

s22

From: ABAC <info@abac.org.au>
Sent: Thursday, 16 November 2023 9:01 AM
To: s22
Subject: ABAC Panel Decision Released

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16 November 2023

ABAC Media Release



ABAC Panel Decision Released - Hard Solo Packaging

Media Release

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Canberra, Act 2600
Australia

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s22

From: s47F
Sent: Wednesday, 15 November 2023 10:10 AM
To: s22
Cc: STREET, Celia; GOODCHILD, Tiali; PATERSON, Carolyn; s22
Subject: RE: In confidence - Hard Solo [SEC=OFFICIAL:Sensitive]

Thank for this s22 can we please have media lines for tomorrow and a QTB prepared.

Best,

s4

From: s22 @health.gov.au>
Sent: Wednesday, 15 November 2023 9:57 AM
To: s47F @Health.gov.au>
Cc: STREET, Celia <Celia.Street@health.gov.au>; GOODCHILD, Tiali <Tiali.Goodchild@health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; s22 @health.gov.au>
Subject: In confidence - Hard Solo [SEC=OFFICIAL:Sensitive]

Hi s47F

Please find attached on a confidential basis an embargoed copy of the ABAC media release and decision on Hard Solo that will be released publicly tomorrow (Thursday 16 November).

The ABAC adjudication panel has determined that the packaging of Hard Solo breached the ABAC Code by having strong and evident appeal to minors. The producers of Hard Solo, Carlton and United Breweries, have accepted the decision and have advised that they will immediately cease further orders for production of this packaging.

We will review the attached determination in detail and provide further advice.

Please note the attached is not for further distribution

Kind regards

s22

s22
 s22 – Drug and Alcohol Policy Section
 Alcohol and Other Drugs Branch

Population Health Division | Primary and Community Care Group
 Australian Government, Department of Health and Aged Care

s22 @health.gov.au

Location: Sirius s22

PO Box 9848, Canberra ACT 2601, Australia

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EMBARGOED UNTIL 16 NOVEMBER 2023 AT 9AM AEDST

Australia's Responsible Alcohol Marketing Scheme

16 November 2023

Hard Solo Packaging - ABAC Panel Decision Released

The ABAC Adjudication Panel (Panel) has determined that the packaging (can design) of the Ready to Drink alcohol beverage (RTD) 'Hard Solo' has breached the ABAC Responsible Alcohol Marketing Code (Code). The Panel's decision followed the receipt of multiple public complaints raising concerns that the brand name and can design of the product strongly appeals to minors.

"The Panel decided that the packaging breached the standard contained in Part 3(b)(i) of the Code by having strong or evident appeal to minors. This followed careful consideration of the public complaints and the detailed submissions from Carlton & United Breweries (CUB), the producers of Hard Solo. The process involved CUB seeking a re-hearing of the Panel's earlier provisional determination." ABAC Panel Chair, Professor Michael Lavarch said

"This decision was the first occasion the Panel has been called upon to assess the packaging of an RTD product with a brand name and core branding elements taken from a well-established and iconic soft drink brand.

"CUB were careful to devise a packaging design that identified Hard Solo as an alcoholic beverage and not a soft drink. However, the Panel believed a reasonable person would probably understand that as a household soft drink brand found in an estimated 1.7 million homes, stocked in supermarkets and convenience stores and marketed freely without the restrictions placed on alcohol products, Solo was an entirely familiar and relatable brand to minors. Using the Solo name and other branding features on Hard Solo would elevate the appeal of Hard Solo and create an illusion for minors of a smooth transition from the non-alcoholic to alcoholic variant of Solo."

"Hard Solo was a novel case in that previous RTD packaging designs considered by ABAC had been built upon emphasising an alcohol type or a well-known alcohol brand being combined with a soft drink such as cola or ginger ale. Hard Solo packaging in contrast is led by the brand recognition of Solo soft drink. Because of the novel issue, the number of complaints spread over a month and the two-stage process for final decisions on brand names and packaging, the Panel determination was lengthy, and the process has taken several months to finalise. Most ABAC decisions are made within 30 days."

