

# **Australian Communications and Media Authority Submission**

## Response to Department of Communications Review of the Australian Communications and Media Authority issues paper

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**Canberra**

Red Building  
Benjamin Offices  
Chan Street  
Belconnen ACT

PO Box 78  
Belconnen ACT 2616

T +61 2 6219 5555  
F +61 2 6219 5353

**Melbourne**

Level 32  
Melbourne Central Tower  
360 Elizabeth Street  
Melbourne VIC

PO Box 13112  
Law Courts  
Melbourne VIC 8010

T +61 3 9963 6800  
F +61 3 9963 6899

**Sydney**

Level 5  
The Bay Centre  
65 Pirrama Road  
Pyrmont NSW

PO Box Q500  
Queen Victoria Building  
NSW 1230

T +61 2 9334 7700 or 1800 226 667  
F +61 2 9334 7799

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Written enquiries may be sent to:

Manager, Editorial and Design  
PO Box 13112  
Law Courts  
Melbourne VIC 8010  
Tel: 03 9963 6968  
Email: [candinfo@acma.gov.au](mailto:candinfo@acma.gov.au)

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# Executive summary

When Thomas Friedman wrote his international bestselling book *The World Is Flat: A Brief History of the Twenty-First Century* published in 2011<sup>1</sup>, he recounted how many of the things that were informing current debate had not been thought of in 2005—the year the Australian Communications and Media Authority (ACMA) was established. He noted that:

- > Facebook cannot be found under ‘F’ in the index of the first edition of *The World Is Flat*;
- > Twitter then was a sound;
- > Cloud was something found in the sky;
- > 4G was a parking space;
- > An Application was something you sent to college;
- > LinkedIn was a prison; and
- > Skype was a typo!

The ACMA was established to be a converged regulator able to respond to the observed and anticipated changes brought about by the convergence of digitalised telecommunications and broadcasting industries. It is one of a handful of such converged communications regulators in the world.

Over the last decade the communications and media industries have become accustomed to the constantly renewing cycle of technological change, fundamentally altering the underlying business models of previously well-established industries. This challenge has further evolved with the emergence and dominance of IP networks. This has meant content has become increasingly interlinked, ‘uncontained’ and non-linear, while people increasingly expect to connect and communicate seamlessly – anywhere, anyhow, anytime.

Convergence remains a relevant concept for the ACMA in the context of this ongoing ‘digital disruption’. While the converged regulatory construct has served Australia well, the review provides an opportunity to draw on insights from this experience to inform the design of the role and remit of a future communications regulator.

The ACMA welcomes this review as an important opportunity for a first principles assessment of the role of a communications regulator and it has developed a two-part submission responding to the questions raised in the *Review of the Australian Communications and Media Authority—Issues paper* from the Department of Communications (DoC).

The first part of the ACMA’s submission focuses on the ACMA’s performance record in its administration of public resources and its performance in discharging the ACMA’s regulatory remit, including a summary assessment of performance in the 2014-15

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<sup>1</sup> Thomas Friedman, *The world is flat: A brief history of the twenty-first century*, 2011.

financial year against the Regulator Performance Framework which came into operation on 1 July 2015.

The second part of the submission considers the future challenges posed by the rapidly changing communications and content environment. It reflects on how these changes can be used to inform the institutional design features and regulatory decision-making structure for any future communications and content regulator.

## Performance

The ACMA's has a complex mandate and it has responded to its environment and to changing government priorities with flexibility and with increasing efficiency in the delivery of its administrative and regulatory operational functions. In the first part of its submission, the ACMA responds to the review issues paper questions 11, 12, 14-22, providing information about the ACMA's financial, administrative and regulatory performance.

In the context of its financial and administrative performance, while the ACMA's base funding has declined by 18 per cent in nominal terms over the 10 years, it has delivered a small surplus of \$0.2m over the period. This was achieved through continual review and restructuring to meet the outcomes and priorities required by the government of the day within its budget appropriation.

While resources have been continually realigned to meet emerging priorities, the ACMA has continued to deliver its core regulatory, compliance, enforcement, licensing, numbering allocation and spectrum planning functions against the backdrop of a steadily increasing volume of transactions and heightened stakeholder expectations. This complex regulatory remit has, in the main, been managed with a low profile, without controversy and with sound judgement in applying resources to deliver outcomes.

During the 2013-14 year the ACMA processed some 9.98 million transactions, excluding the Do Not Call Register operations. Of this total, approximately 180,000 transactions were not automated and involved staff analysis and processing, representing a ratio of staff per transaction of 1:368<sup>2</sup>. What is an increasing level of transactional activity has been supported by a range of measures. They include investments in information technology systems to automate transactions and enable stakeholders to engage online, together with streamlining access points into the ACMA through a single point of contact to the ACMA Customer Service Centre. By adopting a risk-based approach to compliance and enforcement activities, the ACMA has been able to efficiently focus resources on addressing higher risk activities and it has outsourced selected regulatory administrative functions to realise quality and cost benefits.

The ACMA has also delivered major projects over a 10-year period that have supported progressive upgrades and access to new communications technologies in Australia. This work encompasses projects such as the discharge of the ACMA's role in relation to analog television switch-off, broadcast television spectrum re-stack and the digital dividend auction.

The ACMA has also been called on to implement programs to regulate the growth and risks of emerging forms of digital harm. These programs have included the implementation and further expansion of the Do Not Call Register, establishing new

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<sup>2</sup> A full set of 2014-15 transaction figures is not yet available.

programs such as the Australian Internet Security Initiative to address cyber risks from malware, and the delivery of the internationally award-winning cybersmart education programs. More recently in conjunction with the Department of Communications (DoC), the Office of the Children's e-Safety Commissioner (OCeSC) has been successfully established.

Stakeholders will have differing perceptions of the value and timeliness of the ACMA's achievements and of whether the appropriate balance has been struck in the way the ACMA has discharged its responsibilities. Some of these concerns reflect an increasingly sub-optimal and outdated legislative structure, as well as poorly calibrated powers that in some instances establish detailed procedural obligations, or lack appropriate escalation mechanisms and sanctions. Some reflect disagreement about the way the ACMA has gone about its work, and the decisions it has made. The ACMA has, and will continue to listen to feedback and criticism and respond wherever it can appropriately do so.

## Future-focused regulation and a future regulator

In looking to the future, the ACMA sees a continuing need for a communications regulator—one that has deep expertise to deal with the complex technology and commercial issues of the sectors it regulates, and with the capacity and powers to manage what is likely to be a changing and indeed very challenging environment over the next 10 years. In the second part of its submission, the ACMA responds to the review issues paper questions 1-10, 13, 23-26.

A practical design challenge for this review will be to ensure a future- focused agency is capable of both:

- > managing a transition period under which existing legislative structures remain in place, and
- > accommodating developments further driven by the move away from specialised legacy devices such as telephones and televisions towards general purpose, internet-enabled devices, the proliferation of new forms of content and services and the fragmentation of information and entertainment across multiple platforms.

The ACMA encourages the review to consider the design of a future-focused regulator based on five integrally linked design components:

- > **Remit**—this covers the breadth of the areas of economic and social activity that the regulator should have responsibility for regulating and is informed by an understanding of the current, transitional and future challenges facing the communications and media sectors.
- > **Desired outcomes**—the policy objectives that the regulatory scheme and the regulator should seek to deliver or facilitate through its actions within the remit.
- > **Intervention powers**—the range of intervention activities (including both 'hard' regulatory actions and 'soft' information, education and collaboration strategies) that the regulator should be able to undertake to deliver desired public policy objectives.
- > **Compliance and enforcement powers**—the powers available to the regulator to respond to individual or systemic failures to comply with regulatory interventions, and to encourage an environment of industry behaviour and compliance.
- > **Governance model and organisational disposition**—the style of regulator that is desired and given effect through a governance model and decision-making guidance that is externally guided or directed (such as legislation or by ministerial direction) and internally-developed by the regulator, regarding how the regulator should use its powers.

While the ACMA's existing remit might simply be described by reference to the scope of the principal legislation it administers, a useful way to look at **remit** is to consider the components of internet-enabled communications as a way to inform the future focus of regulatory intervention. In broad terms, the five key components of an internet-enabled economy can be seen as:

- > infrastructure
- > devices
- > services/apps
- > digital information/digital content and
- > users interacting with each of these elements.

This approach has the advantage of moving beyond the 'siloed' structures of existing legislation. It enables some analysis of those public policy concerns that relate to each of these enablers and whether those issues should appropriately be addressed by a sector-specific regulator. Many of the existing aspects of the ACMA's regulatory remit could be transitioned under these five components to provide a seamless connection between the current regulatory construct and any future regulatory design.

The ACMA considers that most of the existing communications and media public policy objectives are enduring and will remain very relevant in a future communications environment. However, the method for achieving these **desirable policy outcomes** is likely to require revision to support future technology and service developments as well as addressing the changing risk characteristics of the global, digital communications environment.

Achieving the relevant public policy outcomes for communications and content will require a future regulator with a base-level toolkit that provides **powers of intervention** to address issues in a relevant way. This is likely to include a set of rule-making powers—exercised both in collaboration with industry and consumers; as well as, where necessary, unilateral powers—directed towards facilitating market outcomes, protecting the operation of markets, providing consumer and community protections and mechanisms for addressing and redressing market failures.

The ability to undertake educational intervention will be important and other powers, including the capacity to undertake public inquiries, research and gather information, will be needed to facilitate informed and efficient regulatory decisions, and to draw industry attention to evolving challenges.

A future-focussed regulator will also require a coherent suite of **compliance and enforcement powers** that supports a graduated, proportionate response to a breach of regulation and which can be used to encourage future compliance.

The choice of regulatory decision-making structure or governance model will influence the way any future regulator exercises its powers. The ACMA has observed a range of governance models adopted both internationally and in Australia and there is an international consensus on the value of independent regulatory decision-making for the communications sector. Each of the different models carry design strengths and weaknesses, depending on factors such as the priority given by the government to the independence of decision-making and the degree to which commercial, industry and technical expertise is sought as part of a board or authority decision-making structure.

Noting the wide variation in possible governance structures, designing appropriate structures will be a matter for judgement rather than a strict adherence to any particular model. Clear guidance to the regulator on why particular design choices have been made can be of assistance in the future exercise of its decision-making powers.

# Part 1

# Overview of the ACMA

This chapter provides contextual information about the ACMA's role and accountability structure. It provides background details to inform the review's assessment of the ACMA's administrative and regulatory performance and the review's consideration of appropriate institutional design and structural arrangements for a future communications regulator.

## Role and functions

The ACMA was established in 2005 to be a converged regulator responsible for the regulation of broadcasting, radiocommunications, telecommunications and online content in accordance with:

- > *Australian Communications and Media Authority Act 2005*
- > *Broadcasting Services Act 1992*
- > *Radiocommunications Act 1992*
- > *Telecommunications Act 1997*
- > *Telecommunications (Consumer Protection and Service Standards) Act 1999*
- > other related legislation, including:
  - > *Do Not Call Register Act 2006*
  - > *Spam Act 2003*
  - > *Interactive Gambling Act 2001*.

## Structure and accountability

Three intersecting legislative frameworks establish the ACMA's structure and governance arrangements and define its regulatory and administrative decision-making arrangements and day-to-day operations. Any change to the ACMA must take into account the roles and objectives of each.

### ACMA as a statutory authority

The ACMA Act establishes the ACMA as a statutory authority, with the membership of the ACMA comprising the Chair, the Deputy Chair and at least one, and not more than seven other members (not including associate members).<sup>3</sup> Each member is appointed by the Governor-General.<sup>4</sup> Each associate member is appointed by the minister.<sup>5</sup> The ACMA's functions are outlined in Division 2 of Part 2 of the ACMA Act. As a discrete statutory agency, the ACMA may participate in legal proceedings.<sup>6</sup>

Regulatory decision-making is generally made at formal meetings (normally fortnightly) with matters being decided by a majority of members in attendance. Decisions may also be made by circular resolution. The ACMA may delegate any of its powers and functions to members and staff, with the exception of the non-delegable power to make, vary or revoke a legislative instrument and certain express decisions under the *Broadcasting Services Act 1992*. The overwhelming proportion of administrative, regulatory and other decisions are, in practice, made under delegation. The sheer

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<sup>3</sup> Section 19 of the ACMA Act

<sup>4</sup> Section 20 of the ACMA Act. See also the definition of 'member' in section 3 of the ACMA Act.

<sup>5</sup> Section 24 of the ACMA Act

<sup>6</sup> Section 18(1)(c) of the ACMA Act

volume of decisions required to be made means that the Authority retains for its decision-making matters of obvious national or public interest, sensitive or difficult broadcasting investigations matters involving precedent, or matters that cannot be delegated.

As with any regulatory decision-making body, the role of the Chair is to facilitate and manage the business of the Authority, including the performance of its functions and the exercise of its powers.

### **The ACMA as a PGPA Act Commonwealth entity**

The ACMA (including staff of the ACMA) operates as a non-corporate Commonwealth entity subject to the requirements of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Responsibility for governance and management of the ACMA resides with the Chair as the Accountable Authority in accordance with a central principle of that Act that an individual act as an Accountable Authority. As the Accountable Authority, the Chair has the power and responsibility to manage the ACMA's resources, including the power to enter into contracts on behalf of the Commonwealth.

The PGPA Act also imposes accountability reporting requirements on the Chair such as the preparation of a corporate plan, annual reports and audited financial statements. Under the ACMA Act, other Authority Members may not direct the Chair in the performance of his or her role as the Accountable Authority of the ACMA.

### **The ACMA as a Public Service Act agency**

ACMA staff members are engaged under the *Public Service Act 1999* and the Chair is the head of the statutory agency, with the rights, duties and powers of an employer for Australian Public Service (APS) employees. Some of the rights and duties of an employer are imposed under the common law. Included among the rights, obligations or duties imposed on an agency head specified under the Public Service Act are requirements to uphold and promote APS values, establish procedures for determining whether an APS employee has breached the Code of Conduct and impose sanctions, and comply with the directions of the Public Service Commissioner.

Decision-making as an APS agency head is informed by the obligation to uphold the APS Values and act in a manner that complies with the APS Code of Conduct.<sup>7</sup> The Chair's decision-making powers may also be limited by directions on certain matters issued by the Public Service Commissioner<sup>8</sup> and the Prime Minister.<sup>9</sup> However, the Chair cannot be directed by any minister in relation to a decision made about an individual<sup>10</sup> and, as noted above, the ACMA (the Authority) may not direct the Chair in his or her role as agency head.

### **The relationship between the ACMA, the PGPA Act entity and the Public Service Act agency**

In theory, there is potential for conflict between the ACMA and the Chair acting in his or her role as Agency Head (under the Public Service Act) or Accountable Authority under the PGPA Act. At its simplest, this may occur if the Chair makes decisions about human or financial resources that conflict with decisions made by the ACMA or

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<sup>7</sup> Section 14 of the Public Service Act

<sup>8</sup> Section 11 of the Public Service Act. The Public Service Commissioner's Directions are available at [www.apsc.gov.au](http://www.apsc.gov.au).

<sup>9</sup> Section 21 of the Public Service Act and [The Prime Ministers Directions](#)

<sup>10</sup> Section 19 of the Public Service Act

compromise the ACMA's ability to function or act effectively. In broad terms, the division of responsibility outlined under the ACMA Act contemplates that the ACMA (of which the Chair is but one member) will determine the ACMA's overall disposition and make the decisions required of it, with the Chair deciding how the agency's human and financial resources could best be used to achieve these objectives.

Experience suggests that whatever theoretical concerns may be raised by the division of statutory responsibility effected by legislation such as the ACMA Act, there have been in practice over the last decade no instances of conflict of purpose or interest, or confusion between these intersecting legislative arrangements.



# Resource management

This section sets out the ACMA's financial and resource management performance and some associated work management matters. The information is primarily concerned with the ACMA's performance as a public sector agency under its PGPA Act and Public Service Act accountability requirements. It gives information to assist the review in identifying and assessing where there may be scope for more effective and efficient delivery of systems, processes and funding arrangements to respond to the review Questions 17—22.

## Funding arrangements

The ACMA receives the majority of its revenue through appropriations from the Australian Government. In the 2015–16 financial year, the ACMA is funded by budget appropriations of \$71.85 million in base funding, (excluding funding of \$11.055m designated for the Office of the Children's e-Safety Commissioner (OCeSC), which is supported by ACMA staff and resources). In addition to the budget appropriation, the ACMA expects to secure own source revenue of \$0.9 million for the year as part of fee-for-service arrangements. The ACMA's average staffing level is 420 for the 2015–16 year, which includes staffing of the OCeSC.

The ACMA generates significant revenue for the Commonwealth through asset sales, cost recovery, taxes and levies (\$2.89 billion in administered revenue in 2014–15). However, with the exception of own source revenue, all of the revenue raised by the ACMA is returned to the Consolidated Revenue Fund and has no impact on the ACMA's operational or capital funding.

## Financial performance

Since its formation in 2005, the ACMA has sought to manage its financial and other resources prudently. A small surplus or deficit has been delivered over each of the last 10 years, with a surplus of \$0.2m over the life of the ACMA (see Table 1). This result has been achieved by continual review and restructuring of the ACMA to meet the outcomes and priorities required by the government within the budget appropriation.

The ACMA sought and received prior approval from finance ministers for operating losses in four out of the six years in which a loss was recorded. The reasons for small losses in each of those six years have largely been driven by redundancy payments associated with the winding down of the significant digital dividend work programme from its peak in 2011–12, asset write-offs and changes made by the Department of Finance to the valuation of employee leave provisions. For each of its 10 years, the ACMA has received unqualified audit opinions from the Australian National Audit Office with regard to its financial statements.

The ACMA's base funding has declined by 18 per cent in nominal terms comparing 2015–16 to 2005–06. There have been considerable fluctuations in the funding profile, most notably from the new and terminating New Policy Proposal (NPP) funding associated with specific initiatives such as the digital television switchover and digital dividend auction. The ACMA's practice is to absorb as- required additional unfunded cost pressures arising from new initiatives or heightened expectations. The most recent example of this flexibility is the absorption of unfunded costs associated with supporting the Office of the Children's e-Safety Commissioner, the establishment of the Digital Transformation Office and the ACMA's reporting role in relation to telecommunications data retention.

**Table 1: ACMA 11 Year Funding Profile - 2005-06 to 2015-16 (\$m)**

Budget Year >	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15*	2015-16*
Appropriations (Base)	71.454	74.656	72.208	75.526	76.726	62.903	67.609	64.128	63.911	63.161	58.863
add NPPs	1.403	7.433	25.021	19.790	31.497	36.032	35.917	35.143	28.476	26.072	12.983
Office of E-Safety Commissioner (OESC)											11.055
Approved loss		2.592	0.049			1.600	0.531				
<b>Total Appropriation</b>	<b>72.857</b>	<b>84.681</b>	<b>97.278</b>	<b>95.316</b>	<b>108.223</b>	<b>100.535</b>	<b>104.057</b>	<b>99.271</b>	<b>92.387</b>	<b>89.233</b>	<b>82.901</b>
Other revenue	3.971	2.554	1.860	2.329	2.977	1.029	1.050	1.976	2.916	0.900	0.900
Minus OCeSC											-11.055
<b>Total</b>	<b>76.828</b>	<b>87.235</b>	<b>99.138</b>	<b>97.645</b>	<b>111.200</b>	<b>101.564</b>	<b>105.107</b>	<b>101.247</b>	<b>95.303</b>	<b>90.133</b>	<b>72.746</b>

<b>Expenses</b>	<b>73.798</b>	<b>86.583</b>	<b>99.128</b>	<b>98.971</b>	<b>109.037</b>	<b>111.216</b>	<b>112.769</b>	<b>111.252</b>	<b>102.527</b>	<b>98.625</b>	<b>81.774</b>
Employee expenses	41.670	44.267	54.650	57.334	62.570	68.939	71.270	71.467	65.263	66.346	54.163
Employee percentage of total expenses (excluding depreciation)	61%	54%	58%	61%	60%	66%	67%	69%	70%	74%	74%
Supplier and other expenses	26.426	37.305	40.287	37.416	41.441	35.275	35.155	32.397	28.629	22.451	18.583
Depreciation	5.702	5.011	4.191	4.221	5.026	7.002	6.344	7.388	8.635	9.163	9.028
Surplus/(Loss)	3.030	0.652	0.010	-1.326	2.163	-9.652	-7.662	-10.005	-7.224	-8.492	-9.028
add depreciation loss						7.002	6.344	7.388	8.635	9.163	9.028
<b>Net Surplus/Loss</b>	<b>3.030</b>	<b>0.652</b>	<b>0.010</b>	<b>-1.326</b>	<b>2.163</b>	<b>-2.650</b>	<b>-1.318</b>	<b>-2.617</b>	<b>1.411</b>	<b>0.671</b>	<b>0.000</b>

<b>Revenue Raised</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15*</b>	<b>2015-16*</b>
<b>Total Administered Income</b>	<b>751.247</b>	<b>703.891</b>	<b>708.454</b>	<b>757.142</b>	<b>687.683</b>	<b>580.135</b>	<b>646.375</b>	<b>2,022.046</b>	<b>656.983</b>	<b>2,819.332</b>	<b>755.081</b>
Other Revenue (BLF, TIL, ACLC, ANC, etc.)	751.247	703.891	708.454	757.142	687.683	580.135	646.375	538.669	656.983	680.857	687.481
Sale of assets (Spectrum - Digital Dividend)								1,483.377		2,138.475	67.600

\*Note: 2014-15 and 2015-16 budget figures are based on estimates and includes the Office of the Children's e-Safety Commissioner budget. The surplus excludes an estimated underspend in 2014-15 of \$1.274m for the Office of the Children's e-Safety Commissioner to be rolled over as funding for 2015-16 (with an application to DoF for an approved loss to be prepared for 2015-16).

In managing these funding variations, the ACMA has put in place a number of initiatives including a rolling five-year analysis of affordable staffing profiles, continuous major restructuring to prioritise activities and rolling flexible recruitment to manage the staffing profile of the agency, address fluctuations in workload and provide surge capacity (wherever possible) to deliver outcomes to mitigate emerging harms.

This has allowed the ACMA to reduce its fixed-cost base, not only through staffing reductions but through the rationalisation of accommodation and other fixed costs. Fixed costs (such as accommodation lease costs) have reduced as a proportion of ACMA total costs, from 10 per cent of total expenditure in 2005–06 to 7.8 per cent in 2014–15. This reduction has been achieved through prudent long term management of leases, relocation of staffing, renegotiation with property owners and appropriate closure of regional offices in line with more mobile field operations made possible with new digital equipment and evolving field operations models.

