

Mr Graham Perrett, MP
Chair, House Standing Committee
on Social Policy and Legal Affairs
House of Representatives
Canberra ACT 2601

By email to: spla.reps@aph.gov.au

21st April, 2011

Dear Mr Perrett

RE: Alcohol advertising and The ABAC Scheme

We are writing in response to two related submissions (36 & 37) to your billboard inquiry which question The ABAC Scheme for regulating alcohol advertising.

We understand that the authors of number 37 were invited to address your Committee on April 4th and that there were no slots available for industry to respond or present evidence on the day.

We are grateful for an offer from the Committee Secretariat to forward us proof Hansards and then accept this written response, which we have turned around in four business days.

We thank you for giving us this opportunity.

The ABAC Scheme works well

We are all members of the Management Committee of The ABAC Scheme, which is world best practice for regulating alcohol advertising. The quasi-regulatory model is very appropriate to the task and entirely consistent with the Australian Government's rules for Best Practice Regulation.

The ABAC Scheme has a history of rigorously and effectively regulating alcohol advertising, including billboard advertising, which has earned positive acknowledgement from successive state and federal governments. This rigour includes the **independent pre-vetting** of alcohol advertisements against agreed community standards. A real strength of our scheme, independent pre-vetting was introduced in 1992. It has been reviewed and improved many times since.

Whilst we want to say clearly, upfront that we are proud of The ABAC Scheme, the primary purpose of this submission is to rebut the misleading and false claims about ABAC in other submissions and evidence.

A general ABAC overview is available in Attachment A to submission 27 (Advertising Standards Bureau). More detail on ABAC's design, history, personnel, etc. is publicly available from www.abac.org.au.

Keeping it evidence based

Submissions 36 and 37 are signed on behalf of a small number of organisations who have one thing in common: they are members of the fledgling National Alliance for Action on Alcohol (NAAA). The core organising principle of the NAAA is that industry be excluded from policy development. In fact, this is a condition of membership¹.

VicHealth provides secretariat services for the NAAA. In his appearance before your Committee the acting CEO of VicHealth stated repeatedly that their objective was to 'de-normalise' alcohol, via population-based measures which impact all consumers, moderate or otherwise.

We contend that the consumption of alcohol is indeed a normal, acceptable part of life, as are debates about its regulation. (A consumer demand for standard drinks was cited in the Magna Carta² in 1215.) Our member companies make a product which the vast majority of consumers enjoy in moderation and from which they can accrue social, physical and psychological³ benefit.

The current Australian Guidelines published by the National Health and Medical Research Council (NHMRC) confirm this:

“At low levels of consumption, alcohol has some health benefits in certain age groups – many studies, including meta-analyses have suggested that drinking reduces the risk of some cardiovascular and cerebrovascular disorders: specific studies have found reductions in cardiovascular disease (particularly in middle-aged and older males) and ischaemic stroke (in women after menopause). The large Kaiser Permanent Study found a clear protective association for cardiovascular disease.”⁴

It is fair to summarise the three main assertions of the NAAA group submissions and statements as:

1. There are only two types of regulation: industry or government.
2. Evidence shows the ABAC scheme doesn't work; and
3. Advertising causes under-aged consumption.

We would contest each of these claims, on the evidence.

1. *Is regulation really a black and white choice?*

The member businesses in our three industry associations provide a significant contribution to the economy. So we are pleased to note that one of your terms of reference is “*the desirability of minimising the regulatory burden on business*”.

Successive Australian governments have re-affirmed their commitment to best practice regulation, as have all state and territory governments through COAG⁵.

The Office of Best Practice Regulation publishes a ‘how to’ guide for those who want to determine what level of regulation is appropriate, called the *Best Practice Regulation Handbook*.

The Handbook describes four alternative (in ascending order) regulatory forms: self-regulation, quasi-regulation, co-regulation and explicit government regulation⁶.

Under ABAC, guidelines for advertising have been negotiated with governments, consumer complaints are handled independently, but all costs are borne by industry. The ABAC Scheme is administered by a Management Committee which includes industry, advertising and government representatives.

This meets the definition of the term ‘quasi-regulation’:

“Quasi-regulation includes a wide range of rules or arrangements where governments influence businesses to comply, but which do not form part of explicit government regulation. Some examples of quasi-regulation include industry codes of practice developed with government involvement, guidance notes, industry-government agreements and accreditation schemes.”