CUB have accepted the decision and have advised that in accordance with the ABAC Rules they have immediately ceased further orders for production of this packaging. Transition provisions apply to pre-existing stocks.

The ABAC Independent Chair, the Hon Tony Smith added "I am satisfied that the Panel has adopted a rigorous and considered process in making this landmark decision. The independence and integrity of the Panel and its combined expertise in law, public health and media is crucial in ensuring that its decisions are consistent with the ABAC Code standards, that are developed to reflect community expectations."

More information about the Code is also available at: <http://www.abac.org.au/>

[ENDS]

Media Contact: Jayne Taylor on info@abac.org.au or 0411 700 225.

Background:

- The ABAC Scheme is a core component of the regulatory regime applying to alcohol marketing in Australia. It is a not for profit industry initiative with the aim of alcohol marketing occurring consistently with standards of good practice. ABAC regulates alcohol marketing and provides education and advice to alcohol marketers to promote responsibility and high standards. The ABAC Scheme is:
 - Governed by a Management Committee comprised of industry, government and advertising representatives;
 - Funded by industry via membership levies, direct signatory fees and pre-vetting fees.
- Alcohol promotion and marketing is a shared regulatory space between direct government regimes and industry initiatives such as ABAC. The ABAC standards apply over and above:
 - the Federal Competition and Consumer Act and State Fair Trading legislation;
 - State and Territory Liquor Licensing alcohol promotion requirements ;
 - Australia New Zealand Food Standards Code;
 - the Australian Association of National Advertisers Code of Ethics;
 - the Commercial Television Industry Code of Practice;
 - the Commercial Radio Code of Practice; and
 - the Outdoor Media Association Code of Ethics and Alcohol Advertising Policy.
- ABAC does not regulate physical alcohol beverages nor decide whether alcoholised soft drinks should be permitted in the Australian market, those are matters for Government regulators;
- ABAC encourages responsibility in alcohol packaging/marketing before it reaches the market in a variety of ways, including development of strong Code standards, industry training on those standards, proactive compliance monitoring and pre-vetting advice – in 2022 17% of pre-vetting requests were for material that was rejected and never reached the market;
- The ABAC system also includes the safety net of the independent complaints system - public complaints that raise ABAC issues will receive an independent hearing by an expert Panel, regardless of whether pre-vetting advice was obtained, the Panel is the final arbiter;
- The ABAC Adjudication Panel comprises 5 members including two public health experts and two members with experience in media or marketing. The chair of the Panel is former Commonwealth Attorney-General, Professor Michael Lavarch.
- Statistically there is a very high correlation between advice given in pre-vetting and Panel determinations, however on occasions the Panel reaches a different conclusion – this can arise in a novel case such as this or where the marketing material calls for an 'on-balance' decision where reasonable minds could disagree on whether the communication does or does not meet community expectations as embodied in the Code standards.
- Pro-active measures combined with reactive expert complaints adjudication ensures a rigorous system that works within the principles of procedural fairness.

s22

From: Jayne Taylor <info@abac.org.au>
Sent: Wednesday, 15 November 2023 9:40 AM
To: PATERSON, Carolyn; s22
Subject: Confidential - ABAC
Attachments: ConfidentialEmbargoed ABAC Media Release - 16 November 2023.docx;
Confidential 119-23 and Others Final Determination 8-11-23.pdf

REMINDER: Think before you click! This email originated from outside our organisation. Only click links or open attachments if you recognise the sender and know the content is safe.

Dear Carolyn, s22 and s22

I attach for your information and **on a confidential basis** an embargoed media release scheduled for tomorrow morning at 9am, announcing the ABAC Adjudication Panel's decision on complaints received in relation to Hard Solo packaging, and a confidential copy of the final determination. I understand that you will provide a confidential briefing to the Minister's office on this outcome.

The Panel Chief Adjudicator, Michael Lavarch is available to provide you and/or the Minister's office with a briefing on this outcome at your convenience.

Please contact me if you have any queries.

