

Advocacy Report

November 2016

ASTRA ACTIVITY

- **Media reform** – The Senate Committee considering the reintroduced media reform Bill issued its report on 7 November 2016. The Committee recommended the Bill be passed in its current form. It concluded that the reforms in the Bill should go ahead as a matter of urgency, notwithstanding the need for further reforms.

ALP Senators issued a minority report which supported only reform of the ‘75% reach rule’. They opposed the abolition of the ‘2 out of 3’ rules, saying that:

“There is no compelling evidence that this will improve the competitiveness of the sector but there is a significant risk that it will reduce media diversity. The knock-on effects are unclear and it is ill-advised to condemn this rule to the scrapheap at a time when Australia's media market is amongst the most concentrated in the world.”

Despite the House passing the Bill in the last sitting week of the year, the Bill is yet to pass the Senate. The Government has appeared resolute in its view that it will not split the measures to the Bill, which would secure the repeal of the ‘75% rule’. In effect, this means the Government will need the support of almost all cross-bench Senators to have the Bill passed in its entirety. This comes with significant challenges, given the diverse make-up of the cross-bench and is likely to see progress on the Bill delayed well into 2017.

Should the Bill fail to pass, the setting for negotiations on major media reform will change significantly. This may present new opportunities for ASTRA in its advocacy for more wide-reaching reform.

On free-to-air (FTA) licence fees, a Bill to make permanent the 25% cut to FTA licence fees that the Government announced in the 2016 Budget has been passed by Parliament. FTAs continue to lobby intensively for abolition of fees, launching a multi-media campaign across broadcast and digital.

The Government’s plans for FTA licence fees are unclear, with several possibilities. It is possible further cuts may be announced in the Government’s mid-year Budget update on 19 December. The Government has publicly indicated it will consider FTA licence fees as part of its review of spectrum use and spectrum pricing, however the timeframe for completion of these projects is unclear. ASTRA continues to advocate for the importance of market based pricing of spectrum and offsetting reform.

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

- **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 to 6 December. We do not expect the Bill to have the Government’s support, however there is the ongoing risk that Xenophon

may demand reform in this area in exchange for his three senate votes on other Government legislation

Separately, former NSW Premier Barry O'Farrell has reviewed state-based gambling advertising regulation for the Federal Government. His review recommended the harmonisation of existing state-based restrictions. ASTRA has supported the recommendation provided there is no net increase in regulation and on the basis any new scheme would be administered by the Commonwealth, not the states.

The Government has introduced legislation to ban 'click to call' gambling services. The Bill will be reviewed by a Committee, scheduled to report 30 November. ASTRA did not make a submission to the inquiry. The Bill, as expected, seeks to change the definition of 'telephone' betting services (which are permitted during play) to make it clear that services which combine on-line and telephone betting features are not permitted. ASTRA will continue to monitor.

- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning, conducting a briefing for the Assistant Minister for Disability Services, the Hon Jane Prentice MP. We understand the Department has briefed the Minister on ASTRA's proposed changes and we are now focussing our advocacy on securing priority in the queue for legislation to be drafted.

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

- **Copyright** – There is yet to be a decision in the Foxtel site-blocking proceedings. Detailed coverage of the dispute is available [here](#).

We continue to await the release of the final report of the Productivity Commission's inquiry into Australia's intellectual property arrangements. It is not clear if the Government will release the report on its own, or with a Government response to the recommendations.

There have been no further developments on the Government's Bill to extend 'safe harbour' provisions. Due to a divergence of views within ASTRA, members have been conducting their own advocacy on this issue.

- **Codes of Practice** – the ASTRA Board has approved a suite of proposed changes to the ASTRA Codes of Practice, which enables ASTRA to commence drafting a proposed Code. The drafting will be undertaken in consultation with members.
- **SBS Advertising** - The Minister is considering reintroducing a bill on SBS advertising which was previously rejected. The Government had proposed to allow SBS to increase ads in primetime from 5 to 10 minutes to attract greater revenue, but without increasing its overall total. Coverage is available [here](#).
- **Australian content** - There has been no announcement regarding the mooted review of Australian content regulation. However a consultation event has been announced by the ACMA for 16 and 17 May 2017, which will address Australian content. 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 8 November, the ACMA concluded an investigation into *ABC News*, in relation to ABC standards on harm and offence, warnings, and requirements to apply sensitivity in reporting. The complaint was that footage shown during a report on the Don Dale Youth Detention Centre and alleged mistreatment of detainees, caused harm and offence to viewers. The footage in question was of a teenage boy being stripped naked. The ACMA found that the ABC did not breach the harm and offence standards in its Codes. Whilst the footage was found to have the intrinsic capacity to cause harm or offence to viewers, the sustained and repetitive use of sensitive footage was found to be justified, given the images were central to the story as they established the gravity of the situation at the Detention Centre. The ABC was also found to have given adequate warning to viewers prior to the footage being aired. The report is available [here](#).

