



Acting Deputy Secretary

File Reference: 15/144

Ms Nerida O'Loughlin
Deputy Secretary – Content, Arts and Strategy
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Dear Ms ~~O'Loughlin~~ Nerida

Draft Report of the Review of the Australian Communications and Media Authority

Thank you for the opportunity to provide comments on the Draft Report of the Review of the Australian Communications and Media Authority (ACMA Review Report). I am pleased to provide the Department of Infrastructure and Regional Development's (the Department) comments, which have been developed in consultation with our portfolio agencies. I apologise for the delay in responding.

This Department welcomes proposed policy and governance reforms aimed at clearly defining and delineating the respective roles and responsibilities of the portfolio Minister, the Department of Communications and the Arts (DoCA) and ACMA. We support the clear separation of roles in relation to operational regulatory matters by ACMA and strategic policy decisions and directions by the Minister on behalf of the Government.

Ensuring that significant "public good" and safety-of-life functionality in the delivery of transport services is not compromised or at risk, including where Australia has international obligations to protect specific spectrum to support globally compatible systems, continues to be a strategic policy issue for this portfolio.

Consistent with our previous submissions on the review of the Australian spectrum policy and management framework, the Department continues to support the need for the continued security and continuity of access, and protection of spectrum for all transport modes (road, rail, maritime and aviation) being reflected in relevant communications strategic policy directions.

By way of example, Global Positioning System (GPS) data is a critical enabler for Australia's transport system. The reliance on position, navigation and timing (PNT) services for communications, navigation and surveillance (CNS) activity is extensive and is expected to increase in the future, particularly in relation to core applications utilising (free) data/signals from GPS. In that context, I would like to emphasise the importance of ensuring ongoing protection for spectrum supporting GPS utilisation in the transport sector.

We have provided specific comments against each of the individual draft proposals of the ACMA Review Report, where relevant, at **Attachment A** as requested.

The contact officer for the Department is Charles Hausknecht, Director, Air Traffic Infrastructure, Air Traffic Policy

Yours sincerely

A handwritten signature in black ink, appearing to be 'Pip Spence', with a long horizontal stroke extending to the right.

Pip Spence

15 June 2016

Enc

Comments on individual draft proposals in the Draft Report of the Review of the Australian Communications and Media Authority

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

Noted. The Department does not have specific comments in relation to this draft proposal.

2. ***That the ACMA's cyber-security programmes be transferred, along with staff and funding, to the Attorney-General's Department.***

Noted. The Department does not have specific comments in relation to this draft proposal.

3. ***That the Bureau of Communications Research assume the lead in taking forward research about the emerging environment and market trends, with ACMA's regulatory research programme focusing on supporting the effectiveness of regulatory functions and harms that are affecting businesses and consumers.***

Noted. The Department does not have specific comments in relation to this draft proposal.

4. ***That the Department of Communications and the Arts be responsible for head of delegation roles to key international policy-setting forums, including the World Radiocommunications Conference, and that clear guidance and negotiating parameters be provided by the Department to heads of delegation.***

The Department supports DoCA, as lead policy agency in the communications portfolio, being responsible for head of delegation roles to key international policy-setting forums, noting also ACMA's critical support role (and that of other agencies' on specific issues as required, e.g. aviation, maritime, etc.) in providing strong regulatory, technical and operational advice to DoCA.

5. ***That further work be undertaken to determine whether it may be more efficient for another body, such as the Australian Taxation Office, to undertake the revenue collection functions currently performed by the ACMA.***

Noted. The Department does not have specific comments in relation to this draft proposal.

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

- ***technical standards;***
- ***Integrated Public Number Database;***
- ***Do Not Call Register;***
- ***Action on unsolicited communications, including Spam.***

The Department notes that self-regulation may still require an ongoing role for ACMA even where the regulatory function is devolved to industry (e.g. to ensure timely and effective "regulator" intervention by any industry entities undertaking the regulatory role within a sector, or in certain circumstances by ACMA directly).

Consequently, the Department suggests this draft proposal and its possible application would need to be examined on a case-by-case basis with relevant industry and government agency stakeholders, to test its efficacy, including to examine an industry sector's capacity to undertake the function in the near, medium and long-term.