Kind regards,

Jayne

Jayne Taylor
Chief Executive Officer
The ABAC Scheme Limited

P: 0411 700 225
E: s47F@abac.org.au

www.abac.org.au

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THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

s22

From: Jayne Taylor <info@abac.org.au>
Sent: Thursday, 12 October 2023 10:08 AM
To: s22
Cc: s22 s22
Subject: Re: Hard Solo - timing of a decision [SEC=OFFICIAL]

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Hi s22

I am expecting it will be finalised by the end of this month. In this case there was a large volume of complaints, packaging complaints have a longer two stage process to afford procedural fairness and as it is a decision on a novel issue the Panel will provide a long carefully considered determination that addresses all of the issues raised and the implications.

Jayne

Jayne Taylor
 Chief Executive Officer
 The ABAC Scheme Limited

P: 0411 700 225
 E: s47F@abac.org.au

www.abac.org.au

On 12 Oct 2023, at 9:33 am, s22@health.gov.au> wrote:

Good morning Jayne

I hope that this email finds you well.

Our Minister's office have just been following-up on when a decision on Hard Solo might be made. Do you have any further advice on this matter that you might be able to provide?

Many thanks

s22

s22

s22 - Drug and Alcohol Policy Section
 Alcohol and Other Drugs Branch | Population Health Division
 AUSTRALIAN GOVERNMENT DEPARTMENT OF HEALTH AND AGED CARE

s22

<image001.png>

PO BOX 9848 – CANBERRA ACT 2601

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s22

From: s47E(d)
Sent: Thursday, 9 November 2023 6:11 PM
To: s22
Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

No worries!! Again, lol

s22 She/Her
 Departmental Liaison Officer

s22
 Office of the Hon Mark Butler MP
 Minister for Health and Aged Care

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From: s22 @health.gov.au>
Sent: Thursday, 9 November 2023 6:07 PM
To: s47E(d) @Health.gov.au>
Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Thank you again. Again.

From: s47E(d) @Health.gov.au>
Sent: Thursday, 9 November 2023 5:32 PM
To: s22 @health.gov.au>
Cc: s22 @health.gov.au>; s47E(d) @health.gov.au>
Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

No worries s22 – MPS grateful if you can please amend the milestones.

Thanks!

s22

s22 She/Her
 Departmental Liaison Officer

s22
 Office of the Hon Mark Butler MP
 Minister for Health and Aged Care

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From: s22 @health.gov.au>
Sent: Thursday, 9 November 2023 5:27 PM
To: s47E(d) @Health.gov.au>
Cc: s22 @health.gov.au>; s47E(d) @health.gov.au>
Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Hello again s22

Once again, I am writing to let you know that we don't have a decision on Hard Solo and so I am writing to request yet another extension.

We had a meeting with the CEO of ABAC and the Chair of the Management Committee last week who had been hoping that we would get an embargoed copy of the decision this week (which we could provide in-confidence to the office). Unfortunately that has not happened yet. Naturally, as soon as we get it we will send it on and finalise the MIR but in the interim, could we please extend until 22 November? Hopefully we will have it before then.

Many thanks again.

s22

From: s47E(d) @Health.gov.au>
Sent: Tuesday, 17 October 2023 3:57 PM
To: s22 @health.gov.au>
Cc: s22 @health.gov.au>; s47E(d) @health.gov.au>
Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

No probs s22 🙄

MPS – can you please amend to be due 6 November 2023?

Thanks all

s22

s22 She/Her
 Departmental Liaison Officer

s22
 Office of the Hon Mark Butler MP
 Minister for Health and Aged Care

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From: s22 @health.gov.au>
Sent: Tuesday, 17 October 2023 3:30 PM
To: s47E(d) @Health.gov.au>
Cc: s22 @health.gov.au>; s47E(d) @health.gov.au>
Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Hi again

Sorry to do this yet again – latest advice from the ABAC CEO is that a decision should be made by the end of the month. I think that the office were updated on this last week but I failed to translate it into a request for an extension.

So, once again, could we please get an extension on this one? If the decision is made by 31 October we should be able to turn around the updated Brief pretty fast. So, maybe 6 November? And of course, we will provide it sooner if we get a decision sooner.

Thanks again.

s22

From: s47E(d) @Health.gov.au>
Sent: Tuesday, 3 October 2023 8:46 AM
To: s22 @health.gov.au>

Cc: s22 [redacted] <[redacted]@health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; s47 [redacted] <[redacted]@health.gov.au>

Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Morning s22 [redacted]

No problems at all. Very happy to extend, noting the brief will be up as soon as you have the info.