## Changes in organisational profile to meet priorities

At its inception, the ACMA had an organisational structure of five divisions with the focus on industry inputs and industry outputs along with strategy and coordination and legal services. During its peak funding years of 2010–11, the ACMA required a six division structure to serve an expanding work program and changing government priorities. The six division structure covered communications infrastructure, content, consumer and citizen; digital economy and digital transition initiatives. As NPP funding and base appropriation decreased, the ACMA initiated an internal review to restructure the organisation on two subsequent occasions to create an efficient and sustainable platform for the future (see Table 2).

**Table 2: ACMA Division Structure**

2005–06 ACMA divisions	2010–11 ACMA divisions	2014–15 ACMA divisions
Corporate	Communications Infrastructure	Communications Infrastructure
Industry Outputs	Content, Consumer and Citizen	Content, Consumer and Citizen
Industry Inputs	Digital Economy	Legal Services
Legal Services	Digital transition	Corporate and Research
Strategy and Coordination	Legal Services	
	Corporate Services and Coordination	

The current structure comprises four divisions, ten branches and sixty-four sections. From 2015–16 and beyond, the ACMA's integrated budget and business planning framework will enable a continued refinement of the organisational structure to further efficiently align funding with outcomes (Table 3).

**Table 3: ACMA 10-year Organisational Profile**

	2005 -06	2006 -07	200 -08	2008 -09	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16
<b>Division</b>	5	6	6	6	6	6	6	6	5	4	4
<b>Branch</b>	18	18	18	14	15	16	15	15	14	10	10
<b>Section</b>	83	84	95	95	96	92	86	84	76	64	64
<b>Average staffing level</b>	477	501	554	554	591	591	575	559	488	450	409

The allocation of resources between divisional structures has changed significantly over time in light of evolving industry characteristics, new areas requiring regulatory attention to mitigate particular risks or harms, and the varying priorities of the government of the day. While the ACMA has and will continue to seek to achieve savings through productivity gains, inevitably sometimes difficult decisions must be made regarding the scale of some activities or whether an activity should continue at all. In recent years, the ACMA has chosen to make reductions in the following areas:

- > field activity, frequency assignment and licensing (including a reduced emphasis on the allocation of new long-term and temporary community broadcasting licences and reduced scope in undertaking complaint investigations)
- > international engagement presence, including the cessation of the production of the International Frequency Information Circular
- > supply-side and other research that has historically complemented the ACMA's statutory research and reporting obligations
- > general consumer advice on communications technologies, including wireless technology developments
- > proactive programs to support the digital transition work program to the point where the ACMA has now reverted to a complaints-based approach
- > legal resources for policy and regulatory analysis.

A wide range of other activities have been reduced to their minimum legislative or regulatory requirement, including administrative elements of the Do Not Call Register (involving a reduction in awareness campaigns and telemarketing investigations), a reduced emphasis on digital radio planning and savings in the number and frequency of engagement forums used to communicate with industry, consumer, citizen and other stakeholder groups. The ACMA has adopted more tailored communications using digital publishing to reach specific stakeholder groups as an alternative means of engagement.

# Regulatory activities

The ACMA has a complex regulatory remit spanning some 26 Acts and involving the administration of over 400 regulatory instruments. In broad terms, the ACMA's responsibilities include:

- > promoting self and co-regulation and competition in the communications industry while protecting consumers and other users
- > fostering an environment in which broadcast media respect community standards and respond to audience and user needs
- > managing access to radiofrequency spectrum
- > representing Australia's spectrum, satellite and communications interests internationally.

Within the context of its legislative remit, the ACMA has adopted a three-part regulatory strategy which focuses on communication and facilitation, with regulation only when ultimately necessary or required by law.

In the exercise of its regulatory powers and functions, the ACMA is guided by the policy objects of its principal legislation.

In the telecommunications sector, a key policy intent is that the sector be regulated in a manner that 'promotes the greatest practicable use of industry self-regulation' and 'does not impose undue financial and administrative burdens on industry participants' while providing a regulatory framework that promotes the long term interests of end-users and efficiency of the industry.<sup>11</sup>

Under the *Broadcasting Services Act 1992*, a key policy intent is that the broadcasting and internet sectors be regulated in a way that 'enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens' on industry.<sup>12</sup>

The ACMA's telecommunications regulatory functions cover licensing, service provider rules, registration of industry codes and determination of industry standards, technical regulation, national interest matters, telephone numbering administration and international cooperation.

Its broadcasting services functions cover broadcast licensing and planning, media control rules, registration of industry codes and standards, and complaints and investigations functions.

The relevant legislative schema for telecommunications and broadcasting requires the ACMA to give industry an opportunity to develop co-regulatory solutions before other forms of intervention are considered, but underpinned by clear legislative obligations, with the ACMA maintaining what are essentially reserve powers to intervene where co-regulation has not adequately addressed issues of real concern.<sup>13</sup>

The *Radiocommunications Act 1992* establishes goals to maximise the overall public benefit derived from using the spectrum resource. An underlying aim of the Act is to balance the utility of market mechanisms as a means of promoting the efficient allocation and use of spectrum, against the need to make adequate provision for uses

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<sup>11</sup> Section 4 *Telecommunications Act 1997*.

<sup>12</sup> Sub-sections 4(2)(a) and 4(3)(a) *Broadcasting Services Act 1992*.

<sup>13</sup> See Part 6, *Telecommunications Act 1997* and Part 9, *Broadcasting Services Act 1992*.

of spectrum such as defence and emergency services, in relation to which full marketization may be inappropriate.

Among a number of other Acts, the ACMA also has regulatory responsibilities for anti-spam and the Do Not Call Register Scheme.

Where the ACMA has discretion in the application of its powers, it has sought to exercise these powers using a graduated and strategic risk-based approach to both its powers of intervention and associated compliance and enforcement.

In discharging these regulatory functions, the ACMA has established other support functions that include legal advisory services, a research capability to support evidence-informed decisions and its corporate support functions of ICT, finance and people management.

This section provides information about the administration of the ACMA's regulatory remit. It responds to the issues paper questions 11 and 12, examining the ACMA's performance against the recently introduced Regulator Performance Framework and its contribution to progressing regulatory reform initiatives.

## **Regulatory performance**

A significant feature of Australian communications and media regulation is the use of industry co- and self-regulatory arrangements in a number of areas of the broadcasting, telecommunications and online sectors.

The diverse communications industry with which the ACMA interacts comprises over 160,000 radiocommunications licensees, more than 3,000 broadcasting licensees, more than 200 licensed telecommunications carriers, more than 1,350 telecommunications carriage service providers, internet service providers and over 200 Voice over Internet Protocol (VoIP) providers. Citizens and consumers interact directly with the ACMA across a wide range of activities using ACMA systems to lodge enquiries and complaints, and in direct dealings with the ACMA staff undertaking complaint investigations and resolving licensing and payment enquiries.

The depth of engagement with this diverse group of stakeholder varies — from transactional activities (often managed online or by telephone), to deeper engagement that spans information-gathering to gain an understanding of the environment of regulated entities, as well as information provision about relevant regulation, and identifying the upcoming challenges faced by all stakeholders in the changing communications environment.

### **Regulator Performance Framework**

From the start of the 2015–16 year the ACMA has been required to conduct a self-assessment and report against the six key performance indicators (KPIs) established for all Commonwealth regulators under the Regulator Performance Framework (RPF). The first reporting cycle is to be completed by December 2016, covering the 2015-16 financial year and is intended to provide baseline data for benchmarking future performance. The first reporting cycle also requires stakeholder engagement and validation of the performance assessment.

For the purposes of responding to the review issues paper, the ACMA has nonetheless prepared a summary performance report against these KPIs based on available 2014–15 performance data and included time-series performance data for earlier years where that was available against the metrics outlined in the ACMA's self-assessment methodology recently approved by the minister (see Appendix 1). Within

the timeframe for responding to the review, this necessarily means that the assessment against the RPF is more limited than will be the case when undertaken across a full reporting cycle.

A snapshot of the 2014–15 performance against each of the six KPIs is outlined below. This snapshot demonstrates how, through its programs and activities, the ACMA has sought to:

- > minimise the impact of regulatory burden on regulated entities
- > increase the transparency and accountability of the ACMA's regulatory decision-making
- > contribute to the continuous improvement of regulatory frameworks.

**RPF KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities**

**RPF KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks**

**ACMA self-assessment of performance**

Over 10 years, the ACMA has worked to minimise the cost imposed to, and regulatory burden on, its regulated community through efficiency improvements in transactional processing and IT upgrades, decision-making processes and improvements in its own internal KPIs. Since 2011, the ACMA instigated process improvements across key areas aimed at reducing transactional processing times. The ACMA's commitment to ensuring regulatory frameworks permit the efficient operation of regulated entities is shown by its contribution of over \$53 million in red-tape savings at June 2015.

Outcomes delivered by the ACMA to its regulated population cover better regulation administration (by operating a continuous improvement program aimed at operational and transactional activities), and better regulatory design (a broad regulatory reform program that addresses deeper reform and regulatory cost savings). Since September 2013, the ACMA has:

- > reviewed and remade 46 instruments
- > reviewed and revoked/allowed to sunset 131 instruments
- > reviewed and streamlined 23 instruments
- > conducted 72 consultations on changes to regulation
- > provided approximately 56 separate pieces of advice to DoC on regulatory reform initiatives.

Continuous improvement of regulatory frameworks is also evidenced in the ACMA's release of five key research reports on regulatory reform since 2011, contribution to five separate government policy reviews since 2013, and self-initiated reforms in key areas of numbering, eligible revenue returns, local number portability and streamlining record-keeping and reporting arrangements.

**RPF KPI 2: Communication with regulated entities is clear, targeted and effective**

**RPF KPI 5: Regulators are open and transparent in their dealings with regulated entities**

**ACMA self-assessment of performance**

A multi-layered stakeholder engagement strategy has been designed to target different forms of communications to regulated entities and enhance transparency of decision-making, indicate areas of regulatory attention and provide information to regulated entities about their rights and obligations. Achievements in delivering outcomes are evidenced by:

- > Publication of regulatory guides, industry registers and online statistics for investigations, compliance and enforcement activities, and consultation participation across all communications sectors.
- > Release of over 200 consultation papers (since 2011), the execution of over 170 strategic communications campaigns since 2012, initiation of annual stakeholder satisfaction survey in 2014, and the introduction of the ACMA's Customer Service Centre in 2014.
- > Executive level engagement through the Targeted Outreach Program (708 communications provided in 2014).
- > Publication of investigation and enforcement outcome reports for investigations concluded in 2014 (66 television broadcasting and 46 radio broadcasting complaint investigations, 6 spam enforcement outcome reports and 3 formal warnings and 1 infringement notice investigation outcome report for Do Not Call enforcement outcomes) and 17 telecommunication investigation reports for the April 2013-May 2015 period,
- > Evidence-gathering on industry conditions and reform options through collaborative partnerships. The ACMA convenes formal advisory committees, holds regular information-provision and exchange events ('tune-ups'), and participates in industry reference panels and think tanks.



<b>RPF KPI 3: Actions undertaken by regulators are proportionate to the risk being managed</b>
<b>RPF KPI 4: Compliance and monitoring approaches are streamlined and co-ordinated</b>
<b>ACMA self-assessment of performance</b>
<p>Delivering outcomes for regulated entities through the operation of more efficient and effective regulatory frameworks and associated compliance activities is a key goal for the ACMA.</p> <p>Achievements include:</p> <ul style="list-style-type: none"> <li>&gt; Since 2012, the ACMA's priority compliance areas (PCA) program for radiocommunications and telecommunications technical regulation has publicised and targeted 12 areas of regulatory concern, maximising efficiency and reducing the administrative burden on industry. The priority compliance areas are reviewed annually.</li> <li>&gt; Publication of the ACMA compliance and enforcement policy, providing a graduated set of remedies to manage risk and harms and setting out the ACMA's proportionate response approach. The ACMA also has guidelines, discussion papers and current compliance priorities available across six key areas within its remit.</li> <li>&gt; In 2014, the ACMA's business process improvements were estimated to provide compliance savings of over \$0.48 million annually for industry.</li> <li>&gt; Use of co-operative arrangements to reduce information requirements and compliance burden on industry—the ACMA has over 55 external agreements for co-operation and information-sharing in place.</li> <li>&gt; Working co-operatively with industry to manage harms for the public good—the ACMA has responsibilities across 37 industry codes, and in 2014–15, undertook 96 compliance investigations related to many of those codes.</li> <li>&gt; During 2014, the ACMA was granted the discretion as to the investigation of complaints about broadcasting matters. In the period 17 October 2014 to 30 June 2015, the ACMA applied this discretion to not investigate in 35 instances or approximately 30 per cent of cases. The proportion of matters not investigated or dealt with in a summary manner is expected to rise significantly in the short to medium term.</li> </ul>
<b>Identified areas for improvement</b>
<ul style="list-style-type: none"> <li>&gt; Increased use of published forward work programs and consultation plans so stakeholders can plan and target resources.</li> <li>&gt; New metrics and targets in assessing efficiency.</li> <li>&gt; Earlier stakeholder engagement on regulatory initiatives and reform.</li> <li>&gt; The planned introduction of online consultation engine in late 2015 to provide an alternative simpler avenue for stakeholder engagement in regulatory processes.</li> <li>&gt; Improving planning, transparency and accountability of decision-making resulting from consultation processes.</li> </ul>

To complement the RPF analysis, in the following discussion the ACMA has reflected on the core questions posed by the RPF that require a regulator to demonstrate how it has minimised the impact of regulatory burden on regulated entities in the implementation and delivery of its regulatory remit, improved its transparency and accountability to regulated entities and identified opportunities for continuous improvement.

This discussion responds to the review issues paper question 11 and examines regulatory performance across key regulatory functions of the ACMA, with a particular focus on the efficiency and effectiveness of the ACMA's regulatory operations.

## Efficiency—managing high transactional volumes

While the organisation's budgetary focus has continually been realigned to meet emerging priorities, the ACMA remains focused on delivering its core compliance, enforcement, licensing, numbering allocation and spectrum planning functions amongst its other public interest outcomes. These functions involve a high, and in some cases, a steadily increasing volume of transactions.

While the issue of licences has remained relatively stable over the past five years, there has been a significant increase in complaint and investigations volumes, particularly in relation to unsolicited communications. More recently, malware, including phishing and ransomware, has grown to become the predominant cybercrime threat in Australia<sup>14</sup>.

During the 2013-14 year the ACMA processed some 9.98 million transactions, excluding the Do Not Call Register operations. Of this total, approximately 180,000 transactions were not automated and involved staff analysis and processing, representing a ratio of staff per transaction of 1:368 (see Table 4). In broad terms, the types of interactions that the ACMA has dealt with vary across:

- > simple transactions such as information provision and some registrations that are able to be automated
- > more complex interactions between ACMA staff and regulated entities and citizens that involve complaint taking, information-gathering and investigations resolution where these activities are able to be delegated under legislation
- > matters that require Authority decision, because of complexity, the level of public interest or where the matter is not able to be delegated. In the 2014 calendar year, the Authority made 278 non-delegated decisions.

To manage these high transactional volumes the ACMA has increasingly invested in information technology systems to automate transactions and enable stakeholders to engage online that transactions can be performed at any time.

It has also centralised the contact points into the ACMA to provide a single point of contact through the ACMA Customer Service Centre (CSC). The CSC responded to over 30,000 inquiries in the 2014–15 financial year. Prior to the CSC initiative, the ACMA had upwards of 100 different entry points into the ACMA.

These measures aim to provide a consistent standard of service for people interacting with the ACMA while reducing processing times for industry and citizens and reducing the ACMA's own processing costs.

The ACMA has also adopted a risk-based approach to compliance and enforcement activities that has more efficiently focused resources addressing higher-risk activities. For example, the use of risk-based priorities has increased the efficiency of the ACMA's radiocommunications compliance program, with the ACMA achieving a reduction in the overall number of radiocommunications investigations conducted by better targeting effort resulting in an increase in the number of warning and infringement notices issued. This has flow on cost benefit for industry, as a more targeted investigation program reduces the administrative burden on compliant industry participants, while reducing the most significant harms.

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<sup>14</sup> Australian Cyber Security Centre [2015 Threat Report](#), p.14.

**Table 4: Transaction Volumes**

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
<b>Do Not Call Register (DNCR)</b>						
DNCR numbers Submitted (list washing) (billions)	1.08	1.12	1.19	1.25	1.11	5.75
DNCR numbers listed (cumulative millions)	5.04	6.28	7.73	8.74	9.6	
<b>ACMA broadcasting complaints and investigations</b>						
Written complaints and enquiries received	1,676	1,512	2,273	2,178 <sup>1</sup>	1,593	9,232
Investigations completed	189	197	231	212	180	1009
Investigations resulting in a breach finding	74	72	71	67	45	329
Investigations resulting in a non-breach finding	111	115	155	135	132	648
<b>Telemarketing complaints received</b>						
Complaints received	16,930	24,480	29,118	30,324	31,797	132,649
Business Compliance Actions taken(warning & advisory letters)	907	1343	1099	1057	1,054	5,460
Investigations	13	11	17	11	6	58
<b>Unsolicited communications–Spam</b>						
Spam complaints, reports and enquiries	6,828	31,396	226,816	412,725	349,319	1,027,084
Business Compliance Actions taken (informal warning letters)	1,172	2,041	4,206	7,105	4,697	19,221
Investigations	20	9	12	10	10	61
<b>Australian Internet Security Initiative</b>						
Daily average computer infections reported	11,215	16,464	16,517	16,034	25,835	86,065
Annual infections reported (millions)	4.1	6	6	5.8	9.4	31.3
Phishing reports	-	-	11,806	33,586	46,393	91,785
<b>Spectrum licensing</b>						
Apparatus licences Issued	11,259	11,507	13,882	12,430	13,298	62,376
Apparatus Licences renewed	144,195	151,277	150,291	141,342	130,985	718,090

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
Apparatus licence (in total)	157,330	158,090	163,270	159,516	158,391	
<b>Telecommunications licensing</b>						
Carrier Licences issued	19	18	15	21	22	95
Nominated carrier declarations issued	4	4	2	2	5	17
<b>Radiocommunications licensing compliance</b>						
Radiocommunications-related investigations	75	139	143	464	339	1,160
Advice notices issued	3	31	35	19	6	94
Warning notices issued	6	33	77	157	120	393
Infringement notices	0	17	0	1	11	29
Notices unlicensed operation of a transmitter	42	52	130	189	116	529
LPON investigations	26	4	6	9	5	41
<b>Radiocommunications interference management</b>						
Radio Interference Complaints	536	465	497	518	398	2,014
Broadcasting reception interference complaints	365	366	396	413	663	2,203
Site inspections	214	294	727	770	278	2,283
Advice notices issued	114	230	250	206	138	938
Warning notices issued	62	30	67	171	220	550
<b>Radiocommunications audits of registered suppliers</b>						
Audits conducted	313	243	26	51	111	744
Audits failed	124	59	4	14	21	222
<b>Technical regulation—standards and labelling compliance</b>						
Written Enquiries	2,951	2,965	3,000	3,529	NA	12,445
Telephone Enquiries	2,401	1,881	1,804	2,912	NA	8,998

1. This does not include 2,680 complaints and enquiries received about 2DAY's Summer 30 program broadcast on 4 December 2012.

Note: Sum of categories for ACMA complaints and investigations do not equal to total number of investigations completed due to the exclusions of completed investigations with no finding; for example where the complaint has been withdrawn."

## Efficiency—reducing the cost of regulation to the communications and media sectors

The cost of regulation borne by regulated entities comes in a number of forms. Regulation itself will, in some cases, constrain commercial action in order to deliver public good objectives. This submission has elsewhere noted the efforts the ACMA undertakes to fulfil its statutory obligation to administer its responsibilities in a way which imposes least cost on the industry.

Secondly, regulated entities will need to implement internal measures to ensure they are aware of, and comply with, relevant regulatory rules. Again, this submission has noted steps taken by the ACMA to reduce regulatory compliance costs by revoking redundant instruments, reviewing and where possible, simplifying instruments and reducing compliance reporting obligations.

Thirdly, in a number of areas within the ACMA's remit, cost recovery arrangements mean that regulated entities contribute to, or pay in full, the costs of the administration of regulation. Efficiencies achieved by the ACMA therefore have a direct impact on the proportion of regulatory costs recovered from industry. The following description of the current scope of cost recovery activities is intended to provide background information for discussion later in the submission about alternative funding models for the regulator, where one of the common alternatives in use is cost recovery.

In accordance with the government's cost recovery policy and guidelines, and where it is cost effective, the ACMA seeks to charge individuals and firms for the costs of providing an activity. There are currently three sets of cost recovery charges that apply to the sector:

- > The Annual Carrier Licence Charge (ACLC) established under the *Telecommunications (Carrier Licence Charges) Act 1997* (the Act). The charge is recovered from participating telecommunications carriers and recovers the costs incurred by the ACMA and the Australian Competition and Consumer Commission in regulating the telecommunications industry, the Australian Government contribution to the budget of the International Telecommunication Union (ITU) and grants likely to be made under section 593 of the Telecommunications Act. Reductions in the ACMA's costs of its activities flow directly to industry in a reduced ACLC.
- > Do Not Call Register subscription charges. The costs of maintaining the Register are directly related to the service being provided to telemarketers and fax marketers which allows them to check numbers against the Register. For this reason subscription fees have been set by the ACMA to recover the direct costs of operating the Register
- > Fee-for-service user charges directly related to the provision of a service to an individual or firm and are based on an hourly rate, which is currently \$197. This hourly rate was established during 2011–12 financial year. The ACMA does not apply indexation to its cost recovery fees. These fee-for-service user charges currently apply to the ACMA's allocation and issue of radiocommunications licences and telephone numbers and radiocommunications device testing.

The amount that any particular person or company pays under the Do Not Call Register and under fee for service charges is determined by the level of activity requested by the telemarketers in the case of Do Not Call Register or by the individual in fee for service charges—the ACMA's activities are not a cost driver.

The ACMA may only recover the direct costs of operating the register. Costs that are currently excluded include register procurement, transition and establishment costs, consumer education costs and the ACMA's regulatory costs in monitoring and

enforcing compliance with the DNCR Act. Cost recovery expenses have varied over time reflecting changes to the ACMA's hourly wage rate, combined with reductions in the contract fee for the register operator (see Table 5).

