

Advocacy Report

September 2017

ASTRA ACTIVITY

- **Media reform and gambling advertising** – The media reform bills passed the Senate on 14 September, and now require a rubber stamp from the House of Reps (which sits again in October).

To get the reforms through the Senate, the Government completed side deals with Pauline Hanson's One Nation (PHON), the Nick Xenophon Team (NXT) and Senator Leyonhjelm.

Key reforms

- Removal of FTA licence fees, replaced with a nominal tax (saving about \$80m pa).
- Removal of the 75% reach rule.
- Removal of the '2 out of 3' cross-media ownership rule.
- Modest anti-siphoning delistings and extension of the automatic delisting period from 12 to 26 weeks.
- Increased local content requirements for regional FTA TV following mergers.
- A \$30 million fund over 4 years to support women's and niche sport on subscription television.

PHON deal

- A public register of foreign-owned media assets (subject to legislation).
- Adding a regional focus to the ABC Charter (subject to legislation).
- An inquiry into whether ABC and SBS are breaching competitive neutrality principles.
- Public disclosure of ABC and SBS staff salaries above \$200,000 (may need legislation).
- Legislative requirement to be 'fair' and 'balanced' (subject to legislation).
- Community radio support package.
- The fate of the PHON deal is unclear as NXT will oppose the measures which require legislation.

NXT deal

A regional and small publisher's jobs and innovation package worth \$60m over three years. This includes:

- An innovation fund (\$50m over three years), available to publishers with an annual turnover of between \$300,000 and \$30m (large publishers not eligible) and
- A cadetship program for 200 cadets primarily in small regional publishers
- ACCC inquiry into new digital media and its impact on incumbents.
- Enhanced local content requirements for regional FTAs.
- A 6-month extension for community TV to vacate broadcasting spectrum.
- Review of the reach of Australian broadcasting services in the Asia Pacific.

NXT had previously secured a commitment to prohibit gambling advertising in live sport.

Leyonhjelm

- A deal with Senator Leyonhjelm will see easing of online poker restrictions.

Next steps

Parliament sits again from 16 October. Anti-siphoning reforms will take effect upon passage of the Bills.

ASTRA and Foxtel will closely monitor and assess participation in:

- ABC/SBS competitive neutrality inquiry.
- ACCC inquiry into new digital media.
- Review of Australian broadcasting services in Asia-Pacific.

ASTRA will work with members on implementation of the gambling advertising restrictions.

- **Australian content** – As part of its media reform package, the Government promised to undertake a review of Australian content quotas and funding support.

In August the Review released a consultation paper and invited interested stakeholders to comment. The consultation paper was brief and did not put forward any options for consideration.

ASTRA has consulted with members on a possible industry position, with several members opting to make submissions in their own name. Further details, including the terms of reference and consultation paper, are available [here](#).

We expect FTA broadcasters to push for the abolition of children's television content quotas and for a revision of Australian content quotas, particularly drama. Screen Producers and the producers' guilds have launched a large scale campaign – '[Make it Australian](#)', calling for quotas on on-demand operators, competitive tax incentives, retention of existing FTA quotas, and quotas and funding for public broadcasters. Netflix has reportedly made a submission arguing for better access to funding and incentives for on-demand providers. Coverage [here](#) and [here](#).

- **Spectrum Review** – On 18 May, the Government released a draft new Radiocommunications Bill, together with a package of consultation documents

addressing issues such as broadcasting spectrum and transition arrangements. This is the culmination of the multi-year Spectrum Review, of which ASTRA has been largely supportive. The new Bill will greatly streamline spectrum regulation and management, introducing a single licence category and clearer roles for the Minister and the ACMA.

ASTRA's submission on the new Bill and associated consultation papers focused on proposals relating to free-to-air spectrum, and questioning the privileges they would receive under the proposals (eg, guaranteed access to spectrum, certainty of tenure, trading rights, bespoke pricing). ASTRA is also seeking to ensure adequate protection in the new Bill for Foxtel's direct-to-home satellite installations

The new Bill and consultation papers are available [here](#). ASTRA's submission is available [here](#) and the submissions of other parties are available [here](#). Free TV Australia's submission was critical of the Government's legislative proposals, outlining the ways in which FTA broadcasters would be worse off compared to the current regime. We expect the Government to release a revised exposure draft in the coming months.

