

Review of the Australian Communications and Media Authority— Terms of Reference

Background

The Department of Communications is undertaking a comprehensive review of the Australian communications regulator—the Australian Communications and Media Authority (the ACMA). The ACMA was established in 2005 as a new converged regulator for the communications sector.

The Australian communications environment has changed dramatically since the ACMA’s establishment and it is expected to continue to evolve rapidly. The rollout of the National Broadband Network, the introduction of digital multichannels, the widespread use of digital devices including smartphones, the growth of search engines like Google, and the use of social media platforms like Facebook, Snapchat and YouTube, are all combining to make communications services a more integral part of every Australian home and business.

The Australian Government considers it timely to review the objectives, functions, structure, governance and resource base of the regulator to ensure it remains fit-for-purpose for the current, and future, communications regulatory environment.

The review will be undertaken by the Department of Communications, supported by a Reference Group of Australian and international communications and regulatory experts. The Department will report to the Minister for Communications, the Hon Malcolm Turnbull MP, by the end of 2015.

ACMA structure and objectives

The ACMA is a body corporate consisting of a full-time Chair, a full-time Deputy Chair and between one and seven members (that may be full, or part-time). The Minister may also appoint associate members to the ACMA. The Chair of the ACMA is the responsible authority under the *Public Governance, Performance and Accountability Act 2013*—that is, the Chief Executive of the Agency. ACMA staff are appointed or employed under the *Public Service Act 1999*.

The *Australian Communications and Media Authority Act 2005* (the ACMA Act) identifies the full scope of functions of the ACMA (**Attachment A**). These mirror the responsibilities of the ACMA’s two predecessor organisations, as the establishment of the ACMA resulted in “only minimum changes to the existing regulatory frameworks that apply to the telecommunications and broadcasting sectors in order to provide for the merger....”¹

In addition, the ACMA is given specific regulatory responsibilities under:

- The *Telecommunications Act 1997*;
- The *Broadcasting Services Act 1992*;
- The *Radiocommunications Act 1992*; and
- An extensive range of subordinate legislation and regulation.

¹ Australian Communications and Media Authority Bill 2004, Explanatory Memorandum

Over time, successive governments have given additional responsibilities to the agency, such as the establishment of the Do Not Call Register and, most recently, a supporting role to the Children's E-Safety Commissioner.

There has been no formal, comprehensive consideration of the ACMA Act and the roles, responsibilities and performance of the regulator since its establishment in 2005. The Government considers that it would be consistent with good practice to undertake a review of the ACMA in 2015, given the length of time since its establishment and the major changes in the sector since that time.

Context

The Government is already implementing a range of broad reform initiatives that have implications for the role, structure and performance of regulators, including the ACMA. These include, the Government's:

- Deregulation agenda—aimed at reducing costs to business of regulation by \$1 billion per annum;
- Regulator Performance Framework—aimed at improving the performance of regulators and supporting them to take consistent, risk-based approaches to administering regulation;
- Smaller Government Initiative—aimed at further reducing the size of government and removing unnecessary or duplicative bodies;
- Contestability Programme—aimed at comprehensively testing whether the activities undertaken within the portfolio could be more effectively and efficiently undertaken by other parties;
- Capability Assessments—have been conducted through the Australian Public Service Commission, and were aimed at assessing the current capability of an organisation to deliver on the government's objectives and meet current and future challenges.

The Review

In this context, the Government considers that it would be timely to undertake a full 'root and branch' review of the objectives, functions, structure, governance and resource base of the ACMA to ensure that regulatory and operating arrangements are efficient, effective and fit for purpose in the current and future communications and media environment.

The review will consider the best form of delivering functions required to achieve the Government's priorities in relation to the media and communications sector and the broader economy. It will consider the current communications sector, the evolving shape of the digital media and communications environment, the current statutory and non-statutory roles of the ACMA, performance of its current functions and resource allocation.

The review will consider whether any of the objectives and functions of, or services provided by, the ACMA can cease, be provided by other agencies or the industry itself. It will also consider whether there are objectives and functions of, or services provided by, other agencies that may be more efficiently and effectively delivered by the ACMA. In doing so, it will also look at the structure and operations of other relevant Australian and international regulators.

The review will consult widely with regulated entities, consumers and their representatives and relevant organisations, including other regulators. It may also undertake research,

particularly in relation to future technology and market trends and audience/consumer and industry expectations.

Scope

The review will consider:

- Objectives and functions—this will consider the ACMA Act to determine whether the wide ranging objectives and functions of the ACMA remain relevant now and for the immediate future and are most efficiently located with the regulator.
- Structure and governance—this will look at the current Authority and governance arrangements to consider whether they are fit-for-purpose for the future and provide appropriate accountability to the Minister and the Parliament;
- Regulator Performance—this will assess the ACMA’s performance in administering regulation through a consistent, transparent and risk-based approach that minimises costs to industry;
- Resourcing—this will review current resourcing from government and recovered from industry.