**Table 5: Do Not Call Register Expenses and Revenues 2010-11 to 2013-14**

Activity	2010-11	2011-12	2012-13	2013-14	Total
Expenses	\$3.27m	\$2.50m	\$2.72m	\$2.87m	\$11.36m
Revenue	\$2.61m	\$2.90m	\$3.24m	\$3.30m	\$12.05m
Balance	\$(0.66)m	\$0.40m	\$0.52m	\$0.43m	\$0.69m

In the case of the Annual Carrier Licence Charge (ACLC), the ACMA's proportion of the total costs of regulating the industry has been reducing over time. The small increase in 2014-15 is attributable to the review of telecommunications labelling regulation which realised \$1.58 million per annum in reduced industry costs, updates to carrier licence application forms and websites.

In addition the ACMA reviewed its suite of online material designed to help industry and consumers with the transition to the National Broadband Network. The trend in reduced costs reflects the flow-through of cost efficiencies made by the ACMA, while the total cost to industry has remained relatively stable over this period (see Table 6). Further discussion of cost recovery as one alternative funding model for regulatory activities can be found later in this submission.

**Table 6: Annual Carrier Licence Charge Revenue 2009-10 to 2013-14**

Act Provisions	Cost Component Details	2009-10 (\$m)	2010-11(\$m)	2011-12 (\$m)	2012-13 (\$m)	2013-14 (\$m)	2014-15 (\$m)
15(1)(a)	ACMA's Cost	23.607	21.839	21.519	21.053	19,210	19.654
15(1)(b)	ACCC's Cost	11.767	12.223	12.947	13.815	15.005	14.975
15(1)(c)	Contribution to ITU (DoC)	1.922	1.604	1.511	1.680	1.601	1.860
15(1)(ca)	Telco consumer protection codes development cost	0.252	0	0	0.210	0.321	0
15(1)(d)	Grants for consumer rep program (DoC)	2.000	2.032	2.077	2.127	2.166	2.164
<b>Total</b>		<b>39.548</b>	<b>37.698</b>	<b>38.054</b>	<b>38.885</b>	<b>38.653</b>	

## **Effectiveness—regulatory administration and implementation**

Over the past 10 years the government of the day has asked the ACMA to implement major projects including:

- > establishing the Do Not Call Register
- > managing (together with DoC) the analog television switch-off, the broadcast television spectrum re-stack and conducting the digital dividend auction
- > establishing new programs such as the Australian Internet Security Initiative to address cyber risks from malware
- > providing cyber-safety education, including delivering the internationally award-winning cybersmart programs and more recently the establishment of the Office of the Children's e-Safety Commissioner.

All were delivered on or ahead of time and on budget.

In addition to these higher profile projects, the ACMA's management of its complex regulatory remit has been customarily successful and without controversy. The following analysis provides perspective on the outcomes delivered under the ACMA's day-to-day administration of its regulatory functions.

### **Facilitating access to public resources for industry**

A large component of the ACMA's role is to facilitate access to the resources that enable communications and media infrastructure and services. The ACMA's public resource management functions cover the allocation and issue of telephone numbers and spectrum planning, allocation and licensing.

In 2010 the ACMA commenced a review of telephone numbering arrangements to establish plans to prepare for shifts in demand and future growth and to address a risk that the supply of telephone numbers in Australia might run low.

Over the period 2009–10 to 2014–15, the ACMA issued over 34.7 million telephone numbers, significantly streamlined regulation with the removal of over 150 pages of redundant numbering regulation, while a new outsourced arrangement for numbering administration and allocation was established to provide an automated numbering allocation and administration system as a way to improve the efficient delivery of Australia's numbering services.

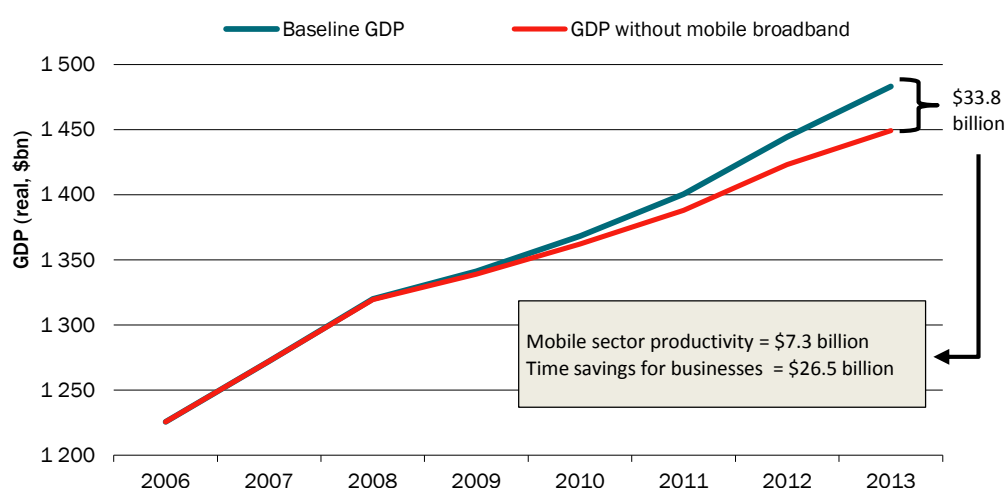
Spectrum represents a critical public resource managed by the ACMA with increasing importance to the digital communications environment. Since 2005 the ACMA has undertaken many high profile spectrum replanning and allocations processes.

These include the 2013 digital dividend auction of spectrum internationally harmonised for advanced mobile broadband in the 700 MHz and 2.5 GHz bands. It included the ongoing review and reallocation (in conjunction with DoC) of the expiring 15-year spectrum licences for mobile telephony, satellite and wireless broadband services and the ongoing reform of the intensively used 400 MHz band that accommodates a wide range of government and commercial land mobile service users. In addition to these relatively high profile projects, the ACMA has also administered an extensive program of detailed spectrum band planning to allocate spectrum to its highest value use, including public good uses where relevant.

**Case study: Promoting regulatory certainty and facilitating investment and innovation in communications services**

ACMA forward-planning documents, including the Five-year Spectrum outlook and the mobile broadband strategy, play a key role in promoting regulatory certainty for industry. Effective spectrum management is crucial for the delivery of services such as mobile broadband, where long-term planning, international co-ordination and significant industry investment is needed. A recent ACMA-commissioned study found that mobile broadband services alone increased Australia's economic growth by 0.28 per cent each year from 2007 to 2013, resulting in an increase in Australia's economic productivity of \$33.8 billion in 2013 (see Figure 1). The study also estimated that mobile broadband increased the spending power of each Australian by \$652 in 2013.

**Figure 1: Economic Impact of Mobile Broadband**



Source: Centre For International Economics [The economic impacts of mobile broadband on the Australian economy from 2006 to 2013](#), published 2014

Equally important is the lower profile but high transaction activity associated with the allocation of apparatus licences and the class licensing regime. Over the past five years, the ACMA has issued over 750,000 apparatus licences that support 21 different types of services. At the same time, 13 different types of class licences provide access to spectrum on a shared basis with no licensing fee for devices where the costs of individual authorisation would outweigh any benefit.

Through a significant IT investment, the ACMA is renewing its outdated radiocommunications licensing and frequency assigning toolset by moving to an automated system (known as HELM), which already provides an electronic lodgement facility and business-to-government system for the registration of devices under spectrum licenses.

Apparatus licences will shortly be available through this system, with early stakeholder testing promising to deliver reduced processing times. Extending the system to apparatus licences, of which there are more than 150,000, will provide a platform for further efficiencies and cost reductions for industry and government by enabling the online management of licences from the first half of 2016.



### **Revenue collection providing a return on the use of public resources**

Over 10 years, the ACMA has collected \$10.33 billion in revenue for the Commonwealth, from asset sales such as spectrum auctions, but also from six industry revenue streams that comprise a mix of resource taxes, indirect cost recovery charges and revenue-based levies.

### **Harmonised standards reducing cost and time to market for equipment supply**

The ACMA engages internationally to advance Australia's national interests in communications and media issues. This is a critical national interest function, involving ongoing communication with other jurisdictions, working in international forums to facilitate internationally harmonised standards and arrangements, and working with other jurisdictions to enforce regulation. The direct benefits of this engagement manifest in a number of important ways.

The ACMA's work in international forums to achieve harmonisation of standards has direct benefits for the industry and for consumers. Encouraging the adoption of internationally-harmonised standards by communications standards-making bodies, reduces the cost of supplying radiocommunications and telecommunications equipment to the Australian market.

Noteworthy is the regional adoption in 2012 of the Asia-Pacific Telecommunity's APT 700 MHz band plan which was developed and promoted by the ACMA.

By collaborating and harmonising with Australia's Asia-Pacific neighbours, the ACMA ensured that the world's manufacturers of mobile phones catered for the Australian market, providing economies of scale that gave Australian consumers greater choice of handsets and lower handset costs. The available economies of scale in handset manufacturing as a result of international harmonisation were estimated to generate economic benefits in Australia of \$207 million per annum. Forty-two countries are now allocating, committed to or recommending the use of the APT 700 MHz band plan for advanced wireless broadband services in their jurisdictions.

The globalisation of information and communications has meant that working cooperatively with regulators in other jurisdictions to address online risks has grown in importance with it becoming increasingly necessary to supplement more traditional, domestically-focused regulatory strategies with corresponding international strategies.

### **Facilitating new telecommunications services while delivering improved customer service outcomes**

Reflecting the service innovations and structural changes that have occurred in the telecommunications industry over the past decade, the ACMA's telecommunications safeguards work has evolved in line with the changing nature of risks and harms.

Facilitating new services while both regulating where necessary to ensure compliance with existing obligations, and forbearing to act where innovations have meant legacy regulation lacked utility, are key strategies used in this element of the ACMA's remit. As an example, the ACMA has exercised forbearance in relation to geographic numbering requirements to facilitate innovative VoIP services in Australia.

The ACMA has also removed or reduced compliance reporting requirements for fixed line, premium and mobile premium services where the market had matured and the nature of the original risk being mitigated ceased to be relevant.

Other issues have elevated in importance corresponding to their position in the broader economy including the regulation of unsolicited communications issues and the emerging challenges for consumers in the migration to the National Broadband

Network. The ACMA implemented the Do Not Call Register in Australia and now manages more than 10 million telephone numbers listed on the register and received over 132,000 telemarketing related complaints in total over the past five years.

Another key element of the ACMA's consumer safeguards strategy in recent years was its focus on telecommunications customer service. Since the ACMA's *Reconnecting the Customer* (RTC) inquiry in 2010–11, consumers have benefited from substantive changes proposed by the ACMA to simplify the purchase and use of a mobile phone or internet service. The resulting reforms to the Telecommunications Consumer Protection (TCP) Code made by the telecommunications industry have improved consumer outcomes in comparing and understanding service offers, managing unexpected high bills and the quality of customer service and complaints-handling. The ACMA's RTC inquiry drove these reforms and Industry's responsiveness has contributed strongly to these positive consumer outcomes (see case study below).

***Case study: Enabling early identification of emerging regulatory issues to minimise risk of harm***

In 2010–11, the ACMA conducted the *Reconnecting the Customer* inquiry into customer service and complaints-handling practices within the Australian telecommunications industry. The ACMA worked collaboratively with industry, consumers and other regulators to identify, analyse and address the key sources of consumer complaint. The inquiry significantly informed revisions to the Telecommunications Consumer Protection (TCP) Code (registered in September 2012). ACMA commissioned analysis estimates that consumers have benefited by at least \$545m each year since registration of the revised TCP Code. These savings stem from a reduction in the incidence and severity of unexpectedly high bills, better information that has allowed customers to choose services that better match their consumption behaviour and preferences and a reduction in complaints to the Telecommunications Industry Ombudsman (TIO). The average annual reduction in new TIO complaints for the two financial years following the registration of the code was 27,378.

**Improving timeliness of broadcasting investigations and transparency of decisions**

The ACMA's role in broadcasting safeguards involves investigations (usually in response to complaints), monitoring of compliance with content and program standards and participation in co-regulatory code reviews. Where its remit enables, the ACMA has implemented processes to review industry compliance behaviour and streamline obligations where there has been a history of good conduct.

***Case study: Reducing regulatory burden in light of sound compliance behaviour***

In 2013 the ACMA revoked the Broadcasting Services (Commercial Radio Advertising) Standard 2012 and registered a new commercial radio advertising code requiring advertisements on commercial radio to be distinguishable to listeners from other content. The decision followed a commitment made by the ACMA at the end of 2011 that the standard would be revoked if the commercial radio industry presented a code of practice that provided appropriate community safeguards. In making this decision the ACMA recognised the industry's high level of compliance with the obligation to ensure advertisements are distinguishable, and worked collaboratively with the industry to achieve an optimal co-regulatory outcome.

In addition, the ACMA has minimised the costs to industry in dealing with broadcasting complaints by focussing its own and industry resources on matters of substance. A legislative amendment effective 17 October 2014 provided the ACMA with discretion to investigate complaints about broadcasting matters where it considers it desirable to do so. The ACMA was required formerly to investigate every single validly made complaint.

In the period 17 October 2014–30 June 2015, the ACMA declined to investigate and relieved industry of the obligation to respond to an investigation in approximately 30 per cent of cases. While the ACMA has had a long program of work to improve the timeliness of broadcasting investigations, the introduction of this discretion has allowed the ACMA to initiate further reforms to deliver faster outcomes, produce internal efficiencies and reduce the administrative burden on industry. In 2014–15 the average time taken to investigate a broadcasting complaint reduced to 2.6 months, down from 3.1 months per investigation in the previous year and a significant reduction from an average of 4.7 months five years ago. This new discretion has now provided the ACMA with the capacity to still more effectively target its, and by extension broadcasters', resources.

In the *Investigations Concepts* series of papers, the ACMA has sought to provide improved transparency for industry and citizens in accessing the decision-making framework that underpins the ACMA's broadcasting investigations.

In the ACMA's monitoring of industry compliance with content production quotas, captioning and other program standards, the ACMA has progressively reduced the regulatory burden associated with record keeping and reporting requirements while maintaining basic consumer safeguards. The ACMA is pursuing further streamlining by moving to online forms for submission of compliance information.

The ACMA used its *Citizen conversation* series to identify issues and inform itself and industry of the broadcasting safeguards that are of enduring importance and which should underpin any code modernisation.

### **Targeted stakeholder engagement – informing and being informed**

A significant feature of Australian communications and media regulation is the use of industry co- and self-regulatory arrangements in a number of areas of the broadcasting, telecommunications and online sectors. This makes for a complex set of stakeholders, many of whom are directly involved in the design of regulation.

The ACMA has developed a targeted approach to its industry and citizen stakeholder communication that is tailored to the issue and the nature of the interaction. This is an integral part of the ACMA's approach to be an evidence-informed regulator.

### **Forward planning for regulatory activity**

The ACMA's three-year corporate plan is the key planning and accountability document that identifies the ACMA's forward work priorities. The corporate plan is published annually.

To provide additional planning details, there are a number of planning publications developed for particular industry stakeholders. With the long lead-times involved in spectrum planning, the ACMA has also developed its [Five Year Spectrum Outlook](#) (commenced in 2009) and [Priority Compliance Areas](#), both of which are made available through the ACMA's website.

In past years, the ACMA has published an annual operating plan that provided work program information across other areas of the ACMA's activities. In light of recent

feedback from stakeholders seeking this information, the ACMA is again planning to produce this publication.

### **Engagement in regulatory processes**

Consultation activities are a key component of how the ACMA carries out its regulatory functions, and in particular how it explores alternative proposals for industry or emerging issues of concern. The ACMA's two standing advisory committees are an important mechanism for engagement:

- > [Consumer Consultative Forum](#) (CCF) provides the ACMA with informed and representative advice about telecommunications consumer issues from multiple perspectives, by convening consumer and citizen advocates, telecommunications industry representatives and government bodies, including DoC, the ACCC and the TIO
- > [Emergency Call Service Advisory Committee](#) (ECSAC) facilitates discussion from stakeholders across the telecommunications industry, emergency service providers (including law enforcement), and DoC to advise the ACMA in its role to support the national Emergency Call Service.

Other regular stakeholder committees and cooperative forums are in place across each area of the ACMA's remit:

- > In radiocommunications, the *RadComms* conferences are usually held annually and are recognised as the leading spectrum management conference in the Asia-Pacific region, providing industry participants with direct access to the ACMA's technical experts and key decision-makers while hearing about the latest developments in spectrum.

*RadComms* conferences have been complemented by the ACMA's spectrum tune-ups (since 2009) which have been designed to promote consultation and improve transparency and accountability around the ACMA's planning and management of spectrum in Australia. Tune-ups are focussed on specific key topics as they arise, from the digital dividend in 2010 through to forums relating to changes to the regional 1800 MHz band and the 400 MHz band in 2015.

- > In telecommunications, the Numbering Advisory Committee provides regular advice to the ACMA on the management of Australia's numbering resource and identifying issues that require regulatory attention.
- > In online communications, in 2014 the ACMA co-hosted the Combating Child Exploitation Material Online (CCEMO) regional cooperation forum that brought together law enforcement, International Association of Internet Hotlines (INHOPE) members, non-government organisations and industry stakeholders who work to combat online child exploitation material.

The ACMA actively seeks input from industry, consumers and citizens as part of its assessment of the implications of regulatory reform or other initiatives. An example is its [published issues for comment](#), which serves as one means for the ACMA to engage with stakeholders prior to making changes to regulations it administers. To support stakeholders in providing input to consultations, in 2010 the ACMA published [a guide to making effective submissions](#).

### **Targeted information and education**

The ACMA has also evolved its information products with developments in digital publishing and it provides stakeholders with options to subscribe to relevant and targeted e-bulletins, newsletters and blogs that provide information and advice about updates to regulation. These include:

- > *Telco matters* e-bulletin: regular updates on telecommunications industry developments and regulatory issues

- > *Amplify* e-bulletin: international spectrum regulatory updates, including treaties, events and ITU/APT engagement
- > *Cybersecurity news* e-bulletin: the latest cybersecurity trends and updates, with a focus on malware and botnet activities from the Australian Internet Security Initiative.

As of May 2015, the ACMA's special interest e-bulletins had a subscriber base totalling 2,623.

From 1 July 2015, the ACMA's delivery of cybersafety education programs moved to the newly established Office of the Children's e-Safety Commissioner. The program has delivered internationally award-winning cybersafety resources for children, their parents and carers.

## Effectiveness of regulatory decisions—accountability

The ACMA's regulatory decisions and its performance in discharging its regulatory remit are subject to independent external scrutiny and validation via administrative and judicial review as well as audit by the Australian National Audit Office.

### External scrutiny of regulatory decision making

The Commonwealth administrative law regime applies to the ACMA. As a consequence, regulatory decisions made by the ACMA may be reviewed and challenged in the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* and the *Judiciary Act 1903*. Over the last 10 years, in the 14 judicial review actions brought against the ACMA, nine actions were dismissed. The Administrative Appeals Tribunal also has power to conduct merits review of certain regulatory decisions made by the ACMA. In the five substantive applications determined by the Administrative Appeals Tribunal during that time, in four matters the Tribunal affirmed the ACMA's decision and in one the ACMA's decision was varied.

### Independent performance audits

Since its formation, the ACMA has participated in three performance audits conducted by the Australian National Audit Office (ANAO):

- > Regulation of commercial broadcasting (2008), which examined the effectiveness of the ACMA's compliance monitoring, enforcement of non-compliance, fee collection and performance reporting.
- > Do Not Call Register (2009), which assessed the ACMA's effectiveness in operating, managing and monitoring the Register, including compliance with legislative requirements.
- > Regulation of Unsolicited Communications (2015), which assessed the effectiveness of the ACMA's regulation of unsolicited communications.

In each of the audits, the ANAO found the ACMA's administration of these activities to be sound while making a small number of recommendations directed to improving the efficiency of the ACMA's processes and interactions with regulated industries.

The most recent ANAO audit of unsolicited communications regulation, noted that the ACMA has implemented: processes to ensure risks are identified and managed; generally sound policies, processes and practices to support its communication of regulatory requirements and its compliance monitoring activities; and a graduated approach to addressing and resolving non-compliance identified through its regulatory activities, with two minor recommendations to improve investigation plans and performance measurement.

## Efficiency and effectiveness—regulatory review and reform

The ACMA has an active program of regulatory review to ensure that regulation remains efficient and effective, or where necessary and the ACMA is empowered to do so, is updated to reflect changed industry environment and risk profile of the issue under regulatory attention. Under the current government (since 20 September 2013), the ACMA's review of the regulatory instruments it administers has resulted in a significant reduction in the overall stock of communications and media regulation, with more than 3,600 pages of regulation being removed (see Table 7).

Under its remit, the ACMA also provides advice to the government about the day-to-day operation of regulation, as well as reflecting on the effectiveness of existing regulatory settings as part of informing industry and citizen stakeholders about emerging issues and their implications for regulatory arrangements.

The ACMA has also contributed to regulatory reviews within the portfolio, such as the recent Review of Spectrum Management Arrangements, as well as contributing to other government reviews where they related to aspects of the ACMA's remit. This includes a number of Australian Law Reform Commission review processes over recent years examining classification, copyright and serious invasions of privacy.

The ACMA has also supported a deeper examination of the current regulatory arrangements, with a view to developing updated arrangements more suitable to supporting an innovative communications and content environment.

This includes analysis of the effective regulatory strategies for the communications and media co- and self-regulatory environment and exploration of citizens' regulatory rights and responsibilities.<sup>15</sup> The ACMA has framed the question of the future of regulation in communications and media in three 'tent-pole' thought leadership pieces:

- > [Broken concepts](#), originally published in August 2011, updated in 2013 – that analysed the currency of the key underpinning legislative concepts of regulation
- > [Enduring concepts](#), published in November 2011 that looked at the enduring public interest outcomes from media and communications regulation and asked whether these outcomes could be delivered more efficiently in different ways
- > [Connected citizens](#), released in June 2013 that explored the use of regulatory powers with a particular focus on communication, facilitation and regulatory powers available.

This analysis provides some 'institutional optionality' to the government as it considers complex regulatory framework challenges in the context of the current review and beyond.

**Table 7: Regulatory review activity since 20 September 2013**

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<sup>15</sup> ACMA, [Optimal Conditions for Effective Co and Self Regulatory Arrangements](#) and ['Citizens' & the ACMA: exploring concepts in communications & media regulation](#)

Regulatory review activity	Number completed
Number of regulatory instruments	
Reviewed and remade	46
Reviewed and revoked/sunsetted	131
Reviewed and streamlined	23
Number of consultations on changes to regulation	72
Decrease in number of regulatory instruments (revoked, sunsetted and streamlined)	142
Number of advices provided to government on deregulatory reform proposals	56
Deregulatory savings to 30 June 2015	\$53.03 million

# Maximising efficiency and effectiveness

The review is examining ways to maximise the efficiency of ACMA in the delivery of its functions to support its priorities, and is looking to identify areas for improvement and potential alternative arrangements that could improve efficiency including system, engagement and market improvements. This section responds to the review issues paper questions 11, 12 and 14–16.

