



**Submission by the  
Commonwealth Ombudsman**

**DEPARTMENT OF COMMUNICATIONS:  
REVIEW OF THE AUSTRALIAN COMMUNICATIONS  
AND MEDIA AUTHORITY (ACMA)**

**August 2015**

## INTRODUCTION AND SUMMARY

On 12 June 2015, the Minister for Communications, the Hon Malcolm Turnbull, MP, announced a review of the Australian Communications and Media Authority (ACMA).

The review includes four terms of reference focussing on ACMA's objectives, function, structure and performance as a regulator.

This submission by the Commonwealth Ombudsman responds to the Terms of Reference and Issues paper with a focus on ACMA's role as a regulator and the Ombudsman's experience in dealing with complaints about the ACMA.

Our involvement with ACMA extends to our Commonwealth Ombudsman role as an investigator of complaints about ACMA's actions, and our Postal Industry Ombudsman role where ACMA is responsible for the recovery of fees arising from PIO investigations of complaints concerning Australia Post and registered Private Postal Operators.

The number of complaints received by the Ombudsman concerning ACMA is relatively small. In 2014-15, of the total 28,154 complaints received by the Ombudsman, only 31 (<1%) were about ACMA. To put this in another context, in 2013-14<sup>1</sup> ACMA received around 1,600 complaints about broadcasting content related issues and almost 350,000 complaints about Spam. The volume of complaints about ACMA directed to the Ombudsman is therefore low when compared to the extent of ACMA's interactions with the public. It is also lower than the volume of complaints received about most of the other regulatory agencies within the Ombudsman's jurisdiction.

Complaints to the Ombudsman about ACMA primarily come from individuals unhappy about ACMA's decision concerning the outcome of a complaint about:

- an alleged breach of the code of practice by a broadcaster
- the Do Not Call Register
- licencing decisions

We consider that ACMA manages complaints made to it in an appropriate manner and is responsive to our investigations and recommendations. On average, we investigate less than 10% of all complaints received about ACMA. Of the complaints investigated, most were mainly resolved after ACMA provided better explanation to us and the complainant concerning its jurisdiction and policy.

## BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- Correcting administrative deficiencies through independent review of complaints about Australian Government administrative action;
- Fostering good public administration that is accountable, lawful, fair, transparent and responsive;
- Assisting people to resolve complaints about government administrative action;
- Developing policies and principles for accountability; and

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<sup>1</sup> ACMA Annual report 2013-14 page 83 and 87

- Reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

## **RESPONSE TO TERMS OF REFERENCE**

On 12 June 2015, the Minister for Communications, the Hon Malcolm Turnbull, MP, announced a review of the Australian Communications and Media Authority (ACMA) to examine and report on the following matters:

- *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.*

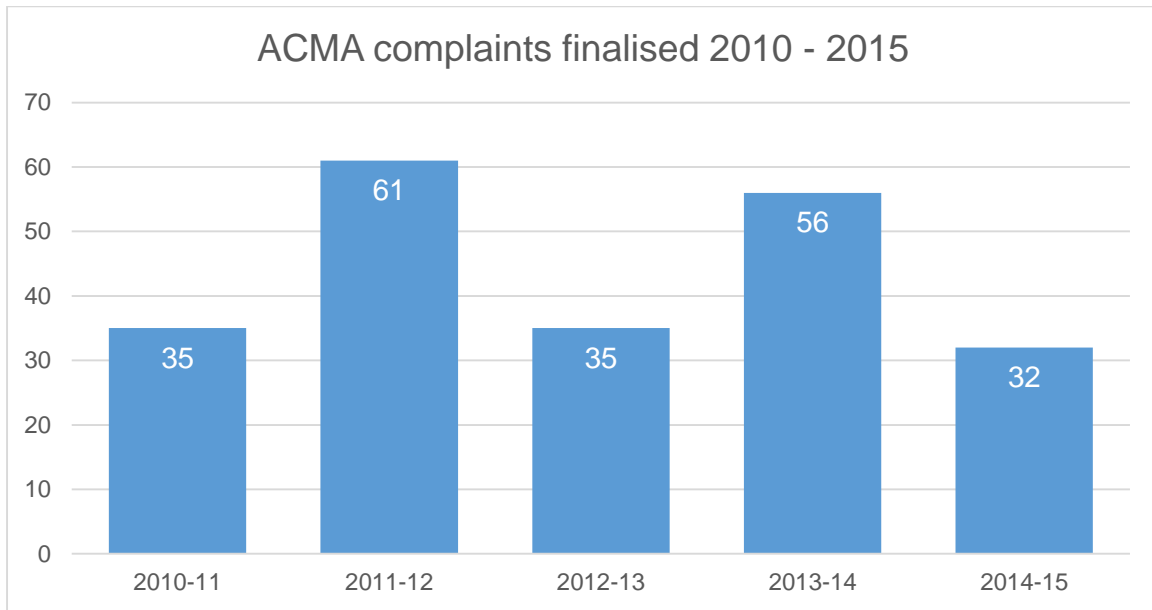
On 13 July the Department of Communications invited submissions to the Review. This submission reflects the Ombudsman's experience in dealing with complaints regarding ACMA.

