



AMTA



**Australian Mobile
Telecommunications
Association**

Review of the Australian Communications and Media Authority

AMTA Submission to Department of Communications

19 August 2015

Table of Contents

Background	3
Introduction	3
A communications regulatory framework for the future.....	3
Governance and Structure.....	5
Enhancing the regulatory performance of the ACMA	5
Co-ordination and avoiding duplication	5
Regulator’s role in Spectrum Planning and Management.....	6
Spectrum Interference – Compliance and Enforcement	7
Conclusion	8

Background

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators and Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see www.amta.org.au.

Introduction

AMTA welcomes the opportunity to provide comments to the Department of Communications (DoC) regarding its 'Review of the Australian Communications and Media Authority' (ACMA) (the Review).

AMTA notes that the Review will take into account submissions made to the 'Spectrum Review' with which AMTA has also engaged. Some of the views expressed by AMTA as part of the Spectrum Review are included in this submission given their relevance to many of the questions raised in the Review (see also **Attachment A**).

AMTA also supports the industry views included in the Communications Alliance submission.

The ACMA has had a formative first decade with much learning to inform its next iteration. AMTA continues to enjoy a strong and positive working relationship with the ACMA and has drawn on the mobile sector's experience of engaging with the ACMA on a broad range of policy and regulatory issues to suggest opportunities for a future communications regulator in a dynamic mobile market.

A communications regulatory framework for the future

AMTA believes that it is timely to consider the appropriate regulatory framework for a future communications regulator.

The mobile market in Australia is competitive and mature and rapidly evolving into critical infrastructure to underpin the development of Australia's digital economy, driving national productivity.

The objective of the future regulatory framework should be to facilitate industry outcomes that foster rather than inhibit the development of the communications sector and its capacity to contribute to economic and social outcomes. It will be important for the regulator to be sufficiently resourced to achieve this outcome.

From a spectrum perspective, it is expected that the Spectrum Review will form the foundation of a future spectrum management regulatory framework. AMTA looks forward to the Spectrum Review delivering a simpler, more agile and more efficient framework that is based on market forces and strives to deliver both certainty and flexibility to licence holders.

AMTA recognises the ACMA's technical expertise and advocacy experience in relation to preparation for and participation in ITU and WRC forums. AMTA believes that a future regulator must be

properly resourced to continue the ACMA's work in this area in order to support the DoC policy and favourable industry outcomes for Australia.

In AMTA's view, a future regulator needs to be:

- able to deliver timely spectrum allocation processes to support necessary network investment;
- focused and adequately resourced to manage the increasing risk of interference from non-compliant devices associated with ongoing growth in the proliferation of wireless and electrical technologies;
- cognisant of the alignment of its decision making processes with network investment cycles, and the critical role mobile networks play as the underlying infrastructure of the digital economy.

To accommodate these market dynamics, AMTA also suggests that the Review determine which current ACMA regulatory functions and responsibilities:

- are no longer necessary;
- should be retained by a future regulator;
- need fewer or more resources; and
- could be more efficiently and effectively undertaken by industry or other government bodies.

AMTA also supports the Review recommending:

- the re-focusing of the ACMA's current regulatory functions and responsibilities with greater reliance on self-regulation and co-regulation;
- regular assessment of opportunities for deregulation;
- conscious consideration of how proposed processes for spectrum allocation, renewal and interference management will minimise the regulatory burden and compliance costs for both government and industry;
- providing the regulator with a greater range of options (including regulatory forbearance) to achieve compliance. In the case of interference management, the ACMA needs more effective legal options along with adequate resources to enforce compliance; and
- the regulator's approach to regulation needs to be clearly understood, transparent and applied consistently.

AMTA notes that this Review is being undertaken at a time when only one of the three underlying pieces of legislation that govern the sector, the Radiocommunications Act, is under review. So, while the Review may recommend fundamental changes to the ACMA's responsibilities, the implementation of these changes will be delayed until necessary amendments to legislation that directs the ACMA's activities are passed.

Governance and Structure

AMTA believes that a review of governance processes to ensure they are efficient, transparent and consistent would improve the overall effectiveness of the ACMA and its fundamental role to facilitate outcomes for industry and consumers.

AMTA's experience is that the ACMA's consultative processes can inhibit timely decision-making and that the Authority's decision-making processes can lack transparency.

There is also a need to allow a greater range of decisions to be made at the ACMA senior executive level so that Authority Members can focus on significant strategic decisions. To effect these changes will require fundamental reform of the ACMA's governance arrangements.

AMTA supports a requirement for members of the Board of a future regulator to have specific technical or policy expertise in relation to areas of regulation. This is a particularly important reform with respect to the spectrum management function of a future regulator.

AMTA also supports creating a culture of self-improvement within the organisation, including the development of skills internally to adapt to the needs of new industry models. To facilitate this goal, the ACMA needs to enhance its application of open and transparent review of the outcome of its decisions.

AMTA suggests that the ability to create ad-hoc expert panels to brief the Members could be an option when the Authority needs to call on specific skills or expertise in order to properly consider an issue and make a decision.

Enhancing the regulatory performance of the ACMA

The ACMA declares that its purpose is to "communicate, facilitate, regulate".

AMTA suggests that the ACMA's purpose should also be to act as a facilitator of the development of the mobile communications sector in Australia for the benefit of customers. This includes acting as an advocate for industry outcomes both within government and in international forums involving the ACMA.

