, digital marketing has an advantage of generally being able to be better targeted to an adult audience. We believe there is an opportunity to work with platforms to ensure they have robust and effective age targeting tools to support responsible alcohol marketing on their platforms.

2018 has seen the consolidation and testing of placement requirements incorporated into the ABAC Code in late 2017. The placement requirements aim to ensure that alcohol advertising is not targeted to minors. The incorporation of placement rules into the ABAC Scheme was a significant policy shift that has been welcomed by policy makers and the industry. During 2018 the rules were tested by complaints, including by public health groups, resulting in the highest number of determinations and the highest number of Code breaches in the 20+ year history of ABAC. ABAC is currently evaluating the operation of the new placement rules now they have been in place for over 12 months.

Ensuring that ABAC operations are transparent and accountable and raising awareness of ABAC standards among the industry, community and policy makers remains an important focus for ABAC. During 2018 we have improved our direct engagement with a wider range of industry participants, policy makers and State Liquor Licensing bodies. This was enhanced by publicly releasing and widely circulating detailed quarterly reports on the operation of ABAC and holding our first free annual webinar which is a more accessible format and available to a wider range of industry participants. ABAC has engaged with the Independent Brewers Association to raise awareness of the ABAC standards for alcohol packaging among small breweries. We were pleased to see the inclusion of ABAC requirements in the recently released Independent Brewers Beer Labeling Guidelines and an increase in pre-vetting of packaging by this sector and participation in our free education webinar.

These measures improve awareness of ABAC, educate on the standards for responsible alcohol marketing set by ABAC and ensure transparency of ABAC operations.

The importance of the ABAC Pre-vetting Service is highlighted by the fact that none of the content breaches outlined in this report or in fact over the past two years involved marketing or packaging that had been pre-vetted under ABAC. With a record 1,751 pre-vetting requests in 2018, the Alcohol Advertising Pre-vetting Service continues to be an important aspect of ABAC's work and an effective means of preventing irresponsible alcohol marketing reaching the community. The ABAC Pre-vetting Service whilst well utilised is under recognised for its important work.

I thank the outgoing Chair, Alan Ferguson; Executive Officer, Jayne Taylor; the Chief Adjudicator, Michael Lavarch, and his panel colleagues; the dedicated team of pre-vetters; and my Management Committee colleagues for their on-going efforts and commitment to the ABAC Scheme. In addition I thank ABAC signatories for demonstrating their commitment to the high standards set for their marketing by the ABAC code.

**Mr Harry Jenkins AO**  
**Chair, ABAC Management Committee**



# OVERVIEW

The ABAC Scheme is the centerpiece of alcohol marketing regulation in Australia. It is a not for profit organisation established to promote responsible alcohol marketing via regulation, education and advice which is:

- Administered by a Management Committee which includes representatives from industry, advertising and government;
- Quasi-regulatory in nature a Professor of Public Health, nominated by government, is part of all adjudication panels and a government representative is included on the Management Committee;
- Funded by industry via membership levies, direct signatory fees and pre-vetting fees.

The ABAC Scheme is not the only set of rules affecting advertising in Australia. Alcohol beverage advertising must also be consistent and comply with other applicable laws and codes, for example:

- the Federal Competition and Consumer Act and State Fair Trading legislation
- State Liquor Licensing legislation
- the Australian Association of National Advertisers Code of Ethics
- the Commercial Television Industry Code of Practice
- the Commercial Radio Code of Practice
- the Outdoor Media Association Code of Ethics and Alcohol Guidelines

## RESPONSIBILITIES OF THE ABAC SCHEME



### ADVICE

- The Alcohol Advertising Pre-vetting Service assesses whether proposed alcohol marketing communications meet the ABAC Code standards.



### REGULATION

- The ABAC Responsible Alcohol Marketing Code (The ABAC Code) which sets standards for alcohol marketing in Australia.
- The Complaints Adjudication system whereby complaints relating to alcohol marketing are assessed and adjudicated by the independent ABAC Adjudication Panel.
- Mandatory pre-vetting of television, cinema, radio and outdoor marketing supported by Outdoor Media Association members and the Commercials Advice Division of Freetv Australia.



### EDUCATION & GUIDANCE

- ABAC educates the regulated community on the Code standards via advice and regulation together with an annual free industry webinar and resources on the ABAC website.
- The Best Practice Guide for Industry on Digital Alcohol Marketing assists alcohol marketers and their agencies in the management of their digital marketing.

# ABAC INTERACTIONS WITH ALCOHOL MARKETING COMMUNICATIONS

1

## CHECK

Company and advertising agency staff check the marketing communication and its media placement schedule against the ABAC Code standards

2

## APPROVE OR REJECT

Independent AAPS pre-vetters check the marketing communication against the ABAC Code and either approve or reject

3

## LODGE A COMPLAINT

Once a campaign is in the marketplace consumers can lodge a complaint about the marketing communication centrally through Ad Standards and at no cost

4

## REFERRAL TO CHIEF ADJUDICATOR

Ad Standards refers all alcohol marketing communication complaints to the Chief Adjudicator of the ABAC Adjudication Panel

5

## REFERRAL TO THE INDEPENDENT ABAC ADJUDICATION PANEL

Complaints raising issues within the ambit of ABAC are referred to the independent ABAC Adjudication Panel for a hearing on whether the marketing communication or its placement meets ABAC Code standards

6

## RESULT

If the ABAC Adjudication Panel finds the ABAC Code standards have not been met the marketer is asked:

- in the case of a product name, packaging or marketing collateral—to cease further production orders immediately
- in the case of all other marketing communication content—withdraw or modify the material within five (5) business days
- in the case of placement of a marketing communication—withdraw, discontinue or modify the placement within five (5) business days.

7

## WRITTEN DECISION

The written decision of the ABAC Adjudication Panel is sent to the consumer and published on the ABAC website

# MANAGEMENT OF THE ABAC SCHEME

**The Management Committee sets the strategic direction, manages and reviews the operations and publications of the ABAC Scheme with a view to:**

- Encourage industry members, large and small, to participate in the quasi-regulatory system;
- Ensure an effective quasi-regulatory system;
- Monitor ABAC operations and publications and improving them where necessary;
- Manage AAPS as an effective mechanism to support and strengthen the aims of ABAC and encouraging participation by industry members in AAPS; and
- Co-ordinate the development and completion of a publicly available annual report.

During 2018 the ABAC Management Committee comprised:

- Independent Chair, The Hon Alan Ferguson and from 1 July 2018, Mr Harry Jenkins AO
- Chief Executive of the Brewers Association of Australia, Mr Brett Heffernan;
- Chief Executive of Spirits & Cocktails Australia Inc, Mr Alec Wagstaff;
- Chief Executive of the Winemakers' Federation of Australia, Mr Anthony Battaglione;
- Chief Executive of the Communications Council Limited, Mr Tony Hale;
- The Assistant Secretary responsible for alcohol issues at the Commonwealth Department responsible for health policy as the representative of Australian Governments, Mr David Laffan.

The Management Committee is supported in its role by the ABAC Executive Officer, Ms Jayne Taylor.

Each member of the Management Committee represents a group of stakeholders in alcohol beverage marketing regulation. Any member of the Management Committee may raise issues for consideration by the Committee and the Committee in practice operates on a consensus basis.

The ABAC Management Committee meets at least four times a year and any issues raised by any member or referred by the Panel or Pre-vetters receive full consideration.