MPS – can we please extend MB23-002579 to be due COB 16 October 2023?

Thanks all

s22 [redacted]

s22 [redacted] She/Her
Departmental Liaison Officer

s22 [redacted]

Office of the Hon Mark Butler MP
Minister for Health and Aged Care

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From: s22 [redacted] <[redacted]@health.gov.au>

Sent: Tuesday, 3 October 2023 8:30 AM

To: s47E(d) [redacted] <[redacted]@Health.gov.au>

Cc: s22 [redacted] <[redacted]@health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; s47 [redacted] <[redacted]@health.gov.au>

Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Good morning again s22 [redacted]

I am sorry to have to keep contacting you about this but the decision on Hard Solo has still not been made.

The advice that we have had from the ABAC CEO last week was that a decision will be made 'soon'.

Am I able to request yet another extension? Perhaps two weeks, noting that we will progress the Min Brief as soon as we have the information (so could be sooner – we just can't tell).

Many thanks

s22 [redacted]

From: s47E(d) [redacted] <[redacted]@Health.gov.au>

Sent: Thursday, 14 September 2023 4:27 PM

To: s22 [redacted] <[redacted]@health.gov.au>

Cc: s22 [redacted] <[redacted]@health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; s47 [redacted] <[redacted]@health.gov.au>

Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

No problem at all, thanks for the update s22 [redacted]

MPS – can we please extend the milestones for MB23-002579 to be due to the MO 11am 2 October 2023?

Very happy to discuss further extensions closer to the date if needed.

Thanks all

s22

s22

Departmental Liaison Officer

s22

Office of the Hon Mark Butler MP
Minister for Health and Aged Care

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From: s22 <[redacted]@health.gov.au>

Sent: Thursday, 14 September 2023 4:23 PM

To: s47E(d) <[redacted]@Health.gov.au>

Cc: s22 <[redacted]@health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; s47E(d) <[redacted]@health.gov.au>

Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Good afternoon s22

By way of an update, ABAC have not made their determination on Hard Solo yet and so we will be unable to provide and updated MB21-002579 to the office by tomorrow.

Could we please have another extension? We are hoping to hear from ABAC soon but have no control (or information) on the timing of the decision. Perhaps another two weeks (noting that we will get the Brief to your office as soon as possible after we receive the determination)?

Many thanks

s22

From: s47E(d) <[redacted]@Health.gov.au>

Sent: Tuesday, 22 August 2023 10:30 AM

To: s22 <[redacted]@health.gov.au>; s47E(d) <[redacted]@health.gov.au>

Cc: s22 <[redacted]@health.gov.au>; s22 <[redacted]@health.gov.au>;

PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>

Subject: RE: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Hey s22

Thank you for this background!

Happy to extend the due date for this brief until 15 September 2023 – **MPS** could you please update the milestones in PDMS?

Additionally, for your visibility, the MO have advised it is unlikely the submission at MS23-000785 will progress to the Minister until the information on Hard Solo is received. Please let us know if there are any concerns with this approach that we can feed through to the team here.

Thank you

s22

s22

Departmental Liaison Officer

s22

Office of the Hon Mark Butler MP

Minister for Health and Aged Care

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From: s22 [redacted] <[redacted]@health.gov.au>
Sent: Tuesday, 22 August 2023 10:07 AM
To: s47E(d) [redacted] <[redacted]@Health.gov.au>
Cc: s22 [redacted] <[redacted]@health.gov.au>; s22 [redacted] <[redacted]@health.gov.au>;
 PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>
Subject: Request re extension for Hard Solo MIR (MB21-002579) [SEC=OFFICIAL]

Good morning

I am writing in relation to MB21-002579, a MIR on the findings of the complaint made to the Alcohol Beverages Advertising Code Scheme (ABAC) regarding Hard Solo. This MIR was initiated by your office and submitted by the Department on 16 August 2023, and subsequently returned to the Department for redraft.

The redraft request asks for the findings to be provided by 24 August 2023.

