

Advocacy Report

SEPTEMBER 2015

ASTRA ACTIVITY

- **Media reform** – The elevation of Malcolm Turnbull to the Prime Ministership recasts the future of media reform, as the stalemate which existed in this space was a result of Tony Abbott's decision not to pursue reform without industry consensus. As Minister for Communications, Turnbull was eager to progress ambitious reform but was blocked by the former Prime Minister. This obstacle to reform of cross-media rules and other legislation no longer exists.

However, there are a number of factors which mitigate the prospect of imminent reform. In comments to date, Turnbull has emphasised his vision for the Australian economy, and is likely to have a set of priorities that does not include media reform.

Further, in recent weeks members of the National Party have spoken out against media reform, in particular the removal of the 75% reach rule and the campaign being run by regional FTA television broadcasters.

In addition to this, the current make-up of the Senate means that any reforms would require the support of the Opposition, Greens and/or independents/minor parties. This increases the degree of difficulty attached to reform.

For these reasons, many are speculating that substantial reform may be postponed until after the election (expected next year). However, we can expect FTA networks to continue to agitate for licence fee relief, and for regional FTAs to continue to pressure for repeal of the reach rule.

At the time of writing, the Prime Minister had not announced his Ministry, and we do not have a clear picture of who may succeed Turnbull as Minister for Communication. The identity of the new Minister will have a significant bearing on the prospects of deregulatory reform.

ASTRA has been active in the press reinforcing that its support for deregulatory reform is conditional on the dismantling of FTA protections.

Once the new Minister is announced, ASTRA will provide them with a briefing on key issues and seek meetings with the Minister and their advisers.

See coverage of these issues [here](#) and [here](#).

- **Review of the Australian Communications and Media Authority** – ASTRA has made a submission to the Government's review of the Australian Communications and Media Authority (ACMA). Refer to the August Advocacy Report for further details of ASTRA's submission.

ASTRA has since met with representatives from the Department of Communications (who are conducting the review), who advise a strong message has been received from stakeholders regarding the need for a less interventionist and more efficient regulator.

Submissions to the review have been published, with the ASTRA submission finding common ground with the submissions from FTA group Free TV Australia and Commercial Radio Australia. There were differences in position amongst the major telecommunications companies, notably on whether ACMA should take on competition regulatory functions.

The Department is preparing its advice to the Minister and is expected to publish a draft report for further comment in October/November. Whilst not raised in the initial Issues Paper, the

draft report is expected to raise the prospect of transferring classification functions to the ACMA. ASTRA's Legal and Policy Committee is discussing this option.

ASTRA's submission is available [here](#).

- **Copyright** - With regards to the Federal Court litigation involving the rights holders for *Dallas Buyers' Club*, there have been no further publicly reported developments since the August Advocacy Report. It is open to the litigants to go back to the court with a more conservative claim for damages, however it is not known whether they will do so.

With regards to the draft Code of Practice for a Copyright Notice Scheme, the Australian Communications and Media Authority (ACMA) continues its consideration of the code and negotiations continue between rights holders and ISPs regarding issues such as costs and indemnities.

- **ACMA Live Captioning event** – On 15 September, the ACMA convened a public forum regarding live captioning. The event involved presentations international and local captioning service providers and a panel discussion involving caption service users and broadcasters.

The subscription television industry was represented at the event by Kylie Merritt of Sky News. Tony Abrahams from Ai Media was also a presenter.

The event was convened in light of the upcoming review of the ACMA's Captioning Quality Standard.

Presentations focused on the operational limitations which dictate live captioning decision-making, as well as outlining recent technological developments which are altering the way live captions are prepared and delivered.

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

NEWS

ACMA Investigation – *A Current Affair (Nine Network)*

On 14 August 2015, the ACMA finalised its investigation into a report on *A Current Affair* first broadcast on 11 June 2014. The report was about Access Ministries, an inter-denominational Christian organisation, and its delivery of special religious instruction in Victorian public primary schools.

