

Advocacy Report

February 2017

ASTRA ACTIVITY

- **Media reform** – The media reform Bill has not progressed since the last ASTRA Advocacy Report. The Bill was listed for debate in the Senate in February, but this did not eventuate. In any event, this was understood to be a tactical move by the Government, not connected to any improvement in the prospects of the Bill. The Minister has come under criticism for the lack of movement on the Bill (and for the lack of movement on a list of other industry issues). Coverage is available [here](#) and [here](#).

On free-to-air licence fees, CEOs of free-to-air networks have used financial results announcements to further iterate what they say is an urgent need for cuts (or abolition of fees). The results announcements were poor across the industry, with Ten forecasting an EBITDA loss for the full year of between \$20 million and \$30 million. Nine announced a decision to write down by \$260 million the goodwill value of its television network and Seven announced a \$75.5 million impairment.

Coverage available [here](#) and [here](#).

The free-to-airers are lobbying intensively for further cuts, or abolition, in the upcoming Budget. Key decision-making in the Budget process will be taking place now, and ASTRA is stepping up its efforts to advocate for the importance of market based pricing of spectrum and offsetting reform.

- **Gambling advertising** – We continue to await the report of the Senate Inquiry into Senator Xenophon's gambling advertising Bill (see previous Advocacy Updates for details of the Bill), which has been pushed back again to 29 March.

The ALP has used debate on the Government's Interactive Gambling Bill (which includes a ban on 'click to call' gambling services) to announce its support for a phase-out of all television gambling advertising before and during live sport. The ALP spoke in strong terms on the issue, the first time it has indicated this position. Coverage is available [here](#).

Also, the Nick Xenophon Team moved amendments to the Bill (which is largely unrelated to TV betting advertising) which would have banned gambling ads during 'G' programming and sports programs.

These amendments replicate the proposed bans in Xenophon's standalone Bill, which is currently being considered by Committee (see above). All amendments were rejected in the House, but may be moved again in the Senate (timing for debate not known).

- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning. We understand the Minister's Office have secured a place on the forward program for legislative drafting, however we have no assurances regarding priority or timing. Our inability to secure timely reform will have consequences, with some channels which would have benefited from our proposed new exemptions facing captioning obligations for the first time in FY17.

For details of ASTRA's proposals, see the [February 2016 Advocacy Report](#). The ASTRA submission to the Department is available [here](#).

A draft submission to the Senate Standing Committee on Community Affairs inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020, is with members for consideration. See the [December-January Advocacy Report](#) for further information. Submissions are due 17 March 2017. More information is available [here](#).

- **Copyright** – ASTRA has made a submission to Government in response to the Productivity Commission's final report on intellectual property arrangements. ASTRA's submission focused on the impact to the local industry if geographic licensing were undermined. Issues such as 'fair use' and safe harbour were addressed in submissions from ASTRA members.

The Government has not publicly indicated its stance on the report, however informal discussions with Government and the Opposition suggest the ideological biases in the report are apparent to all. It is difficult to see the Government wanting to take on such a large range of highly controversial reforms in the current political climate and we don't see it being a first order priority for the Government.

A further meeting of ASTRA's consultative group on piracy is planned for the coming months. Please be in touch with ASTRA if you would like to participate in the group. The problem of IPTV piracy extends beyond just sports programming, with some piracy feeds including content licensed in Australia to ASTRA members.

- **Spectrum** – The Government came under scrutiny during recent Senate Estimates hearings regarding the slow pace of the Spectrum Review implementation. Department officials were questioned regarding the progress of legislative drafting and the extent of consultation. Officials' answers indicate that draft legislation will be released for consultation soon.
- **Codes of Practice** – ASTRA is adding the final touches to a draft new Code of Practice and will consult with members shortly. All members will be invited to comment, given the Code will apply to all programming on the subscription TV platform.
- **Advertising** – on 1 March 2017, the new provision in the AANA Codes of Ethics regarding distinguishable advertising came into effect. The provision requires that "advertising or marketing communications shall be clearly distinguishable as such to the relevant audience." The new provision applies to all advertising and marketing on the subscription TV platform (in fact, the provision applies to advertising on all platforms). ASTRA and other broadcasters raised significant concerns regarding this provision prior to it coming into effect, however the AANA pressed ahead notwithstanding our concerns, citing the risk of Government intervention in this area. The AANA assured ASTRA that the new provision would not affect any current advertising/integration practices. A guideline to assist advertisers in applying the new provision is available [here](#).
- **Australian content** – The Minister was questioned regarding a possible Australian content review during Senate Estimates hearings. He gave hints there may be a review coming soon, but his advice was not definitive. ASTRA understands that momentum for the review was lost after significant staffing changes within the Department. ASTRA members are reminded that a consultation event on Australian content has been announced by the ACMA for 16 and 17 May 2017. Details are available [here](#).

