

# Advocacy Report

## March 2018

### ASTRA ACTIVITY

- **Gambling advertising** – A new Code of Practice Appendix to implement new gambling advertising restrictions has been approved by the ACMA. The new Code came into effect on 30 March 2018. After lengthy negotiations, ASTRA obtained concessions regarding sports channels with very low audience share, the treatment of advertising within breaks in longer events and the interaction of Foxtel's national signal with Australia's various timezones. Coverage is available [here](#). ACMA information and a copy of the Code are available [here](#).

Concurrently, the Government has been progressing new laws to apply the restrictions to online platforms. The Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017 (available [here](#)) was passed on 27 March 2018 without amendment. The Greens had sought amendments to impose tighter controls than in the original Bill. The Bill empowers the ACMA to make online content service provider rules to regulate gambling advertising during live sport online. Online streams which are a simulcast of a broadcast stream will be regulated under the broadcast codes. We await consultation from the ACMA on proposed new online content service provider rules.

The NSW Government has passed laws to tighten restrictions on advertisements featuring betting inducements. Media organisations secured an amendment to the Bill to exempt broadcasters and publishers except where they had involvement in producing the advertisement or had knowledge that an advertisement was in breach of the tighter restrictions. The Bill is available [here](#).

- **ACCC inquiry into digital platforms** – the ACCC is conducting an inquiry into the impact of digital platforms (such as Google, YouTube and facebook) on Australian media. Whilst the ACCC has indicated a narrow focus on journalistic content, Foxtel and Fox Sports are considering a submission which looks at the impact on broader media businesses. Issues of relevance include the unauthorised hosting of copyright content on the platforms, the impact on advertising revenue, the impact on advertisers and imbalances in regulation. The ACCC's paper is available [here](#). Submissions are due 17 April 2018. There has been worldwide interest in the inquiry, which is the first of its kind. Coverage is available [here](#) and [here](#).
- **ABC/SBS competitive neutrality inquiry** – The Government has released terms of reference and announced the panel for its competitive neutrality inquiry into the ABC and SBS. Mr Robert Kerr will chair the independent panel and be joined by Ms Julie Flynn and Ms Sandra Levy AO. The terms of reference are available [here](#) and include cost structures of business activities, regulatory obligations comparative to commercial operators, compliance and reporting and accountability. The panel will also make observations on the role of the national broadcasters in the modern media environment. There has not been a formal call for submissions yet.

- **Foreign Influence Transparency Scheme Bill 2017** - The Foreign Influence Transparency Scheme Bill 2017 was introduced into Parliament on 7 December 2017.

The Bill's requirements are onerous, including: registration by persons undertaking certain activities on behalf of a foreign principal (including governments and businesses), registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that relationship and criminal offences for non-compliance.

We believe these requirements will apply to ASTRA's political advocacy (and any advocacy undertaken by any members with foreign ownership), and also to a broad range of content on the Foxtel platform.

The Bill was referred to the Parliamentary Joint Committee on Intelligence and Security, which is due to report on 23 March 2018.

ASTRA supported a submission from the Joint Media Organisations which outlined concerns with the Bill. Foxtel made a supplementary submission, highlighting the defects in the broadcaster exemption as currently drafted. The practical impact could be the withdrawal of channels such as Al Jazeera, BBC Worldwide News, Russia Today and CCTV (which are all state-owned media organisations). There is also the potential for the Bill to apply to certain content on general entertainment channels.

Many other businesses, professional groups and educational institutions have raised strong concerns with the Bill.

ASTRA and Foxtel have made several appearances in hearings on the Bill, and have raised the industry's concerns directly with Ministerial staff. Media organisations have jointly submitted suggested legislative amendments to address concerns. We understand that the PJCIS has pushed back the reporting date on the Bill to an undetermined time.

- **Screen Australia Code of Conduct** – Screen Australia has published its proposed Code of Conduct to Assist in the Prevention of Sexual Harassment. The aim is for all Screen Australia productions approved from 2 April 2018 onwards to be required to put the Code into effect. The Code sets an expectation that producers must make every effort to maintain a safe workplace where there is zero tolerance for sexual harassment. Further information, including FAQs, is available here.
- **Australian content** – As part of its media reform package, the Government promised to undertake a review of Australian content quotas and funding support. For background to the review, see the October 2017 Advocacy Report. Our latest advice is that an announcement may not be made as part of the Budget, as previously thought. Most press coverage has focussed on potential winding back of FTA quotas. The production industry has been active on this issue. See coverage here.