Stakeholders will understandably have a variety of views about the efficiency and effectiveness of the ACMA's work, including whether an appropriate balance has been struck in the way the ACMA has discharged its responsibilities.

An important distinction can be made between the different sets of considerations that apply to the efficiency of the ACMA's performance against its PGPA Act and Public Service Act accountabilities and the efficiency of the ACMA's regulatory administration under the functions outlined in the ACMA Act and primary legislation.

In each case, there are different factors that need to be assessed when identifying where there is scope to deliver activities and functions in more efficient or different ways, or by another party.

## Identifying where improvements can be made

The ACMA relies on a number of key sources of advice to identify opportunities for continuous improvement in its **financial and administrative performance**. These sources of advice include:

- > ministerial statements of expectation and direction that provide guidance on the priorities of the agency to inform the allocation of resources
- > whole-of-government policies such as the Contestability Framework that assesses where performance can be improved by challenging traditional methods of delivery and whether particular functions should be open to competition and if so, how competition should occur
- > external audits undertaken by the ANAO covering administration or regulatory performance
- > internal audits undertaken by the ACMA's internal auditors which provides a degree of independent scrutiny on performance and which usefully identify areas where the ACMA can improve its performance.

To identify where improvements can be made to its **regulatory administration and priority setting**, the ACMA uses a number of other mechanisms to elicit views. Consultative committees established by the ACMA, as well as regular forums such as spectrum tune-ups, and less frequently issues-based workshops or 'tune-ups', offer ongoing feedback to the ACMA on regulatory priorities and decision-making.

The ACMA commenced an annual stakeholder survey in 2014 to get a broader perspective from stakeholders about the way the ACMA engages and delivers on its remit. This built on an earlier stakeholder survey in 2008, intensive evaluation of its stakeholder interaction framework in 2009–10, and in 2011–12 an extensive survey of a range of stakeholders in re-engineering the ACMA website as a primary stakeholder engagement tool. More recently, the consultation conducted on the Regulator Performance Framework identified a number of areas for improvement where industry



stakeholders in particular are looking for changes in the way the ACMA interacts with them. This included:

- > improved communication around the ACMA's forward work program and compliance priorities
- > earlier engagement in problem-solving and regulatory consultation
- > simpler ways to engage in regulatory processes
- > adoption of a more consistent approach to providing feedback and explaining regulatory decisions.

This feedback usefully points to areas where the ACMA can focus on improving the way it discharges its regulatory remit.

As a result of these consultative processes, the ACMA has in recent years implemented a number of initiatives to improve the efficiency of its operations. As noted earlier this has included investment in information technology systems to enable our stakeholders to engage with us online and to automate transactions. It has also involved streamlining contact points by establishing a centralised contact point into the ACMA through the Customer Service Centre. The ACMA is also progressing with its online consultation engine as a way to simplify engagement for stakeholders in regulatory policy development processes.

### **Improving financial and administrative performance**

Two recent streams of activity illustrate the ACMA's approach to the contestability of its activities.

The first relates to the delivery of an online auction capability to support spectrum auctions. The ACMA recently concluded contracting for an auction capability from a commercial provider, making use of cloud computing to harness the flexibility and reliability of cloud computing in line with the government's cloud computing policy. This followed a risk-benefit analysis conducted by the ACMA that concluded a contestable outsourced service provider model would best meet the ACMA's ongoing need for online spectrum auction capability.

The second example relates to the delivery of internal ICT services. The ACMA is working closely with the Shared Services Centre (created in 2014 by the Department of Education and the Department of Employment) to review its method of delivery for IT services. The expectation is that by harnessing the Shared Service Centre to deliver basic ICT services across the ACMA, the resulting efficiencies can be used to allow the ACMA to refocus additional resources on its regulatory, engineering and technical ICT systems. These latter systems are bespoke for ACMA requirements and form a crucial part of service delivery to industry and citizen stakeholders.

Scrutiny by both the ANAO and the ACMA's internal audit program provide valuable sources of advice on continuous improvements. In relation to internal audits, the annual program encompasses review of operational performance/controls, compliance/regulatory areas of operation, financial operations and IT systems. Over the last two financial years (2013–14 and 2014–15), internal audit conducted four compliance audits and 13 performance audits, including financial operations and IT systems. There were also two reviews of the implementation of audit recommendations.

Advice from the minister about the implementation of the government's priorities for the ACMA provides a further crucial source of guidance to inform resource allocation and reprioritisation. Most recently, the implementation of the Office of the Children's e-Safety Commissioner required the ACMA to reallocate resources within the agency to

service this high priority area of government activity. This implementation exercise was recently completed to enable the 'soft' launch of the Office on 1 July 2015.

### **Alternative funding models**

In considering efficiency improvements, the review issues paper has raised the question of whether the current funding model for the ACMA should be changed from a budget appropriation to an alternative model.

One alternative in use for other Commonwealth regulators is a full cost recovery model. Importantly, however, the government's cost recovery policy provides that costs can be recovered only where there are identifiable direct beneficiaries from an activity. This works well when there is a set of clearly defined and stable set of industry participants, but is more problematic when industry structures are evolving and the aim of regulated activity involves the creation of community-wide safeguards.

For cost recovery to be an effective alternative funding model in the case of the ACMA's current remit, there are two sets of considerations that will require a detailed examination.

First, there will need to be a detailed consideration of whether there is scope to widen the set of activities that could be subject to cost recovery. The most recent review of the ACMA's cost recovery activities occurred in 2014. It confirmed that a limited set of activities currently remain suitable for cost recovery under the current guidelines. Many of the ACMA's regulatory activities or services provide a broad public benefit, such as consumer information or protection activities. In these cases, the cost of those activities falls outside the current cost recovery policy guidelines and would probably continue to require funding from an alternative source such as a budget appropriation.

Secondly, it would be necessary to examine whether cost recovery should be applied to a wider range of industry participants. In some instances, such as the Do Not Call Register, the terms of cost recovery are established in legislation, so any change to the terms on which cost recovery is applied would require a broader policy reconsideration.

If the review forms the view that the ACMA's funding should move to an alternative industry-funded model, then another model would be to fund the cost of regulation from an industry levy drawn from all regulated entities. While this may broaden the funding base, the cost of identifying currently unlicensed entities and collecting levy contributions will need to be carefully considered.

Any reconsideration of changing the basis on which regulatory costs are recovered should also take account of the impact on other industry taxes, charges and levies that the government receives from the industry to understand the full cost impact on regulated entities as well as the intended beneficiaries of regulation.

Other alternative funding mechanisms for government bodies such as triennial funding would provide greater certainty of funding, in turn providing greater capacity for the agency to undertake longer term investment decisions. This would come with some reduced flexibility for the government of the day to redirect the priorities of the agency.

## Improving performance against the existing regulatory remit

### ***Outsourcing to third-party providers***

The ACMA continues to look for efficiencies in its administration of regulatory activities, including through self-regulation, partnering with third-party providers and outsourcing of activities where this will result in improved quality of service and more cost effective service delivery.

The ACMA has established a set of [Partnership Principles](#) which is an assessment framework that is used to determine whether some of the regulatory administrative functions provided by the ACMA could be better performed by an external provider. There are three concepts that underpin the principles:

- > securing the ACMA's key functions
- > improving the quality of service provision
- > increasing the cost effectiveness of service provision.

The ACMA also outsources particular regulatory functions to third party providers where there are cost and quality advantages in doing so. Currently the following services are provided under third party arrangements:

- > Maritime and amateur radio operator examination and certification services which are managed by the Australian Maritime College and the Wireless Institute of Australia.
- > Frequency assignments undertaken by accredited persons.
- > Do Not Call Register operation and management was outsourced to a third-party provider in 2007, with a new contract awarded to a new provider to take over day-to-day operations of the register from September 2015.
- > Telephone numbering allocation and administrative services have been outsourced for some years, but outsourcing has recently been expanded to a wider range of numbering services, with a new provider delivering services from August 2015.
- > Cabling registration where private companies' registrars provide cabling provider registration services as part of the cabling regulatory arrangements. There are currently five registrars accredited by the ACMA who manage the cabling registration system.

The ACMA continues to investigate additional and appropriate opportunities for the efficient provision of regulatory services by third parties. Further opportunities should be explored in relation to:

- > telephone numbering administration moving to an industry-managed model as occurs in some other jurisdictions such as New Zealand. The ACMA identified the scope for additional outsourcing of numbering functions in its detailed review under the Numbering Work Program and is in ongoing discussion with industry about this future model
- > implementation of the Spectrum Review recommendations to identify the conditions where greater use of private band managers, such as for broadcasting radiofrequency planning, and private sector provision of interference management activities could occur
- > opportunities for regulated parties to assume greater responsibility for the investigation and resolution of service issues within communities of users. For

example, some or all of the conditions that currently apply to licensees under their licences could potentially be managed by the peak representative body using alternative regulatory models.

### ***Collaborative partnerships to streamline compliance and enforcement activities***

With the globalisation of communications and in the Australian co- and self-regulatory environment, another strategy the ACMA uses to promote information-sharing and, cooperative compliance strategies wherever appropriate is through the use of Mutual Recognition Agreements (MRAs) and Memoranda of Understanding (MoUs).

The ACMA has MoUs with a variety of international organisations, including international regulators such as the Korea Communications Commission, the United States Federal Trade Commission and the Office of Fair Trading in the United Kingdom. It uses these arrangements to provide a framework for consultation and cooperation on matters of mutual interest and to facilitate information-sharing practices. For example the ACMA has worked with the Internet Watch Foundation in the UK to facilitate management of illegal child abuse websites and with the UK and the USA (amongst many others) in cooperation for the regulation of spam.

At a national level the ACMA has MoUs to assist with information sharing and provide a framework for consultation and cooperation with stakeholders including law enforcement (state and federal police agencies), emergency services and industry peak bodies.

For example the ACMA has recently established an MOU with Communications Compliance detailing how the ACMA will cooperate to enforce the TCP Code. The ACMA has an MoU with the ACCC to facilitate cooperation and information-sharing on matters of mutual interest. The ACMA's MoU with the TIO facilitates the smooth referral of compliance and enforcement issues.

In 2014, the ACMA signed a MoU with the Australian Privacy Commissioner to outline a framework for cooperation to minimise the risk of duplication in relation to privacy compliance investigations.

The ACMA also utilises MRAs in its compliance and enforcement requirements for suppliers of equipment covered by the ACMA's regulatory arrangements.

By allowing an importer of equipment into Australia to have equipment tested or certified in the exporting country (rather than requiring local testing in Australia), or to rely on overseas compliance documentation, the ACMA's use of MRAs reduces business and regulatory costs for suppliers, decreases time-to-market for companies supplying communications and IT equipment and provides consumer choice benefits for end-users.

### ***Improvements to engagement processes***

Feedback from stakeholders has pointed to the need for further improvement in relation to the ACMA's engagement processes. In particular, industry stakeholders have identified a need for better signalling of the ACMA's annual work program priorities to better allow industry stakeholders to plan their interactions and resourcing requirements.

The ACMA acknowledges that this is an important aspect of its transparency and accountability and is identifying how best to forward plan regulatory consultations across all the sectors it regulates in addition to maintaining key forward planning publications that include the Five year spectrum outlook, the priority compliance areas program, and the ACMA's annual research program and its corporate plan.

Industry stakeholders also requested improvements to simplify their engagement in public consultation processes. The ACMA is currently developing an online consultation engine to enhance stakeholder engagement, facilitate openness and transparency and provide stakeholders with an easy and convenient option to submit feedback. The consultation engine is a complementary way for stakeholders to view and submit their comments and answers to issue for comment discussion papers. Key features will include:

- > improvements to format and navigation: consultation papers will be made available on a webpage in a clear, well laid out format and stakeholders will have access to an easy quick navigation pane, allowing them to navigate directly to the relevant section
- > use of a comments form and function to make providing comments easier and timely, with comments, replies or answers to questions able to be published while the consultation paper is open and within 24 hours.

The ACMA plans to shortly pilot the consultation engine with stakeholders and implement the final product by the end of this year.

# Part 2

# Challenges for a future regulatory framework

This second part of the ACMA's submission addresses the review's future-focused questions concerned with the design of a future regulatory framework and the supporting institutional design for a regulator.

A fundamental question for the review is whether there continues to be unique characteristics of the communications and media sectors that require a particular style of regulation and regulator.

At its core, this question is seeking to understand the regulatory context and define the set of 'problems' or 'harms' that provide a basis for government intervention in the market as a way to change behaviours or secure desired outcomes. A clear understanding of the problems requiring resolution then informs the style of intervention, as well as the style of regulator needed to deliver desired outcomes.

In responding to this question, the ACMA is drawing on the results of its research as well as its practical experience in dealing with the many changes occurring in the Australian market and consumer environment, in addition to observing developments occurring in other jurisdictions.

One important observation is that consideration of regulatory design issues comprises a hierarchy of five integrally linked components:

- > **functional remit**—the breadth of the areas of economic and social activity that the regulator should have responsibility for regulating or overseeing
- > **desired outcomes**—the policy objectives that the regulatory scheme and the regulator should seek to deliver or facilitate through its actions within the remit
- > **intervention powers**—the range of intervention activities (including both 'hard' regulatory actions and 'soft' information, education and collaboration strategies) that the regulator should be able to undertake to deliver or influence desired public policy objectives
- > **compliance and enforcement powers**—the powers available to the regulator to respond to individual or systemic failures to comply with regulatory interventions, and to encourage an environment of industry behaviour and compliance, and
- > **governance model and organisational disposition**—the style of regulator that is desired and given effect through a governance model and decision-making guidance that is externally guided or directed (such as in legislation or by ministerial direction) and internally-developed by the regulator, regarding how the regulator should use its powers.

In this section, the ACMA is examining the scope of **remit** that should inform the focus of any revised regulatory scheme and the **desired outcomes** for the sector. This analysis is informed by an understanding of the current and likely challenges the sector faces. It responds to the review issues paper questions 1—10, 13, and 23—26.

The following institutional design section will discuss other related aspects of regulatory design issues focused on the range of **intervention powers and compliance and enforcement powers** required for regulation of the sector and the overarching **governance** features for the type and style of regulator needed for the dynamic communications industry environment.

## Environmental challenges for communications and media

Over the past ten years, the ACMA has observed significant changes occurring in Australia's communications and media markets—changing citizen and user expectations in the way they interact with digital technologies; and consequential changes in the type and scale of risks and harms being experienced by industry operators, consumers and citizens. The original challenge arising from the digitalisation of content and carriage has been compounded by the emergence of IP-enabled communications and content over the past decade. These changes have been documented by the ACMA's tracking studies of market and technology developments and longitudinal studies of the Australian community's changing media and communications practices<sup>16</sup>.

Drawing on this work, it is clear that the rapid development of digital technologies and services is driving an increasing fragmentation across industry sectoral boundaries and consumer and citizen behaviours. In turn, this has placed considerable pressure on existing regulatory interventions that were designed as solutions for a different environment. To address these challenges is likely to require a different regulatory focus in the future, and it can usefully inform a discussion about the breadth of industry and social activity that should desirably form the focus of any revised regulatory framework or remit.

This review presents an opportunity to consider what style of communications regulator is needed for the future, with the financial and administrative capacity and powers to manage what is likely to be a changing industry and policy environment over the next 10 years. Beyond this time period, it is likely that with the rapid evolution of technologies, industry structures and consumer behaviours, the issues requiring government and regulatory attention will be vastly different from those that can be envisaged now.

While the ACMA considers a ten-year horizon as a reasonable time period in which to design institutional arrangements appropriate for a sectoral regulator, a different time frame, particularly a longer one, might demand alternative arrangements. It will also be an important matter for the review to consider what level of reform it expects in the underlying legislative construct in which the regulator will operate.

As reflected in Figure 2, the various elements of change occurring in communications and media across industry layers of devices, network, services and content and enduring consumer and citizen issues are not occurring in a synchronised way or at a uniform pace. While many of the elements noted in the Figure are currently in the market, on trial or being prototyped today, placement of the elements in the timeline has been driven by an estimation of the possible point at which they become 'mature' and widely adopted, a point which must be a matter of conjecture rather than prediction.

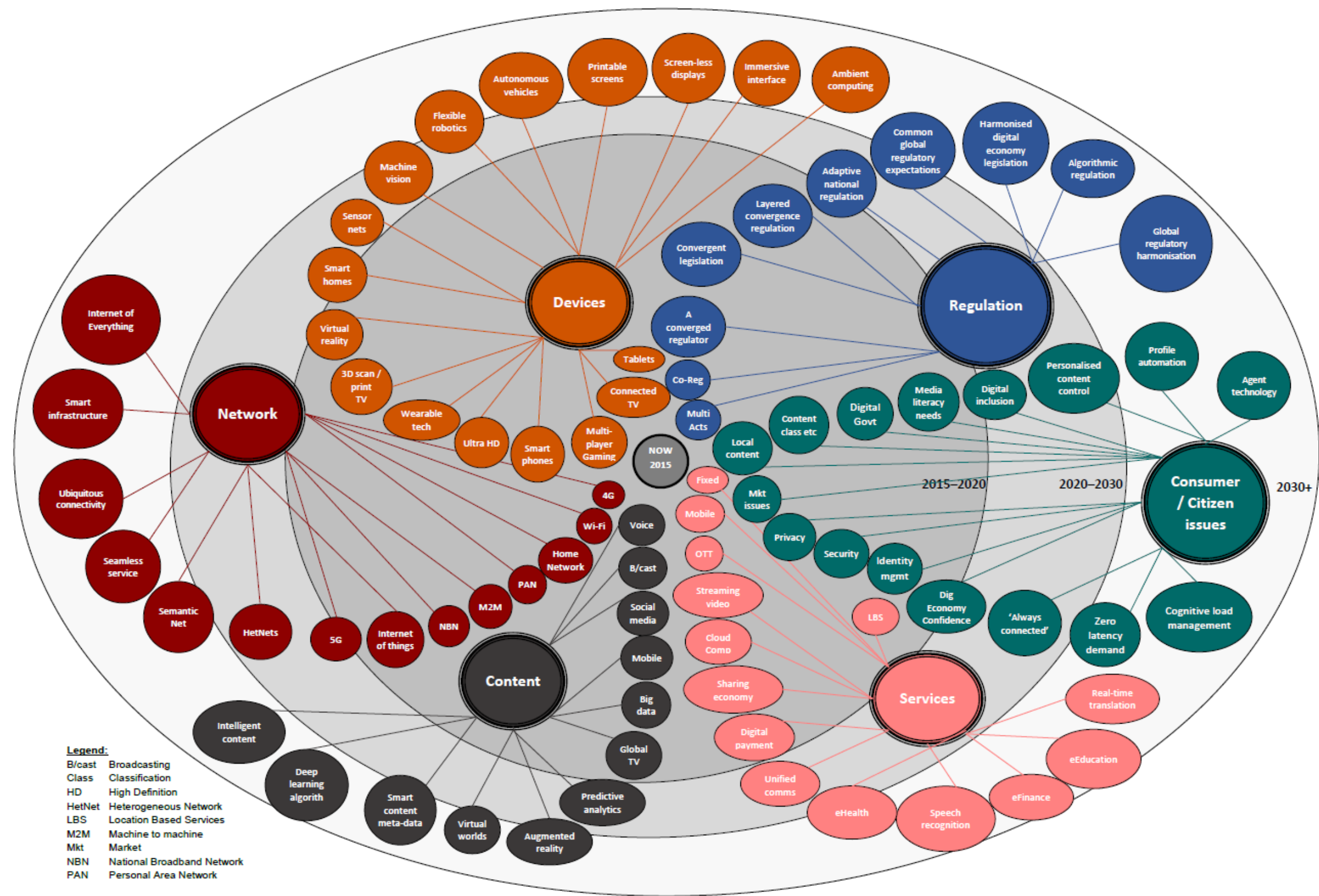
This analysis underscores that the longer term view of the sector is going to be increasingly difficult to define as networked digital communications pervades all elements of the economy. This will likely confront communications and media regulation with a much deeper challenge than convergence and network issues have raised to date.

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<sup>16</sup> ACMA [Evidence informed regulatory practice](#)



Figure 2: Communications and innovation disruption 2015-2030



## **A highly connected and IP-enabled future environment**

Many current technology, content and service developments, both in Australia and around the world, are pointing to a more highly connected and IP-enabled environment. The sector has already seen the mass connection of individuals, businesses and other service providers. Information innovation, critically enabled by broadband, is already creating disruptive effects in other sectors such as banking, insurance and manufacturing.

This 'digital disruption', according to Pew Research Center<sup>17</sup>, is pointing to a global, immersive, invisible, ambient networked computing environment, built through the continued proliferation of smart sensors, cameras, software, databases, and massive data centres, in a world-spanning information fabric known as the Internet of Things (IoT). Such developments potentially give rise to massive numbers of connected devices generating huge quantities of data that may be collected, analysed and further utilised. While there are many different projections about the likely number of connected devices in Australia, even conservative estimates agree that the IoT will be characterised by a rapid and very large increase in the number of connected devices and an evolution in the range of applications and services on offer.

In turn, this is creating an even more complex communications environment in which network elements can and are being emulated in software ('virtualisation'), leading to more sophisticated and subtle interconnection between networks, devices, services and content. This momentum can foreseeably create an outcome beyond the IoT, which might for convenience be called 'the Internet of Everything'. This is a future where digital communications and connectivity are common to and enabling of everything, reaching deep into the social, cultural and economic lives of all citizens, on a global scale. Regulatory settings will need to recognise and adapt to these or other similar developments.

Australian communications and digital information industries have demonstrated significant capacity over many years in leading and responding to change. Australian consumers have also shown a similar appetite for embracing new technologies and communications practices. How quickly Australia can make this transformational change and realise the benefits that can occur from the mass connectivity of devices and information in the IoT environment will also depend to a greater or lesser extent on the existence of appropriate regulatory settings, regulator action and regulator oversight to support and facilitate these developments.

Many of the building blocks to support mass connectivity are in place. However the ACMA's observes that industry segments and sectors, along with individual consumers and citizens, are at different stages in the transition to a highly connected world of an internet-enabled everything. Identifying where there are blocks to innovation, or where confidence in undertaking new activities needs bolstering, will be important in informing the design of any future interventions so that Australia can derive maximum benefit from a hyper-connected environment.

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<sup>17</sup> <http://www.pewinternet.org/2014/03/11/digital-life-in-2025/>

### **Complex transitional challenges exist**

Occurring in parallel to these IP-enabled developments is a range of complex transitional issues that will require careful oversight and management over the next five or so years.