ABAC has a target of 30 business days for responding to a complaint. Given the recency of the complaints regarding Hard Solo, there are no findings available, and there are unlikely to be any findings available for at least another few weeks. ABAC is unable to advise on a more precise timeframe but has noted that, as this matter is related to a 'packaging' issue, the turnaround time could potentially be longer.

Your office has suggested that we could reach out to the WA Cancer Council (as the complainant), for these findings. However, we are advised that the outcome of the complaint will be circulated to the complainant at the same time that it is sent to the Management Committee (of which the Department is a member). The outcomes are generally posted on the ABAC website soon after.

Please note that Carolyn spoke to s47F [redacted] yesterday (21/08/2023) and she was comfortable with this approach. As such, we ask that the deadline for providing this MIR be extended to 15 September. Please note that as soon as we receive notice of the determination it can be forwarded to the Minister's Office via email, with the formal MIR provided shortly after.

Also to note, we have been advised that multiple complaints have since been made to ABAC regarding Hard Solo. ABAC has advised that these will be dealt with through a single determination (given that they relate to the same issue) and that all complainants and committee members will be advised of the ABAC Adjudication Panel's decision simultaneously.

Many thanks and happy to discuss

s22 [redacted]

s22 [redacted]
 s22 [redacted] Drug and Alcohol Policy Section
 Alcohol and Other Drugs Branch | Population Health Division
 AUSTRALIAN GOVERNMENT DEPARTMENT OF HEALTH AND AGED CARE

s22 [redacted]

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s22

From: s47E(d)
Sent: Tuesday, 15 August 2023 11:15 AM
To: s22
Cc: s47E(d); s22; PATERSON, Carolyn; s47E(d)
Subject: FW: MB23-002579 - Hard Solo [SEC=OFFICIAL]

Importance: High

Hiya s22

For your radar, I was chatting to Celia this morning about items to hit her queue before she commences travel on Wednesday PM, Thursday and Friday of this week.

Confirming Celia would like to clear this product prior to unplugging tomorrow Wednesday 16 August 2023.

Please let me know if I can support.

Many Thanks,

s
2

s22

Executive Support Officer
 Population Health Division

Australian Government Department of Health and Aged Care

s22 @health.gov.au

s22 North, Sirius Building

PO Box 9848, Canberra ACT 2601

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From: s47E(d) @health.gov.au>
Sent: Friday, 11 August 2023 10:06 AM
To: s47E(d) @Health.gov.au>; STREET, Celia <Celia.Street@health.gov.au>; s47E(d) @health.gov.au>
Cc: s47E(d) @health.gov.au>
Subject: RE: MB23-002579 - Hard Solo [SEC=OFFICIAL]

Good morning,

Your below request has been registered under MB23-002579 due to MPS 17/8/23 by 3pm.

Kind regards

s22

s22

Ministerial Coordination Officer

Ministerial and Parliamentary Services Branch (MPS)

People, Communication and Parliamentary Division | Corporate Operations Group
 Australian Government, Department of Health and Aged Care

s22 @health.gov.au

Location: Sirius Building, s22

PO Box 9848, Canberra ACT 2601, Australia

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From: s47E(d) @Health.gov.au>

Sent: Friday, 11 August 2023 9:18 AM

To: STREET, Celia <Celia.Street@health.gov.au>; s47E(d) @health.gov.au>

Cc: s47E(d) @health.gov.au>

Subject: RE: Hard Solo [SEC=OFFICIAL]

Thanks Celia,

MPS – can you please create an MIR PDR and assign to PHD.

DUE COB Thur 17 Aug

Thanks,

s22

s22
 Departmental Liaison Officer

Office of the Hon Mark Butler MP
 Minister for Health and Aged Care

E: s47E(d) @health.gov.au P: 02 6277 7220

s22

s22 | PO Box 6022

Parliament House, Canberra ACT 2600

From: STREET, Celia <Celia.Street@health.gov.au>

Sent: Friday, 11 August 2023 8:41 AM

To: s47E(d) @Health.gov.au>

Cc: s47E(d) @health.gov.au>

Subject: FW: Hard Solo [SEC=OFFICIAL]

Hi Guys

Happy Friday. Are you happy to raise the request?

