

ANRA≈

AUSTRALIAN NARROWCAST RADIO ASSOCIATION

Submission To The
Review of the Australian
Communications And
Media Authority

August 2015

Introduction

ANRA welcomes the opportunity to comment on the Review of the Australian Communications and Media Authority.

The Australian Narrowcast Radio Association (ANRA) represents the licence holders of more than 1000 low power open narrowcast (LPON) radio services and 170 high power open narrowcast (HPON) radio services located across all States and Territories.

With the rapidly increasing number of services becoming available in the digital landscape, the important role Narrowcasting services play in the lives of many Australians could easily be overlooked.

While ANRA understands the important role the ACMA plays in the future communications regulatory environment, it is vital that a balanced outlook is maintained by the ACMA in regard to the core framework of Narrowcasting and not over regulate it.

ANRA has appreciated the opportunities to meet with senior representatives from the ACMA who have made themselves available and have kept a strong line of communication open and flowing with ANRA.

Thank you for the opportunity for us to present ANRA's own short submission on this matter.

If any further input is required, please do not hesitate to contact ANRA.

Questions

1. Are there unique characteristics of the communications sector that require a particular style of regulation and regulator?

The Communications sector is a valuable resource of the nation. There are in many situations limited spectrum for the communications market to operate. As such it is imperative that an organised, rational and workable system is in place to organise and regulate the various spectra so as to maximise the opportunities for interested players to operate but also to ensure the public interest is preserved

2. Do the characteristics of the communications sector mean that a sector-specific regulator should be responsible for all aspects of industry regulation including economic regulation? Would switching models enable the regulator to strike the optimal balance between investment and consumer outcomes?

ANRA would submit that a sector-specific regulator particularly in the communications sector needs to be across the economic ramifications of what it regulates so as to ensure an optimal balance between investment and consumer outcomes. If an alternative model was pursued that had a separate financial regulator to what is in place at the moment then that model would also need to be across all of the other specialist responsibilities now under the ACMA charter.

3. What developments in the communications sector over the next 5-10 years are likely to affect the role of the regulator? In what ways will that role be affected?

The Issues Paper correctly identifies the difficulty of attempting to predict the Technological advancements; changes in consumer demand and policy-induced structural change that will be required to continue to ensure that Australian communications markets are dynamic and complex.

As the paper points out that pace of change is potentially greater than many other Australian industries.

For Narrowcasters one of our great challenges will be keeping in touch with social practices and the implications of digital technologies in a variety of ways and at different rates. We are hopeful that the model that is agreed to, for the ACMA in the future includes a place for Narrowcasting to be included in the challenges that face the industry in the future.

We would submit that it is highly questionable whether the architects of the Narrowcast sector would have realised the importance of the role Narrowcasting services would come to play in the lives of many Australians, catering to needs which would otherwise go unsatisfied.

ANRA contends that, after more than 20 years of operation Narrowcasting has become a discrete, established mature and valued sector of the Australian Broadcasting fabric which, while acknowledging the primacy of the national, commercial and community sectors, we believe warrants an inclusion in any future planning of Broadcasting in Australia. As such we submit that we need to be included in any planning for the challenges ahead.

4. What should be the unifying objective and purpose of the communications regulator—is there a succinct way to describe what the regulator should achieve?

A regulator's functions should enable it to meet relevant public policy objectives. Its establishing legislation should clearly define its purpose,

objectives, functions and powers. Ideally, it should not assign conflicting functions or, if it does, it should identify the mechanism for resolving such conflicts. The legislation should also identify functions on which the regulator can, and cannot, receive directions from the government.

5. Looking at both national and international trends, what are considered the optimal objectives, functions and structures for a best practice regulator in the Australian communications sector?

ANRA agrees with the general thrust of the comments made in the issues Paper in that Regulatory best practice suggests that an effective regulator must have a clear purpose and objectives, with clear and linked functions and the mechanisms to co-ordinate with other relevant bodies to achieve the desired regulatory outcome. ANRA would submit that in recent times the ACMA has succeeded in meeting best practice guidelines as a regulatory body. It may not always meet all expectations but in defence of the ACMA there has been a significant effort made to present a clear purpose and objectives to achieve regulatory outcomes that meet the desires and aspirations of those it is regulating along with the general expectation of the general public.

6. What functions are unique to the ACMA (that is, not present or relevant to other regulators or industry sectors) and will these remain relevant in the future?

ANRA would submit that The Australian Communications and Media Authority possesses unique functions that are not present or relevant to other industries. It would seem that certainly for the next 5-10 years there will be a need for a regulatory body to manage, spectrum, broadcasting, content and data casting functions. The general functions now undertaken by the ACMA involving industry regulation, reporting to and advising the Minister, managing Australia's input into international standards setting and informing and educating the public will still require a unique regulatory body.

7. Are new functions likely to emerge over time?

It is very likely that other functions will emerge from the technological opportunities that will present themselves in the future.

8. When should the Minister be able to give directions to the ACMA in relation to the performance of its functions?

ANRA would agree that Parliament must determine the level of regulatory independence offered to the regulator. That level must be measured so as to not restrict the regulator to be able to carry out its functions and responsibilities without political interference. It ought to also be reviewed from time to time to ensure the functions are relevant to current circumstances.

However the Minister is responsible to the people and he ought to have the ability to give directions in relation to the performance of its functions to the regulator but only after an independent review showed that the regulatory body was deficient in carrying out its functions.

