

# Advocacy Report

March 2017

## ASTRA ACTIVITY

- **Media reform** – Yet again, no progress for the Government’s media ownership reform Bill, which can be seen as reflecting a failure to secure cross-bench supports. Further, there have been no announcements on how various other media reform issues will be dealt with, and when. This includes issues such as FTA licence fee cuts, anti-siphoning reform and FTA gambling advertising bans.

With so many moving parts, and a number of potential roadblocks, it is difficult to predict with any certainty what the outcome will be on all of these issues.

FTA broadcasters continue to push for licence fee cuts and have recruited support from high profile television producers (see coverage [here](#)). The broadcasters are reported as critical of any notion that the loss of revenue from stricter gambling ad restrictions could be offset by cuts in licence fees (see coverage [here](#)).

- **Gambling advertising** – The report of the Senate Inquiry into Senator Xenophon’s gambling advertising Bill has been tabled (see previous Advocacy Updates for details of the Bill). The report recommended the Bill not be passed, noting other Government initiatives to address problem gambling. Coverage [here](#).

Senate debate on the Government’s Interactive Gambling Bill (which includes a ban on ‘click to call’ gambling services) provided an opportunity for the ALP to reiterate its support for a phase-out of all television gambling advertising before and during live sport. The NXT Senators also reiterated their position in favour of substantial restrictions. The Bill was passed by the Senate with amendments, and must therefore be sent back to the House. Coverage is available [here](#).

- **Captioning** – There is no update from the previous Advocacy Report in which we noted the Minister’s Office have secured a place on the forward program for legislative drafting in relation to ASTRA’s proposed amendments. In the meantime, ASTRA’s members Foxtel and Ai Media hosted Disability Discrimination Commissioner Alistair McEwin for an inspection of broadcast and captioning technology.

For details of ASTRA’s proposals, see the [February 2016 Advocacy Report](#). The ASTRA submission to the Department is available [here](#).

ASTRA also made a submission to the Senate Standing Committee on Community Affairs inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020. The submission highlighted the consumer benefits of ASTRA’s proposed captioning reforms.

- **Industry viability inquiry** - A Parliamentary inquiry is looking into the future viability of the Australian film and TV industries. ASTRA has made a submission which outlined the various pressures on the subscription TV business model and the need for regulatory relief to ensure the ongoing strength of the industry and the production sector.

- **Copyright** – A further meeting of ASTRA’s consultative group on piracy is planned for the coming week. Please be in touch with ASTRA if you would like to participate in the group. The problem of IPTV piracy extends beyond just sports programming, with some piracy feeds including content licensed in Australia to ASTRA members.

A Bill amending the *Copyright Act 1968* to simplify the use of copyright materials by libraries, educational institutions, archives and people with disabilities was tabled in Federal Parliament on 22 March. The Copyright Amendment (Disability Access and Other Measures) Bill includes provisions that would strip copyright from unpublished materials, introduces changes to ease access to copyright material for Australians with a disability, and simplifies and updates provisions that control how libraries and archives preserve materials. Importantly, the Bill no longer includes safe harbour amendments that were in the initial exposure draft. The government was seeking to extend the copyright safe harbour provision to online intermediaries such as Google and Facebook, giving them immunity for infringing user-uploaded content on their platforms.

There is a diversity of views within ASTRA on safe harbour. Coverage is available [here](#).

- **Spectrum** – The Department has advised that a series of consultation papers on the implementation of the Spectrum Review will be released shortly. There will be a draft new Act, a paper on implementation/transition, a paper on spectrum pricing and a paper on broadcast spectrum. There will also be consultation events.
- **Codes of Practice** – on 5 April ASTRA convened an industry workshop to consider a draft new Code of Practice. Feedback will be incorporated and preparations are being made to present the draft to the ACMA.
- **Electoral Advertising** – The Electoral and Other Legislation Amendment Bill 2017 was introduced on 30 March, and it appears no broadcasting stakeholders were consulted in advance of the Bill’s introduction. The first part of the Bill seeks to streamline authorisation requirements and harmonise them across modern communications channels. As a result, all paid electoral advertising will need to be authorised, regardless of the source. There’s a new civil non-compliance regime, replacing the existing criminal provisions. The Bill also reforms current broadcasting law regarding authorisation and ‘required particulars’. Finally, the Bill creates a new offence for conduct amounting to a person falsely representing themselves to be a Commonwealth entity or service (ie, “mediscare”). ASTRA is considering the Bill and has been asked by the Department to provide feedback. The Bill and Explanatory Memorandum are available [here](#).
- **Classification and ACMA complaints handling** – On 29 March, the Government introduced the Communications Legislation Amendment (Deregulation and Other Measures) Bill 2017. This Bill is a reintroduced version of a Bill previously introduced in 2015 but which lapsed when the election was called in 2016.

The bill will repeal the present requirement under the *Broadcasting Services Act* for commercial FTA licensees to use the film classification scheme in the *Classification (Publications, Films and Computer Games) Act 1995* when broadcasting films. This will enable licensees to use the code based television classification guidelines that apply to other television programs. As a result, the licence condition barring the broadcast of RC and X18+ films will be removed for all broadcasters other than subscription television. In 2016 ASTRA raised concerns with the Department that subscription television wasn’t

included in this deregulation. Despite this, we are again overlooked in the reintroduced Bill. These concerns have been raised with the Government and we are awaiting advice.