In **telecommunications**, as the National Broadband Network rollout proceeds, there remains significant transition work to rationalise telecommunications regulatory structures, particularly the heavy emphasis on fixed line consumer regulation. There are also technical standards issues that will need to be resolved, which will require industry standards development or underpinning regulatory determinations.

The **broadcasting** sector is under pressure as the advertiser-funded business model comes under challenge from the rise of over-the-top content providers such as Netflix, which provide complementary and to some extent substitutable viewing destinations for audiences. Nevertheless, there is also a demonstrable expectation among audiences that content will be guided by some form of community standards and that they will have access to advice about content and the ability to complain when they consider that community standards have not been met. In areas such as television, continued attention in relation to captioning and classification will also be needed for the medium term as it is difficult to see any viable alternatives emerging to the current role legislation and regulation plays.

In **spectrum management**, the increased demand pressures for spectrum allocations to support the needs of every sector of the economy will need to be managed at the same time as the Spectrum Review recommendations are implemented, itself an extensive body of work. Spectrum allocation decisions will become more difficult as pressure for new spectrum uses increasingly involves resolution of competing reallocation demands from existing high value spectrum users.

In **online content and communications**, there remains a set of core issues that still require resolution in areas such as e-security, where industry representatives continue to point to the fragmented approach to issues management across the Commonwealth. Moreover, spam and malware cyber risks remain a growth area of activity and subject to constant and innovative ways to target and exploit consumers. Although the past is often no guide to the future, the ACMA's experience in working in a technologically innovative industry is that there will continue to be new, and often unanticipated, challenges in this field (for example, the evolution and expansion of various risky and harmful online behaviours such as phishing, cyberbullying and cyberterrorism). The appropriate place for the regulation of online content and behaviour will also have to be carefully considered.

It is widely appreciated that current media and communications legislation and regulation in Australia are under strain and increasingly less suited to the new technological and market environment. The ACMA as regulator has acted as a 'bridge' between these 'broken concepts' and the emerging communications and media issues. It has adapted existing tools to new purposes, extending its reach into the market using communication and facilitation techniques, while extending forbearance and exercising regulatory discretion where possible. However, the gap between the legacy legislative architecture and the complex networked environment that now characterises media and communications continues to grow. While it remains wide, the regulator must be well adapted to respond to such complexities.

## Remit—areas for regulatory attention

The ACMA has, for a number of years, expressed its view that the current legislative structures that establish media and communications regulation in Australia are no longer optimal given the rapidly changing nature of these sectors.

A critical practical design challenge for this review of the regulator's institutional arrangement will be to ensure a future-focused agency is capable of both:

- > managing a transition period under which existing legislative structures remain in place
- > accommodating developments driven by the general purpose nature of Internet-enabled communications and content.

Identifying the appropriate remit for a digital communications regulator involves a number of challenges.

First, it is increasingly difficult to clearly delineate between those matters that are appropriately the focus of a communications specific regulator as the networks and services delivered over them become more and more embedded as inputs into the economy as a whole, alongside existing telecommunications and media services.

Second, the rapidly changing nature of the media and communications sector has shown that issues of public policy concern are likely to arise in unanticipated ways. A future-focussed regulator would ideally have the capacity to respond flexibly and quickly to issues within a remit that is not structured solely around its existing regulatory interventions.

Finally, any institutional arrangement will inevitably create a set of boundary issues with other bodies having overlapping or closely related roles. Effective management of those boundary issues will be important to delivering effective regulation. Such arrangements can include measures such as creating concurrent jurisdiction in relation to specific legislation, formal memorandums to ensure efficient and coordinated action, and ongoing, informal communication between relevant agencies. Given the scale and speed of change in the sector, it is unlikely that such boundary issues can be solved once and for all by legislative action, as one gap or overlap is eliminated, another will arise. Flexibility to deal with boundary issues as they arise must be the preferred solution.

While the ACMA's existing remit might simply be described by reference to the scope of the principal legislation it administers, an alternative way, better adapted to future challenges, might be to consider the key components of internet-enabled communications as a way to inform the future focus of regulatory intervention. In broad terms the five key enablers of an internet-enabled economy are:

- > Infrastructure
- > devices
- > services/apps
- > digital information/digital content and
- > users interacting with each of these elements.

This approach has the advantage of moving beyond the ‘siloed’ structures of existing legislation. It enables some analysis of those public policy concerns that relate to each of those enablers and whether those issues should appropriately be addressed by a sector specific regulator. Figure 3 below seeks to map existing aspects of the ACMA’s regulatory remit under these five architecture (see Figure 3).

**Figure 3: A future communications and content remit**

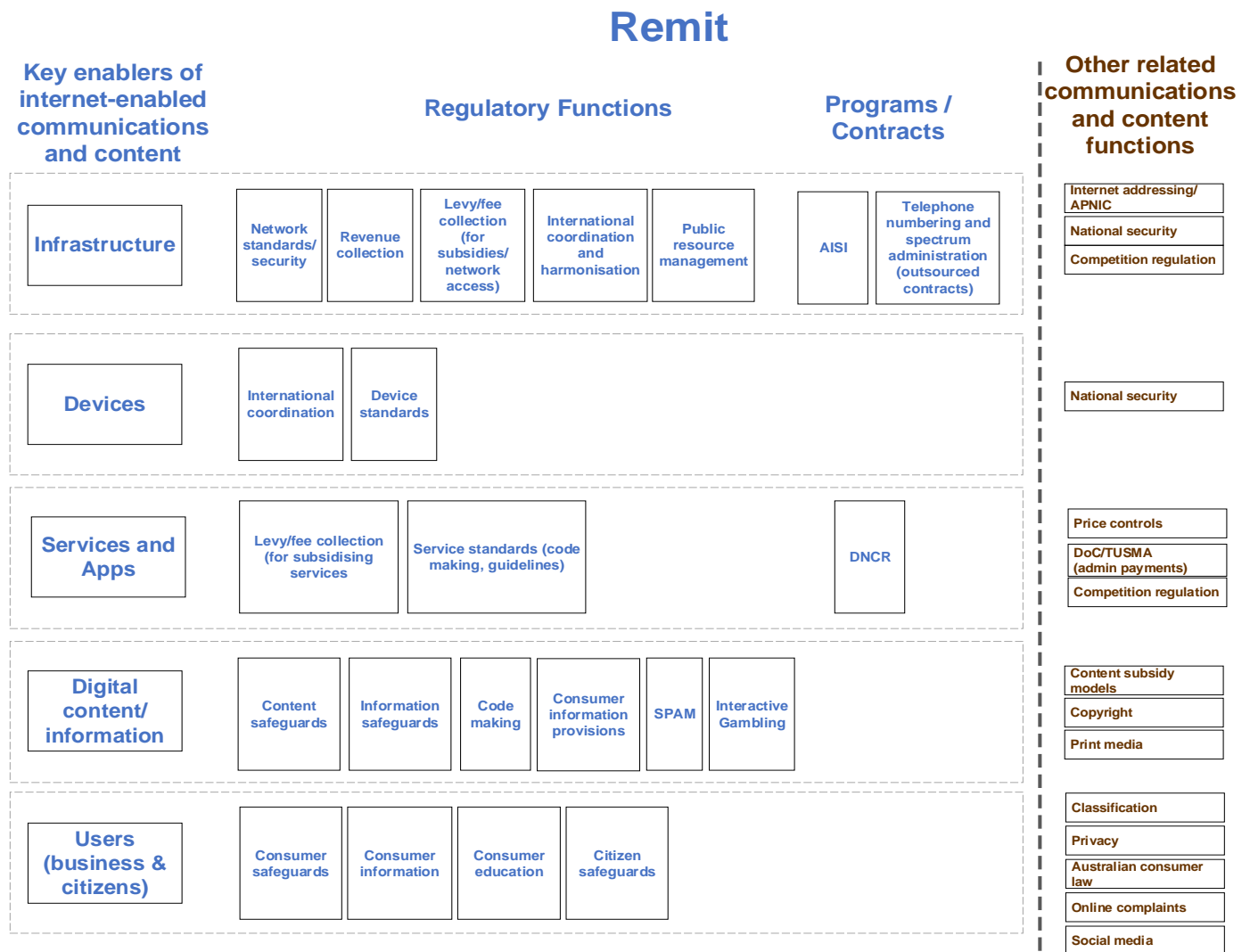


Figure 3 also illustrates that responsibility for delivering some regulatory outcomes in communications and media is currently shared across a number of different Commonwealth agencies and also with industry participants in co- and self-regulatory activities. In some cases, this may be considered a concern, in others that it is appropriate that a responsibility be shared.

The ACMA does not express a view on whether particular functions currently undertaken outside the ACMA should come within its remit or whether current functions should be undertaken elsewhere, but notes that there are a number of particular areas in which the review might consider whether the existing remit is appropriate. These include:

- > classification
  - > Recent reviews undertaken by the Australian Law Reform Commission in relation to the National Classification Scheme have made recommendations about future roles for the ACMA in spectrum management and administration of content classification.
- > television production funding and support models
  - > Responsibilities for different aspects of delivery of the desired policy outcomes are shared across a number of agencies. It is noteworthy that the current regulatory obligations established under broadcasting legislation for children's and Australian content have and will continue to have their efficacy increasingly challenged by market fragmentation and changing audience consumption patterns.
- > telecommunications sector security
  - > The Telecommunications Sector Security Reforms (TSSR) envisage an ACMA role in relation to reporting on compliance and the cost of compliance of the telecommunications industry under the scheme, with the Attorney-General's Department acting as the regulator for the sector. In other matters of national security the Attorney-General's portfolio provides the policy lead, with the ACMA having specialised telecommunications sector reporting roles. In addition, the ACMA operates the Australian Internet Security Initiative and works in conjunction with the Australian Cyber Security Centre in the Defence Signals Directorate on cyber risks.
- > competition policy for the sector
  - > The ACCC's role as competition regulator across the economy and in specific sectors has been recently reviewed by the Harper Review of Competition Policy. The ACMA works closely with the ACCC to identify issues of common or related concern and to coordinate action where appropriate. Given the interaction of sector-specific and general competition law, the ACMA expects that a continuing collaborative relationship will be required regardless of whether a revised arrangement is put in place in this regard.
- > online content
  - > There are many inter-related aspects of online content regulation where responsibilities are shared across a range of government agencies. For example, the investigation of prohibited online content is now undertaken by the OCeSC with enforcement action the responsibility of state and federal police forces. The ACMA administers anti-spam regulation. Interactive gambling is currently an ACMA responsibility but with some powers to undertake investigations residing with DoC. While each agency works cooperatively, the risk of further fragmentation in the oversight of online content brings additional risks of inefficiency and inconsistency in decision-making and the diminution of the benefits of a converged regulator.

A further set of boundary issues arise where sector-specific law is used to complement general law requirements such as the intersection between general privacy law and telecommunications-specific privacy obligations, disability law and the broadcasting requirements of captioning obligations, and sector-specific consumer protection mechanisms and general consumer law.

Where there are shared responsibilities across portfolios, there is always a coordination cost to the government as well as to industry participants in dealing with multiple areas of the government. The ACMA's experience is that where functional responsibilities are split across or between agencies, when a sector-specific regulator hands over responsibility of an issue to another regulator or enforcement agency, the

issue gets reprioritised according to the broader remit of the recipient agency. That can result in frustration on the part of industry and other stakeholders who may afford a different priority to the issue.

It is of course open to the government to have different activities and functions done by different agencies and in different portfolios. The review might consider the principles that should guide what, if any, functions should be co-located to provide an underlying rationale for the location of particular functions with a regulator.

Making judgements about where it is sensible to draw functional boundaries might have regard to the following sets of practical considerations:

- > transaction and coordination costs for government, consumers and industry in having to deal with multiple agencies and regulators
- > technical expertise required to monitor and analyse the communications and media sectors
- > capacity to give priority attention to communications and media issues
- > benefits and risks of separation of regulatory functions
- > degree of structural and decision-making independence from government that is required or desirable.

Where overlapping or closely related functions exist across remit boundaries, the ACMA has (as described in Part 1 of this submission) and will continue to work cooperatively with fellow agencies— based on both formal and informal arrangements—to deliver public policy outcomes with efficiency.

## **Desired outcomes—the “enduring” public interest concepts**

The review has sought information on the most important communications sector public policy aims that are likely to require regulation.

The academic literature observes that regulation is generally established to facilitate one or more of the following four public interest outcomes<sup>18</sup>:

- > facilitate markets for example through market entry authorisation and access to resources
- > protect market operations for example through technical standards and dispute management
- > protect consumers for example by setting behavioural standards and
- > address market failures for example by provision of complaints and redress mechanisms and supporting social welfare outcomes by subsidising consumer service access.

Elements of each of these four outcomes are expressed in the current regulatory framework administered by the ACMA.

In earlier work, the ACMA examined those underpinning regulatory concepts that continue to have relevance for markets, governments and society in describing the important public interest outcomes for the communications and media sectors<sup>19</sup>.

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<sup>18</sup> Monash Business Policy Forum, [Rationalising Rustic Regulators](#) 2014

<sup>19</sup> ACMA, [Enduring Concepts](#), 2011



These concepts were termed “enduring concepts”, of which there were 16 grouped under four broad categories that generally described where interventions are directed:

- > ‘market standards’ links concepts directed towards industry structure and market behaviours. The related concepts under this grouping include:
  - > **Competition.** Media and communications markets should be competitive so as to encourage innovation, excellent customer service and diversity of choice. Regulatory settings should reflect the desirability of competitive neutrality across platforms and among market participants.
  - > **Quality.** Regulation should support access by Australians to a broad range of quality media and communications services that are commensurate in kind and quality with the demands of consumers. It should promote a range of quality choices, including the best available communications and media services.
  - > **Redress.** The public is entitled to have confidence in media and communications safeguards that should appropriately reflect community standards and norms for consumer transactions, and provide users with effective and accessible avenues of complaint and redress if these are not met.
  - > **Efficiency.** Media and communications markets should be supported by policy settings and interventions which are coherent, appropriately calibrated and predictable so that services are provided—and public resources are used—efficiently over time.
- > ‘social and economic participation’ includes concepts that examine the basis for individual and community participation in communications and media. The related concepts under this grouping include:
  - > **Access.** Citizens should enjoy reasonable and equitable access to the media and communications infrastructure, services and content necessary to promote their effective participation in society and the economy. Rights-holders should enjoy **reasonable and equitable access** to media and communications infrastructure to deliver communications services and content.
  - > **Confidence.** Media and communications policy settings should be coherent, appropriately calibrated and predictable so that all parties are empowered to understand and exercise their rights and responsibilities. Responsibility for media and communications outcomes should be shared between government, industry participants and users.
  - > **Digital citizenship.** Citizens and businesses should have the necessary technical proficiency and digital literacy to enable them to engage meaningfully and successfully with and through available communications and media services.
- > ‘cultural values’ explores community expectations of standards to be adhered to in media and communications. The related concepts under this grouping include:
  - > **Diversity of voices.** There should be a diversity of perspectives expressed in the public sphere to promote pluralism and sustain a vibrant and healthy democracy.
  - > **Australian identity.** Australians should be able to experience Australian voices and stories when using or consuming media and communications services,
  - > **Community values.** Delivery of media and communications services and content should reflect community standards.



- > **Localism.** Citizens should have access to media and communications services that are relevant to them and enable them to participate in their local community.
- > **Ethical standards.** Information reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.
- > 'safeguards' describes individual, community and national interest protections. The related concepts under this grouping include:
  - > **Protection of the public.** Australians should be appropriately protected from harm when using media and communications, and they should have access to emergency services to protect life, health and safety of individuals and communities.
  - > **Protection of children.** Children in particular should be protected from content or communications that are age-inappropriate or harmful.
  - > **Digital information management.** The treatment of data by media and communications network operators, service providers and other rights-holders should respect user preferences, relevant privacy legislation and applicable community standards.
  - > **National interest.** Media and communications settings should reflect the national interest. This includes protecting Australia's interests domestically and promoting Australia's interests internationally through multilateral processes.

In responding to the review's question, the ACMA has undertaken a more detailed analysis of each of the 16 enduring concepts and types of intervention that are likely to remain important in the context of a highly connected and IP-enabled communications and digital content environment (see Appendix 2).

This analysis draws on the ACMA's previous examination of the relevant objectives to inform contemporary community standards in the broadcasting sector.<sup>20</sup> This analysis can also assist in refining the scope of an appropriate future remit, as well as informing the design of appropriate intervention powers.

In general terms, this analysis identifies that many of the existing public policy objectives are likely to remain relevant in a future communications environment and to respond to regulation or regulator oversight. However, the method for achieving these objectives will require revision so that particular interventions are better tailored to provide more effective support for future technology and service developments and the changing characteristics of digital harms.

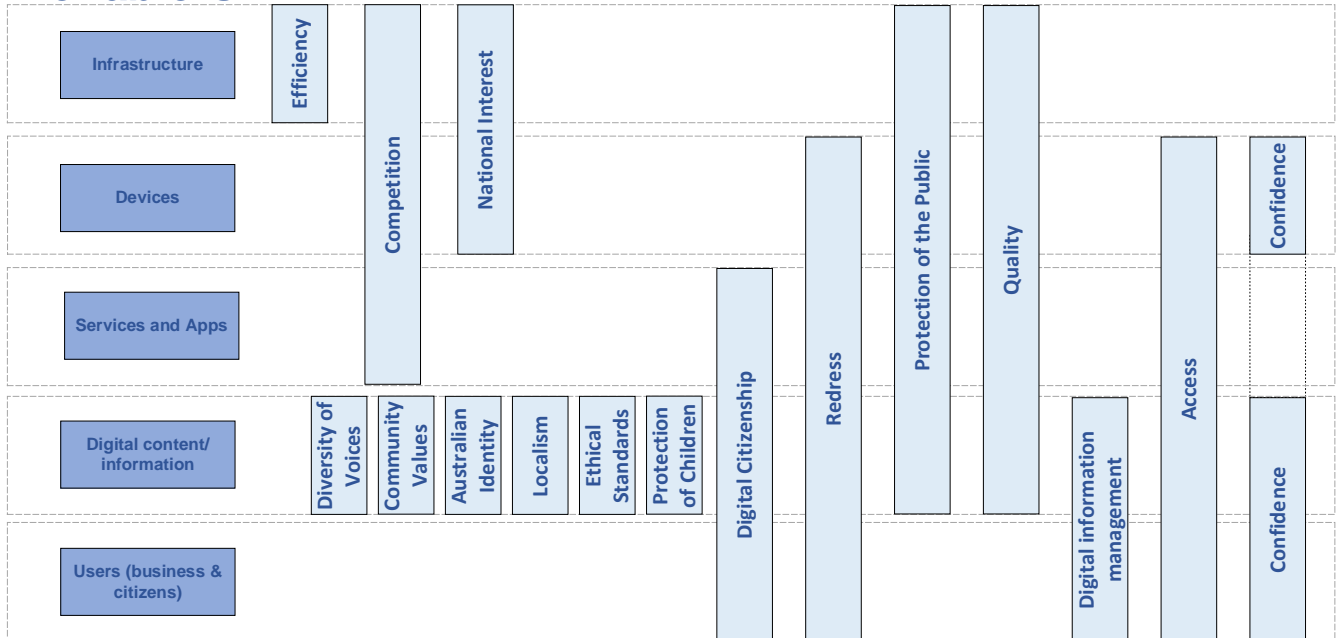
Rebalancing a focus within the regulatory framework to support mass connectivity does not require every intervention to be a regulatory one, but it will require detailed analysis of where the appropriate future balance lies between direct regulation, industry co- and self-regulation and non-regulatory responses. Figure 4 shows how those enduring concepts can be applied to the five components of IP-enabled communications and content, to allow for the design of targeted powers of intervention that may include legislative, regulatory or non-regulatory controls at an appropriate point.

**Figure 4: Enduring concepts and IP-enabled communications and content**

<sup>20</sup> ACMA, [Contemporary Community Safeguards Inquiry Consolidated Report](#), 2014.

## Future enablers

## Enduring Concepts



Because novel technological forms and commercial constructs will no doubt emerge to challenge any amended regulatory structure, and one cannot predict with a high degree of certainty what the likely future areas of harm or problems will be, it will be important that any revised regulatory design for a regulator provides flexible powers of intervention to allow the regulator to develop new responses while also reprioritising by ceasing activity in areas that pose reduced risks over time.

# Institutional design for a new regulator

The institutional design of a regulator signals the style and type of decisions that the government expects to be made to achieve its policy outcomes for the sector. A soundly-based institutional design should enable a regulator to respond to the demands of current and anticipated policy needs as well as manage transitional challenges.

This section considers the other related features of regulatory institutional design that cover the powers of intervention needed to achieve the outcomes required for the sector, and the supporting governance structure and organisational disposition to inform the regulator's decision-making. In considering a response to those questions it is useful to:

- > consider relevant principles that should guide the choice of powers under new arrangements
- > identify the base level intervention, compliance and enforcement powers that might be needed for a communications regulator in the future
- > consider the optimal governance model and guidance that should be provided to the regulator to inform its organisational disposition in the exercise of those powers.

This section responds to the review issues paper questions 8-10 and 25-26.

## Principles to inform a future set of flexible powers

The review issues paper has asked what combination of regulatory interventions might be needed in the future and how might the regulator retain flexibility to adapt its style of regulatory intervention to reflect a changing environment.

A possible starting point is to consider what principles should guide the choice of powers under new or revised arrangements. To that end, the ACMA has identified the following set of principles that may assist in the design of any revised regulatory toolkit—that is, powers of intervention should have the following features. They should:

### > **be coherent, comprehensible and self-contained**

An effective framework should have a clear and understandable structure that applies common principles consistently across broadcasting, telecommunications, radiocommunications, online and related responsibilities. It should be designed to deliver clearly articulated public policy objectives. There should be an explicable relationship between the public policy concern being addressed, the nature of the intervention and the compliance and enforcement powers associated with that intervention.

The framework should be self-contained. The regulator should have all necessary powers to address the areas of public policy concern within its remit without relying on the actions of other agencies. While this may result in some jurisdictional overlap with other agencies, the regulator should have full capacity to uphold the integrity of the regulatory environment for which it is responsible. Where such overlaps occur, the regulator and the other agency(ies) would be expected, and may be obliged, to coordinate their activities consistently with the efficiency principle below.

> **be flexible, integrated and proportionate**

The regulator's powers of intervention and enforcement should be designed to provide a high level of flexibility, enabling interventions appropriate to the public policy concern. Similarly, available compliance and enforcement measures should provide the regulator with maximum discretion to take account of the circumstances associated with particular compliance failures. In particular, interventions and associated enforcement powers should reflect the significance of the policy concern or individual regulatory breach. While more significant powers of enforcement should apply to obligations that are themselves more significant, the regulator should have available to it the full range of lower level responses so that it may take account of the circumstances of individual cases. A multiplicity of remedies available to the regulator (a regulatory 'tool box') is a positive characteristic of an appropriately designed framework.