7. ***That the Department will undertake further work on the potential to expand the ACMA's remit to include the functions of the Classification Board and Classification Review Board Scheme.***

Noted. The Department does not have specific comments in relation to this draft proposal.

8. ***That the Interactive Gambling Act 2001 be amended to require the ACMA to:***
- ***Handle all complaints relating to interactive gambling services and advertisements;***
 - ***Conduct the same investigation process irrespective of whether the content is hosted in Australia or overseas; and***
 - ***Enforce civil penalties for breaches of the Act.***

Noted. The Department does not have specific comments in relation to this draft proposal.

9. ***That the current institutional arrangements for economic regulation of the communications sector be retained.***

Noted. The Department does not have specific comments in relation to this draft proposal.

10. ***That cross-appointment arrangements between the ACMA and ACCC be strengthened in order to benefit both ACMA and ACCC decision-making.***

Noted. The Department does not have specific comments in relation to this draft proposal.

11. ***That the current institutional arrangements for communications consumer protections be retained.***

Noted. The Department does not have specific comments in relation to this draft proposal.

12. ***That, as a priority as future reform is undertaken, the Government provide the ACMA with a clear set of overarching policy objectives to guide its decision-making.***

The Department supports the draft proposal to provide clear Government policy guidance to ACMA to guide its decision making, noting that there are a number of legislative models for achieving this.

For example, in Aviation the responsible Minister provides separate Statements of Expectations on behalf of the Government to each of the Boards of the Civil Aviation Safety Authority (CASA) and Airservices Australia. The *Airspace Act 2007* requires the Minister to make an Australian Airspace Policy Statement (and cause it to be reviewed every three years) to outline to CASA the Government's policy objectives for airspace administration and regulation.

From a policy perspective, the Department would welcome inclusion of a Government policy objective reflecting the need to take into account societal outcomes in undertaking its regulatory role, for example in relation to providing "public good" outcomes through Government platforms including those in transport.

13. ***That the commission model of decision-making be retained.***

Noted. The Department does not have specific comments in relation to this draft proposal.

14. ***That the skill set to be covered by Authority members be outlined in legislation to ensure an appropriate and diverse mix of abilities to respond to the future needs of the ACMA.***

The Department notes that there are a number of legislative and non-legislative models in operation aimed at ensuring that a person being appointed is suitably qualified for appointment – primarily aimed at the substantive experience or expertise of individuals.

For example, qualification requirements for individuals in relation to experience or expertise in particular fields (e.g. law, commerce, etc) is included in the *International Air Services Commission Act 1992* and more broadly e.g. a high level of expertise in one or more areas relevant to the Australian Transport Safety Bureau's (ATSB) functions in the *Transport Safety Investigation Act 2003*.

Administrative requirements within the Department are also used in areas where there are not such explicit qualification requirements by ensuring consideration of the skills of individual candidates and the mix of skills and expertise of the Board or Commission in the selection processes.

DoCA may wish to consider which options best suit its purposes to ensure appointments respond to the future needs of ACMA.

15. That all members of the Authority be appointed on a full-time basis and that the Authority consist of a Chair, a Deputy Chair and at least three other full-time members.

Noted. The Department does not have specific comments in relation to this draft proposal.

16. That the existing arrangements are maintained where the Chair is the Accountable Authority with an ability to delegate powers, duties and functions, to the extent permitted by the PGPA Act, to a CEO.

Noted. The Department does not have specific comments in relation to this draft proposal.

17. That provision be made in the ACMA Act for the Authority to establish sub-boards to manage subject matter not requiring the full commitment of the Authority, or to manage issues that would otherwise diminish the Authority's capacity to focus on its key decision-making or direction setting responsibilities. That the Chair of any such sub-boards be a member of the Authority but not be the Chair of the Authority.

Noted. The Department does not have specific comments in relation to this draft proposal.