The recent report commissioned by the ACMA into '*The economic impacts of mobile broadband on the Australian economy, from 2006 to 2013*' is an example of useful research. Such research can be used by the ACMA to assist other parts of government understand what is at risk if policy and regulatory settings do not support the development of the mobile sector and its potential to deliver increased national economic and social benefits.

Co-ordination and avoiding duplication

The Review should seek to remove unnecessary duplication of functions between the ACMA, DoC and other Government departments and agencies because such duplication typically results in complexity and inefficiencies.

AMTA also suggests that co-ordination is essential with regard to Government funded research into the communications industry to avoid duplication. While AMTA strongly supports recent research undertaken by the ACMA with regard to the economic impacts of mobile broadband, it is now opportune for the ACMA's future research agenda to be co-ordinated with the newly established Bureau of Communications Research.

AMTA also notes the need for better co-ordination between the ACMA and other agencies on operational issues such as network deployment and electro-magnetic energy (EME).

There is also an opportunity for the review to consider the regulation of network deployment activities and EME that is currently shared by several organisations - the ACMA, Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and DoC. AMTA supports the Review recommending:

- that each organisation's role and responsibilities are specifically defined; and
- opportunities for rationalising the regulatory framework, taking into account the complexity and cost incurred by industry by engaging with three different agencies, are assessed.

Regulator's role in Spectrum Planning and Management

AMTA supports an ongoing role for the ACMA in the regulation of spectrum management. AMTA's December 2014 submission to the Government's Spectrum Review is relevant in the consideration of the ACMA's role as spectrum manager. (**Attachment A** – provides a copy of this submission with relevant sections highlighted).

AMTA believes that the outcome of the Spectrum Review should be to deliver a new regulatory framework that drives efficiency in spectrum use through effective processes and encourages innovation and promotes investment in new technologies that rely on Australia's scarce spectrum resources.

The spectrum regulatory framework must be designed to:

- promote competition;
- minimise regulatory burdens;
- provide the flexibility necessary for industry to adapt to the rapid pace of technological change and ongoing development of business models in media and telecommunications markets;
- encourage adoption of risk-management approaches to interference protection; and
- be clearly understood by both administrators and industry and applied consistently so that industry has the requisite certainty to secure future investment.

The ACMA has substantial technical expertise in the management of spectrum and it is important that it continues to maintain an adequate level of expertise under the future framework.

Spectrum licence holders make substantial investments in their spectrum holdings and it is essential that the ACMA is properly resourced to protect these spectrum property rights and manage the risk of interference.

Adequate resources also need to be allocated for ITU functions and responsibilities which are currently shared by DoC and the ACMA. AMTA believes that DoC needs to be resourced to understand and facilitate the setting of the policy direction for Australia's ITU agenda. However, the ACMA also needs to be resourced to facilitate, support and advocate for Australia's position from a technical perspective in domestic and international forums.

Industry currently funds the activities of the ACMA via its carrier licence fees and radiocommunications spectrum access charges. AMTA considers that there needs to be a greater certainty of funding and a transparent linkage between the collection of industry fees and the regulation of spectrum that is supported by these fees and charges. Also, if industry takes on some of the regulator's functions and responsibilities as part of a review of the approach to self-regulation, as suggested in the submission made by Communications Alliance, industry should receive the benefit of the savings achieved through such a change.

In any case, AMTA believes there is an opportunity for improving transparency of the funding of the ACMA. In particular, the ACMA should be required to provide a breakdown of its funding to show how this is used to fund the various outputs and support its strategic priorities.

AMTA submits that the ACMA should be better resourced to enable a greater focus on compliance and enforcement activities in relation to managing the risk of interference.

Similarly, AMTA notes that the ACMA would benefit from having a fully integrated, self-service, online spectrum licence register. Such a register would make spectrum licence management more efficient and stream-lined. While Project Helm is a useful step in that direction, it is still not clear that it will be sufficient to achieve this objective. AMTA is seeking a system which allows all licensing applications to be undertaken without recourse to paperwork or having to consult with ACMA staff. Such a system would make spectrum licence management more efficient and stream-lined.

Spectrum Interference – Compliance and Enforcement

The ACMA needs to be properly resourced to deal quickly and effectively with interference issues that infringe on the property rights of spectrum licence holders. Industry has and continues to make significant investments in spectrum on the basis that spectrum property rights will be respected and protected.

AMTA's mobile carrier members estimate that the management of interference creates costs for the mobile industry in the order of several million dollars per annum.

These costs are being incurred by industry because the ACMA does not currently have sufficient resources to manage interference issues and has inadequate powers under the legislation to effectively enforce compliance. AMTA supports increasing the spectrum enforcement capability of a future regulator to manage the risk of interference, including that it is properly resourced for this task. If it is agreed that aspects of compliance and enforcement can be devolved to industry to improve efficiencies then industry should receive the full benefit of the savings achieved.

Conclusion

AMTA recognises the ACMA's substantial experience and technical expertise in many areas of communications regulation and acknowledges the strong and positive working relationship it has established with industry and other stakeholders.

AMTA recommends that the Review consider potential changes to the regulatory framework that would establish a future regulator that is:

- able to foster and facilitate industry outcomes for the benefit of customers to support Australia's continued social and economic growth;
- more efficient, transparent and accountable in its decision-making; and
- adequately and appropriately resourced to support spectrum allocation and management; including the protection of spectrum property rights and advocacy of Australia's position in ITU and WRC forums.

AMTA looks forward to continued participation in the Review process.

Any questions about the above comments can be directed to Lisa Brown, Policy Manager, AMTA at 02 6239 6555 or lisa.brown@amta.org.au.