- **ACMA Review** – Still no sign of the Government’s response to the ACMA Review. The position of full-time Chair also still stands empty, with deputy Richard Bean continuing to act in the position. It is thought that the two issues will be dealt with at the same time, however there is no visibility of when that will take place. Coverage is available [here](#).

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

NEWS

ACMA Investigations

On 9 February 2017, the ACMA found no breach in relation to a program promotion broadcast by Fox Sports 2. The complaint was that the program promotion contained material that was unsuitable for young children. The promotion was for a series classified MA15+ for ‘Strong themes and violence’. The ACMA investigated in relation to clause 2.3 of the ASTRA Codes, which requires broadcasters to have particular regard to the need to protect children from unsuitable material in program promotions. The content of program promotions must also be consistent with the classification of the programs (if classified) during which the promotion appears. The ACMA found no breach of the Codes on the basis that because sport is not required to be classified, there was no requirement for the program promotion to be consistent with a particular classification. In relation to the requirement to have regard to the need to protect children, the ACMA found that the promotion was brief and understated and did not contain explicit references or depictions of violence. The ACMA found the licensee demonstrated restraint by carefully and discreetly handling the mature thematic material in the promotion. The ACMA also took into account that the annual research demographics for the channel for 2016 show that 93% of the national audience was aged 18 years and over. The ACMA concluded:

“The nature of the program promotion, the level of impact of the program promotion, and the circumstances of the broadcast of the program promotion are indicative of the licensee’s particular regard to protect children from unsuitable material in program promotions.

In this case, the ACMA is satisfied that the licensee exercised caution in relation to the broadcast of The Fall program promotion by ensuring its impact was mild and by considering the likely audience for the program in which it was broadcast.

The ACMA also notes that the licensee has demonstrated a responsive approach to the complainant by advising that it will reconsider the scheduling of promotions for similar themed programs in future.

As such, the ACMA considers the licensee has shown particular regard to the need to protect children from unsuitable material in the program promotion.”

The report is available [here](#).

On 10 February, the ACMA found no breach of accuracy and impartiality requirements in relation to an ABC News Breakfast broadcast covering South Australian power blackouts. The investigation contains an in-depth consideration of the broadcast, which included a discussion and a number of interviews pertaining to the blackouts. The ACMA considered whether the relevant assertions were factual, whether they contained material facts and whether those facts were accurate. The ACMA found the assertions made were factually

accurate. The ACMA also considered whether there had been a breach of the requirement to gather and present news and information with due impartiality, and to present a diversity of opinions. The ACMA found no breach, having assessed contextual factors, balance, fair treatment, open-mindedness and opportunities for principal relevant perspectives to be expressed. The report is available [here](#).

On 14 February, the ACMA found no breach of the ABC's standards on harm and offence and classification, in relation to an episode of 'The Mix'. The complaint was that the program contained depictions of nudity that were inappropriate for viewing at a time when children would be watching. Whilst the ACMA found that the material could cause offence to some viewers, the ABC moderated any harm and offence through the absence of actual nudity, the lack of visual detail, the brevity of the images and tone of the segment overall. The ACMA also found that the editorial context justified the likely harm or offence. The 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 one report in February 2017.

The ASB upheld a complaint regarding an advertisement for Supercheap Auto, finding it breached standards on health and safety (motor vehicle related, unsafe behaviour and prevailing community standards). The complaint was that the ad depicts a teen joyriding in his dad's car, driving recklessly and with no seatbelts being used. The Board considered that the scene showing a person standing up in a moving vehicle with part of their body outside of the vehicle is clearly contrary to the Australian Road Rules and is therefore a breach of prevailing community standards on health and safety around traveling in a moving motor vehicle.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted above, ASTRA intends to provide a response to the Parliamentary Inquiry into the implementation of the National Disability Strategy. Submissions are due 17 March.

A Parliamentary inquiry is looking into the future viability of the Australian film and TV industries. ASTRA plans to respond by outlining the various pressures on the subscription TV business model and the need for regulatory relief to ensure the ongoing strength of the industry and the production sector. Submissions are due 31 March.