Kind regards

Celia

From: s47F @Health.gov.au>

Sent: Friday, 11 August 2023 8:40 AM

To: STREET, Celia <Celia.Street@health.gov.au>

Cc: s47E(d) @health.gov.au>

Subject: Re: Hard Solo [SEC=OFFICIAL]

Yep that's fine, keen to see ABAC findings on Hard Solo after WA Cancer Councils complaint

Sent from [Workspace ONE Boxer](#)

On 11 August 2023 at 8:38:07 am AEST, STREET, Celia <Celia.Street@health.gov.au> wrote:

Hi s47F

Have you requested a formal briefing on Hard Solo through the DLOs?

Can I presume that it's due mid/late next week?

Kind regards

C
Celia Street
First Assistant Secretary
Population Health Division

Australian Government Department of Health and Aged Care

+612 6289 s22 | s22

celia.street@health.gov.au

Location: Scarborough House s22

MDP 707, GPO Box 9848, Canberra ACT 2601

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Making flexibility work - if you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless I reach out to you via phone or text, I'm not expecting you to read or reply until normal business hours.

[SEC=OFFICIAL]

s22

From: PATERSON, Carolyn
Sent: Friday, 6 October 2023 10:02 PM
To: s47F STREET, Celia
Cc: s22
Subject: RE: National FASD Program Expansion Proposal [SEC=OFFICIAL]

Hi both

Advice from the ABAC Chief Executive Officer, while they are unable to provide specific details, is that a decision on the complaints made regarding Hard Solo is imminent.

We will continue to follow up.

Other info:

- ABAC, as outlined in their Rules and Procedures document, have a target of 30 business days on average for the handling of complaints.
- However, if the Panel upholds a complaint about a product's name or packaging, then a provisional determination must be provided to the Marketer, who will be able to seek a rehearing of the provisional determination, by providing a formal written response and further submission within ten (10) business days of receipt of the provisional determination.
- This process means that the timeframe for handling complaints can be significantly longer than the target of 30 business days.
- If a provisional decision is appealed, then no information regarding the outcomes of that complaint will be made public (or provided to the Department) until this matter has been resolved and a final determination made.
- Information received regarding determination outcomes will be provided to the Department at the same time that it is released publicly on the website.

From: s47F @Health.gov.au>
Sent: Thursday, 5 October 2023 10:59 AM
To: PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; STREET, Celia <Celia.Street@health.gov.au>
Subject: FW: National FASD Program Expansion Proposal [SEC=OFFICIAL]

Can we please reach out to ABAC and ask for an explanation for the delay.

Cheers,

s4

From: s47F @fare.org.au>
Sent: Wednesday, 4 October 2023 5:02 PM
To: s47F @Health.gov.au>
Subject: National FASD Program Expansion Proposal

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Dear s47F

s22

s22

s47F

s47F

Chief Executive Officer
Foundation for Alcohol Research and Education

s47F (main line) (direct line)



For an Australia free
 from alcohol harm

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s22

From: PATERSON, Carolyn
Sent: Thursday, 12 October 2023 4:14 PM
To: s47F; STREET, Celia; GOODCHILD, Tiali
Cc: s22; s47E(d)
Subject: Update re ABAC - Hard Solo [SEC=OFFICIAL]

Hi all

We have followed up again with ABAC to seek an update on the Hard Solo complaints and expected data for outcomes.

ABAC have advised today - *they are expecting it will be finalised by the end of this month. In this case there was a large volume of complaints. Packaging complaints have a longer two stage process to afford procedural fairness and as it is a decision on a novel issue the Panel will provide a long carefully considered determination that addresses all of the issues raised and the implications.*

ABAC will continue to keep us engaged noting we will not have any visibility of a decision until it is finalised.

s22

Carolyn

Carolyn Paterson
 Assistant Secretary
 Alcohol and Other Drugs Branch

Population Health Division | Primary and Community Care Group
 Australian Government Department of Health and Aged Care
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From: PATERSON, Carolyn
Sent: Tuesday, 14 November 2023 9:53 AM
To: s47F; GOODCHILD, Tiali; STREET, Celia; s47E(d)
Cc: s22
Subject: RE: ABAC update [SEC=OFFICIAL]

Good Morning

We have been provided a confidential update that the ABAC determination on Hard Solo will be released on Thursday 16 November at 9 am.