Importantly, no advertisers (nor trade association staff) can be a pre-vetter or an adjudicator. We stand by the integrity and independence of our Adjudicators which includes senior law and public health academics⁷. The current Chief Adjudicator is Professor the Hon Michael Lavarch, a former Attorney-General of Australia.

To describe ABAC as industry- or self-regulation is just negative spin from those who would advocate a ‘command and control’ approach over Australian business.

In practice, compliance with The ABAC Scheme is hardly ‘voluntary’ with a one-hundred percent compliance rate for calendar 2010. Professor Lavarch issued 11 determinations where at least part of the complaint was upheld, and all requests to withdraw ads were complied with. Peer pressure between competing companies is a very effective enforcement mechanism.

The independent assessment of alcohol advertisements prior to publication or broadcast (pre-vetting) is a key strength of The ABAC Scheme and is canvassed in detail later.

2. **Who says the ABAC Scheme doesn't work?**

We would offer a general caution about the quality of evidence cited in these two submissions and subsequent verbal evidence. Most of the many footnotes cite grey literature, i.e. other submissions, Wikipedia, opinion pieces written by NAAA friends, etc.

There are three citations in particular which cannot be relied upon.

The **first** is that “A review commissioned by the Ministerial Council on Drug Strategy in 2003 concluded that the ABAC system was ‘dysfunctional’⁸.”

This is manifestly untrue.

The review actually said: “NCRAA is of the view that alcohol advertising should continue to be self-regulated in Australia and recommends that the MCDS work with the alcohol industry to enhance the self-regulatory system.⁹”

The NCRAA review considered, and rejected, government regulation of alcohol advertising.

After the NCRAA report was tabled at the Ministerial Council, agreement was struck with MCDS ministers for enhancements to The ABAC Scheme which included:

- Extending coverage to internet advertising
- Bringing the NHMRC drinking guidelines into the Code
- Allow non-member companies to become ABAC signatories
- Requiring a formal decision to be made (and recorded) for all complaints.
- Appoint a ‘health rep’ to the Adjudication Panel, with a ‘health rep’ participating in all adjudications by the Panel
- Appointing a government rep on the Management Committee, with quarterly meetings and a published Annual Report.

All these changes were implemented by the end of 2005¹⁰ transforming ABAC into a quasi-regulatory model from that time.

Many changes have been made since NCRAA, including publishing all determinations on a public website (www.abac.org.au); extending coverage to social media (Facebook), producer point of sale materials and naming and packaging; and appointing a second public health professor as an adjudicator.

The **second** unreliable citation is the 2004 Jones et al study cited in submission 37, funded by VicHealth. The study design has an insurmountable selection bias flaw, in that it does not identify the ‘experts’ used to fill out the (unpublished) questionnaire, nor describe the nature of their relationship to the authors, if any. The reader must take a leap of faith that the opinions of anonymous people should outweigh the opinions of named, independent ABAC adjudicators (who currently include Professors Lavarch, Baum and Mattick). ABAC processes are completely transparent.

The **third** arises because both submissions cite materials published by the Preventative Health Taskforce as if this were an external, arms-length authority.

What the submissions don't tell you is that NAAA members (including signatories to the submissions to your Inquiry) were intimately involved in writing the PHT report to government. Hence they are citing their past work in support of their present claims.

Mike Daube (McCusker Foundation) was Deputy Chair of the Taskforce. Todd Harper (VicHealth) was on the Alcohol Working Group. A technical report on alcohol to the Taskforce was co-authored by two Turning Point staff, one of whom was Robin Room¹¹. We believe this context is important and should have been acknowledged by the submitters themselves. References to the PHT report generally tell you only that NAAA group members still agree with each other.

