

Advocacy Report

May 2017

ASTRA ACTIVITY

- **Media reform and gambling advertising** – The key issue in May has been the Government's efforts to secure Senate support for the package of reforms announced just prior to the Budget (see May Advocacy Report for details). The ALP has been resolute in maintaining its opposition to the removal of the '2 out of 3' rule, instead arguing for more 'holistic' reform of media regulation and arguing against 'piecemeal' reform (yet the ALP has indicated it would support a standalone bill to repeal the 75% reach rule). Coverage [here](#).

This means the Government must attempt to secure the support of at least 10 of the 12 cross-bench Senators. It is understood that the key challenge here will be negotiating for the support of Pauline Hanson's One Nation Party Senators. Recent media coverage suggests the party leader is concerned about the impact that the repeal of '2 out of 3' would have on media ownership in regional Queensland. The concern is that media ownership in regional Queensland is already too concentrated, and it is speculated that Hanson could seek additional protections for media in that state. The party is understood to support all other aspects of the package. Coverage [here](#).

To demonstrate the unprecedented cross-industry support for the package, all major media CEOs recently hosted an event in Parliament House, which included speeches from the Minister and Prime Minister. ASTRA's CEO and Chair attended the event, along with the CEO of Foxtel. Coverage [here](#). The objective of the event was to help secure Senate support for the package.

The Government has indicated it wishes to bring legislation before the Parliament in June, however this will depend on the ability of the Government to have the legislation drafted quickly, and of course on the outcome of the Government's negotiations with the Senate.

The risk for the subscription television industry is that in the face of continued Senate opposition, the Government relents and seeks to pass only some elements of the package, thereby upsetting the careful balance of sectoral interests. This could potentially mean more politically sensitive elements of the package (eg, anti-siphoning) would be jettisoned. For its part, the Government has insisted it will proceed with the package as announced or not at all. However, we can expect FTA broadcasters in particular to relentlessly seek licence fee cuts notwithstanding the failure of any other parts of the package.

There has also been some scrutiny of the niche sports fund to be allocated to Fox Sports. At Senate Estimates hearings, ALP Senators questioned the Minister on whether the funds should be contestable and available to the national broadcasters.

Meanwhile, ASTRA and other industry bodies have commenced consideration of possible Code of Practice amendments to implement the Government's new policy on

restricting gambling advertising during coverage of live sporting events broadcast between 5.00AM and 8.30PM. We understand it is the Government's expectation that new Codes commence in March 2018.

- **Australian content** – As part of its media reform package, the Government promised to undertake a review of Australian content quotas and funding support. On 23 May the Government released terms of reference for the review. The objective is to provide policy options to Government on the most effective support mechanisms for the Australian production sector. The terms of reference include consideration of the economic and social value of Australian content, the current and likely future market for that content and the adequacy of existing Government policy settings.

The review will be jointly conducted by the Department of Communications and the Arts, the ACMA and Screen Australia. It is expected to conclude by the end of 2017, which is quite an ambitious timeframe for such a broadly framed review.

ASTRA will soon meet with the Government officials overseeing the review and we hope to learn more regarding consultation opportunities and timeframes. ASTRA will then consult with members on an industry position. Further details, including the terms of reference, are available [here](#).

We consider it likely that the review has been driven in part by lobbying from FTA broadcasters, who are on the record as advocating the abolition of children's television content quotas and for a revision of Australian content quotas. Producers are publicly positioning themselves in opposition to the FTAs, and have won support from the Greens. Others are arguing for an expanded role for the ABC. Coverage [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.

As well as our interest in the impact of the new Bill on licences held by ASTRA members, ASTRA is also carefully considering the proposed changes to FTA broadcasting spectrum. It appears that FTA broadcasters will continue to get a 'special deal', with privileges not afforded to other spectrum users. Unlike other spectrum users, they are to be granted certainty of access to spectrum yet will be treated like other spectrum users as regards liberalised trading and sharing. It is also important to note that the release of documents does not include details on the replacement scheme for FTA licence fees.

ASTRA is attending an ACMA/Department information session in early June. ASTRA will work with members to assess the transition path to the new licence scheme for licence holders, assess any changes to pricing and usage rights, and to analyse the potential impact of changes to FTA broadcasting spectrum.

The new Bill and consultation papers are available [here](#). Submissions are due 30 June.

- **Review of the ACMA** – On 22 May, the Government released the final report of the review of the ACMA. The findings are as expected, and are largely in line with ASTRA's various submissions to the Review. The Government has said it supports all the recommendations of the report.

The headline recommendation is for a complete review and rewrite of the media and communications regulatory framework. The Review concludes that regulator performance is greatly dependent on the efficacy of the regulatory framework it administers, and the current framework is extremely out of date.

ASTRA supported most other recommendations, including splitting the CEO and Chair role, better guidance from the Minister on how to perform functions, skillsets for members outlined in legislation, possibility of ACMA taking on classification functions, and retaining competition regulation within the ACCC.

This is a final report and there is no call for submissions. The full report and the Government's media release are 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 has been invited to a meeting of the working group on 29 June and will report back to members after the meeting.

- **Copyright** – ASTRA member Foxtel has filed an application in the Federal Court of NSW asking a judge to block a new list of pirating websites. Village Roadshow is leading a similar application, along with 21st Century Fox, Warner Bros, Disney, Paramount, and Columbia Pictures to block another 41 sites. Further coverage is available [here](#).

A discussion at the ASTRA Board has indicated there may be industry consensus on safe harbour. ASTRA will shortly circulate a proposed position paper on safe harbour, which if agreed by members, would permit ASTRA to commence advocacy on this issue.

- **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.