## ABAC MANAGEMENT COMMITTEE



**Harry Jenkins AO**



**Tony Battaglione**



**Tony Hale**



**Alec Wagstaff**



**Brett Heffernan**



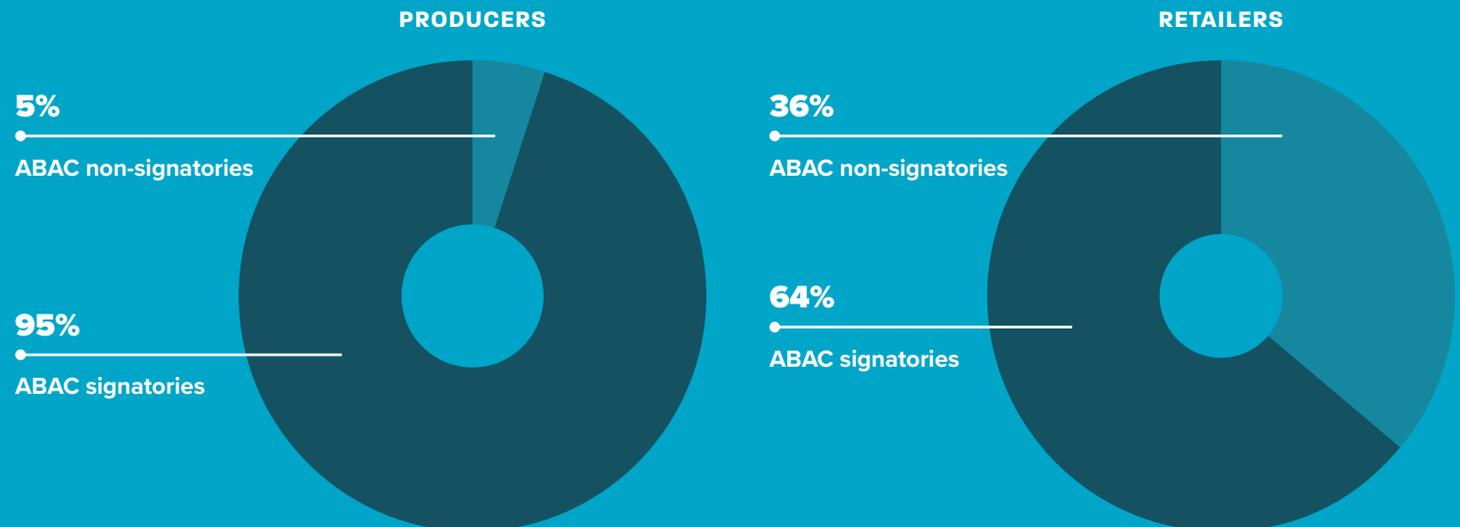
**Australian Government  
Department of Health**

**David Laffan**

# ABAC SCHEME COVERAGE

- Membership and compliance with the Scheme is voluntary. However, the Brewers Association of Australia, Spirits & Cocktails Australia and Winemakers' Federation of Australia have agreed that its members will be bound by the Scheme. This means the great majority of alcohol marketing in Australia is regulated by the Scheme.
- Other companies that market alcohol are encouraged to become direct signatories and to utilise the Pre-vetting Service. Both Woolworths Liquor and Coles Liquor joined the scheme as direct signatories during 2013 and Campari Australia and Lion Cider became direct signatories in 2015. In 2017 Coca-Cola Amatil and Asahi Premium Beverages joined the scheme as direct signatories.
- ABAC signatories comprise over 95% of alcohol producer media spend in Australia and over 64% of alcohol retailer media spend in Australia.
- Many non-signatories currently use the Pre-vetting Service and the Scheme has the support of media associations. In 2018, 17 per cent of pre-vetting applications were from non-signatories.
- The alcohol industry (both signatories and non-signatories) and advertising agencies have access to a free annual training webinar hosted by the ABAC Chief Adjudicator and a pre-vetter where all aspects and obligations of the Code, Pre-vetting Service and complaints processes are explained. In addition, the ABAC pre-vetters, alcohol beverage industry associations and ABAC Executive Officer are all available to explain the Code and the Scheme to alcohol beverage marketers and their agencies.
- The ABAC Adjudication Panel made 61 determinations in 2018, of which 21 upheld complaints. In all but one upheld case the marketing was withdrawn, modified or discontinued in compliance with the ABAC standards.
- None of the upheld content complaints related to marketing that was pre-vetted. All adjudication decisions are published on the ABAC website.

## ABAC SIGNATORIES MEDIA SPEND





# ABAC CODE

The ABAC Code sets key standards for responsible content and placement of alcohol marketing in Australia.

Subject to regular reviews, the ABAC Code reflects community expectations and changes in the media and advertising industries. It applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol beverage marketing communications in emerging digital and social media, user generated content on alcohol company controlled digital and social media, point of sale advertisements, product placement and brand extension marketing over which an alcohol company has control.

The ABAC Guidance notes have been developed to assist advertisers and agencies in interpreting the Code.

# 4 KEY STANDARDS FOR ALCOHOL MARKETING IN AUSTRALIA

## 1 RESPONSIBLE AND MODERATE PORTRAYAL OF ALCOHOL BEVERAGES

- No depictions (not even by implication) or encouragement of excessive or rapid consumption of alcohol, misuse or abuse of alcohol, alcohol consumption inconsistent with [Australian Guidelines](#) or irresponsible or offensive behaviour that is related to the consumption of alcohol.
- No challenge or dare to consume alcohol.
- No encouragement to choose a particular alcohol beverage by emphasising its alcohol strength (unless strength is lower than typical for similar beverages) or the intoxicating effect of alcohol.

## 3 RESPONSIBLE DEPICTION OF THE EFFECTS OF ALCOHOL

- No suggestion consumption/presence of alcohol creates/contributes to significant change in mood/environment.
- No depiction (not even by implication) that the consumption or presence of alcohol is a cause or contributes to the achievement of personal, business, social, sporting sexual or other success.
- No implication or suggestion that alcohol shown as part of a celebration was a cause of or contributed to the success or achievement.
- No suggestion that alcohol offers any therapeutic benefit or is a necessary aid to relaxation.

## 4 ALCOHOL AND SAFETY

- No depiction (not even by implication) of alcohol being consumed before or during an activity that, for safety reasons, requires a high degree of alertness or physical co-ordination (i.e. control of a motor vehicle, boat or machinery or swimming).

## 2 RESPONSIBILITY TOWARD MINORS

- No strong or evident appeal to minors, i.e. the marketing must not be likely to appeal strongly to minors, specifically target minors, have a particular attractiveness for a minor beyond its general attractiveness for an adult, use imagery, designs, motifs, animations or cartoon characters likely to appeal strongly to minors or that create confusion with confectionery or soft drinks or use brand identification on clothing, toys or other merchandise for use primarily by minors.
- People who are or look under 18 may only be shown where they are in an incidental role in a natural situation (ie. family socialising responsibly) and there is no implication they will consume or serve alcohol.
- People who are 18-24 years old and look over 18 may only be shown where the image of the person is not visually prominent within the marketing or is of a real person in a real scenario (not a paid model or actor) only if it is placed in either:
  - › Licensed premises that do not permit entry by minors; or
  - › A digital platform that is:
    - » non-alcohol specific (set up for a purpose other than promotion of alcohol);
    - » requires users to register with birth date and then login to use the platform; and
    - » is able to hide the existence of alcohol pages from users registered as under 18 years of age by selecting appropriate settings (ie. facebook).
- Not directed at under 18s by:
  - › breach of media specific codes ie within 150m of a school or outside times allocated for alcohol ads on tv;
  - › use of available age restriction controls;
  - › only placing where audience is at least 75% adults;
  - › not placing with programs or content primarily aimed at under 18s;
  - › not sending to under 18s by electronic mail (unless due to under 18 providing incorrect date of birth).

# RECENT INITIATIVES

## ABAC EDUCATION & AWARENESS >

ABAC education and awareness continued to be a focus in 2018 with:

- Wider engagement and education (Independent Brewers Association, State Liquor Licensing Authorities, digital platforms, media associations)
- Improved education of the regulated community via a free annual webinar
- Implementation of quarterly reports released publicly and available on the ABAC website
- Digitisation and update of ABAC publications

## ABAC DIGITAL BEST PRACTICE >

ABAC Digital Best Practice updated to provide advice on best practice in the use of social media influencers, namely social media influencers must:

- Be at least 25 years of age
- Have an audience of >75% adult
- Have no known history of alcohol abuse or irresponsible behaviour related to alcohol use or of publishing content that wouldn't meet ABAC Code standards
- Apply available age restriction controls
- Undertake to meet Code standards in the content promoting the brand
- Disclose that the content is a marketing communication
- Undertake to remove any content that the ABAC Panel finds breaches the ABAC code

## ABAC GUIDANCE NOTES >

The ABAC Guidance Notes were updated to provide guidance to marketers on the application of Part 3(a)(iv) of the ABAC Code which prevents marketing that encourages the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless lower than typical) or the intoxicating effect of alcohol. The new guidance highlights that:

- 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' or 'crisp' can be used provided they are not associated with the strength of the product.