Out of Scope

The review does not intend to consider any changes to current conditions for ACMA staff as set out in Part 5 of the ACMA Act.

Terms of Reference

The review will examine and provide a report to the Minister for Communications on:

- The current objectives of the entity as determined by the Government’s forward priorities, other reviews and contemporary pressures of the broadening ‘digital’ character of the sector;
- The efficiency of the ACMA in delivering its functions to support these priorities, any areas requiring improvement, and potential alternative arrangements (including costs/benefit analysis and implementation actions required) that could improve efficiency, where required;
- The recent performance of the ACMA set broadly against the Government’s *Regulator Performance Framework* and any areas for improvement;
- The current resource base of the organisation and relative contributions from current sources— i.e. government funding, industry costs recovery and/or levy arrangements and funding from other sources.

The review will also provide recommendations to the Minister for Communications on options for reform in relation to:

- The future objectives and functions of the regulator;
- The appropriate structure, governance and accountability arrangements of the regulator;
- An appropriate resource base for the regulator and the expected relative contribution from government, industry and other sources;
- A proposed transition path to implement preferred alternatives to enable proposed changes (if any) to be put in place by 2016-17.

The review will have regard to:

- The market structure of the communications sector in Australia and relevant changes since 2005;
- The impact of digital network technologies changing media forms and communications platforms;

- Enduring public interest objectives relevant to citizens and consumers as well as industry;
- National and international best practice models of sectoral regulation and regulator governance structures;
- Any announced deregulatory proposals, recognising that these are subject to agreement by the Parliament;
- Evidence and views of the ACMA and its stakeholders in relation to its performance;
- Future spectrum policy and management arrangements under the *Spectrum Review* being undertaken by the Department;
- Any changes to the regulation of infrastructure access arrangements proposed or agreed by Government under the Competition Policy Review;
- Other relevant government policies or matters identified through consultation or research.

A report of the Review will be provided to the Minister of Communications. The Minister may consult further on the findings of the Review prior to the Government's final decision-making.

Timeframe

The review will provide advice and recommendations to the Minister for Communications by the end of 2015.

Conduct of the Review

The review will be conducted by the Department of Communications. The Department will be supported by a Reference Group appointed by the Minister. The Reference Group will provide insights and advice to the Department on issues to which it must have regard, assist with testing of options and provide external validation of the ACMA's regulatory performance.

The Department will consult widely and may commission data and/or research to assist the Review process.

The Department will also consult with the Department of Finance and the Department of the Prime Minister and Cabinet to ensure broad consistency of the review with other whole-of-government performance improvement processes.

ACMA's telecommunications functions

The ACMA's *telecommunications functions* are as follows:

- (a) to regulate telecommunications in accordance with the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- (b) to advise and assist the telecommunications industry;
- (c) to report to and advise the Minister in relation to the telecommunications industry;
- (d) to report to and advise the Minister in relation to matters affecting consumers, or proposed consumers, of carriage services;
- (e) to manage Australia's input into the setting of international standards for telecommunications (except so far as Standards Australia International Limited is responsible for managing that input);
- (f) to monitor, and report to the Minister on, all significant matters relating to the licensing of carriers under the *Telecommunications Act 1997*;
- (g) to make available to the public information about matters relating to the telecommunications industry;
- (h) to conduct public educational programs about matters relating to the telecommunications industry;
- (i) to give advice to the public about matters relating to the telecommunications industry;
- (j) such other functions as are conferred on the ACMA by or under:
 - (i) the *Spam Act 2003*; or
 - (ii) the *Telecommunications Act 1997*; or
 - (iii) the *Telecommunications (Carrier Licence Charges) Act 1997*; or
 - (iv) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (other than subsection 158F(1)); or
 - (v) the *Telecommunications (Numbering Charges) Act 1997*; or
 - (vi) Part XIC of the *Trade Practices Act 1974*;
- (k) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (j), to the extent it is so specified;
- (l) to do anything incidental to or conducive to the performance of any of the above functions.

An expression used in this section that is also used in the *Telecommunications Act 1997* has the same meaning in this section as it has in that Act.