## **COMPLAINTS TO THE OMBUDSMAN REGARDING ACMA**

The Commonwealth Ombudsman finalised 32 complaints about the ACMA in 2014-15. This is below the 10 year average of around 40 complaints per annum. Since ACMA was established in 2005, we have finalised over 400 complaints about ACMA.

As noted in the background information concerning the review, there have been dramatic changes to the Australian communications environment since ACMA's establishment. However, this has not resulted in any major increase in complaints to us about ACMA.

**Table 1: ACMA complaints closed 2010-2015**

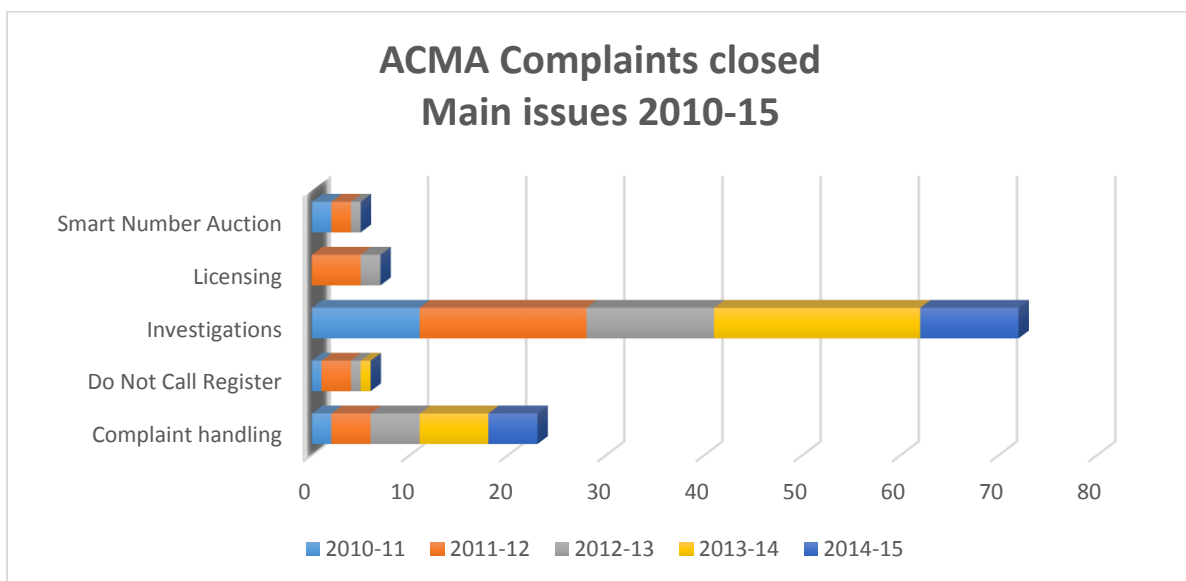


**Common ACMA complaint themes**

The most common causes of complaints to the Ombudsman about the ACMA in 2010 to 2015 relate to:

- Outcome of broadcast content investigation (52%)
- ACMA’s complaint handling (15%)
- Licencing (6%)
- Do Not Call Register (6%)
- Smart Number Auctions (3%)
- All other (18%)

**Table 2: ACMA complaints closed 2010-2015: Issues**



As illustrated in table 2 (above), the outcome of ACMA’s investigation of complaints about broadcast content was the main issue each year in complaints received by the Ombudsman.

In 2013-14 ACMA received almost 1,600 broadcasting complaints and inquiries<sup>2</sup>. During the same period, the Ombudsman finalised 10 complaints about the outcome of broadcast content investigations undertaken by the ACMA.