## 20 YEAR MILESTONE >

Our 20 year milestone was achieved on 1 July 2018. ABAC published a [report on the operation of the Scheme highlighting the development of the Scheme, a selection of banned advertisements and ABAC statistics.](#)

## 2018 SNAPSHOT

● 2017 ● 2018

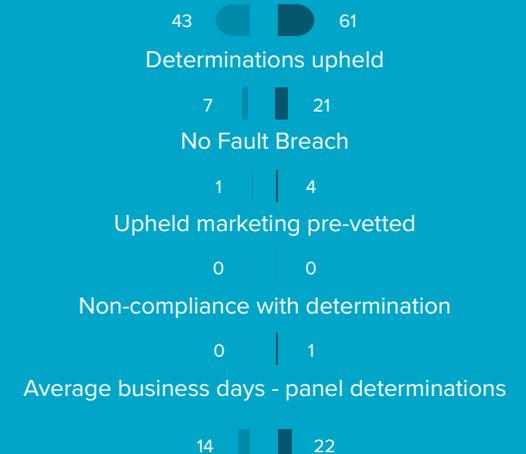
### PRE-VETTING REQUESTS



### ALCOHOL COMPLAINTS



### PANEL DETERMINATIONS

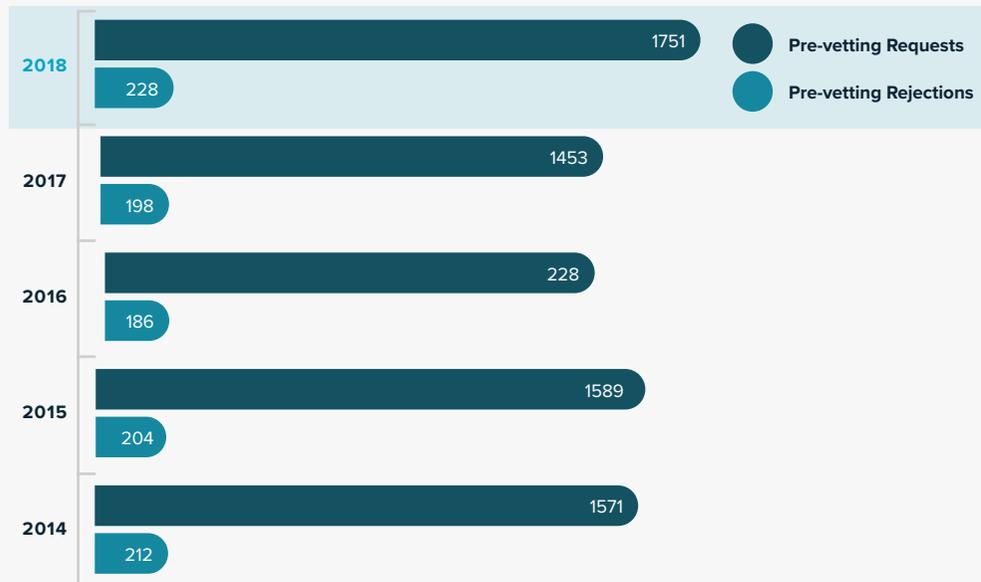


# ALCOHOL ADVERTISING PRE-VETTING SERVICE (AAPS)

AAPS provides confidential advice to marketers on whether proposed alcohol marketing communications comply with the Code. This service is offered on a 'user pays' basis.

- AAPS pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting.
- AAPS has the support of:
  - › Media associations that encourage or require their members to check that an alcohol marketing communication has AAPS approval prior to placement of the communication; and
  - › Retailer signatories that encourage or require suppliers to obtain AAPS approval for packaging and point of sale marketing.
- AAPS Pre-vetters are independent of the alcohol beverage industry.

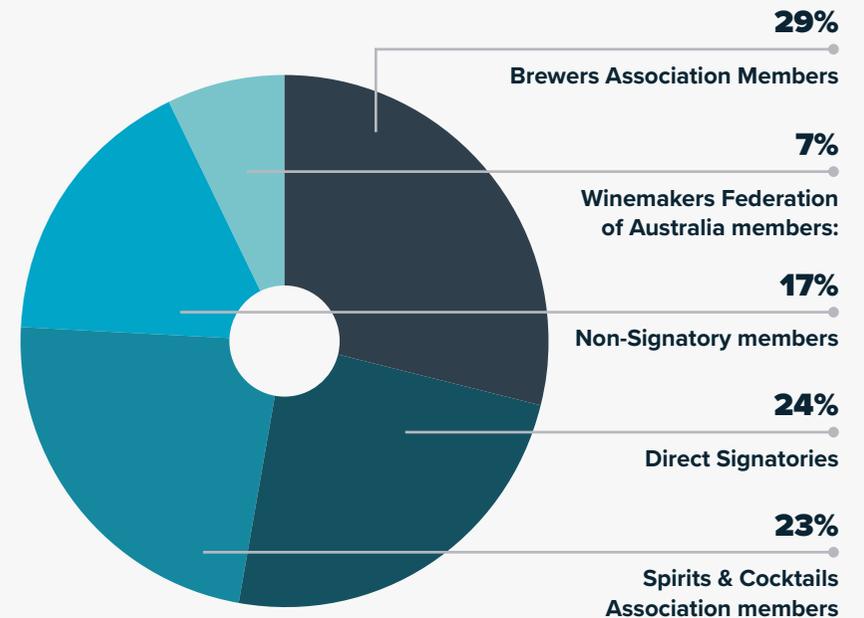
PRE-VETTING REQUESTS & REJECTIONS OVER THE PAST 5 YEARS



In 2018 ABAC saw a record number of AAPS requests by alcohol marketers at 1,751.

The AAPS Service is available to both signatories and non-signatories and again there was a good uptake of the service by non-signatories at 17% of all requests. The use of AAPS is mandated or encouraged by media associations and also our signatory retailers which has the effect of raising awareness of AAPS among non-signatories.

AAPS APPLICATIONS BY SECTOR

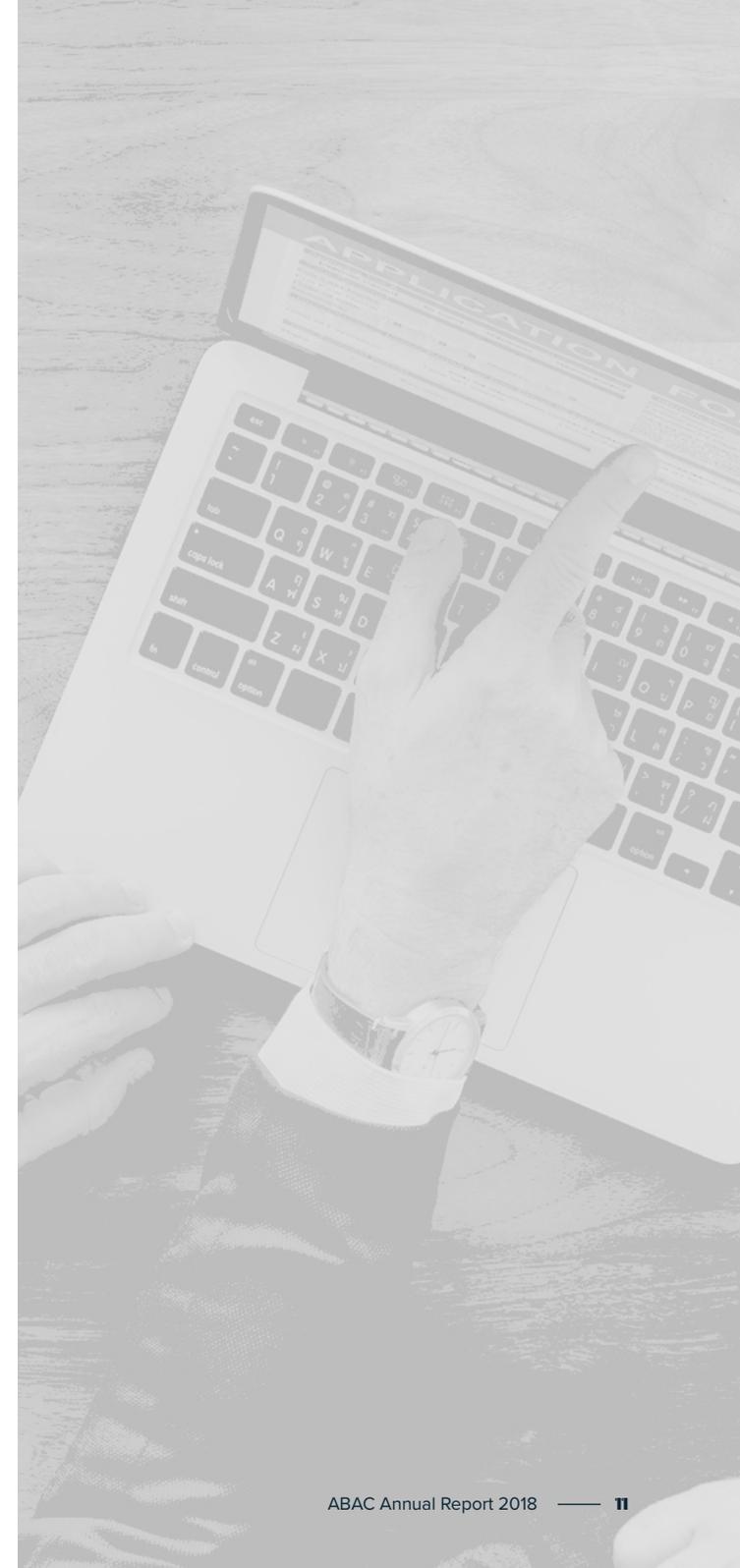


AAPS is mandatory for advertisements placed in outdoor, television, cinema and radio media but optional for all other media. The alcohol industry continues to find value in AAPS by using the service when it is an option rather than mandatory to do so. In 2018 40% of all pre-vetting requests were optional to pre-vet.