18. Legislate the following four regulator principles in the ACMA's enabling legislation, proposed draft:

- **The ACMA have regard that its regulatory settings do not unnecessarily hinder competition, innovation or efficient investment.**
- **The ACMA should apply a risk-based approach to regulation, compliance and enforcement activities. Regulatory intervention should be targeted, evidence-based and commensurate with risk.**
- **The ACMA should implement continuous review of regulation to reduce burden and streamline approaches where the benefits exceed the costs.**
- **The ACMA should be transparent in its actions and clearly indicate the priorities and objectives which inform its decision-making to regulated entities and the broader public.**

The Department generally supports this approach – taking account of innovation effects and future spectrum requirements will be essential for ensuring that Australia is able to take advantage of future technological advances in the transport sector.

In line with our response to draft proposal 12, the Department would like to see consideration given to the inclusion of a principle reflecting the need to take into account societal outcomes in undertaking its regulatory role, for example in relation to providing “public good” outcomes through Government platforms including those in transport.

This has been raised in previous Department submissions to the consultation papers by the DoCA over the last eighteen months and would also appear to be relevant here.

19. That the Minister provide the ACMA with an annual Statement of Expectations and the ACMA respond by publishing a Statement of Intent outlining how it will seek to deliver on the Government's expectations.

The Department supports the draft proposal for the Minister to provide a Statement of Expectations (SoE) and for ACMA to develop a Statement of Intent in response.

The benefits of this clear and regular enunciation of expectations by government to statutory authorities was identified as far back as the 2003 Report of the Review of Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review) as an important vehicle for good governance.

By way of example the previous Deputy Prime Minister issued separate two-year SoEs to each of CASA, Airservices Australia and the ATSB in 2015. These statements are legislative instruments under their respective governing legislation and as public documents provide a higher level of transparency and public scrutiny as they are tabled in Parliament and reported against by the agency.

Given their strategic nature and the nature of the content of SoEs, DoCA may consider a longer renewal period for the proposed SoE, given the likely multi-year time frames associated with progressing complex projects and programs.

- 20. That the Minister provide the ACCC with an annual Statement of Expectations and the ACCC respond by publishing a Statement of Intent outlining how it will seek to deliver on the Government's expectations.**

See comments provided in respect of draft proposal 19.

- 21. That timeliness of decision-making be established as a key area of focus and accountability for future cycles of the ACMA's regulator performance framework, and Government consider legislative amendment to support more timely decision-making, where necessary.**

The Department supports investigation of opportunities to improve the timeliness of ACMA decision processes - to achieve efficient, effective and appropriate outcomes - where this can be achieved without compromising or eroding overall transparency and process integrity.

- 22. That the ACMA publish information on the steps it takes to ensure stakeholders have a clear understanding of the relationship between its actions and its compliance and enforcement policy.**

The Department generally supports initiatives aimed at increasing transparency of government agency processes, and stakeholder understanding of the role and regulatory philosophy of the regulator, particularly where these may have direct implications for stakeholders.

- 23. That the ACMA report to the Minister every two years on initiatives undertaken to identify and reduce regulatory burden on industry and individuals.**

The Department supports the investigation of opportunities to remove complexity in the current regulatory framework, in line with the general government paradigm of reducing the red tape regulatory burden on industry, and to provide appropriate progress reporting agreed with the Minister.

- 24. That the ACMA produce a public report on steps taken to improve the transparency and consistency of its decision-making processes, and that implementation and stakeholder satisfaction be independently assessed by the end of 2017.**

The Department generally supports initiatives aimed at increasing transparency of government agency processes, supported by appropriate progress reporting arrangements agreed with the Minister and consideration should also be given to making such reports publicly available.

- 25. That it would be timely to review the policy objectives of revenue collection from the communications sector and evaluate whether new business models and OTT services are contributing appropriately.**

The Department supports investigation of the existing policy objectives of revenue collection arrangements to ensure they are contemporary and lead to efficient, effective and appropriate outcomes.

- 26. That the ACMA should further analyse its cost base, in light of the proposed function changes, to ensure it is efficiently delivering on its responsibilities and minimising costs to industry.**

Noted. The Department does not have specific comments in relation to this 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.**

The Department supports the broad review of the Australian spectrum policy and management framework (including the review of ACMA) as a timely opportunity to reflect in the spectrum policy and management framework the vital importance of the 'public good' and 'safety-of-life' roles of the transport sector and the importance of spectrum management to regional and remote areas of Australia.