The department will be provided with early, in-confidence advice on the decision on the morning of Wednesday 15 November (approx. 24 hours in advance of public release).

s47C

Happy to discuss. We will update you as soon as we have advice on the decision (under embargo).

Carolyn

From: s47F @Health.gov.au
Sent: Tuesday, 14 November 2023 8:28 AM
To: PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>; GOODCHILD, Tiali <Tiali.Goodchild@health.gov.au>; STREET, Celia <Celia.Street@health.gov.au>; s47E(d) @Health.gov.au
Cc: s22 @health.gov.au
Subject: RE: ABAC update [SEC=OFFICIAL]

Hi where is this up to? Have we got a decision?

Cheers,

s2

From: PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>
Sent: Friday, 3 November 2023 9:38 AM
To: GOODCHILD, Tiali <Tiali.Goodchild@health.gov.au>; s47F @Health.gov.au; STREET, Celia <Celia.Street@health.gov.au>; s47E(d) @Health.gov.au
Cc: s22 @health.gov.au
Subject: ABAC update [SEC=OFFICIAL]

Hi all

I met the ABAC CEO and new Chair of the Management Committee this week (noting that they are not responsible for adjudication panel decisions and work independently to this panel).

I raised concerns about the Hard Solo determination including, timeframe, the number of queries we are receiving and perceived view that the process is taking so long.

They acknowledged the concerns and also noted the adjudication process for matters relating to packing and product names is generally much longer as it includes additional steps whereby the provisional determination is first provided to the marketer who then has a right of reply. Depending on complexity of the issues, number of complaints and time taken for responses to be provided to the panel these additional steps can significantly delay the process.

Whilst the ABAC Management Committee has no visibility of the outcome of the determination until it is finalised, they have proposed to provide an in-confidence embargoed decision to the Department at the same time that it is provided to the marketer (who then has a further five working days to respond before it is made public). The ABAC CEO has confirmed we can share this embargoed decision with the Office.

They anticipate we will received the embargoed determination next week. We did note however, that we had been advised previously the decision was imminent.

s47C

Happy to chat. We will keep you updated.

Carolyn

[SEC=OFFICIAL]

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From: PATERSON, Carolyn
Sent: Wednesday, 15 November 2023 9:24 PM
To: s47F ; STREET, Celia; GOODCHILD, Tiali
Cc: s22 ; s22 ; s22
Subject: CONFIDENTIAL - HS Talking Points [SEC=OFFICIAL:Sensitive]

Hi s47F

Please find below A/g FAS cleared TP's in anticipation of the Hard Solo announcement tomorrow morning. The QTB is going through clearance.

Note that the ABAC rules and procedures require the Marketeer to ensure consistency with the Panel's decision within three months after notification. We would therefore anticipate that the stock would be cleared within the next three months, s47C

Talking Points

- The Australian Government is committed to preventing and minimising alcohol-related harms among individuals, families and communities, as outlined in the *National Alcohol Strategy 2019–2028*. A key priority in this strategy is 'managing availability, price and promotion', with an objective to minimise the promotion of risky drinking behaviours and other inappropriate marketing.
- The Alcohol Beverages Advertising Code (ABAC) Scheme Responsible Alcohol Marketing Code (the Code) sets standards for the responsible content and placement of alcohol adverts in Australia. In line with the ABAC Code, alcohol marketing communication must not have strong or evident appeal to minors.
- All complaints relating to alcohol marketing are independently assessed by the ABAC Chief Adjudicator and Ad Standards and streamed into a formal complaints panel process.
- The Government is aware that multiple public complaints were made to ABAC raising concerns that the brand name and packaging design of Hard Solo would strongly appeal to minors.
- The ABAC Adjudication Panel has determined that the Hard Solo packaging has breached the standard contained in Part 3(b)(i) of the ABAC Code by having strong and evident appeal to minors. In
- On the basis of this decision, the producers of Hard Solo have advised that they have ceased further orders for production of this packaging and that transition provisions will be applied to pre-existing stocks in line with the ABAC Scheme Rules and Procedures.
- The Government understands that due to the specific nature of the complaints being in relation to the product's brand name and packaging, the decision required a more complex two-stage process, which has taken several months to finalise.

