

Advocacy Report

September 2016

ASTRA ACTIVITY

- **Media reform** – The Senate Committee considering the reintroduced media reform Bill resolved to consider submissions and evidence provided when Committee first considered the Bill earlier this year. They have, however, called for supplementary submissions where parties wished to provide additional information. ASTRA's submission addressed some points raised in FTA submissions and evidence in the year. A copy of the ASTRA submission is available [here](#).

FTA submissions provided updated information on the state of the industry to support their calls for urgent reform of ownership restrictions. The Nine Entertainment Co submission was notable in that Nine reversed its previous support for the Bill, calling instead for the Bill to be deferred until licence fees had been addressed. Coverage [here](#) and all submissions [here](#).

On licence fees, a Bill has been introduced to make permanent the 25% cut to FTA licence fees that the Government announced in the 2016 Budget. FTAs have expressed their dissatisfaction with the extent of this cut and are stridently demanding licence fees be abolished. Coverage [here](#).

The Government's public line on these issues has been to note that a review of spectrum pricing is ongoing, however the Government will be facing sustained pressure from the FTAs on this issue. ASTRA continues to advocate for the importance of market based pricing of spectrum and offsetting reform.

- **Gambling advertising** – Senator Xenophon's private members Bill to ban gambling advertising on television during sports programs and 'G' rated programs, has been referred to Committee for Inquiry. This follows an earlier Senate Committee Inquiry which was cut short by the calling of the election. The Committee has resolved to rely on submissions made to the earlier review and no date has been set for hearings. The Committee is due to report by 13 October.

ASTRA will attend an upcoming consultation concerning the implementation of the findings of the Illegal Offshore Wagering Review. One of the recommendations of the review related to standards for the advertising of legal gambling services. The consultation is being hosted by the Department of Social Services.

The Government has also released draft legislation to implement the Review's recommendation that 'click to call' gambling services should be banned. The current law prohibits online in-play betting on a sporting event, but allows in-play betting using the telephone.

'Click to call' in-play betting services include a mix of data entry on websites or mobile apps with a voice call. This typically involves a customer inputting betting information using a website or mobile app, which activates a call to a computerised voice that

repeats the consumer's bet and asks for confirmation by pressing a button. These services claim to avoid the operation of the prohibition in the current law by relying on the telephone betting exemption.

The Government's proposed Bill will address this by tightening the definition of 'telephone service'. Under the new definition, a telephone betting service must be a gambling service where dealings with customers are wholly by way of a voice call that consists of a spoken conversation. The call content cannot include the use of a recorded or synthetic voice.

The Bill also inserts a definition of 'sporting event' into the law to provide clearer rules about what is to be treated as a sporting event for the purposes of the prohibition against in-play betting on sports events.

- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning, conducting further briefings with advocacy groups ACCAN and Media Access Australia.

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

ASTRA is also working with members to collate supplementary information for the ACMA's statutory review of captioning, with ACMA staff requesting further information on complaints handling, record-keeping and sports channel aggregation.

- **Copyright** – There is yet to be a decision in the Foxtel site-blocking proceedings. Detailed coverage of the dispute is available [here](#). The final report of the Productivity Commission's inquiry into Australia's intellectual property arrangements has been provided to Government. The Government has 25 sitting days in which to publicly release the report, which could mean the report is released before the end of sittings for 2016.

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** – Working Groups are currently considering ASTRA's proposals for reform of the Codes of Practice. ASTRA will meet with the working groups shortly to gather feedback and assess any additional reform proposals. ASTRA will then finalise a set of proposed reforms and take these proposals to the Legal and Policy Committee, and then the Board for approval. Channels not represented on working groups will also be consulted. The process would then continue into drafting.
- **Updates to the ACMA's Privacy Guidelines** – The ACMA has released its updated Privacy Guidelines for Broadcasters. The ACMA took into account all of the concerns raised by ASTRA in its submission.

