

31 October 2014

Rights and Responsibilities Consultation
Australian Human Rights Commission

By email: rights2014@humanrights.gov.au

Dear Sir/Madam

Rights and Responsibilities Consultation

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to make a submission in response to the Australian Human Rights Commission (AHRC) Rights and Responsibilities Consultation.

ASTRA is the peak industry body for subscription media in Australia. ASTRA's membership includes the major subscription television (STV) 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.

This consultation focuses on building understanding and improved protection of fundamental human rights, freedoms and responsibilities, including the right to freedom of opinion and expression. Protecting freedom of opinion and expression is critical to media organisations, whose role includes informing the community on matters of public importance, which in turn assists citizens in playing an active role in democratic processes.

The AHRC is seeking to identify initiatives that advance rights and freedoms, as well laws that impose disproportionate restrictions on rights and freedoms. ASTRA is pleased to offer examples below of positive initiatives being undertaken to advance rights and freedoms within the subscription media community, as well as suggestions for reducing disproportionate restrictions.

Advancing rights and freedoms

The most obvious way in which ASTRA members advance rights and freedoms is by seeking, receiving and imparting information and ideas, analysis and opinion that informs and engages the community on matters of public importance. ASTRA members include the Australian News Channel (which produces the suite of Sky News services and A-PAC, Australia's Public Affairs Channel) and organisations that bring news channels including Al Jazeera, BBC World News, CCTV News, CNBC, CNN and FOX News to Australian audiences on STV platforms such as those operated by Foxtel and Telstra.

However, ASTRA members also advance human rights in other, potentially less obvious ways. These rights include:

- **the rights of people with a disability**—through the provision of closed captioning on numerous services (under the auspices of the *Broadcasting Services Act 1992 (BSA)*), which promotes increased access to television services for people with a hearing impairment; and
- **the right to take part in cultural life**—including by the production and broadcast of Australian programming which tells Australian stories and reflects Australian culture. STV is recognised as a home for premium Australian drama and factual programming with

recent series such as *Devil's Playground*¹ and the upcoming production *Deadline Gallipoli*² telling important Australian stories.

ASTRA and its members also take active steps to promote the enjoyment and exercise of human rights for Indigenous Australians.

Closing the gap between Indigenous and non-Indigenous Australians in relation to employment opportunities is a key aim of the Media RING (Reconciliation Industry Network Group). Founded in 2008, the Media RING works to, among other things, increase job opportunities for Indigenous Australians in the media. The group includes broadcasters, government media agencies, Aboriginal and Torres Strait Islander organisations, trade associations and guilds, media buyers and newspaper and new media groups.³ ASTRA and a range of organisations from the subscription media community invest and participate in the Media RING.

Providing media education and employment opportunities builds the capacity of Indigenous Australians to tell their stories. An important vehicle for these stories has been the *Who We Are Series* produced for Foxtel, the third and most recent instalment of which was Leah Purcell's *Who We Are: Brave New Clan* (2014), a documentary produced by Indigenous media company CAAMA which followed the lives of six exceptional young Aboriginal and Torres Strait Islanders.⁴

Restrictions on rights and freedoms

As acknowledged in the Discussion Paper, the right to freedom of expression is particularly relevant to the broadcasting sector. The Discussion Paper notes that:

[t]he right to freedom of expression (commonly referred to as freedom of speech) provides the foundation for individual autonomy, the capacity for individuals to think for themselves and impart knowledge, and a strong democracy where opinions and ideas can be debated freely. The right enables discussions and debates about political and social views, and in so doing, creates the basis for the effective exercise and defence of many other human rights and freedoms.

While ASTRA recognises that no human right is absolute, and accepts that the right to freedom of expression must be balanced against other rights and interests—such as the right to privacy and the Government's obligation to protect national security—there must be very compelling public policy reasons for its subjugation. This is particularly the case given that, as recognised by the AHRC, Australia has no constitutional or statutory charter of human rights at the national level, including no overarching protection of freedom of expression.

A recent example of an attempt to disproportionately restrict journalists' right to freedom of expression can be found in a number of the legislative proposals set out in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (the Bill).

ASTRA has joined a broad range of media organisations in expressing concern that the Bill seeks to erode freedom of communication and freedom of the media in disproportionate ways.

¹ *Devil's Playground* is a psychological thriller series set in the churches, schools and upper echelons of power in the Australian Catholic Church at a time of change in the late 1980s.

² *Deadline Gallipoli*, currently in production, explores the origin of the Gallipoli legend from the point of view of war correspondents Charles Bean, Ellis Ashmead-Bartlett, Phillip Schuler and Keith Murdoch.

³ More information about the Media RING is available at <http://www.mediaring.com.au/>.

⁴ Queensland University of Technology academic Sandra Phillips recognised the contribution of *Who We Are: Brave New Clan* to reconciliation when she commented that '*Purcell's documentary gives us an Indigenous screen narrative that brings together six voices accompanied by the voices and landscapes significant to them; it builds an oral and visual symphony that reminds us how deadly Indigenous Australia is, and allows others in on that little secret too*'. See 'Indigenous Australia is deadly – and Leah Purcell shows it', *The Conversation*, 11 July 2014 – available at <http://theconversation.com/indigenous-australia-is-deadly-and-leah-purcell-shows-it-28768>.

A range of recommendations for amendment were made which were aimed at protecting the ability of journalists to go about their ordinary business and report in the public interest without the risk of being jailed.⁵

Other limits on freedom of expression are set out in broadcasting codes of practice developed by industry groups such as ASTRA and registered by the Australian Communications and Media Authority under the BSA. In developing these codes ASTRA has recognised that the right to freedom of expression must be exercised responsibly. For example, in relation to privacy, the *Subscription Broadcast Television Codes of Practice 2013* provide that:

*In broadcasting news and current affairs programs Licensees must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there are identifiable public interest reasons for the material to be broadcast.*⁶

The enforceable codes of practice developed by ASTRA also include regulatory interventions designed to address matter that is likely to provoke or perpetuate intense dislike, serious contempt or severe ridicule on specified grounds. These provisions are specifically contemplated by the broadcasting laws under which the Codes are registered.⁷

While ASTRA supports regulation intended to prevent the broadcast of such content, and while there is no evidence that these provisions are inadequate, the inclusion of such provisions in codes of practice merely duplicates existing general anti-discrimination and anti-vilification measures. The protection against such discriminatory or vilifying material is adequately addressed under other federal legislation, including:

- *Australian Human Rights Commission Act 1986*
- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*

In ASTRA's view broadcasting codes of practice enforced by the media regulator should not duplicate existing laws, including those that provide anti-discrimination protections. ASTRA submits that consideration should be given to removing the requirement in the BSA that these matters be included in broadcasting codes of practice.

Please feel free to contact me if you wish to discuss anything in this submission.

Yours sincerely



Andrew Maiden
CEO

⁵ The joint media organisation submission to the Parliamentary Joint Committee on Intelligence and Security in relation to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* is available at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Counter-Terrorism_Legislation_Amendment_Foreign_Fighters_Bill_2014/Submissions.

⁶ Clause 2.2(c), *Subscription Broadcast Television Codes of Practice 2013* – available at http://www.astra.org.au/images/pages/ASTRA_Subscription_Broadcast_Television_Codes_of_Practice_2013.pdf.pdf.

⁷ The BSA provides that codes of practice developed by subscription broadcasters are expected to relate to (amongst other things) preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast. In relation to these matters, the development of codes of practice is expected to take into account the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on specified grounds (see sections 123(2)(a) and 123(3)(e) of the BSA).