

**Senate Standing Committee on Environment and Communications**

**Answers to Senate Estimates Questions on Notice**

**Budget Estimates May 2017**

**Communications Portfolio**

**The Australian Communications and Media Authority**

**Question No: 154**

**The Australian Communications and Media Authority**

**Hansard Ref: Page 19-20, 25/05/2017**

**Topic: ACMA Decision – Gambling service penalty**

**Senator Xenophon, Nick asked:**

**Senator XENOPHON:** Back in March 2017, the ACMA decided not to penalise Channel 9 for showing six commercials for a gambling service during a kids' program, *The Spiderwick Chronicles*, between 7.30 and 8:30 pm last September 2016. The ACMA does not have the power to fine a broadcaster, does it? What teeth will the ACMA have if there has been a breach of this new voluntary code?

**Mr Bean:** The code will fit into the existing co-regulatory regime, so the ACMA will have the same powers in relation to breaches of this code that it will in relation to breaches of any other part of the commercial codes. They do vary a little. As you say, we do not have the power, for example, to fine in relation to breaches of industry codes.

**Senator XENOPHON:** What is the sanction then?

**Mr Bean:** There is a graduation of sanctions available to us ranging from writing to broadcasters informing them of the breach finding and asking them what they are going to do about it. I have to say that sounds mild, but it is in practice typically very effective. Broadcasters typically in those circumstances undertake to institute changes to the practices to ensure that the breach does not occur again. We then have after that a different range of powers. If you would like some detail on that, I will ask—

**Senator XENOPHON:** No, can you take that on notice, please, just because of time constraints.

**Mr Bean:** Yes.

**Answer:**

Where there has been a breach of a code of practice, the Australian Communications and Media Authority (ACMA) may:

- agree to accept measures offered by the broadcaster to improve compliance (such as educating staff or changing procedures)
- agree to accept an enforceable undertaking offered by the broadcaster for the purpose of securing future compliance with the rules
- impose an additional licence condition.

The ACMA cannot 'fine' or 'prosecute' a broadcaster for breaching a code, or direct it to do any particular thing (such as broadcast a report of the ACMA's findings).

If an additional licence condition is imposed following a breach of a code provision and the licensee breaches that condition, the ACMA may:

- suspend the licence
- cancel the licence
- issue a remedial direction requiring compliance.

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In the event that the licensee does not comply with a remedial direction, the ACMA may:

- pursue a civil penalty in the Federal Court
- refer the matter for prosecution to the Director of Public Prosecutions as an offence
- accept an enforceable undertaking (including provisions dealing with compliance with a code).

If a licensee breaches an enforceable undertaking the ACMA may apply to the Federal Court for an order.