On 8 November, the ACMA found no breach of the Free TV Code of Practice requirements on treatment of material that causes distress in relation to an episode of *A Current Affair* broadcast on the Nine network. The complaint was that insufficient care had been exercised in selecting material for broadcast at a time when young children were likely to be watching. The material in question was footage of Salim Mehajer screaming verbal abuse and making threats to the camera. In finding no breach, the ACMA noted that warning was provided before the segment and that the licensee took steps to lessen the effect of the stronger aspects of the footage. The ACMA also accepted that the report included inherently confronting material within the context of a report on a matter for which there was an identifiable public interest. The ACMA also accepted that the likely audience was an adult audience, and with regard to such an audience, sufficient care was exercised in selecting material for broadcast. The report is available [here](#).

On 9 November, the ACMA concluded an investigation into a broadcast of Supercars racing on the Ten Network, finding no breach of legislative bans on tobacco advertising. The complaint was that tobacco advertising located on the body of an historic race car was visible to viewers during the broadcast. Ten submitted that the material was not in breach as it was an incidental accompaniment to the broadcast of other matter, and Ten did not receive any direct or indirect benefit for the broadcast of a tobacco advertisement. The ACMA found that whilst the material did constitute a tobacco advertisement, the car was on screen for 11 seconds, out of a total of 22 hours of coverage over three days, meaning it was an incidental accompaniment to other matter. The report is available [here](#).

On 11 November, the ACMA found no breach of accuracy and impartiality standards in relation to a *Seven News* broadcast. The broadcast related to allegations a school had allegedly discriminated against two girls in a same-sex relationship and that a petition had been signed by students in support of the girls. The complaint was that the report misrepresented the circumstances and accused the school of unsubstantiated and false claims. The ACMA found that the underlying assertion concerning the school's treatment of

the girls was accurately presented as a contestable allegation. The ACMA noted that impartiality requirements in the Free TV Code do not require allocation of equal time to different points of view, and that the language, style and tone of the report were appropriately neutral throughout the segment. 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 in November.

The ASB dismissed a complaint in relation to a set of BMW vehicles, which alleged that the ad encouraged hoon driving. The ad features the vehicles driving through long plains, straight dessert roads, and through industrial areas. The on-screen text includes, 'Ultimate Power', 'Ultimate Action', 'Ultimate Control', 'Ultimate Thrills', 'Ultimate Style', 'Ultimate Design', 'Ultimate Luxury', and 'Ultimate Driving Experience'. The Board considered that overall the advertisement does not portray any driving which is unsafe, or reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory. The Board noted the advertiser's response that the advertisement was filmed under controlled conditions and the vehicles were not breaking the posted speed limits.

The ASB dismissed a complaint for a Volkswagen vehicle which depicts parents in the front of a car and a child in the backseat. The couple have conversations which they wouldn't usually have in front of the girl. The complaint was regarding a part of the ad which portrays the father jumping out of the car in a hurry, leaving the girl alone in the car. The Board noted that while the father is seen taking off his seatbelt and turning to open the door, we do not see the father actually leave the car. The Board also noted that the child appears to be old enough to remind her father she is there, or to get herself out of the car seat and car. The majority of the Board acknowledged the high level of community concern around this issue but considered that in this instance this advertisement did not encourage or condone children being left in vehicles.

The ASB dismissed a complaint regarding an ad for a hardware chain, in which a worksite foreman berates tradies for their choice in music. The complaint was that the ad is an example of workplace bullying based on gender stereotypes and is offensive and promotes bullying. The Board noted that the advertisement is exaggerated to make the point about the hardware chain being where real tradies go and displays a reliance on the stereotype of the male value of being 'hard' to liken that to the better quality products available at the hardware chain. The Board considered that this may be considered stereotyped in its portrayal of masculinity but did not consider it to be a negative depiction.

The ASB dismissed a complaint regarding an ad for Unibet, which featured the slogan "luck is no coincidence". The complaint was that this breached wagering advertising code requirements in that it implied a promise of winning, because it implies that by learning about the sport you can correctly predict the result. The Board noted that the advertisement does not specify that you will win but rather that it suggests that if you do your research you may increase your chances. The Board considered that the application of knowledge to inform a bet is common amongst people who place a wager and in their view the advertisement's depiction of men demonstrating their knowledge is

not of itself a breach of the Code. The Board noted that we don't see the men actually place a bet, although we do see one man use his phone, and we don't know if they were successful if they did, and considered that the tagline of "Luck is no coincidence" does not imply you will always win but rather that if you do your research you may be more likely to win.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

The ACMA has released the 2016 update to its *Five Year Spectrum Outlook*. The Outlook identifies key areas of expected demand in spectrum usage and sets out the ACMA workplan on these issues. ASTRA is considering a response. The paper is available [here](#).

The ACMA has also released a discussion paper regarding spectrum for 5G mobile services. The paper looks at spectrum bands adjacent to the C-Band and as such, ASTRA is preparing a response. The paper is available [here](#).