## ABAC ADJUDICATION PANEL (THE ABAC PANEL)

**The ABAC Panel** headed by Chief Adjudicator Professor Michael Lavarch, AO, considers public complaints about alcohol marketing.

- Ad Standards accepts complaints in relation to all types of marketing communications at no cost to the consumer. This streamlined process ensures all relevant Codes are triggered and reduces the risk of duplication and double handling. All alcohol related complaints received by Ad Standards are provided to the ABAC Chief Adjudicator and the Panel considers all complaints that raise ABAC Code issues apart from those already considered or consistently dismissed.
- Ad Standards considers complaints insofar as they raise AANA Code of Ethics issues. The AANA Code of Ethics aims to ensure that all marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society. This ensures there is a consistent standard for issues such as discrimination, violence, sexual imagery, obscene language, health and safety across all marketing for every type of product.
- The ABAC Panel reports its decisions to Ad Standards, the ABAC Management Committee, the marketer and the complainant. Decisions are published on the ABAC website.
- The Panel and its deliberations are conducted independently of the ABAC Management Committee and the broader alcohol and advertising industry.
- The Panel comprises:
  - › The Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise (or if unavailable, the deputy Chief Adjudicator, Debra Richards),
  - › 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 the Chief Adjudicator submits an annual report on the Panel's operations to the ABAC Management Committee for inclusion in its annual report.



# COMPLAINTS

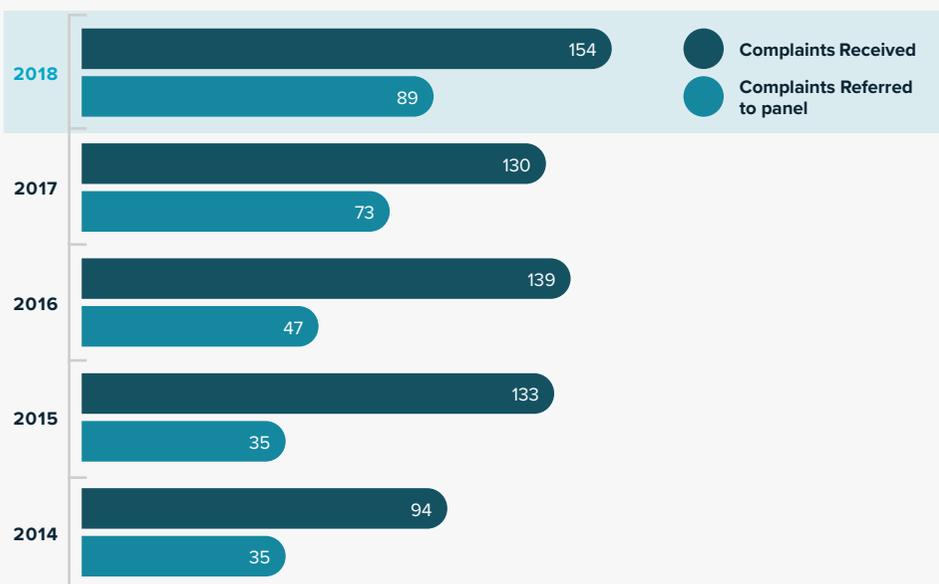
Complaints about alcohol marketing were higher this year than over the past 4 years, although as a percentage of overall complaints about all products and services, levels of alcohol complaints were consistent with previous years at 2.3%.

## OF THE 154 COMPLAINTS RECEIVED:

**100** Separate advertising campaigns attracted a complaint

**89** Complaints were referred to the ABAC panel

## COMPLAINTS RECEIVED AND REFERRED TO THE PANEL OVER THE PAST 5 YEARS



In 2018, 58% of complaints resulted in a Panel Determination, 1% of complaints were previously considered by the Panel, 5% of complaints were consistently dismissed by the Panel and 36% were outside the scope of the ABAC Code.

## COMPLAINTS WERE NOT REFERRED TO THE ABAC PANEL FOR THE FOLLOWING REASONS:

### Complaint previously considered:

2017 Determinations	2
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### Consistently dismissed issues:

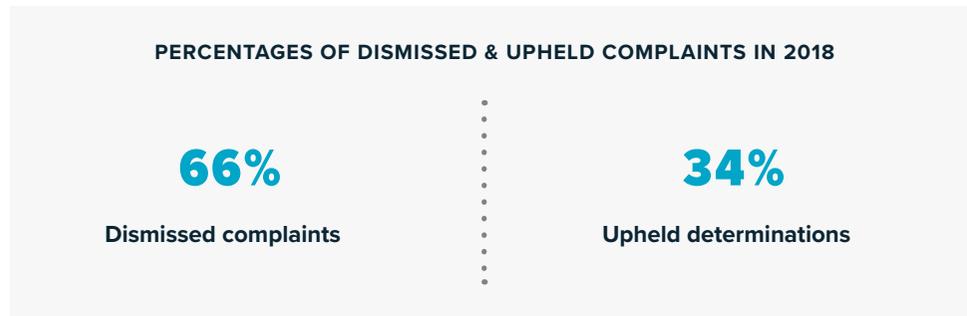
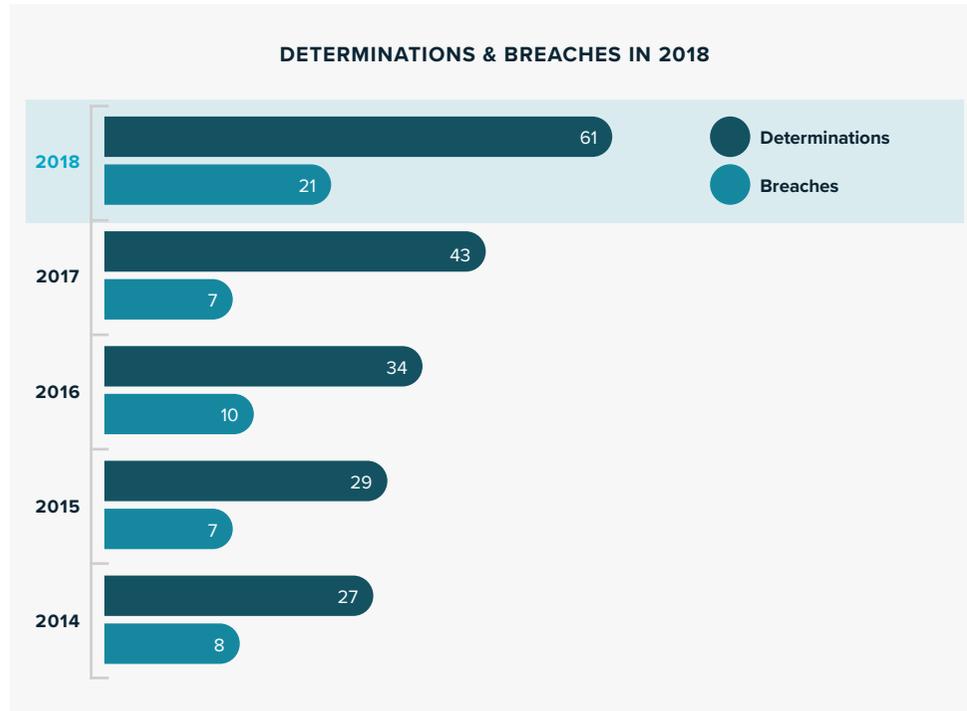
During a sports broadcast permitted by CTICP	2
A tagline previously considered and dismissed by the ABAC Panel	2
Showing ads on television during middle of a weekday in timeslot permitted by CTICP	1
Permissibility of a retailer rewards scheme	1
Alcohol on a sporting program	1