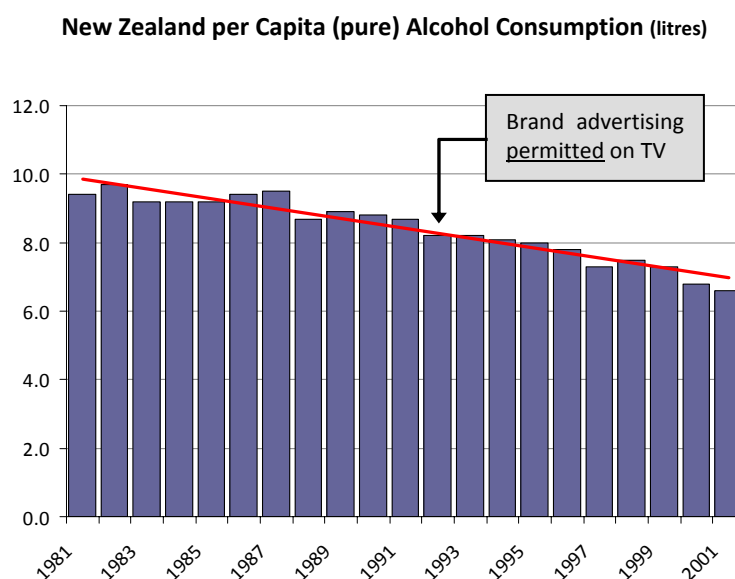
Nor do they mention the Commonwealth Government's response to the PHT report:
*"The Government notes the recommendation. The Government's approach is to pursue voluntary and collaborative approaches with the alcohol industry to promote a more responsible approach to alcohol in Australia before considering more mandatory regulation."*¹²

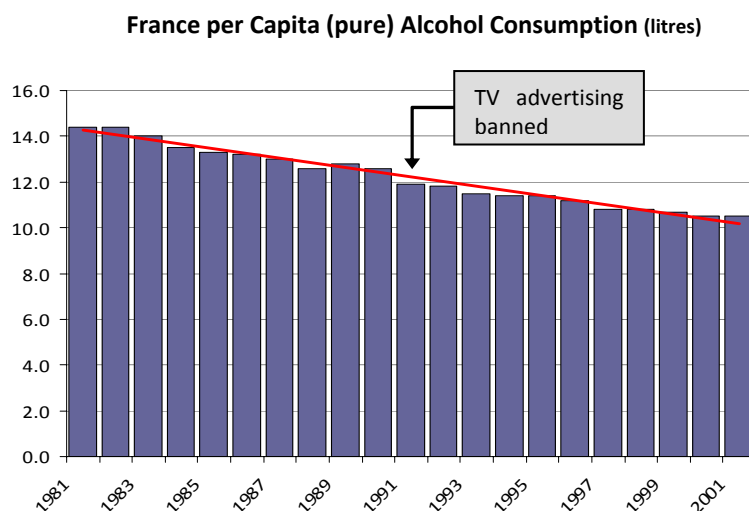
3. Does advertising cause underage consumption?

We all agree that binge drinking among young Australians is of particular concern.

However, the evidence from advocacy researchers about the strength of the relationship between brand advertising and consumption generally is weak. At the population level, a comparison between the real life experience of France and New Zealand is instructive.

In the early 90s New Zealand permitted brand advertising on television for the first time, whilst France banned it.





The result of permitting advertising and of banning it was identical: the consumption trend in both countries continued on its previous path at its previous rate.

At the sub-population level the report of a landmark Victorian Parliamentary Inquiry into Strategies to Reduce Harmful Alcohol Consumption, which conducted more than 102 public hearings and meetings across Australia and Europe, is a fair summary of the debate:

“The Committee believes any firm links between alcohol advertising and increased or harmful alcohol consumption (particularly among young people) remain inconclusive. As contributing authors to a leading Australian textbook on alcohol policy have remarked, “The effect of advertising restrictions on [young people’s] drinking is best considered an open question.”¹³

What is not in dispute is that parents and peers are the primary influencers over youth drinking decisions. There is a broad consensus of evidence to support this.

For example, a report on Parenting Influences on Adolescent Alcohol Use shows that:

“Adolescents tend to drink at home, at parties, or at friends’ homes. Finally, it was shown that a considerable proportion of adolescents (up to one half) obtain their alcohol from parents”¹⁴.

Australian brewers, winemakers and spirit producers have taken the lead in educating peers and parents via evidence based campaigns, including:

- Development of the Rethinking Drinking classroom teaching materials, which were found by a government commissioned report to be amongst the most commonly reported resources in school based alcohol education¹⁵; and
- Contributions to Drinkwise Australia, a non-profit organisation which is engaged in social marketing to parents. The recent ‘Kids absorb your drinking’ campaign has now moved on to ‘Kids and alcohol don’t mix’, where television advertising is supported by in-store materials, widely available in bottle-shops around Australia. See www.drinkwise.org.au to view the TV commercial.