9. What are the optimal structure and governance arrangements for the Authority and Executive?

ANRA submits that the current structure and governance arrangements for the ACMA under which the Authority itself is the principal decision-maker ensure the body's effective functioning, independence and ability to deliver the objectives required of it is a better structure than the alternative governance board mode mentioned in the Issues Paper.

10. What are the optimal arrangements to support good decision-making and maintain trust (including for managing conflicts of interest for decision makers and delegating decision-making)?

ANRA would hope that Regulator Performance Framework (RPF) recently introduced by the Federal Government and adopted by the ACMA will assist the regulatory body not only to improve productivity but will be an indicator to support good decision-making and to maintain trust, including conflict resolution where conflict of interest issues are identified. We would also hope that the RPF process might reduce the cost of unnecessary and inefficient regulation that will provide good decision making and will maintain trust between the ACMA and its client base.

11. How does the ACMA perform against the Regulator Performance Framework KPIs? Please provide examples.

ANRA has been pleased to note in recent times that the ACMA has attempted to meet the KPI's above. We have been particularly encouraged by the willingness of senior managers to discuss issues with the industry and where there are matters of misunderstanding to attempt to clarify those matters in a helpful and conciliatory way yet in line.

An example of this is with KPI 4. ANRA would like to see the ACMA coordinate compliance and monitoring approaches in a more consistent way. However we appreciate the efforts of senior management to address this issue and to continually make themselves available for discussions as to how to best achieve that KPI.

12. Has the ACMA been effective in progressing or influencing regulatory reform initiatives where there has been a change in risk or market characteristics to warrant change?

ANRA would submit that the ACMA has been effective with regulatory reforms where they have been needed and open to changed circumstances.

13. What are the forward looking risk characteristics of the communications landscape? In this environment what is the optimal mix of capabilities and cultural attributes for a high performance communications regulator? Are these characteristics unique to communications?

The forward looking risk characteristics that will face the regulatory body will no doubt be tied up within the framework of the emerging and challenging technological changes that will confront Communications in the near future. Unfortunately those risk factors are not readily identifiable until the challenge or change is upon us due to the rapid rate of change we face. The challenge for the ACMA will be to be prepared for those changes and act appropriately when they arrive.

14. What functions currently undertaken by the ACMA could be more efficiently or effectively delivered by someone else?

ANRA would submit that some of the compliance and monitoring approaches could be better streamlined and coordinated due to limited resources within the authority by outsourcing some of those functions.

15. What functions currently undertaken by other organisations could be more efficiently or effectively delivered by the ACMA?

See above answer

16. Would additional quality assurance arrangements be required where a function is provided by another party?

ANRA submits that quality assurance arrangements would need to be in place if outsourcing was to occur.

17. What system improvements should be made to the ACMA? System improvements include structural changes, process changes, requirements changes, and products or services changes.

ANRA submits that all organisations need to be continually reviewing and improving their efficiency. Our experience with the ACMA is that there is a definite culture within the organisation to do this. However the authority has been lacking sufficient resourcing to enable efficiencies to be introduced as early as and as often as possible,

18. What engagement improvements should be made to the ACMA? Engagement improvements include stakeholder engagement, contractual practices, behavioural and policy incentives to promote compliance or take up of government initiatives.

ANRA has been encouraged in recent times by an improvement in our engagement with the ACMA and the enthusiasm of senior staff to engage in a much broader and conciliatory way than perhaps was the case some time ago.

19. What market improvements should be made to the ACMA? Market improvements include partnering with others and outsourcing

ANRA submits that Outsourcing ought to be an option where it is shown that the efficiency of the ACMA will improve. As long as there are no conflicts of interest then partnerships with stakeholders ought to be encouraged.

20. What funding model would best resource an Australian communications regulator, now and in the future?

ANRA submits the current funding model that is used by the ACMA goes only part of the way. We submit that Government has a responsibility to ensure over and above a fair impost of cost-recoveries from stakeholders achieved by the ACMA that the authority has the resources it needs to fulfil its functions and responsibilities.

21. What activities should be cost recovered from industry? Are user charges administered by the ACMA cost effective and efficient?

The current list of cost recoveries implemented by the ACMA seem to be appropriate. We would submit there is no scope for changes to the current scales.

22. What should guide the ACMA in its allocation of resources between functions?

ANRA submits that in the future the regulatory body will need to allocate its resources fairly across the whole spectre of Communications not only prioritising the needs and demands of the "big players" in Communications but also including the niche industries, such as, for instance Narrowcast Radio when allocating its resources. Our part of the Communications industry may be small to some. However Narrowcast radio stations across Australia are providing a diverse range of programs to large and small communities who might not have any local radio services.

23. How are the ACMA's functions likely to change as a result of reforms to the communications regulatory framework?

ANRA believes that the functions currently undertaken by the ACMA need to be preserved by that organisation.

24. Does the list of 'enduring concepts' capture the policy concepts that are likely to continue to be central to the communications regulatory regime in the future? What are the most important communications sector public policy aims that are likely to require regulation?

ANRA submits that any changing or new technology will need to have strong governance policy associated with it but at the same time the "old" technologies ought not be automatically disposed of the make way for those new technologies.

25. What combination of regulatory interventions might be needed in the future? How much discretion should be provided to the regulator in their application?

ANRA submits that it is almost impossible due to the fast rate of changing technology to predict the combination of regulatory interventions that will be required in the future. We submit that the regulatory interventions and the discretion of the ACMA in those areas currently in place are appropriate.

26. How should a contemporary communications regulator retain flexibility to adapt its style of regulatory intervention to reflect the changing regulatory regime?

By regular reviewing the changing regulatory regime and how the ACMA fits into those changes ought to allow the regulator to retain flexibility.