### Outside scope of ABAC:

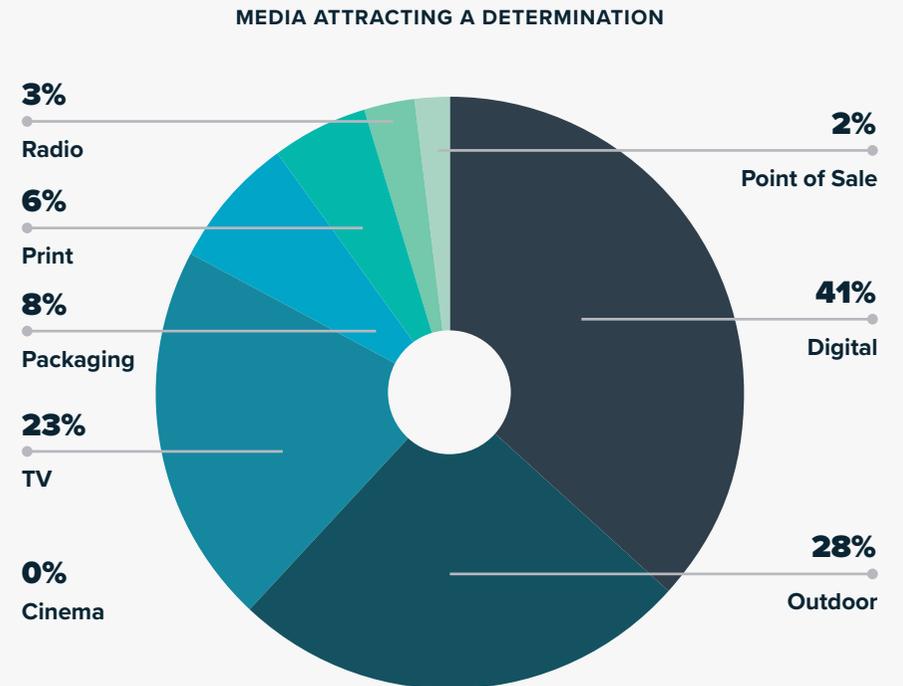
Offensive to red haired people	15
Misleading advertising (referred to Fair Trading)	8
Dislike alcohol being advertised or thought it was illegal	5
Racial/sexual discrimination	4
Objectification of women	3
Not an ad for alcohol	3
Offensive to a particular religion	3
Alcohol shouldn't be shown in a gambling ad (not an ad for alcohol)	2
Offensive language	2
Animal cruelty	2
Imagery of a samurai sword offensive to POW Survivors	1
Dislike ads with Christmas themes being shown after Christmas	1
Dislike ads being deliberately louder	1
Failure to include 'drink responsibly' message	1
Breach of Food Standards (referred to Food Standards)	1
Failure to include a disclaimer	1
Alcohol ads normalise alcohol consumption	1
Body shaming	1
Ridiculing people with a mental illness	1

# DETERMINATIONS

ABAC Panel determinations were significantly higher this year and at their highest levels in the history of ABAC, largely due to the introduction of placement standards in the ABAC Code in November 2017 (30% of determinations in 2018 solely raised issues under the placement rules).

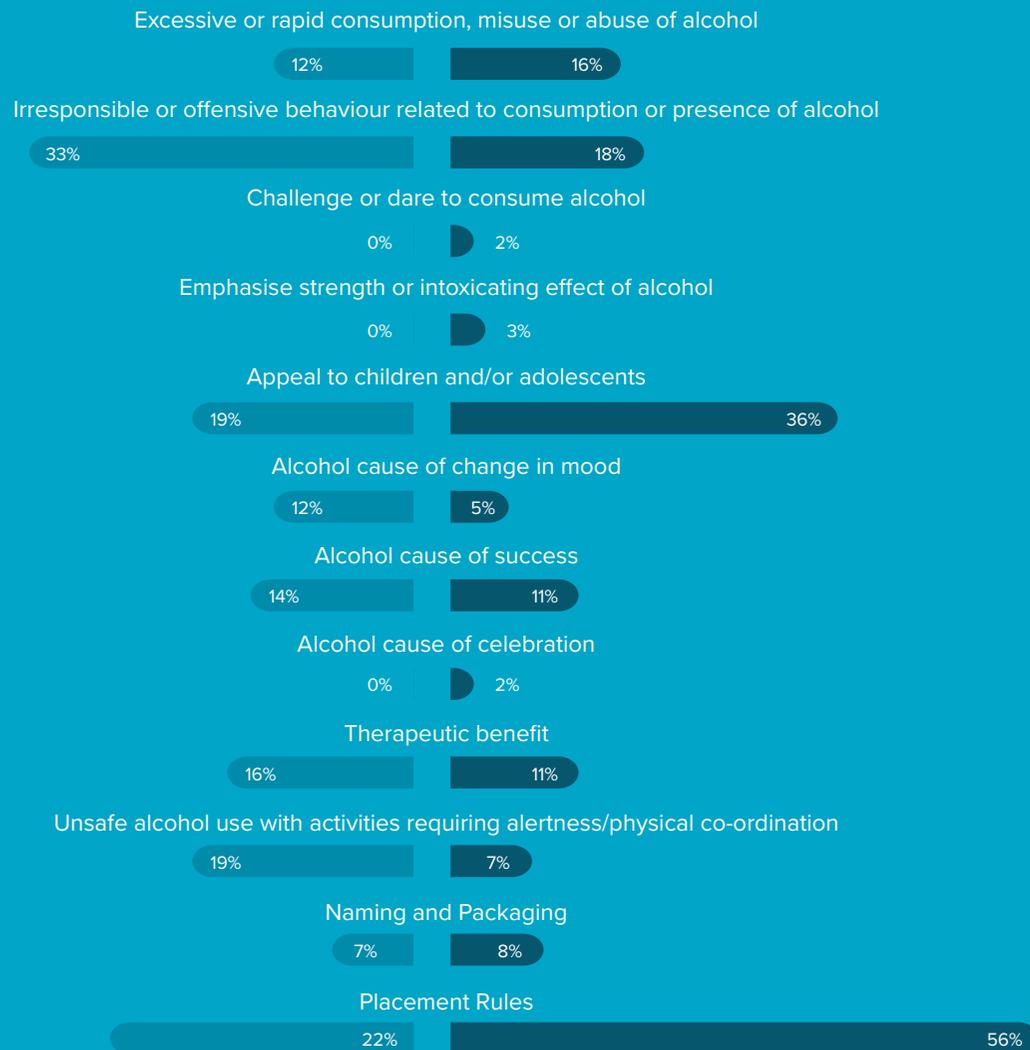


In 2018 there was an increase in determinations relating to Digital and Outdoor media and a notable decrease in determinations about Television, Cinema and Radio media.



## ABAC CODE PROVISIONS ATTRACTING DETERMINATIONS

● 2017 ● 2018



Of note is that 56% of all determinations raised issues under the ABAC Placement Rules. 2018 also saw an increase in complaints about appeal to minors, but there was a decrease in complaints about alcohol related irresponsible behaviour, safety and change in mood.

# CHIEF ADJUDICATOR REPORT

**2018 witnessed three milestones for the ABAC Scheme. Firstly the year marked the 20th anniversary of the commencement of the Scheme. Secondly, 2018 saw the first full year of the operation of the Placement Rules which reorientated the Scheme and significantly expanded the grounds upon which public complaints could be made about alcohol marketing. Finally the expansion of the reach of the Scheme resulted in the largest number of decisions made by the Adjudication Panel exceeding the previous record by another 40%.**

The aim of the ABAC Placement Rules is to better direct alcohol marketing towards adult audiences and away from under 18 year olds. It endeavours to do this by applying differential requirements on the placement of alcohol ads depending on the capabilities of the media being used for the marketing. This means the greater the capacity of the form of media to be directed towards adult audiences the higher the requirement on the alcohol company to use these capabilities to target the reach of their marketing.

Digital media platforms offer the greatest opportunity to direct marketing towards particular market segments and it is this area in which the Panel has experienced the largest challenges in applying the new rules. Social media companies such as Facebook, Instagram, Snapchat and Twitter are global platforms and the Scheme has had some difficulty obtaining timely and consistent advice from the platforms during 2018.

As a result, the use of age restriction controls to exclude under 18 year olds as required by the ABAC Placement Rule has featured in a number of Panel Determinations with the Panel endeavouring to detail the obligations imposed on alcohol companies. Differing and sometimes contradictory advice from the media platforms has made this aspect of the new Rules problematic for the Panel and alcohol marketers.

Not surprisingly the expansion of the Scheme has meant an increase in Panel decisions. A record 61 determinations were finalised in 2018, well in excess of the previous record of 45 determinations. The increased decisions flow in part from more complaints being received about alcohol marketing communications but the most significant reason for the increase is the ability of the Panel to now examine concerns about the placement of alcohol ads as well as the content of the ads. 18 of the 61 decisions related solely to placement concerns.

Prior to the new Rules, these concerns would not have been subject to a decision on the substance of the complaint.

While the Placement requirements are an important reform, the central feature of the ABAC requirements are the content standards. A couple of notable issues dealt with by the Panel included

- The marketing of a 'zero' alcohol product which raised the use of brand extensions as a marketing technique
- The interplay of the ABAC scheme with State liquor licensing regimes and
- The promotion of alcohol products through emphasising the alcoholic strength of the product

Away from the core business of considering complaints and making decisions, it was an active year for engagement activities with government regulators and policy makers. Education sessions were conducted for the communications sector on the Scheme requirements and the Panel Members met with the Scheme pre-vetters to canvass issues of Code interpretation.