Serious wrongdoing is rare but, when it occurs, it should potentially be subject to a serious potential remedy or sanction. That serious remedy or sanction will also be rare, but its rarity should not preclude its availability.

Regulatory interventions and compliance and enforcement action should be considered in an integrated manner. The regulator should have the capacity to respond to areas of systemic concern through both its enforcement powers and a gradation, or restructuring, of the intervention itself.

> **enable timely and effective action**

The regulator's powers of intervention, compliance and enforcement should be structured to enable both timely and effective action (within the reasonable constraints of procedural fairness and review rights). Interventions, particularly those designed to encourage future compliance, should to the extent practicable, take into account the need to address avoidance behaviour, such as 'phoenixing'.

> **be efficient from the perspectives of regulators, the regulated and the community as a whole**

An intervention, compliance and enforcement framework should enable and encourage the regulator to respond to areas of public policy concern with strategies that impose least cost to the regulated entities, itself and the community, to deliver the identified objective. Such strategies should include 'soft' measures such as reliance on market forces, forbearance on available powers, self-regulation, powers to undertake public inquiries or require information disclosure, collaborative initiatives, and information or education strategies. The integrated capacity to undertake these softer measures by the regulator will often deliver policy objectives at lower industry, government and community cost and without the need for recourse to 'harder' powers.

> **be applied fairly, transparently and with accountability**

The regulator should be required to make decisions regarding regulatory interventions or enforcement actions in an accountable manner. Such an expectation should be given effect through targeted procedural obligations, appropriate appeal mechanisms (administrative and judicial) and whole-of-government regulatory impact and regulator performance structures.

> **encourage an environment of compliance**

The regulator's powers, but also the expectations of how it exercises those powers, should be structured to encourage regulatory compliance. The mere existence of strong penalties and powers of intervention (such as the conduct of public inquiries) can of themselves encourage behavioural change and compliance. Judicious enforcement action that penalises non-compliance often has an important 'general deterrence' effect in the market-place.

Criminal sanctions will rarely be an appropriately targeted measure to address commercial behaviour. Co-existing civil and administrative remedies will often provide more timely, more suitable and more collaborative outcomes.

Importantly, regulated entities should have appropriate incentives to cooperate with least-cost interventions or enforcement actions, to avoid the necessity for escalated action. For example, consensual remedies are often only negotiable in circumstances where they obviate a more serious remedy that may be imposed by the regulator.

## Intervention powers

Drawing on these principles, a future regulator should have a base level toolkit that provides powers of intervention to address, in a proportional way, public policy concerns within its oversight and regulatory remit. Each of the primary Acts covering communications and media regulation establishes separate powers of intervention, including the application of compliance and enforcement powers. The result is that there is no consistent framework against which particular matters of public policy concern are assessed for the appropriate form of intervention (primary legislation, mandatory standards, co-regulatory codes). Indeed some are internally inconsistent.

These powers of intervention need to be accompanied by a suite of compliance and enforcement powers which are the suite of powers to respond to individual and systemic failures and to foster future compliance (see Figure 5).

There is an important distinction between the regulator's traditional powers of rule-making (and its enforcement of these rules) and a wider set of interventions that can be used as ways to achieve:

- > where necessary, behavioural change either of industry participants or citizens in order to mitigate particular risks
- > industry and community knowledge of rights and obligations—often given effect through information and communication strategies
- > compliance outcomes—given effect through direct regulatory strategies.

## Rule-making powers

The previous analysis of the desirable outcomes or enduring concepts for media and communications regulation provides a guide to the types of rule-making powers that are likely to remain necessary in managing a transition period under which existing legislative structures remain in the IP-enabled communications and content future. In that context, the ACMA observes that the following areas of intervention are likely to remain important in such a dynamic context:

- > market facilitation powers, including
  - > **planning, allocation and management of public resources** necessary for communications infrastructure and services
  - > **revenue collection** powers to provide a return to the government for providing access to public resources
  - > **licensing** or other forms of market authorisation and entry
  - > **forbearance**. Regulatory forbearance may be adopted as a short-term measure while other legislative solutions or regulatory approaches are being developed, or to allow industry time to come to terms with new obligations and is an effective market facilitation power.

- > protecting the operation of markets through
  - > **technical standards making** powers to underpin service quality for infrastructure, devices and services
  - > **dispute resolution** powers for example, managing interference in radiocommunications
- > protecting consumers and community standards through
  - > **industry code registration** powers which are likely to remain important as a flexible mechanism for addressing consumer protections and community standards as well as the efficient operation of areas requiring intra and inter-sectoral cooperation, usually backed-up by regulatory powers to make **mandatory standards**
- > addressing market failures including through
  - > **redress mechanisms** including complaints processing and investigations
  - > **administering payments** used to support other communications public policy objectives such as access to services
  - > **information provision and education** directed at industry participants and citizens. This power addresses problems resulting from a lack of knowledge among consumers or participants in an industry and assists the regulator to change the quality of the information available or better target its distribution.

However, it will not be appropriate for a regulator's rule making powers to extend to all areas of its remit. Some rules should appropriately be made by parliament in legislation, or by the government through ministerial or other determinations. In other cases, the regulator's rule making powers might be constrained by guidance issued through ministerial direction or policy guidance. At the other end of the spectrum, wherever possible, industry itself should have the capacity to make rules on its own (self-regulation — generally most appropriate where the public policy interests are in parallel with industry objectives) or in concert with the regulator (co-regulation — where regulatory oversight is appropriate to ensure public policy interests that might not be addressed by the industry alone, can be assured).

Some important considerations in determining who should have rule making powers in particular circumstances include:

- > the transparency that the rule making mechanism can afford industry and consumers
- > the flexibility available to revise or remove rules as market circumstances warrant
- > the close interrelationship between rule making and compliance strategies.

### Operational “soft” powers

In addition to these powers there is a set of other operational interventions that provide flexibility to address issues arising in an innovative industry that is increasingly globalised, where the boundaries of issues are sometimes not well defined and where it is appropriate for the regulator to fulfil an oversight rather than formal regulatory role. In this context, operational interventions that are likely to be of critical importance to a regulator include:

- > **international coordination** powers—these are relevant to facilitate international harmonisation of spectrum and standards that will allow Australia to access low

cost equipment and devices. They may also facilitate taking compliance/enforcement action to mitigate harms in a globally connected environment

- > **collaborative partnerships**—this intervention is directed at engaging multiple parties, undertaking collaborative agenda-setting and using moral persuasion to deliver a desired outcome or encourage compliance. It can be an effective mechanism in streamlining and coordinating regulatory responses across jurisdictions and organisations where there are multiple interests
- > **advice and guidance**—this intervention provides the regulator with a capability to provide advice to regulated entities about their rights and responsibilities and advice to government about the operation of regulation
- > **research, inquiries and information-gathering**—this intervention is a mechanism for the regulator to develop evidence, including through the use of inquiries and information gathering powers, to identify matters of concern, the scale and scope of risks and the costs and benefits of particular interventions to inform regulatory decision making.

This broad set of interventions enable a regulator to respond to the demands of current and anticipated policy needs, inform effective rule-making as well as risk-based assessments that guide the targeted application of compliance and enforcement powers. Importantly, these intervention options will often be sufficient in themselves to address issues of concern, avoiding the need to escalate to traditional rules-based regulatory action at all.

### **Compliance and enforcement powers**

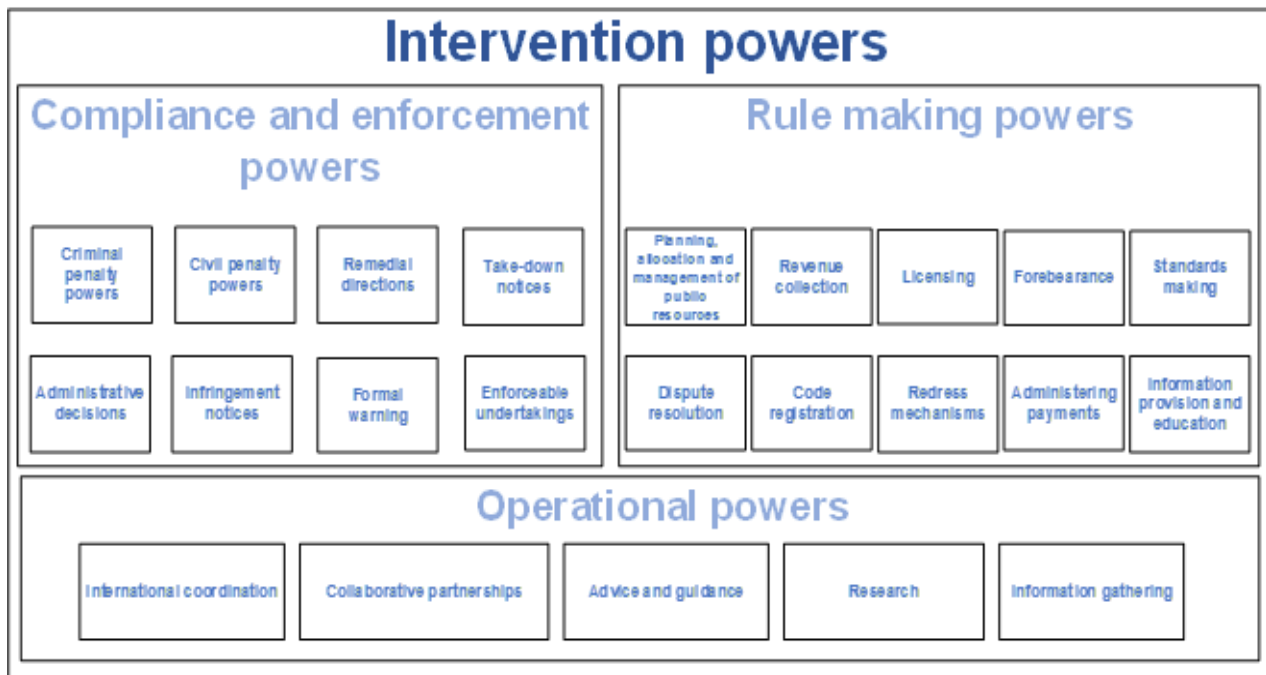
Legislation administered by the ACMA establishes a comprehensive (but not an entirely coherent) set of graduated compliance and enforcement powers by which the ACMA can tailor its response to either individual or systemic issues that raise public policy concerns. The typical set of compliance and enforcement powers available to a regulator are represented across each of the primary pieces of legislation, although not consistently, and cover:

- > criminal and civil penalty powers
- > remedial directions
- > take-down notices
- > administrative decisions such as the imposition of licence conditions or the suspension or cancellation of a licence
- > infringement notices
- > formal warning
- > enforceable undertakings.<sup>21</sup>

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<sup>21</sup> ACMA [Compliance and Enforcement Policy](#)

**Figure 5: A flexible set of intervention powers**



However, there are some notable gaps and differences across communications and media regulation in the application of these existing powers. For example:

- > in the Radiocommunications Act, there is an excessive reliance on criminal law penalties and insufficient ability for civil penalties or administrative action such as enforceable undertakings to be applied
- > under the Broadcasting Services Act (BSA), where a broadcaster is in breach of a licence condition provision that has been imposed by the regulator, under available powers the ACMA can suspend or cancel the licence but is not empowered to seek civil penalties from the court
- > under the BSA there is no power to directly address harm occasioned by contravening content rules such as by directing that there be an on-air correction of an inaccuracy
- > some of the monetary sanctions allowed under some of the legislation are arguably insufficient to deter breaches. For example, the highest monetary civil penalty that a court can awarded against a commercial radio licensee for a breach of a licence condition is \$90,000. Since very few circumstances could merit that maximum penalty, it may be argued that penalties of this order are unlikely to constitute a powerful deterrent for what may be a large commercial entity
- > under the Telecommunications Act, the ACMA may accept an enforceable undertaking for a breach of a provision of the Act, but cannot accept an enforceable undertaking in relation to a breach of an industry code, unlike the BSA where the ACMA may accept enforceable undertakings in relation to breaches of the Act and industry code provisions



- > unlike some other regulators, the ACMA generally lacks a power to grant exemptions from compliance with legal obligations. A power to exempt from otherwise applicable provisions of the law, including conditions, can assist the regulator and industry to achieve sensible, flexible and tailored responses to risk. It can be particularly helpful in periods of transition (for example, as a consequence of the introduction of a new obligation or during the period leading up to the abolition of a legal obligation when forbearance may be appropriate) or where the relevant legal obligation may impose an unreasonable burden on the regulated entity in its particular circumstances.

In the review's consideration of the powers required by a future regulator, it is desirable that some of the weaknesses in the current compliance and enforcement toolkit be addressed.

## **Governance structures and organisational disposition**

The other integral design component for a future-focussed regulator is the governance structure and organisational disposition that guides regulatory decision-making. Specifically, the review seeks to understand how differences in structure and governance arrangements can affect the way in which a regulator performs its functions.

In considering governance structures for the regulator, there are two separate, but related governance realms. First, appropriate structures should be in place to provide confidence to government, regulated entities and the community in the regulatory decision-making activities of the regulator. Secondly, as a government agency, appropriate accountability structures are necessary to provide the minister and, through the minister, the parliament, with assurance that the financial and human resources of the agency are being managed effectively, efficiently and in a manner consistent with public sector policies. While different governance arrangements may be appropriate to these two objectives, those different arrangements must also work effectively as a coherent whole.

### **The ACMA's current governance model**

The current governance model for the ACMA separates agency accountability from regulatory decision governance through the vesting of regulatory decision-making powers in the authority. This is relevant to one of the key aims of any regulatory governance model to guarantee independence.

Under s19 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act), the ACMA consists of the Chair, a Deputy Chair and between one and seven other members. It is this group of people (the regulatory authority) which is vested with the regulatory powers and functions of the ACMA as conferred by the ACMA Act and other legislation. The Authority members are appointed for fixed terms of up to 5 years to a maximum of ten, and may be removed from office only in limited and special circumstances, thus allowing them to exercise the ACMA's powers and functions independently. The regulatory authority has the power to make all regulatory decisions conferred on the ACMA. The minister has a broad power to direct the ACMA, but such power must be exercised by a public instrument, and may only be of a general nature in certain cases, thus promoting the capacity of the regulatory authority to operate independently of executive government.

The staff of the agency are engaged under the Public Service Act (s54, ACMA Act). Relevant powers under the PSA are vested in the Chair as the agency head. The staff support the regulatory authority to give effect to its decisions and exercise its powers and functions under delegation. Subject to certain constraints, the regulatory authority can and does delegate its powers and functions to staff members of the agency.

Agency accountability is achieved through the Chair as the head of the agency being accountable for the Agency's performance under the PGPA Act. Section 63 of the ACMA Act provides that the Chair, as the agency head, is not subject to direction by the regulatory authority in relation to the exercise of powers or functions in relation to the agency under the PGPA Act or the Public Service Act.

The appointment of a single person as Chair of the regulatory authority and the agency head, provides a key mechanism by which it is assured that agency resources and management may be directed swiftly and flexibly to delivering the support necessary to enable the regulatory authority to fulfil its roles effectively. This in turn helps to maximise the independence of the agency as discussed below.

### **Alternative governance models**

In developing an understanding of how different structures and governance arrangements can affect the performance of regulatory functions and decision-making it is useful to identify the available alternative models. In considering alternative governance models, the following discussion focuses on a number of factors of particular relevance to the governance of an independent regulator's regulatory decision-making powers. These include:

- > degrees of independence in decision-making
- > style and composition of boards or decision-making structures, and
- > delegated decision making.

### ***Degree of independence in decision-making***

The degree to which a regulator is independent from government will depend on the extent of its exposure to ministerial and government direction. This in turn depends on how the regulator is constituted. The degree of independence may be conferred under primary legislation, but also be informed by the governance model adopted for the regulator.

In looking at international governance models, the OECD has identified a number of factors that indicate when a structurally separate independent regulatory body is likely to be more appropriate than a body located within a ministry. Factors indicating that a high degree of independence is necessary include—when it is important to have credible commitment to long term policy settings, stability and predictability in decision-making, management of conflicts of interest and development of regulatory expertise.<sup>22</sup> Features of the communications sector including the importance of sector-specific expertise, the need for significant infrastructure investments and the dominance of large incumbent firms, indicate that it would benefit from a regulatory environment with these characteristics.

The OECD also provides guidance on principles to inform when independent decision-making should be used, including 'where there is a need for an agency to be seen as independent, to maintain public confidence in the objectivity and impartiality of decisions'; and where 'the decisions of the agency can have a significant impact on particular interests and there is a need to protect its impartiality'.<sup>23</sup> All of these are current considerations relevant to the communications and media sectors.

The following objectives may provide useful criteria for determining when independence in regulatory decision-making is desirable:

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<sup>22</sup> OECD [Governance of regulators](#), p51

<sup>23</sup> OECD, [Governance of regulators](#), p49

> Non-discriminatory treatment of stakeholders

Excessive external pressures may potentially lead to the fact or perception that regulatory decisions lack objectivity and transparency leading to discriminatory treatment in regulatory decision-making. This can seriously impair the development and functioning of marketplaces by weighting the playing field in favour of certain stakeholders; for example, large incumbent communication companies compared with new market entrants.

An independent regulator also allows the concerns of consumers and users to be more fully considered and balanced with the interests of firms. This is particularly important in the communications environment where there can be a concentration of a few major industry providers in contrast to a diffuse consumer and user base reliant on their products and services, along with significant information asymmetry.

> Consistency in decision-making

Independence removes regulatory decision-making from the political process and the possibility that regulatory actions may be or be seen to be based on or influenced by political expediency. This provides greater certainty within the operating environment for both business and consumers. Stability and certainty are particularly important in the communications sector where major long term investment decisions for infrastructure and product development are made. A predictable environment is a key condition for investment to meet current and future demand and foster innovation. The International Telecommunications Union (ITU) has concluded that 'independence stimulates investor confidence and reduces regulatory risk'.<sup>24</sup>

> Efficiency

Efficiencies may also be available where rule-making is devolved from the government to a dedicated, expert body.

> Enhanced credibility of policy settings

An issue related to real or perceived interference in the administration of regulation is the effect it is likely to have on undermining the credibility of the broader policy settings reflected in the regulatory framework. Establishing an independent regulator can be an important signal by government of its commitment to the policies in place for the sector.

> Confidence in the regulator's decision-making authority

Independence also underpins the regulator's authority both among those directly affected by its decisions and by influencing broader perceptions of its role and effectiveness. The authority that attaches to an impartial regulator acting in the interests of all stakeholders is necessary for it to effectively undertake its functions, including: supervision, monitoring, approvals, rule-making, investigation, adjudication and the imposition of remedial actions and possibly sanctions and penalties.

For reasons such as these, the international trend is for regulatory agencies in the communications sector to be created with a high degree of independence. Each year the International Telecommunication Union prepares information on world-wide trends in approaches to regulating the information and communications sector. Evidence collected by the ITU for 2014 confirms that autonomous separate communications regulators are the dominant institutional structure for regulation of the sector, with 84 per cent of the ITU member countries surveyed reporting a 'separate telecoms/ICT

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<sup>24</sup> International Telecommunications Union, [ICT Regulation Toolkit](#)

regulator' and 87 per cent reporting that the regulator is 'autonomous in its decision-making' (based on 194 data points).

In the Australian context, there are three main models for agencies in use across the Commonwealth government<sup>25</sup>. The accountability requirements for a public sector agency are similar under each of the three Commonwealth agency models, but the implications for degrees of independence in decision-making vary under each of these models. They are:

> Departments.

Under the OECD's governance principles, departments represent the model most closely aligned to the executive decisions of government. Although they may not be involved in a department's day-to-day operations, ministers direct a department's priorities and departmental staff are responsible for implementing Government decisions and meeting Government objectives.

> Statutory agencies with staff employed under the Public Service Act 1999.

Statutory agencies tend to have the characteristics connoting a high degree of independence as outlined in the OECD's governance principles, including:

- > independent decision-making boards or commissions;
- > conditions governing appointment and termination of members of the board or commission are set out in constituent legislation;
- > the ministerial role in relation to the agency is limited by the legislation;
- > the objectives, role, functions and jurisdiction of the agency are defined in legislation; and
- > accountability and transparency are provided by a range of oversight mechanisms such as periodic parliamentary scrutiny, compulsory consultation on rule making, freedom of information laws and review rights.

This is the current ACMA model. There is a variation on this model in which agencies have the capacity to employ staff under the Public Service Act or under their own enabling legislation.

> Executive agencies

The independence of an executive agency is somewhere between a department and a statutory authority. Although they are located within a department, executive agencies are declared separate from the department for staffing, accountability and reporting purposes under the Public Service Act. In this sense they are semi-independent. They are usually set up by the Government to carry out particular functions, for example the recently established Digital Transformation Office (DTO).

In the ACMA's experience, the statutory agency model provides an effective regulatory decision-making model, particularly in the context of an environment in which the independence of decisions is important for confidence in regulatory settings and investment decisions, as well as for efficiency of decision-making.

***Style and composition of boards and decision-making structures***

While the ACMA's regulatory decision making powers are vested in a group of persons—the Authority—an alternative model would involve a single person holding such

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<sup>25</sup> Australian Public Service Commission, [Australian Public Service Agencies](#)

powers. The rationale for attaching regulatory powers to an individual is speed and ease of regulatory decision-making.

The disadvantages of such a model, however, include the ‘possibility that significant political pressures may be directed at one person; a lack of accountability to a board or equivalent; and the potential for unpredictable decision making’ particularly where advice and adjudication roles are combined.<sup>26</sup>

Given the breadth of remit of a communications regulator, the ACMA suggests that such a model would also be challenged by the difficulties of identifying a single person with the requisite knowledge and experience to provide confidence to sector stakeholders. The expertise and skills of the collective group of authority members can significantly strengthen the credibility of, and public confidence in, a regulator’s decisions.

If an authority model is retained, consideration could be given to the balance of full and part-time members, and to any guidance that might be established for the skill sets of those to be appointed.

Across other commonwealth regulators a variety of full or part-time board membership models are in use. The benefits of full-time membership are the capacity to engage deeply with stakeholders and develop deep expertise on complex issues. But as noted in the recent Harper Competition Policy Review examining competition law, a potential weakness of having an all full time commissioner structure can mean full time members become enmeshed in day to day organisational decision-making<sup>27</sup>. The opportunity to appoint members with an ongoing or recent involvement in relevant industry sectors may also be lost in the absence of part-time members.