We believe that the alcohol industry deserves credit where it is due for these voluntary efforts to change the drinking culture over time.

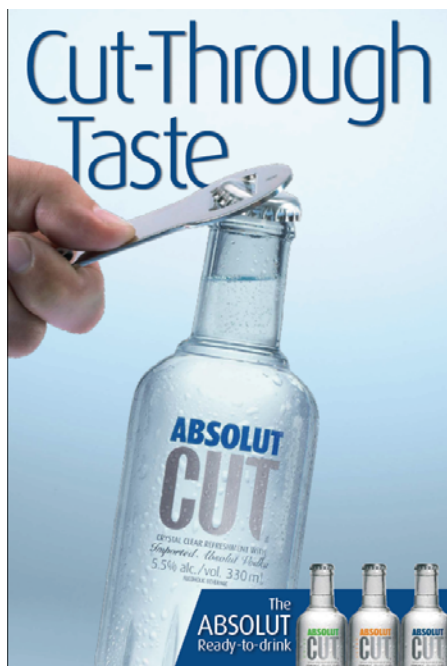
Understanding the role of pre-vetting

At the Melbourne hearing, Mrs Moylan asked whether any ABAC pre-vetted advertisements subsequently elicited any upheld complaints¹⁶. The answer is yes, but we found only three upheld determinations for pre-vetted billboards over the past five years.

In the first determination in June 2006, two billboards with a ‘raining beer’ theme were found to appear to contribute to a change in mood. Here is an example of the two:



In the second determination, in April 2007, a bus shelter ad for Absolut was removed because it was too near a school. In the third determination, in February 2008, the presence of the box on the back of a bike was found to have suggested ‘excessive consumption’ in this Corona ad.



We believe they show how stringent the independent adjudicators are in applying both the letter and spirit of the ABAC Code.

The determinations may be read in full at www.abac.org.au, but it is important to consider these few examples across a five year period within the context of the current debate.

Many submissions to your inquiry are concerned primarily about billboards designed to shock or that contain graphic images. The following excerpt from a submission by two WA Liberal MPs is typical of these concerns:

“Sexually explicit material displayed across outdoor advertising, in particular through billboards, raises particular concerns due to the inability of members of the public to avoid such material. Of particular concern is the inherent inability of parents to restrict exposure to such inappropriate images and slogans.”¹⁷

We contend that alcohol advertising on billboards (including these examples) easily passes this ‘Can we explain that to children?’ test, in a way that some other product advertising does not. In fact, it does so easily because of pre-vetting.

It is illogical to argue that pre-vetted material should be guaranteed to always survive the ABAC complaints process because any judgement about the suitability of advertising will, unavoidably, be subjective. The personal judgement of a pre-vetter may not always match the personal judgement of an adjudicator (or a complainant) and this will be the case regardless of who is funding these services, government or industry. It is not possible to design a system otherwise, unless the right of the public to complain is abandoned. ABAC is proud to fund a free complaint process where all complaints must be considered.

What matters, and what ABAC delivers, is whether the rare inconsistencies between pre-vetting and adjudications occur at the margins of case law (as these examples clearly do) and whether advertisers accept the verdict quickly (as they did – all three were removed).

The Management Committee of The ABAC Scheme takes care to keep both advertisers and independent pre-vetters up to date on case law, as determined by the independent adjudication panel. This information flow occurs through seminars, guidance notes and the publishing all determinations on our website.

We are proud that there are a negligible number of instances where a complaint against a pre-vetted ad is upheld, and the lessons are quickly absorbed.

Here are some other statistics to provide some perspective: all from 2007 for comparison purposes, as ad spend figures are available for that year¹⁸:

- Alcohol advertising expenditure was only 1.3% of the total advertising expenditure in Australia¹⁹.
- 98.3% of the alcohol spend (the 1.3%) was by companies who are ABAC signatories.
- In 2007, the total number of advertisements submitted to the pre-vetting service was 1267.

