

# POLICY UPDATE

## JUNE 2014



### ASTRA ACTIVITY

- **Senate Inquiry - Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill** – On 1 May 2014 ASTRA made a submission to the Senate Environment and Communications Legislation Committee Inquiry into the Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014. ASTRA's concern is to ensure that the legislation does not inadvertently prohibit the use of classification markings for online content provided by STV licensees. The Committee is due to report on 27 August 2014.

Further information on the Bill and the Inquiry is available on the Committee's website at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Classification\\_2014](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Classification_2014)

- **Australian Law Reform Commission (ALRC) Inquiry into Serious Invasions of Privacy in the Digital Era Discussion Paper** – on 12 May 2014 ASTRA made a submission to the ALRC's Discussion Paper proposing a statutory tort for serious invasions of privacy, as well as amendments to existing legislation to complement, or as an alternative to, a new statutory tort. ASTRA considers that a new statutory tort is unnecessary, with existing provisions under the ASTRA Codes of Practice as overseen by the Australian Communications and Media Authority (ACMA) sufficient to deal with any privacy concerns relating to the operations of STV providers. ASTRA strongly opposed the ALRC's proposal for the ACMA to be given the power to order compensation for individuals for privacy breaches under the Codes. The ALRC is due to provide its final report to the Government by June 2014. Further information on the ALRC Inquiry is available at: <http://www.alrc.gov.au/inquiries/invasions-privacy>

- **ACMA: Draft RALI for 'early access' to 700 MHz spectrum** – On 15 May 2014 ASTRA provided comment on the draft 700 MHz band Early Access – Radiocommunications Assignment and Licensing Instruction (RALI) for Public Telecommunications Services (RALI MS 36). ASTRA's comments related to the potential interference to wireless audio devices operating in the 700 MHz band, and to subscription television cable set-top boxes.

Further information on the ACMA consultation is available at: <http://www.acma.gov.au/Industry/Spectrum/Digital-Dividend-700MHz-and-25Gz-Auction/Reallocation/draft-rali-and-determination-for-early-access-to-700-mhz-spectrum>

- **Captioning compliance and reporting obligations** – ASTRA is working with the ACMA and the Department of Communications on measures to reduce captioning compliance reporting requirements, and other issues of continuing concern to the STV industry regarding the current regime of captioning obligations on STV.

Information on current captioning obligations for STV is available on the ACMA website at: <http://www.acma.gov.au/Citizen/Consumer-info/Rights-and-safeguards/Captioning/captioning-1>

Publicly available ASTRA submissions are on the ASTRA website at: <http://www.astra.org.au/Menu/Policy/Overview/Submissions>



## NEWS

### National Commission of Audit

On 1 May 2014 the Abbott Government released the Report of the National Commission of Audit. The Commission was established by the Australian Government as an independent body to review and report on the performance, functions and roles of the Commonwealth government. The Commission of Audit Report can be viewed at: <http://www.ncoa.gov.au/>

### STV signal piracy convictions

On 6 May 2014, two Sydney men were sentenced for their role in the provision of unauthorised access to Foxtel services. The father and son, Michael Scherle and Daniel Albert Clark, were charged with Commonwealth criminal offences relating to the manufacture, distribution and sale of unauthorised decoders and for providing users with access to encoded Foxtel subscription television broadcasts. A Sydney court ordered Scherle to serve a six month gaol term followed by home detention and community service for his role in leading the offences. Clark was also found guilty and was placed on a good behaviour bond for his involvement. Further information at: <http://www.smh.com.au/digital-life/digital-life-news/father-and-son-sentenced-after-selling-illegal-foxtel-services-20140506-zr5pt.html>

### Australian Government's Communications Portfolio Deregulation Roadmap

On 6 May 2014 the Government released a roadmap of key deregulation priorities in the communications sector and the expected timing for consideration of these issues throughout 2014. The roadmap is available on the Department of Communications' website at [http://www.communications.gov.au/deregulation/communications\\_portfolio\\_deregulation\\_roadmap\\_2014](http://www.communications.gov.au/deregulation/communications_portfolio_deregulation_roadmap_2014)

Items of particular relevance to the STV industry include:

- ***Spectrum Review - May 2014:*** The Department of Communications (DOC), in cooperation with the ACMA, has commenced a review of Australia's spectrum management framework, including the *Radiocommunications Act 1992*. The Review is expected to provide initial options to the Government late in 2014 with legislative change progressing in 2015. Extensive consultation will be undertaken as part of the review process. An [issues paper](#) was released on 23 May 2014 (see below for details).
- ***Regulatory Frameworks - May 2014:*** The Government has released a short background paper on current and potential future regulatory frameworks. This will explore the relative strengths and weaknesses of a range of interventions used extensively to regulate the communications sector—black letter law as well as co and self-regulation. The intent of the paper is to inform future discussions about the best approaches to regulatory arrangements to achieve important safeguards while minimising costs to industry. The paper is available at: <http://www.communications.gov.au/deregulation>
- ***Reform of Digital Television regulations—Schedule 4 to the Broadcasting Services Act 1992 - June 2014:*** The DOC will be reviewing the provisions contained in Schedule 4 of the BSA which set in place the legislative framework for the conversion from analog to digital television. The Department will provide advice to Government on removing all provisions which are now redundant and whether 'surviving' provisions should be adjusted to achieve ongoing public policy outcomes. This includes considering the ongoing restrictions on broadcasters on the type of service that they can provide. At the recent Senate Estimates, the DOC indicated that a consultation paper would be released in June or July 2014. The Government will consider final proposals in time for inclusion in the next Repeal Day process.

- **Captioning requirements - June 2014:** The DOC and the ACMA will jointly review and consider modification of the captioning reporting provisions of the BSA and ACMA captioning reporting requirements. Changes are expected to be limited to addressing problematic administrative and reporting issues. The Government will consider final proposals in time for inclusion in the next Repeal Day process.
- **Other areas currently proposed for review and potential reform to progress in 2014:**
  - ACMA will consult on proposals to reduce reporting obligations on commercial radio broadcasters in relation to local content and presence obligations;
  - Australian and children's television content quotas and sub-quotas – at the recent Senate Estimates hearings, the DOC indicated that the review of Australian content quotas may also examine the Producer Offset and Screen Australia funding programs;
  - ACMA review of broadcasting compliance and reporting obligations, including in relation to local content standards on regional radio.
- **Other policy areas for reform that are not just deregulatory in nature and will require the Government's consideration during 2014 include:**
  - Use of the sixth television channel, including the future of community broadcasting;
  - Any changes to the anti-siphoning rules;
  - Any changes to current media ownership rules;
  - Retransmission of commercial and national broadcasting services.

### **Federal Budget**

The [2014-15 Federal Budget](#) was tabled on 13 May 2014. Items of interest included:

- **Communications Portfolio**
  - **NBN:** \$20.9 billion in equity funding to NBN Co over the period 2014–15 to 2017–18. This amount is in addition to \$5.2 billion in equity provided in previous financial years from 2008–09 to 2012–13 and \$3.4 billion expected to be provided in 2013–14. The Government's investment is capped at \$29.5 billion, with the balance of the project to be funded by the private sector.
  - **National broadcasters:** As a down payment on the ABC and SBS Efficiency Study, the Government will achieve savings of \$43.5 million over four years through a one per cent reduction in the base funding of the ABC and the SBS.
  - **ACMA:** Savings of \$3.3 million over four years from a one-off one per cent efficiency saving from the ACMA. The ACMA is budgeting in 2014-15 for total expenditure of \$95.2 million. This represents a decrease of \$8.1 million from the 2013-14 estimated position. The decrease is primarily due to terminating Digital Television Switchover and Dividend funding.
  - **Online safety for children:** \$10 million over 4 years to enhance online safety for children, including \$7.5 million to assist schools to access accredited online safety programmes; \$2.4 million to establish and operate the Office of the Children's e-Safety Commissioner; and \$0.1 million to support Australian-based research and information campaigns on online safety.
  - **Community broadcasting:** \$6 million over 3 years (extension of existing funding).
  - **Digital Television Switchover – Spectrum Restacking Assistance:** \$61.7 million over two years (funding previously identified, ending 2015-16).
  - **Spectrum – Assistance to FTA Broadcasters for Electronic News Gathering:** \$9.1 million in 2014-15 (funding previously identified, ending 2014-15).

