

**REVIEW OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY**  
**FURTHER SUBMISSION IN RELATION TO DRAFT REPORT**  
**JUNE 2016**

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the Department's draft report (**Report**) following its Review of the Australian Communications and Media Authority (**ACMA**).

In relation to the issues covered by the Report, CRA does not propose to revisit the comments made in its submission of August 2015.

However, there are a number of recommendations in relation to which CRA wishes to make further comment.

***Draft Proposal 1: That the ACMA's remit cover all of the layers of the communications market, including infrastructure, transport, devices, content and applications***

1. The commercial radio industry supports the Department's observation that *'the ageing regulatory regime maintains a distinction in many areas between technologies which no longer exist and places excessive emphasis on traditional sectors to achieve public policy outcomes'*.<sup>1</sup>
2. Traditional media platforms bear an extremely high regulatory burden, particularly in terms of content regulation. Regulatory parity should be one of the main objectives of any new policy framework.
3. While in practice it can be difficult to apply the same regulation with the same effect to all distribution platforms, there is scope to align more closely the regulatory treatment of traditional broadcast platforms with the position of new platforms.
4. A greater alignment could be achieved between commercial radio and new and emerging distribution platforms by the adoption of a self regulatory model for the sector, resolving some of the shortcomings inherent in the co-regulation / statutory regulation model which currently applies to commercial radio broadcasters.

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<sup>1</sup> Report, page 6.

5. Nonetheless, the Department should recognise that there are some instances where regulatory parity does not achieve regulatory equality. For instance, radio is at a distinct disadvantage in relation to the obligation to transmit certain warnings, disclaimers or qualifications in advertising. These obligations have a disproportionate impact on radio as, unlike the television or online platforms, the radio platform has very limited capacity for additional incidental content through visual cues.

**Draft Proposal 6: That, within the next 12 months, the ACMA examines whether some or all of the following functions can be referred to industry for self regulation, in consultation with relevant industry bodies: technical standards.**

6. CRA notes with approval the Department's suggestion that '*the ACMA explore greater opportunities for industry to self regulate in areas such as ... technical regulation*'<sup>2</sup>.
7. CRA considers that self regulation in the technical sphere would increase efficiency by permitting broadcasters, who are the key technical experts in the radio broadcasting industry, to determine the most appropriate technical means of achieving objectives under the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992*.
8. This would increase efficiency, by allowing those with the most relevant expertise to undertake the bulk of the technical work. It would also enable the regulator to focus on key areas, such as policy and planning.
9. The commercial radio industry and the ACMA have worked together effectively in the past by adopting such an approach. For example, when planning the metropolitan DAB+ rollout, the ACMA initially allocated very low power for transmission. The commercial radio industry did its own research, using mechanisms such as terrain limited coverage planning and beam tilt to manage overspill. The ACMA accepted this research and hence quickly found a workable solution to the problem, by permitting transmission at a higher power. In this way, industry and the regulator worked efficiently together to achieve cost effective and practical solutions which delivered robust digital radio coverage in the 5 mainland capitals.
10. Another example of cooperative planning between regulator and industry is the work of the technical subcommittee of the Digital Radio Planning Committee. The Committee is chaired by CRA and includes representatives from industry, ACMA and the Department. The Committee oversees the complex task of agreeing the technical planning for digital radio roll out to 100 regional licence areas within a finite allocation of 14MHz of VHF Band III spectrum.

**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.**

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<sup>2</sup> Report, page 9.

11. CRA notes with approval the Department's conclusion that 'a coordinated programme of reform is required to move to a contemporary regulatory regime'.<sup>3</sup>

12. Similarly, the industry supports the Department's observation that a self regulatory model should be considered:

*'[i]t may also be timely for the Government to consider the style of regulation applied to the sector. In May 2014, the Department released Regulating harms in the Australian communications sector Policy Background Paper No. 2 which considered the relative strengths and weaknesses of a range of interventions used to regulate the communications sector. The paper questioned the preference for co-regulation as the preferred regulatory model in the context of evolving technologies, business models and consumer expectations. It also questioned industry commitment to take greater responsibility for its own performance and suggests it may be timely for industry to consider how it could make greater use of self-regulation'.<sup>4</sup>*

13. CRA considers that the commercial radio sector is well suited to a self-regulatory model and satisfies the basic pre-requisites identified by regulators for the implementation of this model. In this regard, we have looked at the principles outlined by the ACMA<sup>5</sup> and also Ofcom in the UK<sup>6</sup>.

14. Ofcom identified the following good practice criteria to the development of new industry schemes:

- **Public awareness:** the objectives of the scheme are unlikely to be met if consumers and citizens are not aware of its existence and its remit by active promotion.
- **Transparency:** the success of the scheme will require openness and transparency in operation, and a degree of public accountability in respect of the scheme's performance.
- **Significant numbers of industry are members:** to have an effective impact, a scheme should represent a very high proportion of traders in the marketplace, or traders representing the vast majority of consumers. It will then be in a position to influence, and act independently of, individual members, to ensure that its influence extends across the industry.