ACMA originally proposed to limit the exemption for material already in the public domain so that it only exempted material legitimately in the public domain. This concept of 'legitimately' has been dropped from the final guidelines.

ACMA originally proposed that the broadcast of opinion material about a person could be a breach of that person's privacy. This has been amended so that it only applies where that opinion is based on facts about the person.

ACMA originally proposed that broadcasting social media content that had been uploaded without the person's consent would be a breach of privacy. This has been changed to apply only where the material is also inherently offensive.

ACMA had originally proposed to remove a requirement that for there to be a breach, privacy had to be intruded on in 'more than a fleeting way'. This reference to 'fleeting' has been put back in the final guidelines.

ACMA originally proposed to downgrade the prominence of advice about how the existence of consent rules out expectations of privacy. This advice has been put back into a prominent place in the final guidelines.

The new guidelines are available [here](#).

- **Proposed changes to the AANA Code of Ethics** – The AANA has shared a draft practice note and guidance note relating to its proposed Code change to address distinguishable advertising. ASTRA is consulting with members on the materials but retains concerns about the necessity and uncertain impact of the proposed Code change.
- All of ASTRA's publicly available submissions are on the [ASTRA website](#).

NEWS

ACMA Investigations

On 8 September, the ACMA finalised an investigation into the program *20 to 1*, following complaints that the program contained material that offensive to transgender people. The segment complained about featured Renee Richards, a transgender tennis player. Whilst finding that comments about transgender people could fall within the scope of the prohibition on vilification on the grounds of gender, the ACMA found no breach of clause 2.6.2 of the Commercial Television Industry Code of Practice. Overall, the segment was found to have portrayed Ms Richards in a favourable manner, despite 'mildly ridiculing' statements which were in-keeping with the light-hearted nature of the program. The ACMA also found that the material could not have provoked or perpetuated, in a reasonable person, intense dislike or serious contempt against transgender people or Ms Richards. Any ridicule was not sufficiently extreme to arouse the strength of audience response contemplated by clause 2.6.2.

On 15 September the ACMA found no breach of impartiality standards in relation to a political interview on the ABC's *7.30* program. The ACMA received a complaint that the use of the term 'government handouts' in an interview featuring opposition leader Bill Shorten on the night of his budget-in-reply speech was emotionally charged and inappropriate in the context of the interview. The ACMA found that the term 'government handouts', while potentially emotive, was not inaccurate. The ACMA also found the interviewee was given opportunity to respond and that the tone of the interview was probing, but respectful. The segment was also found to provide a balance that followed the weight of evidence.

On 22 September, the ACMA found no breach of impartiality and diversity of perspectives requirements in relation to an episode of the ABC program *The Drum*. The complaint alleged a discussion dealing with same sex marriage was biased and lacked a diversity of perspectives. The ACMA found that all participants in the panel discussion were given many

opportunities to provide their point of view during the program in length and in detail. The panel host's tone was probing, but in a respectful way, and did not express a personal opinion on the issues raised. The host allowed for a range of views to be elaborated on, and asked relevant follow-up questions, displaying fair treatment and open-mindedness.

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 August.

The ASB dismissed a complaint regarding a commercial for Real Life Insurance. The complaint was that the ad depicted a scene in which a baby's cot was located near slatted window blinds, which the complainant said was a safety issue (strangling). The Board noted that the blinds are not the main focus of the ad, and that there are no cords visible and no child in the cot (or elsewhere in the cot). The ad did not therefore depict material contrary to prevailing community standards around child safety.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

The ACCC has released a discussion paper for its market study of the communications industry. The paper raises issues including throttling of OTT services, implications of OTT services for economic regulatory frameworks, the potential for content bundling to distort competition and the impact of content control on competition in the communications sector. Submissions are invited until 14 October. ASTRA will not be providing a submission as ASTRA tends to stay silent on competition issues, which can affect members in different ways.