Background

- ABAC has a target of 30 business days for responding to a complaint. However, complaints relating to product packaging often take longer because companies are provided with a provisional decision and the right to appeal (via a formal written response) before the decision is finalised. This is primarily due to the high investment costs involved in product packaging.
- Where the Panel makes a determination to uphold a complaint against a product's name or packaging, Clause 4.17.2 of the ABAC rules and procedures require the Marketeer ensure consistency with the Panel's decision within three months after notification [ALCOHOL BEVERAGES ADVERTISING CODE \(abac.org.au\)](https://www.abac.org.au).
- In addition to the ABAC Code, alcohol advertising is regulated under the Broadcasting Service Act 1992 and several intersecting codes and laws, which aim to prevent marketing that promotes risky drinking behaviours, including exposure of such marketing to children.

- Alcohol advertising in Australia must also comply with Commonwealth consumer legislation such as the *Competition and Consumer Act 2010*, as well as state and territory fair trading legislation and Liquor Licensing alcohol promotion requirements.
- The ABAC Scheme is not responsible for regulation of alcohol beverages or decisions regarding whether an alcohol product should be permitted in Australia. Regulations relating to the sale of particular alcoholic products are generally provided for under state and territory liquor licensing laws, with several states having the legislated power to prohibit or ban alcohol products on public policy grounds.

Happy to discuss. Thank you

Carolyn

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From: PATERSON, Carolyn
Sent: Thursday, 16 November 2023 12:37 PM
To: s47F
Cc: GOODCHILD, Tiali; s22
Subject: FYI: Industry code on alcohol advertising fails to address Hard Solo [SEC=OFFICIAL]
Attachments: FARE MEDIA RELEASE HARD SOLO ABAC 16NOV23.pdf

FYI I understand FARE have also spoken with you. I haven't seen this published yet.

C

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s22

From: s47E(d)
Sent: Thursday, 10 August 2023 8:05 AM
To: s47
Cc: s22, s47E(d); PATERSON, Carolyn; s22; s22
Subject: RE: NEW QTB due 9:30am: Hard Solo [SEC=OFFICIAL]
Importance: High

Good morning s22

Confirming we have received QB23-000247 in our queue.

Thanks so much,

s22 😊

s22

Executive Support Officer
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From: s47E(d) @health.gov.au>
Sent: Thursday, 10 August 2023 8:02 AM
To: s47E(d) @Health.gov.au>; s47E(d) @health.gov.au>
Cc: s22 @health.gov.au>; s47E(d) @health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>
Subject: RE: NEW QTB due 9:30am: Hard Solo [SEC=OFFICIAL]

Hi team

QB23-000237 (Hard Solo) has been created and sent to Division for drafting.

Warm Regards

s22

Parliamentary Co-ordination, Appointments and Committee Section
 Ministerial and Parliamentary Services Branch

People, Communication and Parliamentary Division | Corporate Operations Group

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From: s47E(d) @Health.gov.au>
Sent: Thursday, 10 August 2023 7:28 AM
To: s47E(d) @health.gov.au>
Cc: s22 @health.gov.au>; s47E(d) @health.gov.au>; PATERSON, Carolyn <Carolyn.Paterson@health.gov.au>
Subject: NEW QTB due 9:30am: Hard Solo [SEC=OFFICIAL]

Good morning

Can we please organise a new QTB due 9:30am this morning with PHD titled 'Hard Solo' based off the following article (hyperlinked):

Teals shoot first in Hard Solo battle

Sydney Morning Herald, General News, 10/08/2023, Angus Thomson, Page 7

Teal crossbenchers will confront industry figures about the growing number of alcoholic drinks marketed to underage drinkers after a "hard" version of the popular soft drink Solo was approved for sale in Australia.

Also reported by: [Sydney Morning Herald \(Online\)](#)

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Thank you!

s22

s22

Departmental Liaison Officer

s22

Office of the Hon Mark Butler MP

Minister for Health and Aged Care

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