Pleasingly even with the significant increase in the number of determinations made, the Panel was able to meet its target timeframes to finalise decisions. My thanks are extended to my fellow Panel Members and to the Scheme's Executive Officer Jayne Taylor for her efficiency and good humour even during the most demanding periods of work.

**Professor The Hon Michael Lavarch AO  
Chief Adjudicator, ABAC Adjudication Panel**



## MOST COMPLAINED ABOUT ALCOHOL ADS IN 2018



### The most complained about marketing campaign in 2018 was for Rusty Yak Ginger Ale.

13 complaints were made but the complaints were outside ABAC's jurisdiction as the concerns were unrelated to alcohol as a product but rather were concerned with discrimination against a sector of the community. [Ad Standards](#) upheld complaints on the basis that the advertisement vilifies people with red hair by the phrase 'stop the spread of the gene'.



### IRON JACK KNOWN FOR THIRST-CRUSHING REFRESHMENT

The second most complained about marketing campaign, with 5 complaints received in 2018, was the Iron Jack series of advertisements with the tagline, "Iron Jack, Thirst Crushing Refreshment". This marketing campaign resulted in **three separate Panel decisions about two separate advertisements and in each case dismissed the complaint finding:**

- no positive assertion that the product will provide a benefit to health or wellbeing is made about the impact of the product;
- the reference to thirst crushing is used with the term 'refreshment' and would likely be taken to be going to the taste of the product;
- taken as a whole a reasonable person would not understand the ad is making claims about the health benefits of the product;
- The scene showing alcohol use is clearly placed at the conclusion of the day after the fishing had been completed; and
- There is no suggestion that the men had consumed alcohol before or during their use of the boat.

## ALCOHOL ADVERTISEMENTS FOUND BY THE PANEL TO BREACH THE ABAC CODE

During 2018 the Panel made 21 determinations that upheld public complaints about alcohol marketing communications.

### LIQUORLAND

*Complaint regarding content*

#### COMPLAINT

Advertisements on Spotify suggesting you should drink alcohol to overcome embarrassment or mental health issues.

#### ABAC STANDARDS

Alcohol marketing cannot suggest alcohol may create or contribute to a significant change in mood or offers a therapeutic benefit or is a necessary aid to relaxation.

#### DECISION →

The Panel held that two of the advertisements met the ABAC standards, but that one breached the standards:

- The advertisement that breached the standards was described as an ‘awkward moment’ in a scenario where a person says something awkward when the surrounding party fell silent, which would generally make that person feel awkward or embarrassed about the incident;
- Alcohol is then introduced in response to the embarrassing scenario with the tagline “We’ve got a drink for that at Liquorland”; and
- The reasonable implication is that alcohol consumption will be an aid in overcoming the tense moment.

In response, the advertisement has been withdrawn.

## MOON DOG BREWERY

Complaint regarding content

### COMPLAINT

In store promotion strongly appeals to children.

### ABAC STANDARDS

Alcohol marketing cannot have strong or evident appeal to minors.



### DECISION →

The Panel held that the promotion as whole breached the standard noting:

- The inflatable palm tree is reminiscent of children's toys;
- It is brightly coloured and eye catching in a manner likely to appeal to children;
- It has a novelty value that would appeal to children; and
- The placement of a frisbee (not a frisbee of the type used for Extreme Frisbee) within the installation would add to the appeal to children.

The promotion has been removed.

## 5 SEEDS CIDER

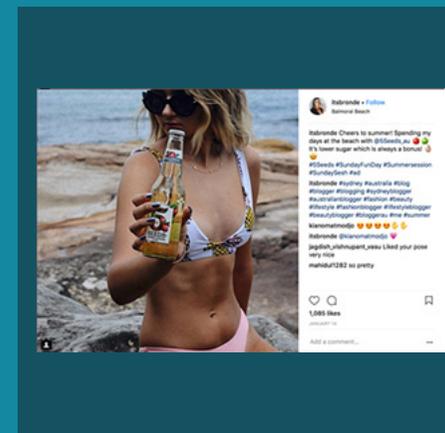
Complaint regarding content and placement

### COMPLAINT

The Instagram posts depict women under the age of 25 and the posts are not age restricted.

### ABAC STANDARDS

Alcohol marketing cannot include images of people under the age of 25 and digital marketing must apply available age restriction controls.



### DECISION →

The Panel found that two of the posts met the ABAC standards and two were in breach of the content standards:

- The social media influencer posts were by private account holders and not able to age restrict their Instagram accounts or posts, so age restriction technologies are not available for their posts promoting the product. In addition the followers of the two accounts were 83% and 89% adult, so exceeded the 75% adult threshold and the placement rules were met.
- The regrams of these posts on the 5 Seeds Cider account met the placement rules as the company applied available age restriction controls.
- The 'mcdhannah' posts feature a woman aged 25 and so meet the ABAC standards, however, the 'itsbronde' posts feature a woman aged 23 years of age, so are in breach of the ABAC content standards.

As a result, the 'itsbronde' post on the private social media account and the regram of this post on the 5 Seeds Cider account were both removed prior to the advertiser responding to the complaint. Further, the company has reiterated its guidelines to its social media moderators to ensure no similar breach is repeated.

## PREMIX KING

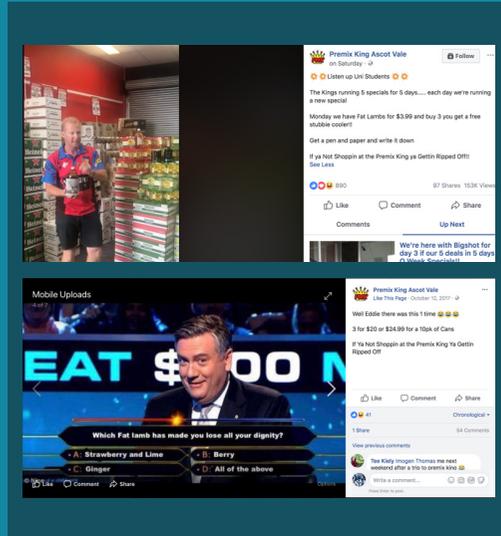
Complaint regarding content and placement

### COMPLAINT

Advertisements on the retailer Facebook page focus on cheap alcohol, encourage excess consumption of alcohol and irresponsible behaviour, have strong or evident appeal to young people and have no age restriction controls in place.

### ABAC STANDARDS

Alcohol marketing cannot have strong or evident appeal to minors or encourage excess consumption of alcohol and irresponsible alcohol related behaviour.



### DECISION →

The Panel upheld the complaint on the basis that:

- It seems the company did not utilise available age restriction controls.
- A post that refers to an alcohol product leading to a loss of dignity suggests excessive alcohol consumption and irresponsible alcohol related behaviour.
- A post which references university students in the context of 'O week' which is the orientation period for first year students might be taken as being directed to younger students a proportion of which would be aged 17.

The posts have been removed and the Facebook page has been age restricted.

## SPIRIT BAR & LOUNGE TRARALGON

Complaint regarding content

### COMPLAINT

A Facebook post promoting a healthy cocktail range encourages excess consumption by suggesting customers can avoid a hangover and advertises the alcohol drink as healthy.

### ABAC STANDARDS

Alcohol marketing cannot encourage excessive consumption of alcohol or suggest that the consumption of alcohol offers a therapeutic benefit.



### DECISION →

The Panel found that the post was in breach of the ABAC standards by referencing the 'new spirit bar healthy cocktail range' and stating it will 'keep you hydrated all night' and will 'avoid the hangover the next day' which implies excessive consumption of the product together with a therapeutic benefit from consuming the product.

The advertiser removed the post upon notification of the complaint.

## CHARLIE'S LIQUOR BARN

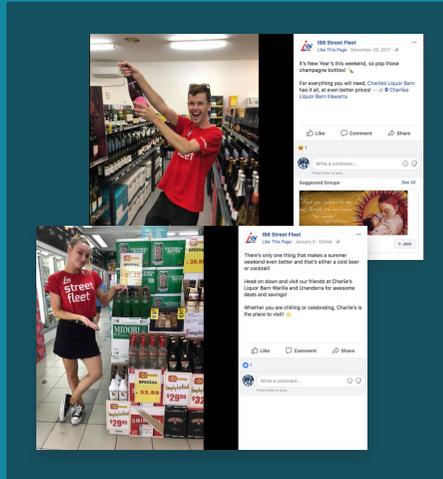
Complaint regarding content

### COMPLAINT

A series of Facebook posts depicting people aged under 25 and promoting excessive consumption or alcohol as a cause of change in mood.

### ABAC STANDARDS

Alcohol marketing cannot encourage excessive consumption of alcohol, depict people aged under 25 years or suggest that the consumption or presence of alcohol is a cause or contributor of a significant change in mood.