On 18 October 2017, the Australian Greens established a Senate inquiry into the value of Australian screen content to audiences. Together with the Government run review, and the House of Representatives inquiry, this is the third review of Australian content. ASTRA made a submission attaching its and Foxtel's previous submissions on this topic. The Committee is due to report by 9 May 2018. Further details including the terms of reference, are available here.

- **Spectrum** – The ACMA has announced it will recommend to the Minister that the 3.6 GHz band be cleared completely and reallocated to 5G mobile broadband services. The recommendation is for a reallocation period of only 2 years for in-band satellite services, with no options for sharing. A proposed East Coast Earth Station Protection Zone is also to be established. ASTRA’s previous submissions on these issues are available [here](#) and [here](#). Further information is available [here](#).

We are still yet to see a further exposure draft of spectrum reform legislation, which the Government has indicated it wants to introduce in June.

- **Audio-description** – On 6 April 2017 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 participated in 4 working group meetings, and contributed heavily to the production of the group’s report, which is now with the Minister. The working groups were attended by broadcasters, disability advocacy groups, accessibility service providers, academics and representatives of the Department. The report did not contain a recommended method for introducing audio-description to Australian television, and instead gave a detailed analysis of the various options. ASTRA opposes a broadcast delivery solution. Advocacy groups were initially only supportive of a broadcast delivery solution, but have since expressed conditional support delivery of audio-description via a smartphone app or telephone line.

The issues are now with the Minister for consideration.

- **Copyright** – Foxtel and Fox Sports have made a joint submission to the Government’s review of site blocking legislation. The submission expressed the view that the laws are working well and that the process for obtaining blocking orders has become progressively more efficient. The submission also noted that the laws are not ideally suited to respond to illegal live streams (of sporting events).
- The Government has released a consultation paper inviting comment on several issues raised in the Productivity Commission’s final report – fair use/fair dealing, contracting out and orphan works. We are considering a submission based on previous work on these issues. Submissions are due 4 June 2018. The consultation paper is available [here](#).
- Applications by film studios and broadcaster TVB to block Kodi box apps is underway. The matter is set for hearing on 13 April 2018.
- Legislation to extend safe harbour protections to libraries and educational institutions was introduced in the Senate on 6 December 2017. Rights holders maintain their opposition to the extension of safe harbour protections any further. The Bill was referred to the Senate Environment and Communications Legislation Committee and the Committee tabled its report on 18 March 2018. The Committee recommended the Bill be passed and noted the highly polarized views and lack of consensus on further safe harbour reform. The Committee therefore supported the Government’s incremental approach to reform. The report is available [here](#).
- **Equipment laws** – the ACMA has conducted a consultation on a proposed change to the way equipment rules are made. ASTRA made a submission in support of a Comms Alliance submission. That submission expressed a view that change may not be

necessary, particularly if there is a risk that any changes may increase non-compliance and risks of interference. The consultation paper is available [here](#).

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

## NEWS

### **ACMA Investigations**

On 1 March 2018, the ACMA found that the ABC had not breached its Code of Practice in relation to an episode of *Get Krack!n*. The ACMA found no breach of standards relating to harm and offence, or standards relating to condoning or encouraging prejudice.

On 6 March 2018, the ACMA found that Channel 9 South Australia had not breached the Commercial Television Code of Practice in relation a promotion for *Underbelly files: Chopper*. The ACMA found no breach of classification requirements.

**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 has issued three reports since the previous Advocacy Report:

- Complaints regarding a commercial for Foxtel were dismissed. The ASB considered the complaints under the violence and distress to children provisions of the AANA Code.
- Complaints regarding a commercial for Ultra Tune were dismissed. The ASB considered the complaints under the objectification, degradation and sex/nudity provisions of the AANA Code.
- Complaints regarding a commercial for a water balloon toy were dismissed. The ASB considered the complaints under the discrimination and sex/nudity provisions of the AANA Codes.

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

### **DISCUSSION PAPERS/REQUESTS FOR COMMENT**

As noted above, the Government is consulting on modernisation of Australia's copyright laws. Submissions are due 4 June 2018.

The ACCC is inviting submissions to its inquiry into digital platforms. Whilst the date for submissions has passed, some stakeholders have obtained extensions of time.