The investigation found the licensee breached the accuracy provision of the Commercial Television Industry Code of Practice 2010, by conveying to the viewer that Access Ministries was:

- Misleading parents about the nature of the religious instruction it provided
- Dishonest and secretive in its use of 'hidden codes' to convert children

The ACMA found no breaches under the Code with respect to the other accuracy complaints and complaints about religious vilification, creating public panic and negative portrayal of the organisation on the basis of gratuitous emphasis on religion.

Further information 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 one report in late August and two in September.

An advertisement for SPC Fruit Cups attracted complaint regarding the depiction of people bludgeoning and stabbing fruit. The ad featured a man trying to open a coconut by karate-chopping it with his hands, a child splitting a watermelon with a cricket bat, and a mother cutting a rockmelon with a kitchen knife. The complaint was that it suggested an unnecessary level of violence, in breach of the AANA Code of Ethics, the AANA Food and Beverages Advertising and Marketing Communications Code and the AANA Code for Advertising and Marketing Communications to Children. The complaint was dismissed, with the ASB noting the depictions were exaggerated and intended to appear humorous and light hearted. The Board also considered whether the advertisement was aimed at children, concluding it was aimed at the main grocery buyer instead. The ASB also concluded that whilst the advertisement encouraged people to choose packaged fruit over fresh fruit, this was not contrary to prevailing community standards. The Board also found the ad did not undermine the importance of healthy lifestyles or balanced diets.

A complaint for an advertisement for Big W was dismissed. The complaint was that in the advertisement, which featured underwear, there was an unnecessary focus on a woman's behind and that the depiction of a man in his underwear in the vicinity of his daughter was 'weird'. The Board found the ad focused on the product for sale (underwear) being worn as intended, rather than the woman's bottom, and that the ad was thus not discriminatory or vilifying. The Board also found that the depictions of the man and woman in underwear are not presented in a sexualized manner, and that the depiction is of a family unit, making the proximity of the man and girl not inappropriate.

A complaint for an advertisement for Hyundai was dismissed. The advertisement showed a woman cracking her belt to repel a snake. The complaints were that this was an irresponsible message to be sending children, that the woman's actions were dangerous and that someone copying her actions could be bitten and possibly killed. The Board found that there was no graphic depiction of the snake being struck by the belt and that it could conceivably have been scared off by the noise of the belt cracking – the snake is not actually harmed. The Board found that the woman is not attempting to harm the snake, but is rather protecting herself in a situation not uncommon in bushland. The Board noted that interaction with snake could be dangerous, however the ad does not encourage people to behave as the woman does in the ad. Most people would recognise the fantastical nature of the ad and would not be encouraged to seek out snakes or try to interact with them.

ASB reports are available to ASTRA members on request.

DISCUSSION PAPERS/REQUESTS FOR COMMENT

ACMA Spectrum Outlook and Mobile Broadband paper

The ACMA has released its annual Five-year spectrum outlook, together with a discussion paper titled 'Beyond 2020 – A spectrum management strategy to address the growth in mobile broadband capacity'. The spectrum outlook looks at ACMA's expected work program and explains the priorities it applies to particular activities. Submissions are sought by 18 December 2015.

The mobile broadband paper addresses the challenge of balancing the needs of existing spectrum users with facilitating access for new technologies and broader applications. The paper describes a draft set of strategies for identifying potential future spectrum options for mobile broadband. Submissions are sought by 23 October 2015.

Of relevance to ASTRA are any considerations of reallocating the spectrum it uses for satellite downlinks and outside broadcasting.

ACMA 1800 MHz licences auction

The ACMA is inviting applications to participate in the November 2015 auction of spectrum licences in the 1800 MHz band. These are licences for mobile broadband operations throughout regional Australia. There are no issues of direct relevance to ASTRA members.

South Australian Surveillance Devices Bill

The South Australian Government has released a further incarnation of its Surveillance Devices Bill, which would outlaw the use of secret recordings. The concern for ASTRA members would be the potential criminalisation of legitimate journalistic practices and the adequacy of any media carve-outs. ASTRA is working with the joint media organisations' group on a response.