

Australian Broadcasting Corporation

submission to the

Department of Communications and the Arts

**Review of the Australian Communications and
Media Authority Draft Report**

June 2016





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Introduction

The ABC acknowledges the work of the Department of Communications and the Arts in developing the Draft Report into the review of the Australian Communications and Media Authority (the ACMA) and appreciates the opportunity to respond to certain draft proposals explored in the report.

Elements of the draft report relate to matters on which the Corporation has previously commented and the ABC refers the Department of Communications and the Arts to the following past submissions:

- November 2011- ABC response to the Australian Law Reform Commission National Classification Scheme Review; and
- December 2014- ABC response to the Department of the Communications and the Arts Spectrum Review.

The ABC has had a constructive working relationship with the ACMA since its inception in 2005 and acknowledges the challenges it has faced in supporting industry and citizens in an environment that has transformed rapidly over that time.

The Corporation believes the ACMA's "enduring concepts" provide useful bedrock principles in any reconsideration of the communications regulatory regime. The ABC supports the idea that recognition of cultural values and voices, social participation, community safeguards and effective and responsive market mechanisms are crucial elements of a sustainable twenty-first-century communications and media policy framework. The ABC welcomes the Department's Draft Report as a reinforcement of those principles in concert with the Regulator Performance Framework, and provides comments in response to the following Draft Proposals.

1. Design of a Contemporary Regulator

1.1 Draft Proposal 1

That the ACMA's remit cover all the layers of the communications market, including infrastructure, transport, devices, content and applications.

The ABC believes that there is merit in the concept of a single, whole-of-sector regulator and that this is preferable to the alternative of a collection of agencies, each charged with specific regulatory roles. This alternative could lead to a lack of transparency and potentially to conflicting or over-lapping requirements being imposed on industry participants.

The effectiveness of a single, unified point of contact for industry regulation hinges on its independence from industry and, in the administration of regulation, from government in order to ensure that all industry participants are treated equally.

In particular, the ABC recognises the valuable part the regulator plays in ensuring that the public utility of spectrum is appropriately considered in the planning, allocation and (where relevant), pricing in the regulation and administration of spectrum, in particular for non-commercial services.

1.2 Draft Proposal 6

That, within the next 12 months, the ACMA examine whether some or all of the following functions can be referred to industry for self-regulation, in consultation with relevant industry bodies:

- *Technical standards;*
- *Integrated Public Number Database;*
- *Do Not Call Register;*
- *Action on unsolicited communications, including Spam.*

While the ABC recognises the value of self-regulation in freeing the market from unnecessary oversight or legislative constraint, the Corporation believes this principle should be weighed against the merits of a co-operative approach between industry and the independent regulator in order to ensure proper protection of consumers.

The ABC notes that the report recommends the introduction of self-regulation be explored in mature regulatory schemes, and the Corporation acknowledges that such initiatives may create efficiencies in these environments. However, the ABC would recommend caution in adopting self-regulation for matters where there are no agreed national industry standards of compliance or compatibility.

1.3 Draft Proposal 7

That the Department will undertake further work on the potential to expand the ACMA's remit to include the functions of the Classification Board and Classification Review Board Scheme.

The ABC recognises the important function that an effective and responsive classification system plays in guiding and informing audiences in their viewing, gaming and certain reading choices.

The Corporation has established television classification standards in accordance with section 8(1)(e) of the *Australian Broadcasting Corporation Act 1983*, which requires the ABC to develop codes of practice and notify the ACMA of these codes. The ABC's television classification standards form part of the Corporation's Code of Practice and, requires the ABC to classify all of its broadcast television content, except news and current affairs content and sporting events, in line with Australia's television industry. The ABC regularly reviews its television classification standards to ensure they continue to reflect and adhere to contemporary audience behaviours and expectations.

The ABC supports the integration of all classification functions into the ACMA in order to establish a more efficient approach to the oversight and administration of the various regimes. The ABC acknowledges the report's support for the continuation of the current industry self-classification arrangement and the effective co-regulatory approach. In the case of the ABC, this arrangement is essential in preserving the national broadcasters' independence.

