

Advocacy Report

October 2017

ASTRA ACTIVITY

- **Media reform and gambling advertising** – The media reform bills passed the Senate on 14 September, and finally passed the House on 16 October. The new laws are now in place, including the changes to the anti-siphoning scheme. Refer to the [September Advocacy Report](#) for details of the reforms and the deals done with minor parties to ensure passage.

Next steps

ASTRA and Foxtel will closely monitor and assess participation in:

- ABC/SBS competitive neutrality inquiry.
- ACCC inquiry into new digital media.
- Review of Australian broadcasting services in Asia-Pacific.

ASTRA continues to work with members on implementation of the gambling advertising restrictions. A draft new appendix to the Code of Practice will be submitted to the Government shortly, with a public consultation to take place soon after. The Code must be in effect from 30 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.

In August the Review released a consultation paper and invited interested stakeholders to comment. The consultation paper was brief and did not put forward any options for consideration. Further details, including the terms of reference and consultation paper, are available [here](#).

As noted in the September Advocacy Report, Foxtel and several other ASTRA members chose to submit to the review in their own name.

As expected, the FTA broadcasters are pushing for the abolition of children's television content quotas and for a revision of Australian drama quotas. Screen Producers and the guilds have launched a large scale campaign – '[Make it Australian](#)', calling for quotas on on-demand operators, competitive tax incentives, retention of existing FTA quotas, and quotas and funding for public broadcasters. Several of the guilds called for an extension of subscription television Australian content requirements (up requirement to 20% and make it apply to all channels, not just drama).

All submissions to the Review are available [here](#).

On 18 October, 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 now the third review of Australian content.

The closing date for submissions is 31 January 2018 and the Committee is 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](#). Submissions on the ACMA's recommendation are due 27 November. Further information is available [here](#).

The ACMA has also released its annual update of its Five Year Spectrum Outlook, which outline major pieces of new work, an overview of the spectrum environment, progress on last year's key projects and upcoming ACMA activities. Submissions are due 18 December. The Outlook is available [here](#).

On 1 and 2 November, the ACMA will hold its annual Radcomms conference. Spectrum reform and the reallocation of spectrum for 5G mobile are likely to dominate discussions. Representatives from ASTRA and Foxtel will be in attendance.

- **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 and Foxtel have participated in 4 working group meetings, with no further meetings planned. The working groups were attended by broadcasters, disability advocacy groups, accessibility service providers, academics and representatives of the Department. Productive steps were taken in recent meetings with broadcasters presenting in detail on the complexities of a broadcast delivery of AD, and service provider Big Access Media announcing details of a new land-line based AD companion service. The Department is expected to provide a report to the Minister by the end of the year with options for the introduction of audio description services.

- **Copyright** – Since the last Advocacy Report the Government has sought submissions on proposed changes to the Copyright Regulations which would affect safe harbour and the use of technical protection measures. ASTRA member Foxtel made a submission to this review.

We continue to monitor the Government's progress on consideration of changes to safe harbour and copyright exceptions, with no major developments since the last Advocacy Report.

A meeting of ASTRA's consultative group on IPTV Piracy took place in October. The meeting provides a forum for members to share intel on piracy issues and coordinate possible advocacy opportunities. A further meeting is planned for early 2018.

- **Codes of Practice** – the ASTRA Code of Practice has been submitted to the Board for final clearance before an approach to the ACMA is made.

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

NEWS

ACMA Investigations

On 12 October the ACMA found that Network Ten had not breached the Commercial Television Industry Code of Practice in relation to an episode of *The Bachelor*. The ACMA received a complaint alleging that a comment made by a contestant on the program was deeply offensive, derogatory and severely ridiculed Jews. The ACMA found that although the comment may have been offensive to some members of the community, an ordinary reasonable viewer would have been unlikely to consider that they were being urged to share feelings of dislike, contempt or ridicule towards Jewish people on the basis of religion. Instead, the ordinary reasonable viewer would have understood that the comment was a negative, ridiculing comment about a contestant's unflattering outfit, and was not on the basis of religion. 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 October 2017.

The ASB dismissed a complaint regarding an advertisement for the Aqua Beyond Deep Blue fragrance. The advertisement features Michael Klim diving from a cliff face into the ocean at night. The complaint was that this modelled dangerous behaviour. The ASB found that the depiction was highly stylised and there was nothing to suggest it was not carefully planned.

The ASB dismissed a complaint regarding an advertisement for lingerie. The complaint was that the depiction of breasts in the advertisement was inappropriate. The Board notes that in order to be a breach of the Code, the advertisement would need to be using sexual appeal in a manner that is considered both exploitative and degrading. The Board considered that all the women are portrayed in a manner that is true to life and not in a manner which is exploitative and degrading of any individual or group of people.

The ASB dismissed a complaint regarding an advertisement for the film *American Assassin*, which had received an MA15+ classification. The complaints were that the violent content in the advertisement was inappropriate for children. The ASB noted that there are no graphic depictions of violence, and no death or horror in the ad. The Board acknowledged that some members of the community would prefer that this type of movie not be advertised, especially at times when children can view them, but considered that in the context of an action movie the actual content of the advertisement is relatively mild.

The ASB dismissed a complaint regarding an advertisement for the movie *It*. The complaint was that the content of the ad was scary, confronting and inappropriate for children. The Board acknowledged that using a child's voice to narrate the advertisement does tap in to children's fears, particularly as the voiceover states that you won't always be protected and cared for, but considered that the actual visuals are not graphic or violent and the advertisement is clearly promoting a movie and not a real event. The Board considered that these versions also were justifiable in the context of the product advertised and the relevant time slot the advertisement was aired in.

The ASB dismissed a complaint regarding an advertisement for Christian Dior perfume. The complaint was that the depiction of a woman jumping from a jetty into a body of water was unsafe. There were also complaints that depictions of a woman and a man playfully pushing each other were akin to domestic violence. The Board noted that there is concern in the community about entering any body of water without checking for dangers and assessing the risks of such activity. In the Board's view however, the advertisement did not depict, encourage or condone behaviour contrary to prevailing community standards on health and safety.

The ASB dismissed a complaint for an advertisement for a movie, *Happy Death Day*. The complaint was that the advertisement's depiction of violence was not suitable for the program during which it was shown. The Board found that the overall tone of the advertisement was mild and considered that the content is relevant to the advertised product and that the level of implied violence as well as the use of scary scenarios was not overly violent.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted above, the ACMA is receiving submissions in relation to proposals for the 3.6 GHz band (by 27 November) and on its Five Year Spectrum Outlook (by 18 December). The Senate Environment, Communications and the Arts Committee is seeking submissions on Australian content by 31 January 2018.