The bill also deals with ACMA's handling of broadcasting complaints. It will repeal part 11 of the *Broadcasting Services Act 1992*, which sets out a framework for making and investigating complaints about licensed and national broadcasters, including complaints relating to compliance with broadcasting codes of practice. The Bill makes it clear that people may complain directly to ACMA about broadcasting or datacasting services, and ACMA may investigate the complaint at its discretion.

The Bill and Explanatory Memorandum are available [here](#).

- **ACMA Review** – Still 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 31 March the ACMA found that the Nine Network had breached the Commercial TV Industry Code of Practice by broadcasting on 9Go! Commercial for a gambling service during a program principally directed to children. The ACMA found six commercials for the gambling service were shown between 7.30pm and 8.30pm during the adventure/fantasy film, *The Spiderwick Chronicles*. The film was classified PG. The Code states that a commercial relating to betting or gambling must not be broadcast during any program broadcast between 5.00am and 8.30pm that is principally directed to children. More details [here](#).

On 28 March the ACMA found that Foxtel has breached the *Broadcasting Services Act 1992* by not broadcasting the 'required particulars' following the broadcast of political matter. Required particulars include the name of the person or organisation who authorised the broadcast. The ACMA investigated the broadcast on 13 February 2017 of promotions from The Equality Campaign's 'Marriage Equality: It's only fair' series. These promotions comprised a 30-second advertisement broadcast on *Sky News Live* during a program break in *The Bolt Report* and a 13-second information ticker looped across the bottom of the screen alongside news headlines and sports results. The ACMA investigation found that the advertisement and ticker constituted political matter because they sought to influence public opinion about the issue of marriage equality. Further, they were broadcast at the request of another person (Australian Marriage Equality Limited) and no particulars were broadcast. These matters were not disputed by Foxtel, which indicated that the absence of the required particulars was inadvertent. More details [here](#).

On 7 March, the ACMA found that TCN Channel Nine Pty Ltd (Channel Nine) breached the Commercial Television Industry Code of Practice by broadcasting a news item that was inaccurate and was not presented fairly and impartially. The ACMA investigated a prime time news item entitled 'Protecting Perks', broadcast in Sydney by *Nine News Sunday* on 16 July 2016. The news item contained allegations that former Ku-ring-gai Mayor, Councillor Cheryl Sztatow, and the Ku-ring-gai Council had engaged in wasteful spending, including funding a

legal challenge to the NSW Government's plans to amalgamate Ku-ring-gai and Hornsby councils. The ACMA investigated the broadcast following a complaint that the news item contained a number of inaccuracies and was biased and unfair. The ACMA found that Channel Nine breached the fairness and impartiality requirements of the news provisions of the code by using non-neutral language, unfair juxtapositions of facts, comical graphics and a tone more commonly found in current affairs programming, to which different standards apply. The ACMA also found that the news item contained one factual assertion that was inaccurate—that the Mayor had spent \$900 a week on flower deliveries for her office. The licensee has advised the ACMA that this figure in fact referred to the total cost of 30 separate deliveries that had occurred over a nine month period. However, four other allegations of inaccuracy were investigated by the ACMA, in respect of which no code breaches were found. More details [here](#).

On 9 March, the ACMA found that Network Ten's Perth licensee has breached the *Broadcasting Services Act 1992* by not broadcasting the 'required particulars' following the broadcast of political matter. The ACMA investigated the broadcast on 7 September 2016 of an advertisement for 'notbornyet', a campaign run by the organisation Emily's Voice. The ACMA investigation followed a complaint that the advertisement constituted political matter and that the required particulars had not been broadcast immediately afterwards, in accordance with the standard licence condition in Schedule 2 to the BSA. The ACMA found that the advertisement constituted political matter as it sought not only to influence the personal choices made by people experiencing an unwanted pregnancy but also to influence public opinion about abortion and its regulation, as part of the political process. More details [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 two reports in March 2017.

The ASB dismissed a complaint for a lingerie ad, in which a woman is depicted ditching uncomfortable underwear, and is subsequently shown in 'comfortable' underwear. The complaint was that the ad was inappropriately erotic. The Board noted the advertiser's response that the advertisement was depicting a light hearted situation and aimed at women in their forties who followed certain fashion trends and providing a solution that is more appropriate and more comfortable. The Board noted that Bonds are a well-known underwear brand and that it is not unreasonable for an underwear business to show the types of product available to purchase. The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant viewing audience and determined that the advertisement did not breach Section 2.4 of the Code.

The ASB also dismissed a complaint regarding an ad for AAMI insurance. The ad features a caravanning family who have broken down on a rural dirt road. The parents are discussing who should make the call to Roadside Assist. The ad makes it appear as if the father says they are "up sh\*t creek", although those aren't the words spoken (he says "ship creek"). The complaints were with regards to inappropriate language for children. The Board noted that while the inference is that the man has said 'sh\*t', he clearly says 'ship'. The Board acknowledged that some members of the community may find a reference to the word 'shit' to be inappropriate but considered that this word is not actually spoken in the advertisement. The Board noted the repeated use of the phrase 'Ship Creek' and considered that while this does emphasise the reference to 'sh\*t creek' in the Board's view the overall tone is light-

hearted and humorous and the language used is not inappropriate in the circumstances and does not amount to strong or obscene language.

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

#### **DISCUSSION PAPERS/REQUESTS FOR COMMENT**

ASTRA has received a request for feedback from the Classification Branch of the Department regarding possible new classification categories for films and computer games. ASTRA will consult with members.