



Senate Community Affairs Legislation Committee
Inquiry into Tobacco Advertising Prohibition



ASTRA Submission: Inquiry into Tobacco Advertising

This submission is made by ASTRA, the representative body for subscription television broadcasters, in response to the Senate Community Affairs Legislation Committee Enquiry into Tobacco Advertising Prohibition. ASTRA apologises for the lateness of this submission.

ASTRA has read Free TV Australia's submission to the Committee dated 16 June 2004. ASTRA agrees with the thrust of Free TV Australia's conclusions. However, ASTRA wishes to comment further on the proposed offence of screening film and television programs containing product placement of tobacco products (set out in section 7 of the Bill). ASTRA wishes to highlight in particular the difficulties posed from a compliance point of view for subscription television operators who broadcast dozens of movie and general entertainment channels.

1. The scope of the proposed legislation is not restricted to programs which are produced in Australia. Accordingly, broadcasters will be required to consider the appearance of tobacco products in films and television programs obtained from anywhere in the world. Given the large volume of international material broadcast by subscription television operators this clearly amounts to a very onerous obligation and one that would be impossible to administer given that operators are not notified, and would not be able to obtain this information even if it were requested from program or channel suppliers.
2. The Bill places the broadcaster in breach for acting **knowingly or recklessly** in relation to tobacco product placement.
3. The meaning of the word "reckless" was given a broad interpretation by the ABA in its investigation (No 1999/0718) of an alleged tobacco advertisement in the credits of a program broadcast on a subscription television channel in 1999. On the basis of the ABA's determination, the broadcasting of material which has not been checked carries with it the risk that the content may not comply with relevant codes of practice or licence condition requirements. Broadcasters must therefore check all material so as not to risk non-compliance or being charged with reckless conduct.
4. Subscription television operators are simply not in a position to know whether program material contains product placement of tobacco products as there is no way of determining whether the appearance of a tobacco product in a program is a product placement.
5. The primary means by which subscription television operators can ensure compliance is through contractual arrangements with channel providers and program suppliers. However, product placement arrangements are confidential as between production companies and program suppliers and would not be disclosed to operators as part of any licensing arrangement. Given this lack of control and knowledge over the arrangements involving tobacco manufacturers and the inability to investigate these arrangements it is unclear what, if anything, subscription television operators could do to ensure compliance with the legislation. This would not be assisted by training and education programs, as the channel and program supplier with whom the operators contract would similarly be unaware of product placement arrangements agreed in other territories.

6. It is our submission that the prohibition on tobacco product placement is unnecessary in light of existing legislative restrictions and unworkable from a compliance point of view.

6 July 2004