A potential weakness of a part-time commission or authority membership are the limitations on the capacity of those part-time members to engage in the detail of complex decisions, be available to engage with stakeholders on issues of concern and the increased potential exposure to conflicts of interest. Conversely, a potential strength of part-time membership is that the agency has available to it the expertise of persons who retain roles outside the public sector. That may assist the agency to stay in touch with current market developments and changing stakeholder views. For an agency that needs to apply generally accepted community standards to matters such as the content of broadcasting, the perspectives of persons who are not full-time public servants can also add value and credibility to the decision ultimately reached.

In the ACMA’s experience, the existing mechanism of having two or more full-time members, ensures that there is the required capacity at Authority level to engage in the detailed review and analysis of complex issues. This is a particular benefit when considering the future communications environment where technological change will affect the complexity of regulatory decision-making. Such a requirement is recognized in the governance mechanisms of comparable agencies (for example the ACCC, ASIC and APRA).

A wholly part-time Authority is likely to have difficulty providing the time required to oversee the full range of regulatory matters before it. Further, the existence of a number of full-time members, each with full access to agency information and support has the effect of being a counterbalance to any risk of a dominant Chair. And, as

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<sup>26</sup> Australian Law Reform Commission, [Australian Privacy Law and Practice](#) 2008 section 46.

<sup>27</sup> [Competition Policy Review Final Report](#) 2015 recommendation 51.

mentioned above, having some part-time members enables the Authority to have access to relevant recent or current industry experience and allows ‘fresh eyes’ and industry and community perspectives to be applied to Authority deliberations.

It is broadly acknowledged that Authority members should not be appointed as representatives of particular stakeholder groups, and that appropriate measures be in place to manage actual and perceived conflicts of interest. More generally, however, those appointed should individually have skills and experience relevant to the regulator’s remit and, importantly, the collective group of Authority members should as far as possible be able to bring to bear skill sets that reflect the breadth of the organisation’s responsibilities.

### ***Delegated decision making***

A further aspect to consider in the design of an appropriate institutional structure for a regulator is the capacity for efficient decision-making. Delegated decision-making is one way of achieving timely and efficient decisions on routine or less complex matters.

The ACMA’s capacity to delegate regulatory decisions is specified under legislation. In practice, a number of these regulatory decision-making powers is delegated to others in the agency (including members) via instruments of delegation/authorisation. Currently, there are around 15 instruments of delegation/authorisation in place in relation to the ACMA’s regulatory powers. In practice, the majority of regulatory decisions are made under delegation—the vast bulk of which are routine, often automated processes, but also involve matters that require individual assessment and varying levels of analysis.

While many decisions can be made under delegation, the Authority has a number of mechanisms in place to ensure that delegated decisions are made appropriately, and that matters requiring Authority consideration are brought to the Authority itself. Such measures include:

- > agency guidance to staff regarding processes for delegated decision-making, including appropriate escalation of issues that should have senior management, or Authority level, consideration
- > regularly constituted internal committees, including both senior management and full-time members, to review issues before the ACMA and determine whether Authority decision is appropriate or opinion should be sought
- > regular reporting to the Authority on delegated decisions made to ensure transparency to Authority members and enable any systemic areas of concern relating to conduct in the sector to be identified.

### **Financial and resource accountability**

The ACMA manages its financial and human resources in a manner consistent with government-wide legislative and accountability obligations. The Chair, as agency head, is accountable to government for the agency’s operations and delegates, as appropriate, financial and resource decision-making responsibilities to staff.

The combined role of Chair and agency head provides the mechanism to ensure that agency resources and effort is directed to enable the regulatory authority to fulfil its regulatory role. In the ACMA’s experience, the combined Chair and agency head role operates effectively in delivering an alignment between the operation of the agency and regulatory decision-making requirements of the Authority. This is important to help maximise transparency and stakeholder understanding of Authority decision-making, which can be compromised where there is a real or perceived misalignment between staff and Authority views. The existence of full-time Authority members, in addition to the Chair, provides an additional practical mechanism for ensuring this alignment.

Alternative approaches would include conferring on the Authority itself, responsibility and accountability for the financial and human resource management of the agency (which was described in the discussion paper as a 'governing board' model) and/or separating the roles of Chair and agency head.

The ACMA was established in the wake of the 2003 Review of the Corporate Governance of Statutory Authorities and Office Holders, conducted by John Uhrig. Uhrig observed that in the private sector for larger listed firms, where ownership is dispersed, it is impractical for shareholders to be closely involved in oversight or management of the enterprise. In these circumstances, good governance is achieved through the establishment of a board of directors<sup>28</sup>. He noted, however, that in the public sector government oversight and 'ownership' is concentrated through the minister and concluded that for the purposes of financial and resource management accountability a governing board "may dilute accountability by adding a layer between ministers and management"<sup>29</sup>.

The separation of the Chair and agency head roles would also have parallels with Australian corporate practice, at least among large ASX listed entities. It would, however, create the need for additional mechanisms to achieve alignment between the Authority and agency. The most obvious of such mechanisms would be to also borrow from corporate practice to fully empower the Authority, like a corporate board, to appoint and terminate the appointment of the agency head. As noted by Uhrig, however, such a mechanism may in fact have the effect of weakening the accountability to government for agency financial and human resource management. It would also run counter to the PGPA Act principle that an individual hold such accountability.

### **Organisational disposition**

Noting the variation in governance structures adopted across Commonwealth agencies, as well as in other international regulatory models and the private sector, designing appropriate governance structures is a matter for judgement rather than a strict application of criteria. Clear guidance to the regulator on why particular design choices have been made can assist it in the future exercise of its decision-making powers.

A further important feature of institutional design for a regulator is the guidance, both externally conveyed and internally developed by the regulator that communicates how the regulator should exercise the decision-making powers conferred on it by the government.

This guidance can be provided by way of legislation (for example, expressed in legislation as regulatory policy objects) or by ministerial guidance such as Statements of Expectations conveyed to the regulator. Internally developed guidance can include published statements by the regulator about the regulatory principles or its regulatory philosophy that explains to the public how decisions are likely to be made. As noted in the discussion above, such guidance is an important part of vesting authority in a regulator, and also assists by instilling confidence in the public about the government's expectations for the regulator.

While it will remain appropriate for different aspects of the ACMA's regulatory remit to be guided by specific policy objectives, the review might consider whether some greater consistency is appropriate in statements of regulatory policy in legislation or

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<sup>28</sup> John Uhrig, [Review of the Corporate Governance Of Statutory Authorities And Office Holders](#), 2003, p3.

<sup>29</sup> John Uhrig, [Review of the Corporate Governance Of Statutory Authorities And Office Holders](#), 2003, p13.

whether an appropriate alternative mechanism can be established to bring together what is currently a disparate set of regulatory policy objectives.

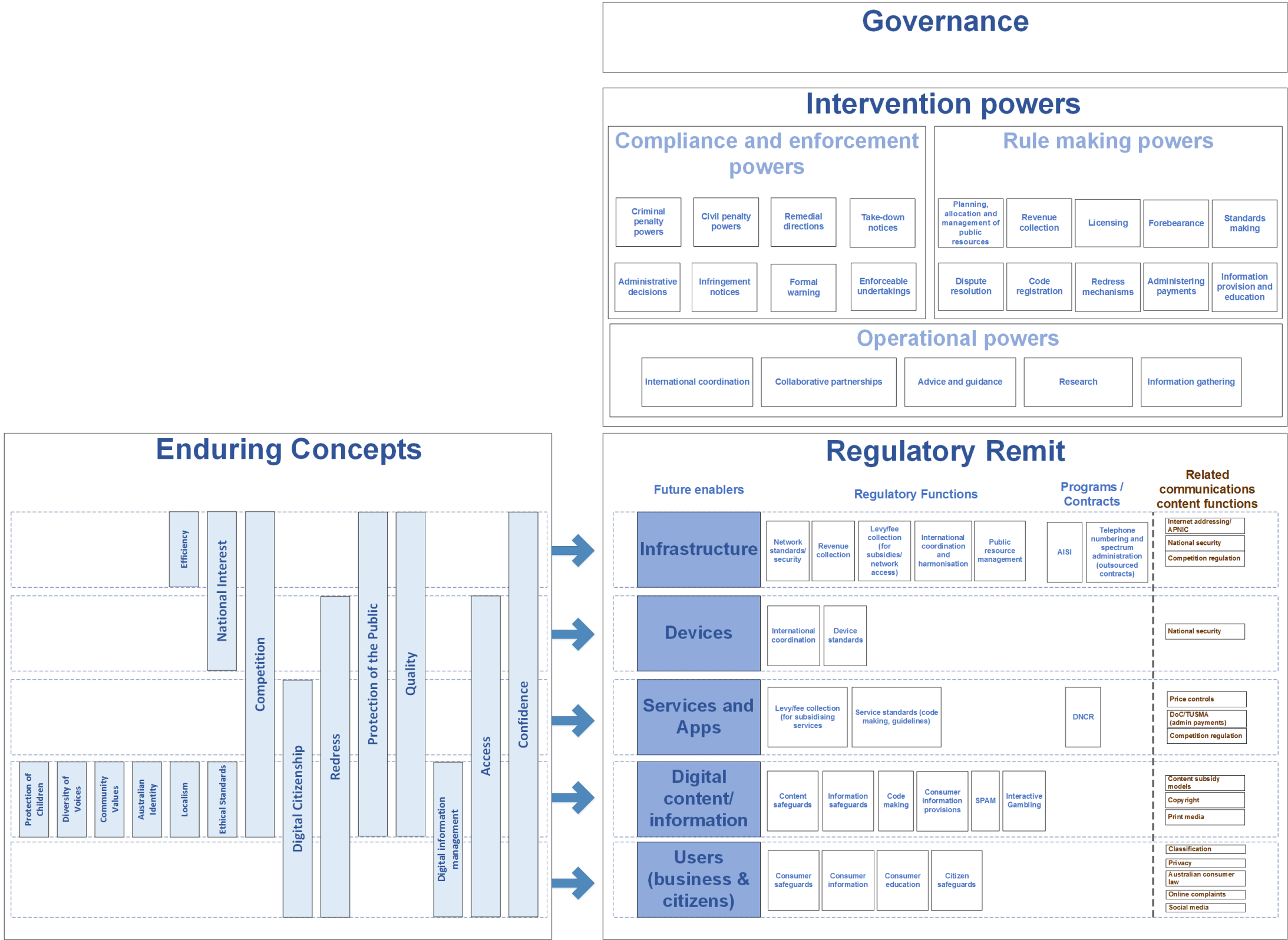
## **Concluding observations**

The review issues paper has asked a broad set of questions about the design of a future communications regulator. In responding to these questions, the ACMA has identified 5 design components (remit, desired policy outcomes, intervention, compliance and enforcement powers and the overarching governance model) that can form the basis for establishing new enabling legislation for an independent communications regulator (see Figure 6).

Difficult policy choices will be involved in designing and implementing any revised arrangements, but the ACMA is encouraged that the review is taking a first principles approach to the assessment of the role of a communications regulator in a dynamic digital communications environment. The ACMA looks forward to working closely with the Department of Communications in the implementation of any new communications regulatory arrangements.



Figure 6: Structural elements of a new communications regulator



# **Appendix 1— Regulator Performance Framework Assessment**

The Regulator Performance Framework summary report is attached.

# Introduction

As part of the Government's deregulation agenda, the Regulator Performance Framework (RPF) was developed to measure the efficiency and effectiveness with which regulators undertake their roles, and in particular, their impact on regulated entities. The framework encourages regulators to:

- > minimise the impact of regulatory burden on regulated communities
- > increase their transparency and accountability
- > focus on continuous improvement of regulatory frameworks.

The RPF consists of six key performance indicators (KPIs) that cover common core regulatory activities:

- > KPI 1—Regulators do not unnecessarily impede the efficient operation of regulated entities.
- > KPI 2—Communication with regulated entities is clear, targeted and effective.
- > KPI 3—Actions undertaken by regulators are proportionate to the risk being managed.
- > KPI 4—Compliance and monitoring approaches are streamlined and co-ordinated.
- > KPI 5—Regulators are open and transparent in their dealings with regulated entities.
- > KPI 6—Regulators actively contribute to the continuous improvement of regulatory frameworks.

Under this framework, the ACMA is required to:

- > establish a performance assessment framework and annually self-assess its performance against the KPIs
- > publish a report of its self-assessment results each year
- > consult stakeholders on its performance assessment framework and the annual self-assessment reports.

The ACMA has sought to integrate the requirements of the RPF into its corporate performance reporting activities. The ACMA has identified a strong alignment between the RPF's KPIs and the ACMA's strategic functions, as expressed in the ACMA's corporate plan through its Key Result Areas (KRAs). Table 1 below shows the relationship between the ACMA's KRAs and the RPF's KPIs.

Table 1: Mapping of ACMA functions to RPF KPIs—green indicates alignment

ACMA KRA outcome and function	KPI 1	KPI2 & 5*	KPI 3	KPI 4	KPI 6
KRA 1: That the allocation and use of public resources maximises the public value to the Australian community (Including licensing, numbering and interference management)					
KRA 2: That national safety and security interests are appropriately supported in the planning and delivery of communication infrastructure services					
KRA 3: That consumer, citizen and audience safeguards are effective, reflect community standards and deliver on consumer experience (Investigation, compliance and enforcement, and the establishment of appropriate safeguards)					
KRA 4: That citizens engage positively, confidently and securely in the developing information economy and evolving networked society					
KRA 5: That the ACMA remains relevant as an increasingly resilient, agile, efficient and knowledge-based organisation (regulatory reform and the provision of advice and information through reporting, research and stakeholder engagement)					

\* The ACMA has grouped KPI 2 and KPI 5 together because both have outputs that relate to consultation, openness and effective communication of information, leading to appropriate and fit-for-purpose decision making.

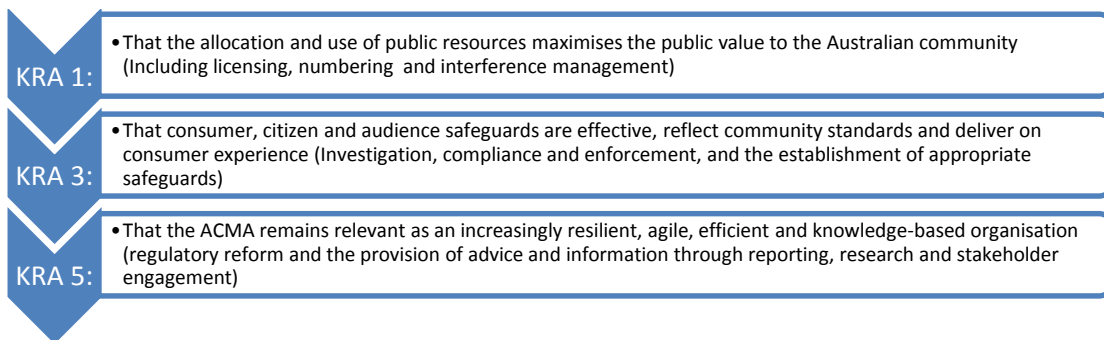
From July 2015, the ACMA is subject to the RPF, with a self-assessment report for the 2015–16 period due in December 2016. However, for the purpose of responding to the Review Issues Paper’s focus on the ACMA’s performance against each of the six KPIs, the ACMA has prepared a summary snapshot performance report.

The following summary report is based on 2014–15 performance data and includes time-series data for earlier years where that was available against the metrics outlined in the ACMA’s self-assessment methodology (refer Appendix A). The snapshot report provides a mix of quantitative time-series performance and volume metrics, as well as qualitative narrative-based examples of performance.

The time frames for responding to the review issues paper means that the assessment against the RPF is more limited than that intended in December 2016. The ACMA has taken an outcomes-focused approach to this self-assessment and has genuinely identified areas for continuous improvement as part of this process.

# KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

## ACMA functions relevant to the achievement of KPI 1:



## Performance measures

The ACMA has determined that the following performance measures are relevant to measuring its performance against KPI 1:

- > timeliness
- > cost
- > use of collaborative partnerships
- > use of alternatives to traditional regulation
- > use of research and environmental scanning.

In gathering evidence in support of this KPI, the ACMA sought to answer the following questions:

- > How did the ACMA seek to understand regulated entities, their industry and market?
- > How did the ACMA make it easier for regulated entities to operate their business?
- > How did the ACMA seek to minimise costs for regulated entities?

Where available within required time frames, the ACMA has sought to use 10-year time-series quantitative data to demonstrate its performance against KPI 1. While the data available is variable across different performance indicators, trend data has been used where possible to show historical performance.

Since the ACMA's inception, communications and media have undergone a period of significant change, along with disruption to existing business models and industry structures. Such significant shifts have had flow-on effects in relation to the risks and management of potential harms for the ACMA. In response, the ACMA has sought to develop a flexible and adaptable regulatory toolkit underpinned by an efficient evidence-gathering network, which enables it to stay informed of and respond to emerging issues, as well as identify potential risks and areas of harm. Understanding the breadth of the ACMA's regulated entities and their industry and market structures

requires a sophisticated information-gathering and research program to ensure that efficient operation is encouraged and costs for regulated entities are minimised.

## **ACMA seeks information about regulated entities and markets**

To gather intelligence on industry conditions across its regulated population, and identify risk and harms to ensure efficient operation of its regulated community, the ACMA conducts the following range of activities:

- > the [ACMA research program](#) provides information to industry, citizens and government on the Australian communications market, explores new technologies, emerging risks, harms and industry developments to assist the ACMA make informed regulatory decisions.
- > ACMA formal advisory committees such as the Emergency Call Service Advisory Committee, the Consumer Consultative Forum and the WRC Preparatory Group
- > convening of information provision and exchange events such as Spectrum Tune-ups, [Citizen Conversations](#) and the [RadComms](#) conference
- > participation in industry reference panels and think tanks
- > stakeholder consultation program on key regulatory issues and forward planning documents such as the Five Year Spectrum Outlook (FYSO).
- > collaborative partnerships.

The ACMA also represents Australian communications interests in international fora, which it does through its [international engagement strategy](#). By engaging with overseas regulators, the ACMA gains insights that enhance its own regulatory administration and design. The ACMA's international work is also a key element in how it promotes outcomes in the interests of Australian business and the community. For example, many of the messages and threats related to spam and internet security originate off-shore and a growing number of telemarketing calls also originate in other jurisdictions. So international engagement in these areas is an important strategy to address unsolicited communications and threats from malware and phishing. This leads to a more secure online environment for users and a reduction in the harmful impact of unsolicited communications and cybersecurity threats on Australian home and business users. The ACMA's efforts in relation to [international spectrum harmonisation initiatives](#) facilitates access to economies of scale that benefit Australia's domestic telecommunications markets through cheaper communications devices and easier access to international roaming.

## **Transactions and decision-making processes are efficient and minimise cost impost to regulated entities**

Over 10 years, the ACMA has worked to maximise the efficiency and timeliness of its decision-making and transactional processes, to assist in the efficient operation of its regulated population. This is achieved by:

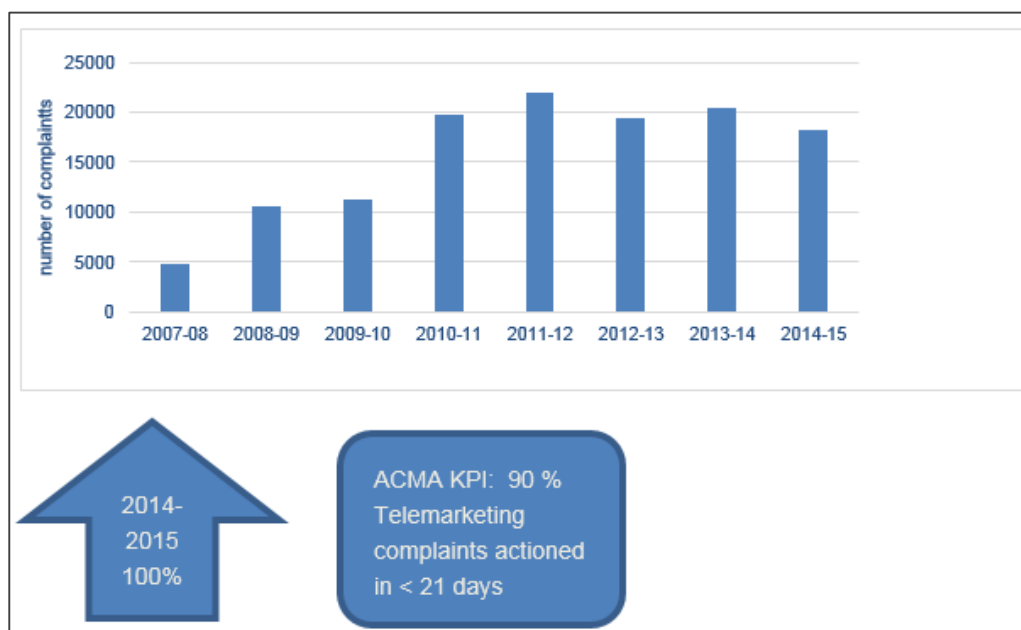
- > adoption of an evidenced-informed, risk-based approach to compliance and enforcement (for example, published [compliance and enforcement policy](#))
- > delegation of decision-making. The ACMA has over 15 instruments of delegation in place in relation to the delegation of its regulatory powers, enabling the majority of regulatory decisions to be delegated. This leaves only the more complex matters, or where particular decisions are not able to be delegated under legislation, to be decided by the Authority
- > implementation of improved transactional processes and IT upgrades. For example:

- > electronic lodgement of transactional forms
- > establishment of over-the-counter processes for access to 13 and 1800 numbers
- > introduction of a single point-of-contact Customer Service Centre (CSC) (the CSC fielded 30,837 enquiries during 2014–15)
- > streamlined application processes for a range of licensing requirements (for example, increased automation of transactional activities, including the use of business-to-government (B2G), and customer-to-government (C2G) capabilities improve service delivery to and reduce the costs to stakeholders)
- > online reporting platforms for eligible revenue and industry levy reporting.

Since 2010, the ACMA has managed increasing volumes of transactional activities. During this time, the ACMA has continued to meet its key performance indicators while also facing significant resource limitations. **Figure 1** shows that despite an increase in reporting of telemarketing calls, from just below 5,000 complaints in 2007-08 to a peak of nearly 22,000 in 2011-12, the ACMA has continued to maintain its performance in meeting the internal KPI of actioning 90 per cent of complaints in 21 days or less.

