

21 December 2016

Advertising Consultation
Regulatory Practice, Education and Compliance Branch
Regulatory Practice & Support Division
Therapeutic Goods Administration

By email: advertising.consultation@tga.gov.au

Dear Sir/Madam

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the Consultation Paper 'The regulatory framework for advertising therapeutic goods' (the Consultation Paper).

ASTRA is the peak industry body for subscription media in Australia. ASTRA's membership includes the major subscription TV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA supports appropriate restrictions and guidance surrounding the advertising of medicines and medical devices and notes the findings of the Expert Review of Medicines and Medical Devices Regulation (the Review). In principle, ASTRA does not oppose the proposed move to a more self-regulatory scheme for the management of the potential risks associated with advertising therapeutic goods. However, we are concerned to ensure that:

- enforcement of the proposed new self-regulatory scheme is proportionate and appropriately targeted; and
- the severity of the sanctions in the Consultation Paper is heavily scrutinised in light of the increased regulatory burden for broadcasters.

ASTRA would welcome further detail regarding which parties will be the target of the increased enforcement powers and penalties provisions which are proposed in the Consultation Paper and would also welcome the chance to review the exposure draft of the legislation when it is released. The level of sanctions is, in some instances, quite severe, and ASTRA is concerned to ensure that subscription television broadcasters are not subject to unduly harsh penalties for advertising content over which they have limited control.

ASTRA submits, as a general principle, that responsibility for compliance with restrictions on the content of advertisements should sit with advertisers, as they are in a position to control that content, rather than broadcasters who in our view, should only be responsible for adhering to restrictions on the placement, scheduling and frequency of advertisements (all of which are under the control of broadcasters).

There is a trend away from placing regulatory responsibility for the content of advertisements on broadcasters, with the Free TV Code of Practice recently removing liability for broadcasters in regards to an advertisement's compliance with the Australian Association of National Advertisers Codes of Ethics (and associated Codes). ASTRA is considering a similar reform to its Codes of Practice.

One possible approach would be to exempt broadcasters from liability where they have obtained a guarantee from advertisers that the advertisement has been appropriately pre-vetted and complies with the relevant Code. ASTRA would welcome further consideration of these issues prior to the finalisation of the new regulatory arrangements.

We note that if there are legislative changes to the pre-approval requirements under the Therapeutic Goods Act 1989 in favour of a self-regulatory regime, the licence condition for broadcasters relating to therapeutic goods advertisements (as set out under clause 6, Schedule 2 of the Broadcasting Services Act 1992) should be removed.

Thank you for the opportunity to comment on the Consultation Paper. If you have any queries in relation to the above, please contact Holly Brimble, Policy and Regulatory Manager (holly.brimble@astra.org.au or 02 9776 2688).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Maiden', with a stylized flourish at the end.

Andrew Maiden

CEO