# PMcGILL: Comments on the ACMA Review Draft Report:

I thank the Department for providing an opportunity to review on the ACMA review. I have tried to conduct my appraisal within the broad parameters described in the TOR, but also seeking an innovative way forward: included are comments on each of the proposals for completeness.

The review appears to have kept to a very narrow interpretation of its TOR. As such it reminds me of an autopsy rather than a strategic, holistic review of ACMA and its role in todays and the *future* digital economy. To provide constructive support for this view, I would consider the possibility for heavily automating many of the ACMA functions (using heuristic/algorithmic/ GOV.2 paradigm): as an example, I would like to see an on-line self-serve process for spectrum access. There is also the issue of ACMA undertaking contestable work eg spectrum assigning.

In another example is that there could be sound economic, governance and synergistic benefits by merging ACMA’s (especially infrastructure and standards) roles into the Government’s other essential-service infrastructure Departments that deal with transport, energy and the like. The review simply assumed that the future will/should need a separate Department and Regulator to cover the ICT sector.

Even more surprising is the suggestion for proposed ACMA Governance, where Ministerial appointments to a permanent “Board” are not subjected to endorsement/approval by Government (eg as a disallowable decision). The proposal that such appointments would then Chair any working parties/committees creates an impression of undue influence – a perception (real or actual) of poor Governance!

With today’s digital economy, there is no reason why all- apart from truly private data- should be open to all stakeholders; this would include reasons behind any decision/action made by the regulator. Today there are many automata tools that can track actions, requirements and linkages to all externalities. This way, any change in the reason behind/supporting a regulatory decision can be an automatic klieg light to trigger review etc. An open GOV.2 ACMA function would also encourage stakeholders to submit proposals directly to the “Board” for decision directly, rather than always being created/processed by the bureaucracy.

I hope the abovementioned words are helpful in your follow-up work preparing the final review document. In addition- for completeness- I have included in an annex, some preliminary comments on each of your proposals.

P McGill

BE, MEng. MIE.

# **Annex a.** Comments on individual Proposals

## Comments on Part 1

P1: the remit as proposed, may extend the Commonwealth power beyond that envisaged in the *Constitution*.

P2-8: functional changes have some merit: however there is an issue overlooked by the review at that concerns the need for the Commonwealth to keep all infrastructure / technical regulations within a common Government Department to include Energy/ICT/Transport- much like the old “DOTC”. Keeping ICT separate from other infrastructure governance functions of Government -eg electricity regulation- creates a lack of consistency in how the various essential services/infrastructure are treated by government as a whole. The review should have considered merging functions across Government - beyond the Cyber issues transfer as proposed.

P 9: see above: should be merged with other Government Infrastructure/essential services functions: integrate into Infrastructure Australia?

P10: this should align with the practice used in other sectors eg Transport or Energy

P20: this may lead to political interference into a statutory governance function.

P11: n/c

P13: see P20 above

P12: in order that some degree of bipartisan support for what may impact long term essential infrastructure – should this not come from the Parliament?

P13: this would at least be somewhat consistent with say electricity sector.

P14: agree and parliament -as a whole- should thus endorse, those selected for Office.

P15: should duration of tenure be limited and to prevent any “double dipping” salary to be reduced in accordance with any government supplied pensions of any authority member- we are in a time of budgetary restraint!

P16: If ACMA is merged back into other like essential service/infrastructure Departments, then its employees should be managed by an APS executive, separate to the Board. The proposed structure is offers poor governance.

P17: Sub boards and the like should be part of normal governance and, for integrity, should not include chairmanship by any Authority Member!

P21-24: This should be a normal part of business- and done automatically for any/all decisions. Many stakeholders cannot have instant access to the reason or assumption behind decisions at present: this is not desirable for modern GOV.2 practice.

P18: the list of regulator provisions as proposed are biased towards a particular Weltanschauung. I am sure that Parliament at least could add to this list eg regulations to be sustainable, improve the service and lower cost to all citizens etc etc.

P25: Review should be comprehensive and include all externalities impacted by any taxes.

P26: N/C

P27: ??

## Comments on Part 2:

DP1: ACMA remit should extend only to those areas concerning essential services and basic infrastructure. I note the original 1990’s ICT deregulation agenda was for government to regulate infrastructure and the private sector to market at the retail/service/app level.

DP2: This seems reasonable, and as a logical consequence ACMA work on say censorship etc should also be transferred.

DP3: In a merge with transport/energy regulators, as I proposed earlier- then research effort should be amalgamated into a new merged department to encourage synergism, remove any inconsistency in government policy towards various sectors. The research should not be limited to economic research, but also must include technical R&D like that conducted by the now defunct Communication Lab.

DP4: There is no reason why the DOCA or any new merged Department, head a Delegation to a treaty making World Conference: this should be led by an Australian Plenipotentiary/Ambassador under DFAT jurisdiction. It is important that Government policy be made available, and summarized into official briefs. For ITU treaty Conferences, noting their unique self-ratifying status, EXECO should sign off official briefs/proposals (or specifically delegate to the Minister), not just the Minister!

DP5: More work is needed eg should the taxes be upfront? ( like the spectrum license fees/charge) or recouped out of a users Corporate Tax take. This would increase the transparency to the claims that “paying for spectrum etc actually creates business and economic wealth”- adding to our GDP.

DP6: Why within 12 months? This should be a normal part of ACMA business processes: this list may be incomplete!

DP7: would this be better in AGD- similar to the proposed move of the Cyber issues?

DP8: as above.

DP9: This should only be retained after it is independently proven to be effective!

DP10: This should not be necessary if ACMA (or if merged with energy/transport etc)? ACCC decision making should not be influenced by an ACMA like regulator through cross appointments: if ACCC wants advice/counsel it should formally request it and keep such advice in archives open to public scrutiny.

DP11: Some would say the current protections are somewhat wanting. Is there a better – more agile, innovative and transparent arrangement?

DP12: Do we want Government or Parliament to endorse these policy objectives?

DP13: Authority Members should already have required experience and not need to get involved in details to acquire it- this is a poor example of Corporate Governance and leads to micromanaging and potential for undue influence. Accordingly, there is a case for a more conventional Board arrangement , with its ability to draw upon a collegiate of wise counsel and wisdom.

DP14: Agree

DP15: With the current trend towards temporary part time work and pay by the hours worked, how could a full time, high cost workforce be justified. It is a well-known phenomenon that these Members will create a lot of work for ACMA (or merged entity) staff.

DP16: The accountability and governance should be aligned to that used in similar entities in other essential services and infrastructure.

DP17: It is not good governance for the Members to Chair subordinate entities.

## Comments on Part 3

DP18: The list may not be complete and should be consistent with other like regulators in the Commonwealth. Parliament may choose to edit the bullet points especially to ensure long term life cycle issues are included in strategic plans and not just a triennial outlook.

DP19/20: Parliament to provide?

DP21: Only if timeliness does not diminish quality

DP22: Yes.

DP23/24: Should this report be prepared by an independent agent?

DP25: Yes

DP26: Perhaps an independent reviewer?

DP27: ??