- Of these, 23% of advertisements were rejected and a further 5% were modified (so the system has real teeth).
- Only 38 of the surviving advertisements attracted complaints.
- These 38 comprise only 2.44% of all complaints received by the ASB in that year. (A low number considering that advocacy activists routinely search for ads to complain about²⁰).
- Billboards led to 4 determinations by the ABAC Adjudication Panel, with only one complaint upheld. The decision was complied with.

In summary

The ABAC Scheme is a quasi-regulatory system for managing the content of alcohol advertising in Australia, including billboards.

A key feature of the scheme is the extensive use of pre-vetting for advertising. This sets the regulation of alcohol advertising apart from the other 98.7% of the advertising spend.

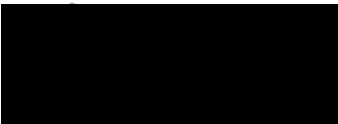

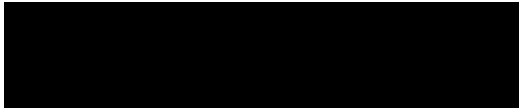



The effectiveness of pre-vetting is borne out by the negligible number of upheld complaints against billboard advertising.

Industry reacts quickly to any non-compliance threat and has a demonstrated record of honouring ABAC determinations.

Our opponents object to alcohol advertising per se, and are quite public about their ideological determination to exclude industry from policy input. Their evidence is weak, with misleading claims within their submissions and statements.

We believe that The ABAC Scheme is an example of best practice regulation, consistent with the Australian government guide to regulation and with community expectations.

Yours sincerely,

		
Gordon Broderick	Stephen Strachan	Stephen Swift
Executive Director, Distilled Spirits Industry Council of Australia	CEO, Winemakers Federation of Australia	Executive Director, Brewers Association of Australia & New Zealand
		

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- ¹ See ‘Join NAAA!’ within the NAAA publication ‘Creating a healthier Australia’.
- ² “There shall be one measure of wine throughout our whole realm, and one measure of ale...”
- ³ Cummins, R.A., Woerner, J., Gibson, A., Lai, L., Weinberg, M., & Collard, J. (2008). *Australian Unity Wellbeing Index: Survey 19 (The Wellbeing of Australians – Links with Exercise, Nicotine and Alcohol)*. Melbourne: Deakin University.
- ⁴ National Health and Medical Research Council (2009) Australian Guidelines to reduce health risks from drinking alcohol.
- ⁵ Best Practice Regulation: a Guide for Ministerial Councils and Standard Setting Bodies
- ⁶ Section 3.4 of the Best Practice Regulation Handbook 2010
- ⁷ Short biographies of our adjudicators are publicly available on www.abac.org.au
- ⁸ Alcohol Policy Submission at Section III: The Alcohol Beverages Advertising Code
- ⁹ P vii, Report to the Ministerial Council of Drug Strategy, Review of the Self-Regulatory System for Alcohol Advertising by the National Committee for the Review of Alcohol Advertising (NCRAA). August 2003.
- ¹⁰ Page 1, Annual Report of The ABAC Scheme, 2005.
- ¹¹ P6, Turning Point Progress Report to the AER Foundation.
- ¹² Page 93, Taking Preventative Action; Australian Government response to The Report of the Preventative Health Taskforce
- ¹³ p425, Final Report of the Inquiry into Strategies to Reduce Harmful Alcohol Consumption, Drugs and Crime Prevention Committee, 2006
- ¹⁴ Summary, p19, Parent Influences on Adolescent Alcohol Use prepared by the Australian Institute of Family Studies for the Department of Health and Ageing, 2004.
- ¹⁵ The Role of Schools in Alcohol Education, National Centre on Education and Training in Addiction, August 2009
- ¹⁶ p9 of the proof Hansard
- ¹⁷ Submission from the Hon Nick Goiran MLC, and Mr Michael Sutherland MLA.
- ¹⁸ Figures are from the 2007 ABAC Annual Report, unless separately footnoted.
- ¹⁹ Figures for 2007., p7 of Alcohol beverage advertising in mainstream Australian media 2005 to 2007: Expenditure and Exposure, Victorian Dept of Hum Services.
- ²⁰ “...both CHI and ADF constantly monitor alcohol advertising and lodge complaint where breaches are detected.” - from p37 of Jones et al, 2004