

Advocacy Report

April 2017

ASTRA ACTIVITY

- **Media reform and gambling advertising** – The Government has announced a package of media reforms that includes repeal the 75% and 2-out-of-3 rules, a slight trimming of the anti-siphoning list, the creation of a small fund to support certain sports broadcasts, FTA licence fee cuts, spectrum reform and restrictions on gambling advertising. ASTRA has welcomed the package as a modest first step in the media reform process, expressed disappointment in the gambling ad ban given we have taken a conservative approach, and welcomed changes to anti-siphoning but flagged an interest in further reform soon. Whilst industry reaction to the announcement has been uniformly positive, the reforms will still face a challenge in the Senate, which has been unpredictable and difficult to negotiate.

The Government's media release is available [here](#). ASTRA's media release is available [here](#). Free TV's media release is available [here](#). There is extensive online coverage and commentary.

75% reach and '2-out-of-3'

These reforms to media ownership laws have been stuck in Parliament since before the last election. The Government takes the view that cuts to FTA licence fees are conditional on these reforms getting through Parliament. The ALP has flagged it remains unconvinced of the case for repeal of '2 out of 3', meaning the Government must secure support from almost all cross-bench Senators.

FTA licence fees and spectrum

The current licence fee regime, which is a tax on revenue, will be abolished and replaced with a flat spectrum access charge. This will result in substantial savings of \$90m pa for FTA broadcasters. Further detail will be published in the budget papers on 9 May.

Anti-siphoning

The list will be trimmed to remove mostly overseas events not involving the Australian national team. This will include events such as the golf majors and tennis opens coming off the list. There will be minor improvements to the listing of rugby league, rugby union, cricket, soccer and motorsport. However the piecemeal nature of the delistings will mean the commercial upside is limited. The automatic delisting period will be extended from 12 to 26 weeks.

Niche sports fund

The Government will provide funding of \$30 million over four years to subscription television to maintain and increase coverage of women's sports, niche sports and high participation sports that are less sustainable to broadcast.

Gambling restrictions

The Government expects industry bodies including ASTRA to amend their codes of practice to ban gambling ads during live sport played between 5.00am and 8.30pm, and during five minute shoulder periods either side of the first and last siren. The Government will threaten to legislate if industry does not enact acceptable code amendments within a certain period of time. We have argued for a series of exemptions for international pass-through content, racing channels, services in pubs and clubs and for accidental/incidental references, which we understand will be acceptable to Government. A further exemption for channels with low audience shares remains outstanding and will be negotiated in coming weeks.

The bans will apply to FTA, subscription television and online, however it is unclear how the Government expects to regulate online content, which has proven difficult in the past.

Australian content review

This year, the Department, Screen Australia and the ACMA will undertake a review of Australian and children's screen content. The review will identify sustainable policies to ensure the ongoing availability of Australian and children's content to domestic and international audiences, regardless of platform.

- **Gambling advertising (other)** – With no Parliamentary sittings in April, the Government's Interactive Gambling Bill (which includes a ban on 'click to call' gambling services) has not progressed further. As reported in the March Advocacy report, the Bill was passed by the Senate with amendments, and was therefore sent back to the House. Coverage is available [here](#).

On 28 April, the Commonwealth Government reached in-principle agreement with the State and Territory Ministers for additional measures to be included in the National Consumer Protection Framework for online wagering. This includes more consistent responsible gambling messaging, a national self-exclusion register and severing links between gambling operators and payday lenders. The Communique also calls for more consistent regulation of gambling advertising, and explicitly notes that current levels are not desired or liked by the community. Rather than recommending specific reforms, the Communique references the active consideration of the issue by the Commonwealth. Further information is available [here](#).

- **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.

Audio description is a verbal commentary that complements the underlying soundtrack of a television program, film, DVD or live performance. It aims to assist people who are blind or vision impaired. ABC's audio description trial on iview ran for 15 months concluding in June 2016. The trial provided 14 hours of audio described content per

week, accessible on a range of devices. The terms of reference for the Working Group are available [here](#) and include:

- Identify options to sustainably increase AD services
- Identify technical, financial, cultural or capability issues
- Consider incentives to encourage provision of AD
- Consider alternatives to legislated requirements

The Working Group will include representatives from television broadcasters, vision impairment representative groups, audio description service providers and government representatives. ASTRA is yet to be contacted directly regarding participation in the group.

ASTRA's Legal and Policy Committee will determine an industry position prior to any engagement with the Group. Key issues will include feasibility within the existing broadcasting technical environment, feasibility within the online environment, costs, funding and potential scope of participation across broadcasting and online service providers.

By way of background, the ABC's trial reports are available [here](#) and [here](#). The ABC report on the trial of AD on its iView service reported a largely successful roll out, with some obstacles in relation to iView desktop and flash, and the complications arising from the sheer breadth of technology types on which iView is available.