2. Enhancing Regulatory Performance

2.1 Draft Proposal 21

That timeliness of decision-making be established as a key area of focus and accountability for future cycles of the ACMA's regulator performance framework, and Government consider legislative amendment to support more timely decision-making, where necessary.

The ABC agrees that timeliness in decision-making should be an area of focus for the ACMA's regulatory framework.

The Corporation notes that there has been improved efficiency in complaint-handling since the March 2014 changes to the *Broadcasting Services Act*, which has allowed the ACMA to use greater discretionary powers in the decision to accept and investigate complaints. However, the ABC believes that there is capacity for greater efficiency through taking a more proportionate approach to deciding which complaints to investigate. The ABC also considers that adopting a more consultative dialogue with broadcasters early in proceedings would likely help to narrow issues of contention and allow resources to be targeted appropriately, so that matter can be resolved with greater timeliness.

The ABC also notes that Draft Proposal 13 of the Report recommends that the current 'Commission Model' of decision-making be retained. If this is the case, the ABC would recommend that a proportionate approach also be applied here to ensure that only those decisions which require the Authority's direct attention are escalated to this level, allowing more routine decisions to be quickly made by delegated officers.

2.2 Draft Proposal 24

That the ACMA produce a public report on steps taken to improve the transparency and consistency of its decision-making processes, and that implementation and stakeholder satisfaction be independently assessed by the end of 2017.

The ABC supports the proposal for increased transparency and accountability of the decision-making processes of the ACMA. The publication of a range of guidance and other explanatory documents will lead to more effective relationships between the regulator and industry and greater consistency in decision-making. In particular, the ABC is of the view that the provision of public information on decision-making processes will clarify how the ACMA exercises its discretion to decide whether to accept complaints for investigation, given the concerns about proportionality mentioned in 2.1 above.

The ABC is also believes that the recommendation for assessment of stakeholder satisfaction by the end of 2017 has merit and would recommend that such consultation be regular and ongoing. The Corporation believes such as initiative would assist the ACMA to be more responsive to industry expectations and that this, in turn, will lead to better outcomes for consumers.

3. The Case for Further Regulatory Reform

3.1 Draft Proposal 27

To enable the communications sector to reach its full potential as an enabler of innovation and productivity, the Government commence a coordinated programme of regulatory reform to establish a contemporary communications regulatory framework.

The ABC believes that the ACMA should be empowered through its regulatory obligations as an enabler within the communications and media sector to ensure positive outcomes for the public without unduly restricting industry growth, creativity and innovation.

What were once well-defined, segmented and linear markets dominated by a small number of established, domestic stakeholders are now complex and multi-layered markets in which domestic and global stakeholders intersect. The rapid technological changes of the last decade have had a confluent effect, serving to erode many of the barriers between markets. The ABC acknowledges that the legislative frameworks that the ACMA is charged with administering still adhere to these pre-existing barriers and should be reviewed to ensure that they are relevant to today's media environment and that, where possible, can adapt to the significant technological change.

Conclusion

The Corporation believes a strong and vibrant communications sector is crucial to any working democracy and that an effective regulator plays a key role in the cultivation of a healthy media ecosystem. For the Australian communications environment to continue to thrive, all stakeholders must work towards ensuring a diverse media, with fair and equitable access to communications infrastructure.

The emerging dominance of large, international media companies and the subsequent pressure that this has placed on local business models should be borne in mind in considering policy settings for the future. It is vital that the sector continues to create and curate Australian stories. More than ever, the ABC plays a pivotal role in ensuring that Australian voices continue to be heard in a crowded and growing marketplace.

The ABC also believes that management of scarce public resources such as spectrum should be retained by the independent regulator, and that, should there be changes to the existing regime, safeguards must be put in place to ensure transparency as well as equity of spectrum allocation for public services that deliver public benefit.

While the ABC recognises that regulation must keep pace with the world around it, the Corporation believes that new approaches to regulatory policy must contribute to improved regulatory outcomes, enable productivity and growth for the sector and ensure the well-being of citizens. Lastly, the ABC considers it important that any industry-wide regulatory changes continue to recognise and include a commitment to the independence of the ABC and recognition of the unique position the Corporation holds as the public broadcaster.