- **New Chair of the ACMA** – On 18 August the Government announced the appointment of a new permanent Chair of the ACMA (Richard Bean had been acting in the role since Chris Chapman's departure last year). Nerida O'Loughlin has been appointed for a five year term. Nerida was most recently interim chief executive of the Digital Transformation Agency, however she has extensive policy and regulatory experience in the media sector and ASTRA has an established, good working relationship with her. ASTRA welcomes the appointment and will establish contact with Nerida shortly. Further information is available [here](#).
- **Audio-description** – On 6 April the Minister announced the formation of an Audio Description Working Group to examine options for increasing the availability of audio description services in Australia, following the ABC's recent trial on iview. See the [April Advocacy Report](#) for further details.

ASTRA and Foxtel have participated in 2 working group meetings and a third is scheduled for the end of September. The working groups are attended by broadcasters, disability advocacy groups, accessibility service providers, academics and representatives of the Department. The discussion so far has centred around the demand for audio description, approaches in other countries, technological issues and methods of delivery. The Department is expected to provide a report to the Minister by the end of the year with options for the introduction of audio description services.

- **Copyright** – In August the Government released its response to the Productivity Commission's Final Report. The Government has left the door open on issues such as fair use and other exemptions, but will not move quickly to implement any changes. There will be further opportunities for advocacy on these issues. To summarise:

Safe harbour - The Government response refers to the Government's ongoing consultation on the extension of the safe harbour scheme. The Government is currently considering the results of the consultation and will make a decision on a way forward in due course.

Fair use, orphan works, contracting out - The Government has committed to consulting further on flexible copyright exceptions options. This process will consider the complexities of possible changes and gather information on the regulatory impact of any changes on stakeholders. This consultation will also extend to recommendations on

orphan works and contracting out. This consultation will take place in the first half of 2018.

Geoblocking - The Government has indicated it will not amend the Copyright Act, but will consider requests for specific technological protection measure exceptions in line with the requirements under s 249 of the Copyright Act. The next opportunity for stakeholder comment on technological protection measure exceptions will be in the context of the sunset review of the Copyright Regulations. An exposure draft of the revised regulations has been released and ASTRA is consulting with members.

Copyright Collecting Societies - The Government has asked the Department of Communications and the Arts to undertake a review of the Copyright Collecting Societies' Code of Conduct in consultation with the ACCC. ASTRA is unlikely to make a submission.

Timeline for next steps - In the second half of the year the Department plans to:

- continue consideration of the copyright safe harbour;
- undertake public consultation on an exposure draft of modernised Copyright Regulations and Copyright Tribunal Procedure Regulations, including consideration of technological protection measure exceptions; and
- undertake public consultation on the Copyright Collecting Societies' Code of Conduct.

In the first half of 2018 the Department plans to:

- release of final report on collecting societies code of conduct; and
- undertake public consultation on implementation of flexible exceptions, orphan works and contracting out.

In other copyright news, Foxtel has had further success using new site blocking laws to block an additional tranche of piracy websites. When combined with successful actions by music companies and the movie studios, most of the top 50 pirating sites in Australia have been blocked.

A meeting of ASTRA's consultative group on IPTV Piracy took place earlier this month. The meeting provides a forum for members to share intel on piracy issues and coordinate possible advocacy opportunities. A further meeting is planned for October.

- **Codes of Practice** – further consultation on the draft ASTRA Code of Practice is underway, with members' feedback leading to some changes to the draft. ASTRA is considering the best timing and strategy for dealing with the main Code in light of the required changes to gambling advertising provisions.
- **Alcohol advertising** – In August, ASTRA attended a briefing from the body administering the Alcoholic Beverages Advertising Code (ABAC) regarding new rules in the Responsible Alcohol Marketing Code. Our industry is required to adhere to the ABAC Code by our own Codes of Practice.

The ABAC Code has to date been only concerned with the content of advertisements for alcoholic beverages, and not their placement. However, ABAC is introducing new rules, to commence 1 November 2017, which would place restrictions on the placement of ads for alcoholic beverages.

The new rules mandate the use of age restriction controls where available, to exclude minors from the audience. If a platform does not have age restriction controls available that can exclude minors, alcohol ads and promotions may only be placed where the audience is reasonably expected to comprise at least 75% adults.

