

Advocacy Report

MARCH 2015

ASTRA ACTIVITY

- **De-regulatory reform**

Captioning and Australian content

On 4 March 2015, the Parliament passed the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (the Bill). The Bill included minor reforms to captioning and Australian content rules.

For further information on the Bill refer to the [January 2015 Policy Update](#).

There were last minute amendments to remove deregulatory provisions favourable to free-to-air (FTA) broadcasters and to add a requirement for a review of captioning legislation in 2016. Reforms favourable to subscription television pass unamended.

The Bill received Royal Assent on 19 March 2015 and came into effect the following day. The passage of the Bill means that:

- Providers of a group of sports channels will be able to 'average' captioning levels across channels (a proportion of a channel's captioning target could met on another channel within the group) - the amendments would assist sports channel providers such as FOX SPORTS to direct captioning to programming which is of the greatest interest to audiences;
- There will be a 12 month exemption from captioning requirements for new channels
- The industry will have more time to apply for exemptions from captioning obligations
- There will be exemptions if captioning lapses are due to technical and engineering issues
- ACMA will be required to consider the nature of live captioning when making a quality standard.

The Bill as passed is available here:

http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbills%2F5368_aspassed%2F0000%22;rec=0

ASTRA's submission to the Senate Inquiry into the Bill is available at:

[http://astra.org.au/images/pages/ASTRA_submission_-_Broadcasting_and_Other_Legislation_Amendment_\(Deregulation\)_Bill_2014_-_December_2014_FINAL_\(corrected_15.12.14\).pdf](http://astra.org.au/images/pages/ASTRA_submission_-_Broadcasting_and_Other_Legislation_Amendment_(Deregulation)_Bill_2014_-_December_2014_FINAL_(corrected_15.12.14).pdf)

- **Digital Television Regulation Consultation Paper** – The Department of Communications has released a Consultation Paper examining the regulation of FTA television in light of the completion of digital switchover and rapid changes in technology and consumer behaviour.

For a description of the positions put forward in the paper, see the [February 2015 Advocacy Update](#). The proposals in the paper, when taken together, would represent significant policy decisions regarding the media industry as a whole

The ASTRA Legal and Policy Committee is preparing a response to the paper with input from members of the Technical and Planning Committee.

Submissions are due 31 March 2015.

▪ **Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 –**

As noted in the February 2015 Advocacy update, this Bill was referred to the Joint Parliamentary Committee on Intelligence and Security for inquiry. This Bill establishes the Government's proposed metadata retention and access scheme.

On 27 February, the Committee handed down its report, which recommended the Bill be passed subject to amendments. With regards to journalists' sources, there was an acknowledgment that the laws could be used to access sufficient data to reveal the identity of journalists' sources and a recommendation that the issue be further reviewed. The report did not, however, recommend that this review take place before passage of the wider legislation.

As part of the Australia's Right to Know coalition of major media organisations, ASTRA supported proposals put to Government for a media exemption from the new laws and that this exemption be made part of the legislation currently before Parliament (as opposed to the issue being decoupled from the Bill, potentially to be dealt with by amendment at a later time).

On 19 March 2015 press articles reported that a deal had been reached between the Government and the Opposition for amendments to the Bill to require any agency wishing to access journalists' metadata to obtain a warrant.

We understand the warrant process will not allow journalists or their employers to contest the warrant, with a public interest advocate instead being created. When an agency applies to a judge to access journalists metadata, the public interest advocate will be notified and be able to put a case to the court opposing the warrant. The public interest advocate will be a senior barrister appointed by the Prime Minister and will have to weigh up whether exposure of the journalists source outweighs the public interest.

Press reports also stated that the Opposition insisted the legislation include a "presumption against issuing the warrant", setting a higher bar for agencies seeking access.

The legislation passed the lower house on 19 March 2015 and is listed for debate in the Senate in the week beginning 23 March.

The Bill and Explanatory material are available here:

http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5375

The joint Australia's Right to Know Coalition submission is available here:

<http://www.aph.gov.au/DocumentStore.ashx?id=91724931-10f0-41cb-b4ae-bfde79893c89&subId=302780>

- **Proposal to remake the LIPD Class Licence with variations** – ACMA sought comment on a proposal to remake the Radiocommunications (Low Interference Potential Devices) Class Licence 2000.

For further information on this consultation, refer to the [January 2015 Policy Update](#).

Of interest to ASTRA's members was the proposal to extend operation of ultra wide-band (UWB) devices to the frequency band 3400 – 4800 MHz. ACMA argues that this band for UWB devices has been in place in areas such as Europe and countries such as the USA and New Zealand without significant impact on other C-band users.