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<sup>3</sup> Report, page 19.

<sup>4</sup> Report, page 18.

<sup>5</sup> ACMA, *Optimal conditions for effective self and co-regulatory arrangements*, Occasional Paper, June 2010.

<sup>6</sup> Ofcom, *Identifying appropriate regulatory solutions: principles for analysing self and c-regulation*, Statement, 10 December 2008.

- **Adequate and proportionate resource commitments:** Industry members must ensure that there are adequate resources in place to operate the scheme effectively.
- **Enforcement measures:** schemes may need to have sanctions to have an incentive to comply. To administer this, the disclosure and transparency of information from members is essential for participants to be able to monitor the effectiveness of the scheme.
- **Clarity of processes and structure:** this should include an agreement on terms of reference, institutional structures, clarity on funding arrangements, time limits to achieve the objectives where such limits are appropriate, decision making arrangements and voting rights.
- **Audit of members and scheme:** it is advisable that schemes set and audit key performance indicators to ensure that these are met consistently across the industry. Where KPIs have been set, they should be published and regularly reviewed in light of changing circumstances.
- **System of redress in place:** consumers and citizens should have the right to adequate complaint handling standards where they have been dissatisfied by the initial response of a provider. It is desirable for there to be a genuinely independent appeals mechanism that can ensure that complaints are resolved quickly and effectively, and their outcomes disclosed. An effective scheme will have an alternative redress mechanism such as independent arbitration, or an ombudsman scheme.
- **Involvement of independent members:** the benefits of self-regulation may only be realised if the scheme is respected by other stakeholders including consumer and citizen groups, government and parliamentarians. Consequently, a system involving a mixture of independent lay and industry members will be appropriate in both the scheme's governing body and further operating committees.
- **Regular review of objectives and aims:** schemes should actively review trends in the market landscape and changes in citizen and consumer needs and monitor whether their remit and operations are sufficient to meet these.
- **Non-collusive behaviour:** the scheme should not provide a forum for collusion and must be compliant with competition law.

15. Similarly, the ACMA identified 10 factors that influence the effective and efficient operation of self and co-regulatory arrangements. These include:

- the number of market players and coverage of the industry, with industry players in more concentrated markets having similar interests and more likely to agree on common rules to follow;

- whether it is a competitive market with few barriers to entry, with more open and competitive markets being better suited to such arrangements;
- homogeneity of products – whether they are essentially alike and comparable;
- common industry interest – whether there is a collective will or genuine industry incentive to address the problem or enhance existing provisions;
- incentives for industry to participate and comply;
- whether the objectives are clearly defined by the government, legislation or the regulator;
- role of the regulator;
- the existence and operation of transparency and accountability mechanisms;
- stakeholder participation in the development of the scheme, particularly consumer input into the development of co-regulatory arrangements; and
- whether the scheme is promoted to consumers.

16. Applying both Ofcom's factors and the factors identified by ACMA, it is clear that the commercial radio industry is well suited to self-regulation.
17. CRA considers that the development of a self regulatory regime in accordance with the above parameters would provide a strong basis for addressing the needs of citizens, consumers and the industry.
18. The current industry culture, combined with strong commercial incentives to comply with audience expectations and provide valued local content and a diversity of views, strongly implies that self-regulation would work as effectively as would coercive regulation, except with significantly less regulatory burden.
19. Most importantly, CRA is prepared to work with stakeholders to ensure that these issues are adequately addressed and the self-regulatory model can be implemented in an effective manner.
20. Whereas the current co-regulatory model is implemented through a 'package' of legislation, regulation, industry codes and regulatory decisions, a self-regulatory model is inherently more 'self-sustaining' in nature. This provides for a higher degree of flexibility in implementation that is not typically available in the context of co-regulation or statutory regulation.
21. For example, Canada, which has similar social and political, constitutional and legal structures to Australia, has implemented a self-regulatory model for the media and communications sector, which has operated successfully over many years.

22. As in Australia, radio licences in Canada are categorised into three categories: private, public and community. However, unlike the Australian model in which ACMA can set industry-wide rules, broadcasting rules in Canada are largely determined by the Canadian Broadcast Standards Council and advertising standards by Advertising Standards Canada. The first body is funded by the Canadian Association of Broadcasters and the second body is funded by advertisers, advertising agencies and media organisations.
23. One benefit of the Canadian model is a decreased cost to the regulator compared with a model which requires significant regulator involvement like the current model in Australia. Due to this flexibility, it was possible in Canada to reduce licence fees for Canadian radio broadcasters to below one per cent of revenue in response to increased competition from emerging media which has significantly lower regulatory and operational costs.
24. CRA proposes replacing Part 9 of the BSA (and the co-regulatory / standard model contemplated within it) with a self-regulatory model.
25. Some of the elements that are currently embodied within Part 9 of the BSA could potentially be transposed into the legislative framework that seeks to implement a self-regulatory model.

Please contact Joan Warner, CEO, Commercial Radio Australia, for clarification of any aspect of this submission