- *Digital switchover ongoing costs:* Approximately \$11 million per year, largely due to continued funding of the VAST satellite service for transmission of FTA television services to areas without adequate terrestrial reception (funding previously identified).
- **Department of Foreign Affairs and Trade Portfolio**
  - *Australia Network:* The Government will terminate the Australia Network contract with the ABC, delivering \$76.8 million over four years, with additional savings over the lifetime of the contract beyond the forward estimates.
- **Attorney-General's Portfolio**
  - *Privacy and Freedom of Information functions:* Savings of \$10.2 million over four years by establishing new arrangements to deliver privacy and Freedom of Information (FOI) functions. Privacy functions will be undertaken by the Privacy Commissioner as an independent statutory position within the Australian Human Rights Commission. External merits review of FOI decisions will be undertaken by the Administrative Affairs Tribunal, while responsibility for handling FOI complaints will be combined with the Commonwealth Ombudsman function.
  - *Screen Australia:* Reduction in core funding of \$25.1 million over 4 years.
  - *Australian Federal Police officers — cessation of additional recruitment:* Savings of \$42.5 million over four years from the remaining unspent funding for the AFP retention and recruitment programme announced in the 2008-09 Budget. The AFP will cease recruitment of additional sworn officers at the end of the 2013-14 financial year.

**Senate Inquiry: Current investigative processes and powers of the Australian Federal Police (AFP) in relation to non-criminal matters**

On 15 May 2014 the Senate Legal and Constitutional Affairs References Committee tabled the report of its inquiry into AFP investigative powers and processes. The Inquiry was undertaken after raids on Seven West Media offices in relation to an AFP investigation under the *Proceeds of Crime Act 2002*, and included examination of issues relating to freedom of speech and freedom of the press in the context of these investigations. The report is available on the Senate Committee website at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/AFP\\_Inquiry/report/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AFP_Inquiry/report/Report)

**ALRC Inquiry: Review of Commonwealth Laws for Consistency with Traditional Rights, Freedoms and Privileges**

The final Terms of Reference for the 'Freedoms' Inquiry were received by the ALRC on 19 May 2014. The Attorney-General, Senator the Hon George Brandis QC, [announced this Inquiry](#) in December 2013.

The ALRC has been asked to deliver an Issues Paper and an interim report by the end of 2014 with the final report to be delivered to the Attorney-General in December 2015. The ALRC will provide more detail about the timetable for the Inquiry in the coming months. The final Terms of Reference and further information about the ALRC's Inquiry are available on the ALRC website at: <http://www.alrc.gov.au/inquiries/freedoms>

## DISCUSSION PAPERS/REQUESTS FOR COMMENT

### Competition Policy Review

On 27 March 2014, the Government released the Final Terms of Reference for its review of competition law and policy, as well as the Review Panel to be chaired by Professor Ian Harper. The Review Panel is expected to report by March 2015. The key areas of focus for the review are to:

- identify regulations and other impediments across the economy that restrict competition and reduce productivity, which are not in the broader public interest;
- examine the competition provisions of the *Competition and Consumer Act 2010* (CCA) to ensure that they are driving efficient, competitive and durable outcomes, particularly in light of changes to the Australian economy in recent decades and its increased integration into global markets;
- examine the competition provisions and the special protections for small business in the CCA to ensure that efficient businesses, both big and small, can compete effectively and have incentives to invest and innovate for the future;
- consider whether the structure and powers of the competition institutions remain appropriate, in light of ongoing changes in the economy and the desire to reduce the regulatory impost on business; and
- review government involvement in markets through government business enterprises, direct ownership of assets and the competitive neutrality policy, with a view to reducing government involvement where there is no longer a clear public interest need.

On 14 April 2014, the Review Panel released an Issues Paper, with submissions due **10 June 2014**. Further information on the Competition Policy Review, including the full Terms of Reference and Issues Paper, is available at: <http://competitionpolicyreview.gov.au/>

### Spectrum Management Framework Review

On 23 May 2014, the Minister for Communications announced a review of the spectrum policy and management framework. The Government considers the framework needs to be modernised to reflect changes in technology, markets and consumer preferences that have occurred over the last decade and to better deal with increasing demand for spectrum from all sectors.

The purpose of the review is to examine what policy and regulatory changes are needed to meet current challenges, and ensure the framework will serve Australia well into the future. In line with the Government's deregulation agenda, the review is seeking to simplify the framework to make it easier to administer as well as increase accessibility and reduce compliance costs for users. The review will consider opportunities for reducing regulation and non-legislative reform approaches where possible.

The Terms of Reference and Issues Paper are available on the DOC website at: [http://www.communications.gov.au/consultation\\_and\\_submissions/spectrum\\_review](http://www.communications.gov.au/consultation_and_submissions/spectrum_review)

Comments on the list of issues, including suggestions to add, amend, remove and prioritise issues, are due close of business **Friday 20 June 2014**.