Groups representing those with a vision impairment also provided a report on the iView trial. That report argues that AD on iView is not acceptable as an accessibility solution. Blind people are generally older and do not have smartphones or fast enough internet connections to download TV. Many do not have internet connections at all because the internet is too hard to use when blind. Data limits are also an issue. This meant the AD content was actually inaccessible to many blind people. The report also identified that blind people would prefer to be able to access ABC programs at the time of broadcast, to aid in interaction and shared enjoyment with friends and family. The full report is available [here](#).

- **Copyright** – A further meeting of ASTRA's consultative group on piracy was held on 11 April. The meeting discussed the availability of non-sports content on pirate IPTV services, including content licensed to ASTRA members in Australia. The meeting discussed the difficulties of utilising existing law as a solution and the limitations on what could be achieved through advocacy. It was agreed that copyright law is out of date and unsuited to combatting this form of piracy. Industry-led actions (disrupting sales of boxes, liaising with social media sites and server providers) are more likely to be effective and are more immediate. There was support however for advocating for a specialist police unit to help bring prosecutions against providers of these services/equipment. A precedent exists in the UK. The group will meet again in the next quarter.

The Government has announced a series of stakeholder consultations on possible extensions to the safe harbour regime. Heather Smith PSM, Secretary of the Department of Communications and the Arts, will oversee a series of meetings and roundtable discussions with stakeholders on the proposed changes. The Department has been asked to provide advice to Government by early June 2017 to enable the Government to

continue to progress the copyright reform process. There is a diversity of views within ASTRA on safe harbour. Coverage is available [here](#).

ASTRA member Foxtel is reportedly soon to file an application in the Federal Court of NSW asking a judge to block a new list of pirating websites. Village Roadshow is leading a similar application, along with 21st Century Fox, Warner Bros, Disney, Paramount, and Columbia Pictures to block another 41 sites. Further coverage is available [here](#).

- **Spectrum** – The promised consultation papers on the implementation of the Spectrum Review have not been released (refer to [March Advocacy Report](#)). Inquiries have been made with the Department regarding revised timing and they have assured ASTRA the papers will be released in the near future.
- **Codes of Practice** – further consultation on the draft ASTRA Code of Practice is underway, with members' feedback leading to some changes to the draft. ASTRA is also preparing for the presentation of the draft Code to the ACMA.
- **Electoral Advertising** – As noted in the [March Advocacy Report](#), the Government has introduced the Electoral and Other Legislation Amendment Bill 2017. The Bill will introduce a new regime for the 'tagging' of political and electoral material (the 'authorised by...' tags). ASTRA has met with the Department and several elements of the Bill have been clarified. Whilst the Bill does impose additional regulatory compliance obligations, they will not be substantial in nature and can be complied with. A more detailed briefing has been provided to members of the ASTRA Legal and Policy Committee. If you would like further detail, please contact ASTRA. The Bill and Explanatory Memorandum are available [here](#). It is likely the Bill will be referred to a Senate Committee, giving ASTRA the opportunity to put comments on the record.
- **Classification** – The Classification Branch of the Department of Communications has consulted with ASTRA on proposed new classification categories. The new categories would introduce more granularity at the PG level. ASTRA impressed upon the Department to significant cost and logistical impact of changes to the categories.
- **ACMA Review** – Again, no sign of the Government's response to the ACMA Review. The position of full-time Chair also still stands empty, with deputy Richard Bean continuing to act in the position. It is thought that the two issues will be dealt with at the same time, however there is no visibility of when that will take place. Coverage is available [here](#).

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

NEWS

ACMA Investigations

On 3 April, the ACMA found that SBS had not breached the classification and consumer advice requirements in the SBS Code of Practice. The investigation was into the program *Outlander*, and the ACMA received a complaint that the program contained prolonged and gratuitous depictions of sexual violence that were traumatic and disturbing. The ACMA found that due to the editing techniques used, and the brief and implied depictions of actual violence, the violence was not presented in a gratuitous or exploitative manner. The ACMA also found that the strong themes were contextually justified, as they were critical to

character development and the plot. The ACMA found the content could be accommodated in the MA15+ category and that the messages conveyed by the classification symbol, the consumer advice and accompanying text and voice-over did provide sufficient information about the nature of the program's content, as required by the code. 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 one report regarding subscription television in April 2017.

The ASB dismissed a complaint for an advertisement for a superannuation fund. The complaint was that the depiction of foxes raiding a henhouse, and a child overhearing the slaughter of hens, was contrary to the AANA Code requirements regarding violence, distress to children and cruelty to animals. The Board considered that the depiction of a fox entering a chicken coop that contains the family pet hens is mildly menacing. The Board noted that the hens are not seen being attacked by the fox but the assumption is that the fox will kill the chickens. The Board considered that the use of the chickens in the hen house is an analogy for the message the advertiser is trying to deliver and that the viewer does not actually see any harm come to the chickens. The Board considered that the advertisement uses an acceptable level of menace which is justifiable to the product.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted above, ASTRA is expecting contact from the Government regarding participation in the audio-description working group and in relation to proposed changes to safe harbour.