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

NEWS

ACMA Investigations

On 27 April, the ACMA found that the Nine Network had not breached its special care and offence obligations in relation to a bulletin of Nine News. The ACMA received a complaint alleging that graphic footage in the news report could have a significant effect on children and may cause distress to children who happen to be watching. The report recounted events relating to a fatal vehicle collision. The report included vision leading up to the collision, the collision itself and the aftermath of the collision. The ACMA found there was an identifiable public interest in broadcasting the collision footage, and it could be justified in the context of the report. The ACMA also noted that the licensee took steps to lessen the effect of the footage and edited out details of the injured driver. The ACA also considered that the material did not reach the high threshold of being likely to 'seriously' distress or 'seriously' offend a 'substantial' number of viewers. The full report is available [here](#).

On 5 May, the ACMA found that the Ten Network had not breached the classification provisions of the Commercial Television Industry Code of Practice in relation to a broadcast of *Studio 10*. The ACMA received a complaint alleging that the use of the term 'slut' during the program was offensive, disparaging and sexist and inappropriate for daytime television. The ACMA considered that, while in some circumstances the word 'slut' may be a sexual reference or may be linked with a broader thematic element, the colloquial use of the word in this instance is most appropriately assessed as coarse language. The term was not used in a sexual context, was not delivered aggressively or as an insult, and was used only once in the program. The tone of the program overall, and the segment in particular, was light-hearted and comical. Considering all of these factors, the impact of the infrequent coarse language did not exceed 'mild' and was contextually justified. Therefore, the ACMA found that the program was appropriately classified PG. 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 six reports regarding subscription television in May 2017.

The ASB dismissed a complaint that an advertisement for instant coffee misrepresented the country of origin for the product. The Board noted that whilst the advertisement does not specify the origin of the coffee the Board noted that the voiceover clearly state the coffee is blended and roasted in Australia and that this is not a statement about the source of the ingredients. The Board acknowledged that there is a distinction between the phrase 'blended and roasted in' and the source of the ingredients used to make the finished product and that the advertisement does not create an impression that the product is made from Australian coffee beans.

The ASB dismissed a complaint regarding an ad for Ultra Tune Automotive. The extensive complaints were that the ad depicted women in a demeaning way and was overtly sexual in nature. The Board noted that the women's physical appearance may be considered as sexy to some viewers or exaggerated to others but considered that this is not of itself vilifying or discriminatory. The Board concluded that the women are depicted as being aware and in control therefore there is no suggestion that these women are stupid or helpless with regards to their predicament. A minority of the Board noted that during the fire extinguisher scenes the footage does appear to be slowed down and the camera does linger on the women's bottoms and chests. A minority of the Board considered that this focus on the women's bodies is gratuitous and in their view presents women in a manner which is both exploitative, as it reduces them to parts of a body, and degrading, because it implies that the women should be thought less of because they can't use a fire extinguisher without wiggling their bottoms and spraying one another's breasts. The majority of the Board considered that the focus on the women's bodies during the fire extinguisher scenes is very fleeting and in their view while it is exploitative to focus, albeit briefly, on women's body parts the women are depicted as being in control and having fun which is not degrading or demeaning to women.

The ASB dismissed a complaint regarding an ad for dog treats. The complaint was that the ad depicts the dog licking a baby's face and this is irresponsible, as dogs tend to attack children on the face. The Board considered that the dog does not appear menacing and the father is only briefly out of eye contact with the child as he reaches for

a wipe. The Board noted the overall humorous tone of the advertisement and considered that there was no suggestion that the family dog was a danger to any person at any time.

The ASB upheld a complaint regarding an ad for Sportsbet, which featured drug cheat athlete Ben Johnson. The extensive complaints were that the ad breached community standards on health and safety in that it promoted the use of performance enhancing drugs in sport. The Board considered that there are numerous references and double entendres in the advertisement which are intended to mean steroids even though it would be clear to the consumer that the advertised product is a wagering app. The Board considered that the impression of the advertisement makes light of drug use and that the use of drugs will enhance performance. The Board also considered that, despite the parody, there is little consequence depicted for these actions as the athletes are portrayed in a positive way, rather than showing a negative side to the choices they made in their sporting careers. The Board considered that the prevailing community standard on health and safety is opposed to the use of performance enhancing drugs and to avoid drug use more generally. In the Board's view the advertisement depicts performance enhancing drug use in sport in a manner that is contrary to prevailing community standards on health and safety. The Board therefore determined that the advertisement breached section 2.6 of the Code.

The ASB dismissed a complaint regarding an advertisement for Airbnb, which carried a message regarding marriage equality in Australia. The complaint was that the ad may sexualise children. The Board considered that the Code does not prohibit references to same-sex relationships or homosexuality and also considered that these issues are not of themselves unable to be treated with sensitivity in advertising that children might see. The Board noted that advertisers are free to use whomever they wish in their advertising and considered that a depiction of a same sex couple with their arms around one another is not strongly sexualised and is not of itself a breach of the Code. The Board noted the complainant's concern that the advertisement is not appropriate for children but considered that the language used in the advertisement is not sexually suggestive, the poses and behaviour of the participants is not sexual or inappropriate and in the Board's view treats the issue of same-sex relationships with sensitivity for a broad audience which would include children.

The ASB dismissed a complaint regarding UltraTune Automotive services. The complaints were that the ad promotes the sexualisation of children and normalises predatory male behaviour. The complaint was also that the gang of men depicted in the advertisement are all ethnic minorities. The Board noted that the women in the ad are depicted as being in control, rather than passive observers and therefore the ad does not vilify women. The Board considered that the advertisement did not suggest that ethnic minorities would or should form gangs and that overall the advertisement did not depict any material which suggested that people from any particular ethnic background would behave in a manner which is negative or inappropriate

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted above, submissions on the draft Radiocommunications Bill and associated papers are due 30 June.