ACMA's spectrum management functions

The ACMA's *spectrum management functions* are as follows:

- (a) to manage the radiofrequency spectrum in accordance with the *Radiocommunications Act 1992*;
- (b) to advise and assist the radiocommunications community;
- (c) to report to and advise the Minister in relation to the radiocommunications community;
- (d) to manage Australia's input into the setting of international standards for radiocommunications (except so far as Standards Australia International Limited is responsible for managing that input);
- (e) to make available to the public information about matters relating to the radiocommunications community;
- (f) to conduct public educational programs about matters relating to the radiocommunications community;
- (g) to give advice to the public about matters relating to the radiocommunications community;
- (h) such other functions as are conferred on the ACMA by or under:
 - (i) the *Radiocommunications Act 1992* (other than a provision of that Act covered by paragraph 10(1)(p)); or
 - (ii) the *Radiocommunications (Receiver Licence Tax) Act 1983*; or
 - (iii) the *Radiocommunications (Spectrum Licence Tax) Act 1997*; or
 - (iv) the *Radiocommunications Taxes Collection Act 1983*; or
 - (v) the *Radiocommunications (Transmitter Licence Tax) Act 1983*;
- (i) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (h), to the extent it is so specified;
- (j) to do anything incidental to or conducive to the performance of any of the above functions.

ACMA's broadcasting, content and datacasting functions

The ACMA's *broadcasting, content and datacasting functions* are as follows:

- (a) to regulate broadcasting services, Internet content and datacasting services in accordance with the *Broadcasting Services Act 1992*;

- (b) to plan the availability of segments of the broadcasting services bands on an area basis;
- (c) to allocate, renew, suspend and cancel licences and to take other enforcement action under the *Broadcasting Services Act 1992*;
- (d) to conduct investigations or hearings relating to the allocating of licences for community radio and community television services;
- (e) to conduct investigations as directed by the Minister under section 171 of the *Broadcasting Services Act 1992*;
- (f) to design and administer price-based systems for the allocation of commercial television broadcasting licences and commercial radio broadcasting licences;
- (g) to collect any fees payable in respect of licences;
- (h) to conduct or commission research into community attitudes on issues relating to programs and datacasting content;
- (i) to assist broadcasting service providers and datacasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards;
- (j) to monitor compliance with those codes of practice;
- (k) to develop program standards relating to broadcasting in Australia;
- (l) to monitor compliance with those standards;
- (m) to monitor and investigate complaints concerning broadcasting services (including national broadcasting services) and datacasting services;
- (n) to inform itself and advise the Minister on technological advances and service trends in the broadcasting industry, Internet industry and datacasting industry;
- (o) such other functions as are conferred on the ACMA by or under:
 - (i) the *Australian Broadcasting Corporation Act 1983*; or
 - (ii) the *Broadcasting Services Act 1992*; or
 - (iii) the *Interactive Gambling Act 2001*; or
 - (iv) the *Radio Licence Fees Act 1964*; or
 - (v) the *Special Broadcasting Service Act 1991*; or
 - (vi) subsection 158F(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
 - (vii) the *Television Licence Fees Act 1964*;
- (p) such other functions as are conferred on the ACMA by or under the following provisions of the *Radiocommunications Act 1992*:
 - (i) paragraph 102B(b), 109A(1)(g) or (ga), or 131ACA(b);
 - (ii) subsection 106(6A), 109A(1A) or (1B), 114(3C) or (3E), or 128C(1);
 - (iii) section 128D;
- (q) to report to, and advise, the Minister in relation to the broadcasting industry, Internet industry and datacasting industry;
- (r) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (o) or (p), to the extent it is so specified;
- (s) to do anything incidental to or conducive to the performance of any of the above functions.

An expression used in this section that is also used in the *Broadcasting Services Act 1992* has the same meaning in this section as it has in that Act.

ACMA's additional functions

The ACMA's *additional functions* are as follows:

- (a) if a written instruction issued by the Minister to do so is in force—to prepare to provide for the management of electronic addressing:
 - (i) of a kind specified in the instruction; and
 - (ii) relating to a kind of listed carriage service specified in the instruction;
- (b) if an instruction under paragraph (a) and a written instruction issued by the Minister to do so are in force—to provide for the management of electronic addressing:
 - (i) of a kind specified in the instruction under this paragraph and covered by the instruction under paragraph (a); and
 - (ii) relating to a kind of listed carriage service specified in the instruction under this paragraph and covered by the instruction under paragraph (a);
- (c) to provide services, or facilities, on behalf of the Commonwealth under a contract made by the Commonwealth, where:
 - (i) the services or facilities relate to radiocommunications or telecommunications; or

- (ii) the provision of the services or facilities utilises the ACMA's spare capacity; or
 - (iii) the provision of the services or facilities maintains or improves the specialised technical skills of the ACMA's staff in relation to radiocommunications or telecommunications;
- (d) such functions as are conferred on the ACMA by or under:
 - (i) this Act (other than section 8, 9 or 10); or
 - (ii) any other law (other than a law to the extent to which it confers functions described in section 8, 9 or 10);
- (e) to do anything incidental to or conducive to the performance of any of the above functions.

Paragraph (c) does not authorise the ACMA to perform a function if the performance of the function would impede the ACMA's capacity to perform its other functions.