ASTRA is working with Foxtel and MCN to plan compliance with the new restrictions.

- **SBS additional advertising** – The Government has withdrawn legislation to permit SBS to increase prime time advertising from 5 to 10 minutes per hour, without increasing its overall advertising.

All of ASTRA's publicly available submissions are on the [ASTRA website](#).

NEWS

ACMA Investigations

On 1 August 2017, the ACMA found that an episode of 7:30 on the ABC had not breached the accuracy, impartiality and opportunity to respond requirements of the ABC Codes, in relation to a news report about charity fundraisers. The complaint was made against a story on Appco, and included allegations of incidents of inappropriate workplace behaviour and dishonest practices. The full report is available [here](#).

On 30 August 2017, the ACMA found that an episode of *ABC News* on the ABC had breached impartiality standards in a report concerning child sexual abuse allegations. The ACMA's investigation followed a complaint about a segment that aired in Canberra on 19 November 2016 covering historical child sexual abuse allegations against the late Dr Vincent John Adams Flynn. The ACMA found that the ABC failed to gather and present news and information with due impartiality and thereby breached Standard 4.1 of the ABC Code. The segment raised several allegations against Dr Flynn. The tone and the language used conveyed the view that those allegations were true. The report contained no mention of Dr Flynn's earlier and explicit denial of the allegations to the ABC. This omission added to the sense of prejudice conveyed in the report. The ACMA did not review and made no findings in relation to the substance of the allegations. The ACMA found that the ABC did not breach Standards 2.1 (in relation to accuracy), 5.3 (in relation to opportunity to respond) and 5.4 (in relation to attribution of information), which were part of the complaint investigated.

In response the ABC has added a statement, that Dr Flynn had denied the allegations, to a similar online report of the matter. This action has been noted on the ABC's Corrections & Clarifications webpage in relation to the segment. The ABC has also discussed the ACMA's finding with the reporter involved and circulated the ACMA's investigation report to senior news management. The full report is available [here](#).

Advertising Standards Bureau findings – ASTRA receives updates from the Advertising Standards Bureau (ASB) when it issues final case reports where complaints about an advertisement have been considered. The ASB issued four reports regarding subscription television in May 2017.

The ASB dismissed a complaint regarding an advertisement for a toilet product that masks odours. The complaint was that the depiction of animated human faeces was inappropriate. The Board considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use

language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided". The Board noted the complainants' concerns about the language used in the advertisement, specifically the references to 'punish(ing) the porcelain' and 'devil's doughnuts'. The Board noted that the language used in the advertisement is in relation to faeces and considered that whilst the subject matter itself would be considered distasteful by many members of the community, in the Board's view the actual language used is not strong or obscene and in the context of the advertised product, which is legally allowed to be advertised, the language is not inappropriate in the circumstances.

The ASB dismissed a complaint regarding an advertisement for a fragrance. The complaint was that the depiction of a woman whose face is twitching in time with music was making fun of people with Tourette's. The Board acknowledged that making light of a disability is not appropriate but considered that in this instance the complainant's interpretation of the advertisement making fun of Tourette's sufferers is an interpretation unlikely to be shared by the broader community and in the Board's view the most likely interpretation is that the woman is making fun of the supermodel persona by pulling silly faces.

The ASB dismissed a complaint regarding an advertisement for the movie *Girls Trip*. The complaint was that the ad depicts a woman acting out fellatio. Whilst the Board found that the scene was not appropriate to screen during a PG timeslot on FTA television, it did also find that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of subscription television, and was therefore not a breach of the Code.

The ASB dismissed a complaint regarding an advertisement for sex toys. The complaint was that it was screened at an inappropriate time. The Board noted the references to sex toys and considered that the toys are not pictured in the advertisement and the overall tone is playful and fun rather than explicitly sexual. The Board acknowledged that some members of the community would prefer this type of product not be advertised but considered that in this instance, the manner in which the sex-related product is advertised is not strongly sexualised and not inappropriate in the context of an advertisement airing on a Subscription Television channel directed at a mature audience. The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and determined that the advertisement did not breach Section 2.4 of the Code.

Copies of ASB Case Reports are available to ASTRA members on request.

DISCUSSION PAPERS/REQUESTS FOR COMMENT

ASTRA has contacted members regarding proposed changes to sunseting Copyright Regulations. Submissions are due 6 October.