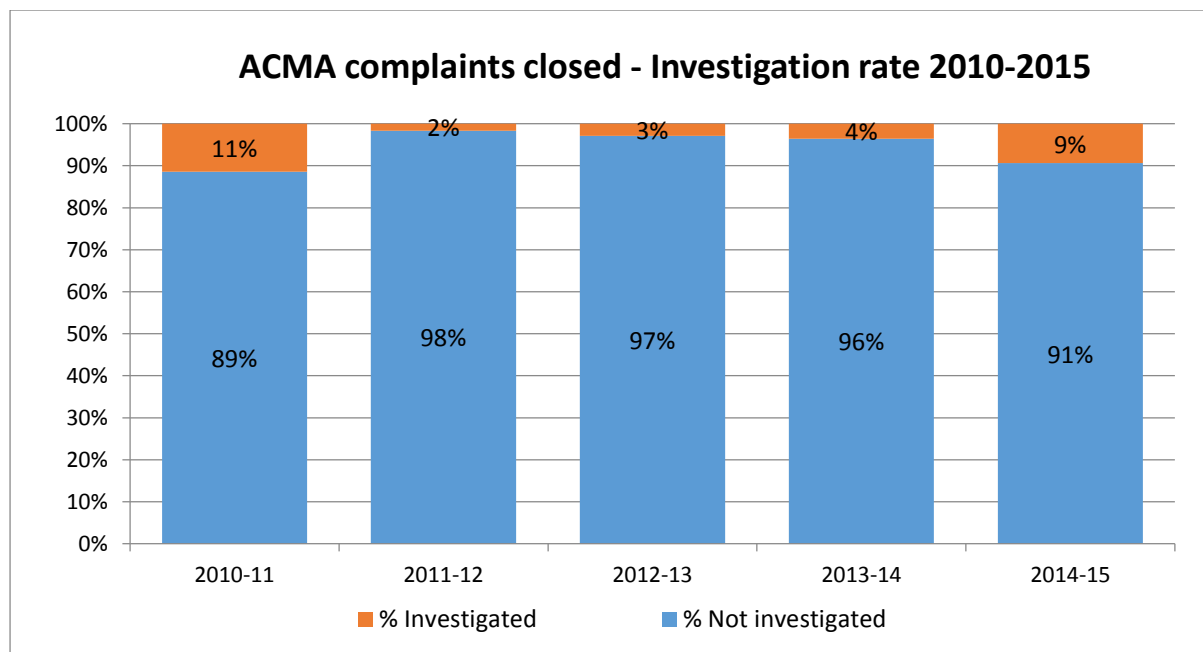
### Ombudsman investigations of ACMA complaints

Of the 219 ACMA complaints finalised since 2010, the Ombudsman has investigated 11 complaints (5%).

The majority of the complaints about the ACMA received by the Ombudsman did not require investigation as:

- the complainant had either not lodged a complaint with ACMA in the first instance or had an active complaint which had not been finalised
- we decided that an investigation was not warranted in all the circumstances because:
  - the matter could be more appropriately addressed by another agency e.g. Telecommunications Industry Ombudsman
  - the complaint issue was not within ACMA’s responsibilities
  - ACMA’s investigation had given due consideration to the issues raised and the decision was reasonably open to it to make.

**Table 4: ACMA complaints closed 2010-2015: Investigation rate**



Complaints investigated by the Ombudsman were typically finalised after a better explanation was provided; ACMA took appropriate action to address the matter; or we formed the opinion that ACMA’s decision had been reasonably open to it to make.

<sup>2</sup> ACMA Annual Report 2013-14 page 88

## **Recovery of fees for the Postal Industry Ombudsman**

The Commonwealth Ombudsman is also the Postal Industry Ombudsman (PIO). The PIO investigates complaints about Australia Post, and postal or courier operators registered as a Private Postal Operator (PPO) under the *Ombudsman Act 1976*. The volume of complaints received by the PIO has increased steadily since the scheme was established. In 2014-15, complaints about Australia Post accounted for approximately 27% of all complaints received by the Ombudsman.

The PIO can charge a fee for each investigation. The ACMA collects the fees on behalf of the PIO – invoices are sent to a PPO by ACMA for investigations completed by the PIO in the previous financial year. To date this has been an effective method of fee recovery. The fees are currently returned to Consolidated Revenue, not to the Ombudsman.

## **Complaints about the ABC and SBS**

ACMA can receive and investigate complaints about the Australian Broadcasting Commission (ABC) and the Special Broadcasting Service (SBS) regarding captioning obligations under the *Broadcasting Services Act 1992*, and alleged breaches of relevant Codes of Practice in content broadcast via television, radio and the internet.

The Ombudsman can also receive and investigate complaints about the ABC and SBS. The Ombudsman generally refers complainants who raise concerns about the ABC or SBS to the ACMA in the first instance, if the matter appears to fall within the ACMA's responsibilities and where the complainant has not yet raised it with the ACMA. This is because the Ombudsman is generally of the view that the ACMA is best placed to deal with complaints about the ABC and SBS at first instance, given its specialist expertise and resourcing, for example, in relation to complaints about content and captioning.

## **REVIEW OUTCOMES MAY IMPACT THE COMMONWEALTH OMBUDSMAN**

Our involvement with ACMA extends to our Commonwealth Ombudsman role as an investigator of complaints about ACMA's actions, and our Postal Industry Ombudsman role where ACMA is responsible for the recovery of fees arising from PIOs investigations of complaints concerning Australia Post and Private Postal Operators.

The Ombudsman receives relatively few complaints about the ACMA and the investigations carried out by the Ombudsman over the past five years have not evidenced any systemic or significant issues of concern nor required formal recommendations.

The Ombudsman recognises ACMA's expertise in broadcasting regulation. Should the review result in any changes to the ACMA's role in respect of complaints about the ABC or SBS, the impact of those changes on the Ombudsman's office should also be considered.