### DECISION →

The Panel found that posts were in breach of the ABAC standards by including people aged under 25 years, encouraging excess consumption and implying alcohol consumption could lead to a significant change in mood.

The advertiser removed the posts upon notification of the complaint. The advertiser has also followed up with i98FM radio to ensure the ABAC standards are followed when promoting the company's business.

## ALBY BEER

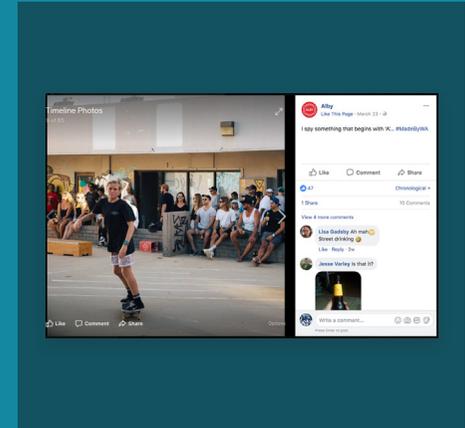
Complaint regarding content and placement

### COMPLAINT

A non-age restricted Facebook post depicting a male aged under 25 skateboarding that would have strong appeal to minors.

### ABAC STANDARDS

Alcohol marketing cannot have strong or evident appeal to minors, cannot depict people aged under 25 years and must apply available age restrictions.



### DECISION →

The Panel found the post in breach of the ABAC standards by:

- Including a prominent image of a male aged under 25 years and possibly under 18 years
- Depicting a young male skateboarding as the central character in the post is likely to strongly resonate with males under the age of 18
- Failing to age restrict the Facebook page where it is possible to apply age restriction controls

The advertiser removed the post and age restricted the Facebook page immediately after being notified of the complaint.

## MY BOTTLESHOP

Complaint regarding content

### COMPLAINT

An email marketing communication that encouraged excessive consumption.

### ABAC STANDARDS

Alcohol marketing cannot encourage excessive consumption or misuse of alcohol.



### DECISION →

The Panel found the marketing in breach of the ABAC standards by:

- Referring to the product as a “Mega Can” and a “massive 500ml hit” encouraging excessive consumption
- Including a statement that the product in a mega can is “perfect for long drives” is encouraging alcohol consumption while in control of a motor vehicle

The advertiser removed the advertising upon notification of the complaint. The brand owner of Jack Daniels was unaware of the advertising and did not approve it.

## RI-BEER-NA BERLINER WEISSE

Complaint regarding content

### COMPLAINT

Packaging that appeals to children and creates confusion with the well known non-alcoholic blackcurrant drink.

### ABAC STANDARDS

Alcohol packaging cannot have strong or evident appeal to under 18s or create confusion with a soft drink.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as:

- The product name is clearly a parody of the well known blackcurrant based soft drink, Ribena
- Ribena would generally be regarded by a reasonable person as a drink primarily targeting children
- The product packaging resembles Ribena in the use of purple colouring and depictions of blackcurrants and the use of a font style for the name which is identical or very similar to that employed for Ribena products
- While the reasonable person would likely understand the product to be a tongue in cheek play on the Ribena name the product packaging does create a potential confusion with the children’s drink Ribena
- Taken as a whole the similarity in the packaging’s design, colouring and the use of the font for the name would be taken as having a strong or evident appeal to minors

The advertiser has ceased production of the packaging.

## PHILTER BEER

Complaint regarding content

### COMPLAINT

Posts on the Philter Beer Instagram account that have imagery and captions with heavy sexual references.

### ABAC STANDARDS

Alcohol marketing cannot show or directly imply that the consumption or presence of alcohol is a cause of or contributor to the achievement of personal, business, sporting, sexual or other success.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as the posts fall well short of community expectations about the responsible portrayal of alcohol and its use and suggest that alcohol is a cause or contributor to the achievement of social success.

The advertiser removed the posts immediately on being notified of the complaint.

## ORANGE C NEIPA

Complaint regarding content

### COMPLAINT

The packaging looks like a can of orange juice.

### ABAC STANDARDS

Alcohol marketing cannot have strong or evident appeal to minors, including creating confusion with soft drinks.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as the packaging:

- uses the name Orange C which could readily be expected to be used by a soft drink or fruit juice
- is similar in appearance to a can of orange flavoured soft drink
- uses colouring which is similar to that used on orange flavoured drinks
- uses a depiction of a stylized orange which could readily be found on orange flavoured soft drinks
- does not contain any easily recognized term that the product is a beer, i.e. beer or ale
- the inclusion of NEIPA on the can would not clearly identify the product as a beer given the other features which closely resemble an orange soft drink

The advertiser confirmed they will not reinstate the product in its current packaging.

## XXXX SUMMER BRIGHT LAGER

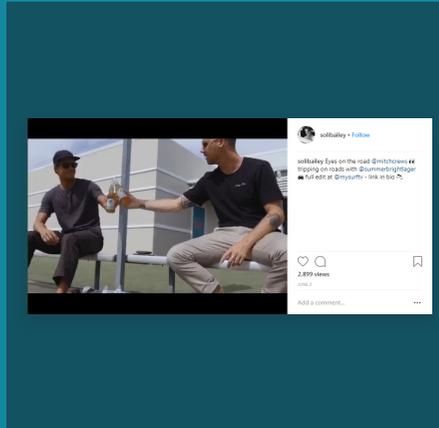
Complaint regarding content and placement

### COMPLAINT

Posts by the brand and various social media influencers include images of people aged under 25 and social media influencers (SMI) failed to activate available age restriction controls.

### ABAC STANDARDS

Alcohol marketing cannot include images of people under the age of 25 and digital marketing must apply available age restriction controls.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as:

- All posts were generated by the brand owner, including posts by SMI where product was gifted by the brand in exchange for images that the brand could use but there was no requirement for the SMI to post on their own account.
- 16 of the 19 posts complained about included images of people under 25 years of age.
- All of the SMI posts failed to activate age restriction controls.

The advertiser confirmed that most of the posts were removed prior to the determination being made, however, the post by @elisehalina and 3 posts by @brisbanegirlsabroad were removed later due to an initial reluctance by those SMI to remove the posts.

## WILDE BEER

Complaint regarding content and placement

### COMPLAINT

Posts by the brand and various social media influencers include images of people aged under 25 and social media influencers (SMI) failed to activate available age restriction controls.

### ABAC STANDARDS

Alcohol marketing cannot include images of people under the age of 25 and digital marketing must apply available age restriction controls.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as:

- All posts were generated by the brand owner, including posts by SMI where the arrangement was for the SMI to provide images that the brand could use but there was no requirement for the SMI to post on their own account.
- All posts complained about included images of under 25 year olds.
- All posts complained about failed to activate age restriction controls.

The advertiser confirmed that the posts by Wilde Beer were removed within 7 business days and the brand account age restricted. However the posts by the SMI were removed later and one SMI post is still awaiting removal or geoblocking by Instagram.

## FURPHY BEER

Complaint regarding content and placement

### COMPLAINT

Posts by the brand and various social media influencers include images of people aged under 25 and social media influencers (SMI) failed to activate available age restriction controls.

### ABAC STANDARDS

Alcohol marketing cannot include images of people under the age of 25 and digital marketing must apply available age restriction controls.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as:

- The post complained about failed to activate available age restriction controls.
- The post complained about included an image of an under 25 year old.
- The SMI signed an agreement that included a representation that the SMI were over 25 years of age, however this did not render the breach 'no fault' as ages were not verified and it was not reasonably unforeseeable that the SMI may have been under the age of 25.

The advertiser confirmed that the post was removed prior to the determination being made.

## LEON B CABERNET SAUVIGNON

Complaint regarding content

### COMPLAINT

Concern about a wine label showing a woman screaming while looking backwards at a male holding a long kitchen knife toward her.

### ABAC STANDARDS

Alcohol marketing cannot show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.



### DECISION →

The Panel found the marketing in breach of the ABAC standards as:

- The label depicts a violent attack on a woman.
- Violence against women is a major problem in Australia with an average one woman per week being murdered as a result of domestic violence.
- Alcohol misuse is a contributing factor in some incidences of violence.
- The resemblance of the label to a horror film poster will be noted by some but not necessarily a majority of potential consumers.
- Taken as a whole a reasonable person might take the label as showing offensive behaviour related to the presence of alcohol.

The advertiser confirmed the packaging will be discontinued when responding to the provisional determination.