On 6 March 2015, ASTRA made a submission which requested details of the studies which prove there would be minimal impact on existing C-Band users, such as Foxtel.

The ASTRA submission is available here:

http://astra.org.au/images/pages/FINAL_submission_LIPD_variation_050315.pdf

The ACMA discussion paper is available here:

<http://acma.gov.au/theACMA/Consultations/Consultations/Current/proposal-to-remake-the-lipd-class-licence-with-variations>

- **Australian Law Reform Commission Freedoms Inquiry** – The Attorney-General asked the Australian Law Reform Commission to review Commonwealth legislation to identify provisions that unreasonably encroach upon traditional rights, freedoms and privileges. The ALRC released an Issues Paper and called for submissions on 10 December 2014.

ASTRA endorsed a submission prepared by the Australia's Right to Know media coalition, which set out the potential chilling effect recent counter-terrorism legislation could have on press reporting of nationally significant issues. The submission also highlighted shortcomings in whistleblower protections under existing legislation.

The Issues Paper is available at: <http://www.alrc.gov.au/inquiries/freedoms>

The joint media organisations' submission is available at:

http://www.alrc.gov.au/sites/default/files/subs/70._org_joint_media_organisations_final.pdf

There will be a second call for submissions when a Discussion Paper is released in late May 2015.

- **Commsalliance – draft Code for a Copyright Notice Scheme** – following a request from Government that rights holders and ISPs work together to develop a notice scheme for online copyright infringement, Commsalliance has released a draft Code setting out such a scheme.

The Code creates a scheme under which ISPs and Rights Holders will variously:

- Identify online copyright infringement (Rights Holders)
- Send a series of three escalating notices to infringers (ISPs)
- Facilitate legal proceedings against infringers (ISPs and Rights Holders)

The scheme does not include direct sanctions or give rights holders access to account holder personal details without a court order. Rights holders will still have to pursue alleged infringers

through the usual court processes. Who will pay for the costs of the scheme has yet to be agreed.

ASTRA has provided a short submission to Commsalliance supporting the draft Code and the collaboration between rights holders and ISPs.

The submission is available here:

[LINK TO COME](#)

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

ACMA Investigation – 7.30

On 12 March 2015, the ACMA announced its finding that the ABC's 7.30 program breached the ABC Code of Practice 2011 by failing to give MyBudget, a personal budgeting business, a fair opportunity to respond to allegations of mismanagement and neglect.

The program broadcast on 9 December 2013 was about the rise of commercial debt management firms providing services to people in financial difficulty. The ACMA found a breach of standard 5.3 of the Code as MyBudget was not given the opportunity to provide a response to specific allegations by two former clients that its actions were improper or negligent.

The ACMA also found no breach of ABC Code obligations relating to accuracy, impartiality and informing participants of the general nature of their participation in its story.

The ABC has undertaken to place an Editor's Note on the segment transcript, acknowledging the ACMA's breach finding, as well as on the ABC Corrections and Clarifications webpage.

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 three reports in March, firstly in relation to a tattoo care product which, the complainant argued, objectified women. The ASB found that the depiction of women in the advertisement was not degrading or exploitative.

Secondly, the ASB issued a finding in relation to an advertisement for Sports Bet, which the complainant claimed racially vilified Asians in its promotion for betting during the Asian Cup football tournament. The ASB found that the depiction of Asian people, Asian-style writing and a person speaking with an 'Asian' accent were not intended to be negative or demeaning to Asian people.

A third finding concerned adult dating website Ashley Maddison, which promotes extra-marital liaisons. The Board upheld a complaint that the advertisement objectified or demeaned married women. It was found not to have treated sex in an inappropriate way and was also found not to be in conflict with prevailing community standards.

A further four reports were issued in late February. A complaint regarding an erectile dysfunction treatment service was found not to have been inappropriate or demeaning. An advertisement for AAMI insurance was found not to vilify or demean people in the advertisements on the grounds of

gender. An advertisement for a weight loss product was considered not to discriminate against or vilify people on account of gender or physical attributes. It was also found not to depict or promote unhealthy weight loss. An advertisement for a clothing retailer was found not to be unacceptably sexualised.

ASB reports are available to ASTRA members on request.

DISCUSSION PAPERS/REQUESTS FOR COMMENT

Free TV Australia draft Code of Practice – the industry group for commercial free-to-air television broadcasters has released a draft Code of Practice for public comment. The Code is a substantial rewrite of the existing Code, and reduces complexity and doubling-up of legislative provisions. The key changes are to classification timezones, which are proposed to allow PG content all day, allow M content from 7.30pm (currently 8.30pm) and to allow MA15+ content from 8.30pm (currently 9.00pm).

The public comment period closes on Friday 3 April 2015.