## PREMIX KING

Complaint regarding content

### COMPLAINT

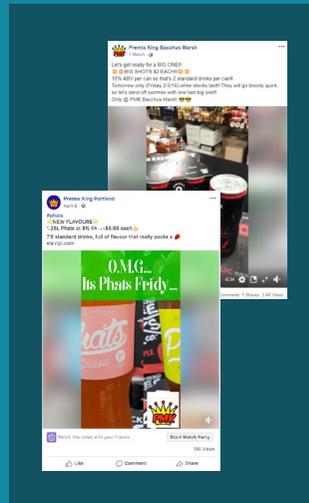
Concern that 7 Facebook posts:

- Encourage the choice of products by emphasizing their alcohol strength;
- Encourage excessive consumption and;
- Strongly appeal to minors through the use of language, sweet flavoured RTDs, emojis etc.

### ABAC STANDARDS

Alcohol marketing cannot:

- Encourage excessive alcohol consumption
- Encourage the choice of a product by emphasizing its alcohol strength
- Have strong or evident appeal to minors



### DECISION →

The Panel did not believe any of the posts were strongly appealing to minors but found the two posts depicted in breach of the ABAC standards as encouraging excessive consumption and the choice of the product by emphasizing its alcohol strength by:

- Using as a key selling point an emphasis of alcohol strength and/or the number of standard drinks per serving and the intoxicating effect of the product through language such as 'really packs a [punch emoji]';
- Using messages such as 'let's send off summer with one last big one' when combined with other messaging and graphics which endorse consumption levels in excess of Australian Alcohol Guidelines.

The Bacchus Marsh post was removed prior to the complaint being received by ABAC and the Portland post was removed within 5 business days of the determination being made.

## JOHNNIE WALKER

Complaint regarding placement

### COMPLAINT

Concern that an alcohol ad was broadcast with the Adelaide Christmas Pageant on the 9Now digital app.

### ABAC STANDARDS

Alcohol marketing must be directed at adults by compliance with CTICP, activating available age restriction controls, only using channels with >75% adult audience and not placing alcohol ads with programs or content primarily aimed at minors.

### DECISION →

The Panel found the marketing in breach of the ABAC standards as the Adelaide Christmas Pageant is a program with a primary aim of the entertainment and engagement of children. It was noted that the floats in the parade are heavily themed on children's characters including Santa Claus, Mary Poppins and Little Red Riding Hood and there are numerous child entertainers, such as clowns.

The advertiser advised that their advertisements will no longer appear with the program on 9Now and they also outlined a variety of actions they have and will continue to undertake to improve their processes for placement of advertisements on digital television.

# ALCOHOL ADVERTISEMENTS FOUND BY THE PANEL TO BREACH THE ABAC CODE WHERE THE BREACH WAS NOT THE FAULT OF THE ALCOHOL MARKETER

## VB

*Complaint regarding placement*

### COMPLAINT

A VB advertisement appearing in a 15-year-old girl's Instagram newsfeed.

### ABAC STANDARDS

Available age restriction controls must be utilised by alcohol marketers.

### DECISION →

The Panel noted that the company and complainant both agree that the alcohol ad should not have appeared in a minor's newsfeed and that Instagram has age restriction controls that should have been utilized. In this case, the company did apply the available age restriction controls and data from Facebook business manager shows that the ad did not reach any under 18-year-olds. The complainant confirmed that the child's account was set up with her correct date of birth and when she sought to enter the brand's page, but was denied access on the basis she was under 18. The Panel found there had been a breach of the placement rules but that as the company correctly applied available age restriction technologies a no fault breach occurred.

Instagram later confirmed that the technical failure was due to a bug in the age verification system and in addition to fixing the bug will be implementing a platform wide change so that only accounts that have been explicitly connected to an age verified Facebook account will be able to see sensitive material, including alcohol ads.

## SOMERSBY CIDER

*Complaint regarding placement*

### COMPLAINT

A Somersby Cider advertisement appearing in a 13-year-old boy's Instagram feed.

### ABAC STANDARDS

Available age restriction controls must be utilised by alcohol marketers.

### DECISION →

The Panel noted that the company advised that it did apply available Instagram age restriction controls. The complainant did not respond to a request for the relevant user profile details which would have enabled the error to be investigated. The Panel was, therefore, not able to make a finding as to what had occurred and assumed the child's account was setup correctly and that the company acted with reasonable diligence to follow the ABAC requirements. The Panel upheld the complaint but made a 'no fault breach' finding.

The Advertiser suspended its Instagram account on discovering the errors while further investigations were ongoing. Since this error occurred Instagram advised it is implementing a platform-wide change so that only accounts that have been explicitly connected to an age verified Facebook account will be able to see sensitive material, including alcohol advertisements, to avoid these types of errors.

## COOPER'S SESSION ALE

Complaint regarding content and placement

### COMPLAINT

A Coopers Session Ale advertisement appearing near Perth Modern School.

### ABAC STANDARDS

Alcohol marketing cannot:

- Strongly or evidently appeal to minors.
- Be placed within 150m sight line of a school (exception for alcohol retail sites).



### DECISION →

The Panel found that the placement rule had been breached noting:

- 150m sight line can not be subject to variable factors such as the density of the foliage as this would depend on whether it had been trimmed recently or was overgrown and the guideline needs to be understood in a way that provides continuity and certainty
- In any event the billboard is visible and within 150m sight line of several locations within the school grounds and from the footpath outside the school
- The retail outlet exception does not apply in this case as while the billboard is located on the Murray Hotel, it is owned by APN Outdoor and is not promoting the hotel nor linked to the availability of the product at the hotel
- A no fault finding was found in relation to this breach as this is the first time the Panel has made a ruling on the intent and meaning of the qualification to the 150m rule, noting the position taken by the company and outdoor media provider that the site fell within the qualification was not unreasonable given there had been no previous ruling on this point

The Panel found that the advertisement did not have strong or evident appeal to minors noting:

- The product is presented in a standard beer can and the Coopers brand name is reasonably well recognised as a beer product
- The play on the word 'TropicAle' emphasizes that the product is a beer
- The use of Hawaiian style fruit and images is colourful, but in the overall context is not considered as having strong or evident appeal to minors

The Advertiser removed the advertisement from that site pending a decision being made by the Panel and has advised it will no longer use that site for its advertising.

## CARLTON DRAUGHT

Complaint regarding placement

### COMPLAINT

A promo for 'The Front Bar' which is a program that includes product placement of Carlton Draught was broadcast during a family program.

### ABAC STANDARDS

Alcohol marketing cannot:

- be placed inconsistently with the Commercial Television Industry Code of Practice (CTICP)
- be placed where the audience is reasonably expected to comprise >25% minors
- be placed with a program primarily aimed at minors



### DECISION →

The Panel found that the first placement rule had been breached noting:

- The television station and marketer believe the CTICP does not capture product placement and this is the reason the advertisement was placed outside the usual time zones that apply to alcohol
- The Panel's obligation is to apply the ABAC consistently with its policy purpose and the spirit and intent of its provisions. Placement Rule 1 is to be understood as requiring all alcohol marketing communications to meet the placement and location restrictions as detailed in the relevant media codes such as the CTICP. The fact that other codes adopt different definitions as to what is included in the scope of alcohol marketing for the purposes of those particular codes cannot be taken to water down the meaning of a marketing communication for ABAC purposes. That is, ABAC incorporates the requirements pertaining to placement and location found in other codes and applies those to ABAC marketing communications.
- The Panel accepts that the company had no input into the promo, but notes it has a right to protect its brand and can exercise a reasonable measure of control over the portrayal of its brand in the promo.
- As the audience was 97.5% adult and the program (Home & Away) has broad appeal but is not primarily aimed at minors no other placement rules were breached.

## ABAC STATISTICS 2004 – 2018

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>Marketing Pre-vetted</b>	754	761	936	1267	1110	1369	1050	1059	1229	1394	1571	1589	1416	1453	1751
Rejected	84	86	182	293	232	238	77	82	192	211	212	204	186	198	228
<b>Alcohol Complaints</b>	212	105	53	87	162	117	87	119	98	182	94	133	139	130	154
Percentage of all complaints	8.1%	3.6%	1.3%	3.3%	4.5%	3.1%	2.5%	3.5%	2.7%	6.6%	1.6%	3%	2.5%	2%	2.3%
Campaigns complained about	23	29	26	38	44	42	38	74	63	78	42	71	78	67	100
Complaints considered by Panel	8	29	13	25	49	47	41	63	53	69	35	35	47	73	89
<b>Panel Determinations</b>	5	12	10	22	36	39	31	45	36	36	27	29	34	43	61
Determinations Upheld	3	2	2	8	7	10	11	15	7	4	8	7	10	7	21
No Fault Breach	N/A	1	4												
Upheld Marketing Pre-vetted	2	1	2	2	2	0	2	2	0	2	1	3	2	0	0
Non-compliance with determination	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
<b>Average business days – Panel determinations</b>	35.1	33	78.6	29.3	19.8	22.5	26.5	25	20	26.3	19.7	21.6	19.7	14.6	22