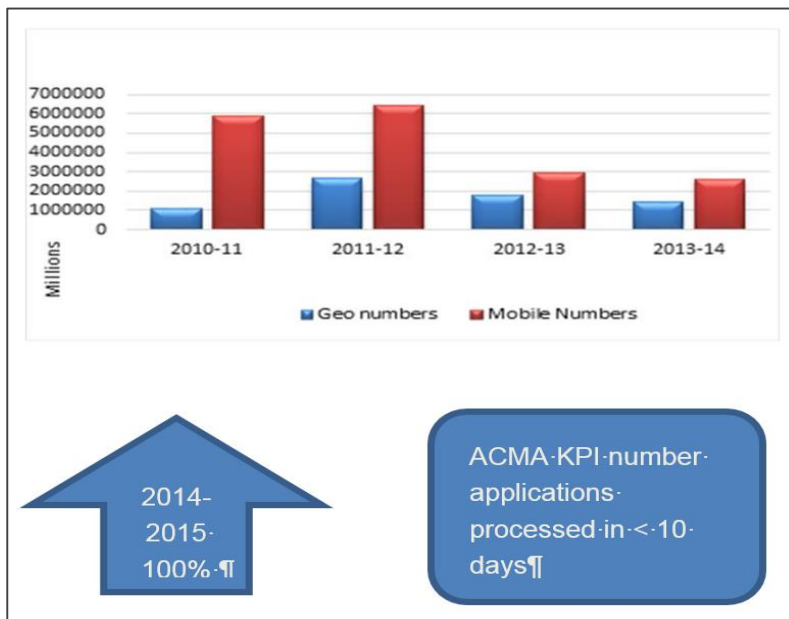
**Figure 2** shows how the ACMA has continued to outperform statutory timeframes in allocating telephone numbers, in a high volume environment.

**Figure 7: Telemarketing activity 2007–08 to 2014–15**



\* In Figure 1 the blue box outlines the ACMA's KPI and the blue arrow illustrates the ACMA's performance against the KPI (i.e. for the 2014-15 reporting period, the ACMA actioned 100 per cent of telemarketing complaints in 21 days or less. This ACMA's KPI is to action 90 per cent of complaints in 21 days or less.

**Figure 8: Numbers allocated, 2010–11 to 2013–14**

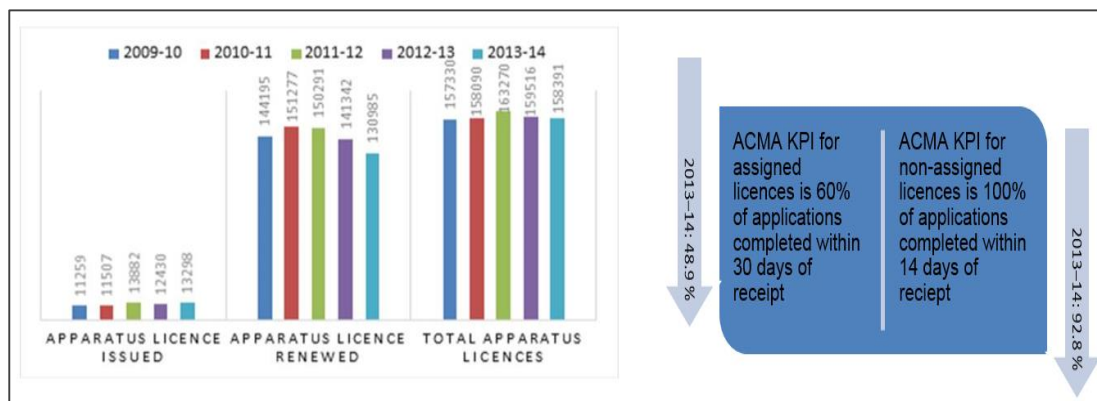


In recognition that delays in transactional processing times can result in increased cost burdens to industry, the ACMA has initiated improvements against its own internal performance indicators. In the 2011-12 reporting period, the ACMA increased the focus on timeliness in its performance target for apparatus licencing, by changing the KPI for assigned apparatus licencing applications from 70 per cent completed within 70 days of receipt to 60 per cent completed in 30 days.

Business process improvements also deliver transactional efficiencies. The ACMA has over the last three years, undertaken major business improvements to replace its spectrum management systems. These initiatives have significantly improved the ability of the ACMA to support high value spectrum licences used for wide-area services such as fixed and mobile broadband, including the development and issue of spectrum licences for the Digital Dividend auction, significant reductions in the time taken to process trades of spectrum licences and complete automation of the registration of devices under spectrum licences. This has required a number of expert assigning staff to support this work with consequential resource impacts on the ACMA's ability to meet some of its internal KPIs for apparatus licences (see Figure 3). However, the ACMA is working with stakeholders, including accredited persons, to minimise the impact of delays in processing apparatus licence applications.



**Figure 9: Radiocommunications apparatus licences, 2009–10 to 2013–14\***



\*Figure 3 shows that in the 2013/14 reporting period, the ACMA processed 48.9 per cent of assigned apparatus licence applications within 30 days of receipt. The ACMA's KPI is to process 60 per cent of applications within 30 days of receipt.

A similar drive for continued process improvements saw the introduction in late 2014 of the discretion to investigate complaints about broadcasting matters. Previously the ACMA had to investigate all such complaints even when, for example, the matter complained of was trivial. When deciding whether to investigate a particular matter, the ACMA's primary consideration is the public interest. In this regard a range of factors are considered, including the nature and seriousness of the issue raised.

The introduction of this discretion has allowed the ACMA to initiate new processes for responding to complaints into broadcasting matters to improve the timeliness of outcomes, produce internal efficiencies and reduce the administrative burden on industry. The benefit of these new processes is evident in the broadcasting investigations statistics reported during 2014–15, with the average time taken to investigate broadcast matters reduced to 2.6 months—from approximately 3.1 months per investigation last year. This is a significant reduction from the average of approximately 4.7 months five years ago. The ACMA completed 92 per cent of its investigations within a best practice KPI of six months, for the period to end June 2015.

## Minimising the cost burden of regulatory decisions

More broadly, the ACMA's commitment to ensuring regulatory frameworks encourage efficient operation of regulated entities is demonstrated by the following range of programs and activities:

- > Under the sunseting of legislative instruments program, since September 2013 the ACMA has:
  - > reviewed and remade 46 instruments
  - > reviewed and revoked/allowed to sunset 131 instruments
  - > reviewed and streamlined 23 instruments.
- > Conducted 72 consultations on changes to regulation since September 2013 and publication of a [guide for stakeholders](#) on how to respond to consultations.
- > Reduced regulatory stock—the total number of legislative instruments has decreased by 131 since September 2013.
- > Red-tape reduction regulatory reform program and better regulation initiatives:
  - > provision of approximately 56 separate pieces of advice to the Department of Communications (DoC) on deregulatory reform initiatives

- > as part of implementation of better regulation initiatives, regulatory reforms and business improvements, the ACMA contributed over \$53 million in red-tape savings as at June 2015.
- > Publication of a series of [Regulatory guides](#) in 2010 and 2011 to assist stakeholders to understand how the ACMA undertakes specific regulatory activities under legislation, explain the ACMA's regulatory approach and assist entities to comply.
- > Decisions to exercise regulatory forbearance (for example, VoIP and Regional Radio content reform).

## Identified areas for improvement and focus

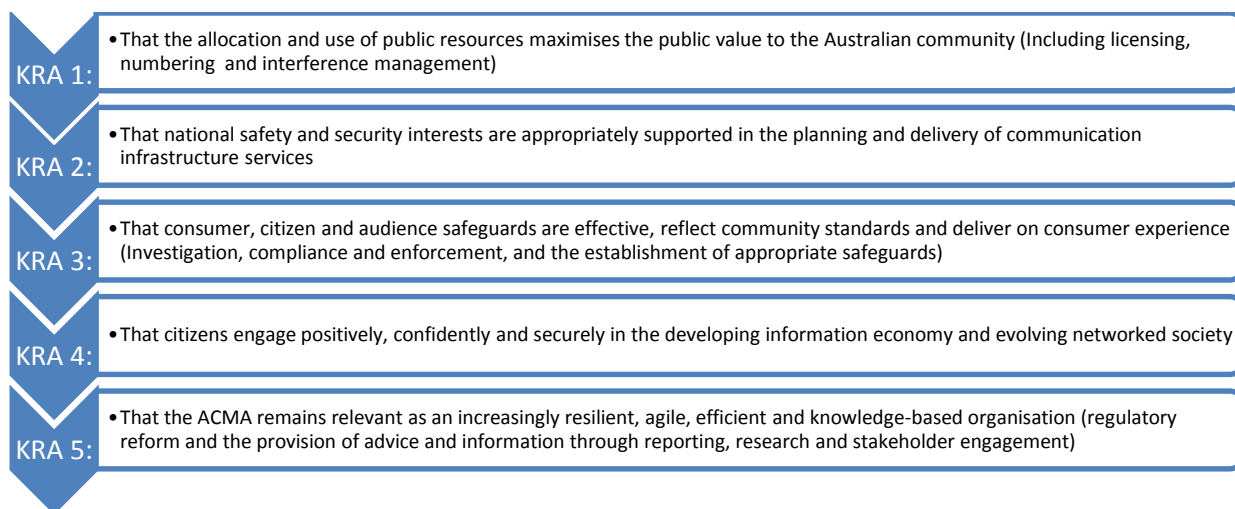
During the ACMA's planning for implementation of the RPF, feedback from stakeholders indicated they would like to see greater use of forward work plans for the ACMA's consultation program. The ACMA has proposed to adopt this recommendation as part of its continuous improvement program. For example, in response to the Government's Spectrum review the ACMA will prepare a one year spectrum management forward work program to be made available to stakeholders.

In relation to tracking the performance of day-to-day administrative processes, the ACMA has proposed new metrics to assist in assessing efficiency over time. For several years, the ACMA has recorded volumes of work conducted and has made efforts to track performance against various timeliness indicators. Over future years, it considers there is scope to make more use of averages and rates, in order to establish baseline performance levels, which can be used to set targets for ongoing improvement in transactional activities and timeliness of decision making. This will commence for the first RPF report in December 2016.

Additionally, the ACMA is currently progressing initiatives to improve the efficiency and effectiveness of consultation processes, through streamlining mechanisms for stakeholder input, and developing a more cohesive framework for managing consultations. The ACMA is developing an online consultation engine as a way to provide easier channels for stakeholders to engage in regulatory processes, and to reach out to individual stakeholders who may not engage in formal processes. The ACMA plans to pilot the consultation engine with stakeholders in the second half of 2015, and implement the final product by the end of the calendar year.

# KPI 2: Communication with regulated entities is clear, targeted and effective; and KPI 5: Regulators are open and transparent in their dealings with regulated entities

## ACMA functions relevant to the achievement of KPI 2 and KPI 5:



## Performance measures

The ACMA has determined that the following performance measures are relevant to measuring its performance against KPI 2 and 5:

- > stakeholder satisfaction
- > timeliness
- > use of information strategies.

In gathering evidence in support of these KPIs, the ACMA sought to answer the following questions:

- > Did the ACMA use clear, targeted and effective communications strategies to engage with stakeholders?
- > Did the ACMA demonstrate transparency in its dealing with stakeholders when contemplating changes to regulatory frameworks and in communicating the reasons for and outcomes of regulatory decisions?

For reporting performance against KPI 2 and 5, the ACMA has endeavoured to use historical trend data where available for both quantitative and qualitative self-assessment. Availability of this data varies across indicators and is dependent on commencement dates of certain activities and initiatives.

## **Integrated stakeholder engagement strategy supports regulatory outcomes**

Since its inception, the ACMA has developed and continued to refine a strategic approach to engaging with its stakeholders, featuring the use of different tools calibrated to be issue-specific and tailored to the appropriate level of interaction. The ACMA's tiered approach includes:

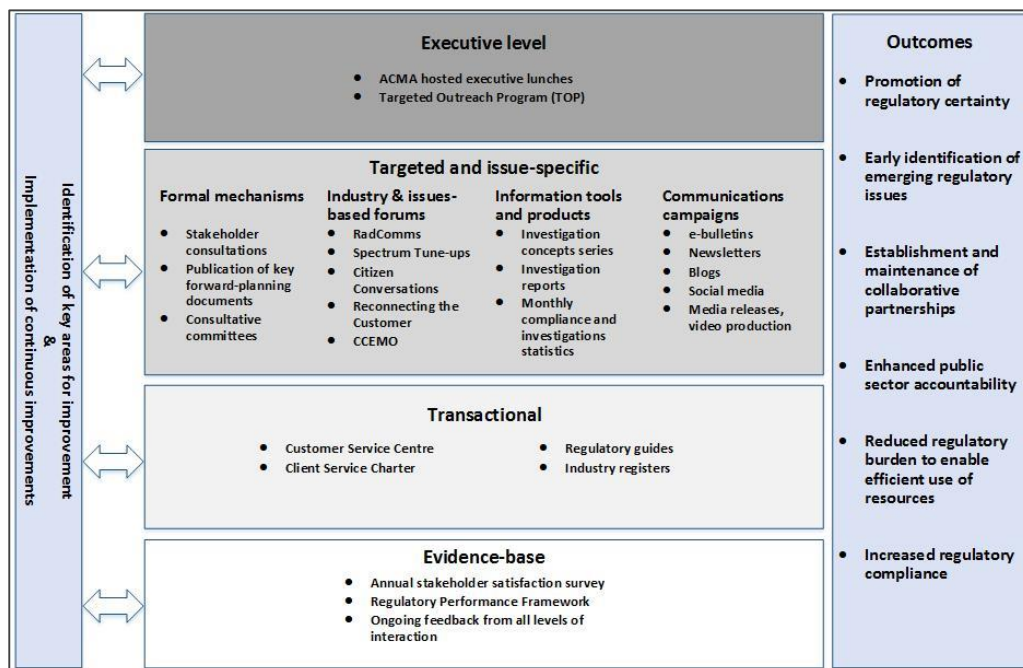
1. open and direct information sharing at executive level
2. clear and targeted communications on specific regulatory issues, using formal consultation processes and targeted industry and issue-specific forums, supported by strategic communications campaigns and a sophisticated digital communications capability
3. provision of accessible information and guidance to support stakeholders engaging with the ACMA at an everyday transactional level.

This strategy is designed to support the delivery of positive outcomes for industry, citizens, consumers, and the government. The ACMA aims to:

- > promote regulatory certainty and facilitate investment and innovation in communications services
- > minimise harms through early identification of risks and emerging regulatory issues
- > where there is a recognised need, establish collaborative partnerships with industry to combat harm to citizens and consumers
- > maximise regulatory compliance and encourage industry best practice to minimise risk of harm
- > reduce regulatory burden on industry and enable efficient use of government resources
- > enhance public sector accountability processes and promote confidence in regulatory decision-making.

Figure 4 depicts the ACMA's approach to stakeholder relations across the sectors it regulates, the outcomes delivered, and use of feedback and evidence to drive continuous improvements. Qualitative examples are also included to illustrate how the ACMA's approach to stakeholder relations is contributing to positive outcomes.

**Figure 10: ACMA stakeholder relations strategy**



### Open and direct communications at executive level

Key to contributing to efficient environment scanning and maintenance of effective relationships between the ACMA and industry are the two mechanisms used to facilitate direct communication at the executive level:

- > From 2009, the ACMA Chair and Authority have hosted 60 executive-level lunch meetings with key stakeholders to share information and maintain an open dialogue about the communications environment and emerging issues.
- > Since 2013, the ACMA has used a Targeted Outreach Program (TOP) to send direct communications to stakeholder executives. From November 2014, ACMA Authority members sent 708 separate communications and received 58 feedback responses, including positive endorsement for TOP as a valued tool for keeping stakeholders informed about relevant issues and developments.

Key benefits realised include early identification of regulatory pressure points and promotion of regulatory certainty.

### Clear and targeted communications on specific regulatory issues

Informing and being informed by stakeholders is key to how the ACMA identifies and addresses regulatory issues, promotes regulatory certainty and maintains effective collaborative partnerships. The ACMA aims to achieve clear and targeted communications with stakeholders through the use of a range of strategies including formal mechanisms, targeted industry and issues-based forums, fit-for-purpose information tools and products, and targeted communications campaigns.

#### Formal mechanisms

Formal mechanisms play a significant role in enhancing the ACMA's accountability and promoting confidence in regulatory decision-making. Since 2011, the ACMA has released over 200 [issues for comment](#) public consultation papers, and maintained a number of formal [consultative committees](#) including the [Consumer Consultative Forum](#), the [Emergency Call Services Advisory Committee](#), [Numbering Advisory Committee](#), Radiocommunications Consultative Committee and two Submarine Cable Protection Zone Advisory Committees (in NSW and WA). In addition, the ACMA

publishes key forward-planning materials including the [annual regulatory plan](#), [Five-year spectrum outlook](#), and [priority compliance areas](#).

***Promoting regulatory certainty and facilitating investment and innovation in communications services***

ACMA forward-planning documents, including the Five-year Spectrum outlook and the mobile broadband strategy, play a key role in promoting regulatory certainty for industry. Effective spectrum management is crucial for the delivery of services such as mobile broadband, where long-term planning, international co-ordination and significant industry investment is needed. A recent ACMA-commissioned study found that mobile broadband increased Australia's economic growth by 0.28 per cent each year from 2007 to 2013. The study also estimated that mobile broadband increased the spending power of each Australian by \$652 in 2013.\*

Effective forward-planning and stakeholder liaison also enabled the ACMA to provide early access to digital dividend spectrum in the 700 MHz band. The 700 MHz licences issued as a result of the digital dividend auction commenced on 1 January 2015. However, the ACMA made the required legislative and administrative arrangements in June 2014 to enable Optus and Telstra to apply for apparatus licences and begin commercial LTE services in the intervening period before 1 January 2015.

\* Source: Research report prepared for the ACMA by the Centre for International Economics, [The economic impacts of mobile broadband on the Australian economy from 2006 to 2013](#), April 2014.

***Targeted industry and issues-based forums***

Over the last 10 years the ACMA has held a number of targeted industry forums and issues-based events.

- > Since 2005, the ACMA has hosted annual [RadComms conferences](#). These conferences give its diverse radiocommunications stakeholder community direct access to the ACMA's key decision-makers, while hearing about the latest developments in spectrum. In addition, since October 2008, the ACMA has held quarterly Spectrum Tune-ups to help the ACMA and industry to mutually inform one another about developments and issues that impact on contemporary and future spectrum arrangements and planning. Additional ad hoc Tune-ups have also been held on matters as diverse as allocating the digital dividend, spectrum beyond scarcity, use of mobile broadband by infrastructure users, and private parks for spectrum use.
- > Since 2011, the ACMA has hosted a series of forums, bringing together many voices on issues surrounding convergent media content. In 2013 the ACMA leveraged the success of this [Citizen Conversations](#) format to hold a series of six sessions with citizens and industry stakeholders exploring the core principles that should guide the content of contemporary broadcasting codes of practice, as part of the *Contemporary Community Safeguards* inquiry.
- > In 2010–11, the ACMA initiated the [Reconnecting the Customer](#) inquiry, taking a leadership role in providing the telecommunications industry with guidance and a clear opportunity to address issues of concern in relation to consumer protection. The ACMA also held Numbering Plan Consultation stakeholder workshops to discuss concerns raised by stakeholders about the numbering plan and arrangements.
- > In 2014, the ACMA co-hosted the [Combating Child Exploitation Material Online](#) regional cooperation forum, bringing together relevant stakeholders to work collaboratively on combating online child exploitation material.

These events and forums have been instrumental in facilitating shared understanding, and driving action by the ACMA and industry to address specific issues and minimise potential harms.

***Enabling early identification of emerging regulatory issues to minimise risk of harm***

In 2010–11, the ACMA conducted the *Reconnecting the Customer* inquiry into customer service and complaints-handling practices within the Australian telecommunications industry. The ACMA worked collaboratively with industry, consumers and other regulators to identify, analyse and address the key sources of consumer complaint. The inquiry significantly informed revisions to the Telecommunications Consumer Protection (TCP) Code (registered in September 2012). The ACMA estimates that consumers have benefited at least \$545m\* each year since registration of the revised TCP Code. These savings stem from mitigating unexpectedly higher bills and the wrong contact problem (i.e. helping consumers choose service plans that are better suited to their consumption patterns), and reductions in complaints.

\* Due to data limitations the ACMA has only estimated a subset of conceivable benefits to consumers.

***Establishing collaborative partnerships with industry to combat harms***

In July 2014, the ACMA and the Australian Federal police co-sponsored the *Combating Child Exploitation Material Online* regional cooperation forum and training event. The forum brought together law enforcement, International Association of Internet Hotlines (INHOPE) and INHOPE foundation members in the Asia-Pacific region, along with industry and non-government organisations who work to combat online child exploitation material. The event highlighted the efforts of participants to tackle the scourge of online child sexual abuse, as well as opportunities to collaborate more effectively.

The [Australian Internet Security Initiative](#) (AISI) is another program where the ACMA engages with industry proactively to assist in managing harms. Through the AISI program the ACMA provides daily email reports to 140 members (including 122 internet service providers) identifying IP addresses on their networks observed as being malware infected or potentially vulnerable to malicious exploits. It is estimated that 95 per cent of Australian residential internet users are covered by the networks of AISI members, resulting in safer networks and more confident consumers.

**Regulatory decisions and application of decision-making frameworks are increasingly transparent for stakeholders**

Transparency in regulatory decision-making enhances public sector accountability and promotes confidence in regulatory processes. The ACMA continues to refine a range of products to provide stakeholders with transparent and timely access to the ACMA's regulatory decisions and decision-making frameworks.

In 2014, the ACMA launched its [Investigation concepts series](#) to provide stakeholders with insights into how various important principles of broadcast content regulation have been exemplified, clarified or applied in ACMA decisions. The papers in the series are 'living' documents, and the ACMA regularly updates the information in each to keep them current and helpful to the broadcasting industry and citizens alike.

The ACMA also routinely publishes its decisions and accompanying reasons related to investigations, licence renewal applications and enforcement outcomes. The ACMA annual report includes summaries of investigations undertaken in the reporting period, as well as information on spectrum licence renewals and a summary of completed investigations into prohibited/potentially prohibited internet content. An up-to-date



catalogue of reports is also available from the ACMA website covering [television investigations](#), [radio investigations](#), [telecommunications investigations](#), [spam enforcement actions](#) and [Do Not Call Register enforcement outcomes](#). A consolidated [list of enforceable undertakings](#) that the ACMA has accepted under the *Broadcasting Services Act 1992*, *Telecommunications Act 1997*, *Spam Act 2003* and *Radiocommunications Act 1992* since 2004 is also available on the ACMA website.

Since 2012, the ACMA has also provided stakeholders with timely access to statistics on the nature of compliance and investigations work the ACMA is undertaking on a monthly basis, including [broadcasting statistics](#), [telecommunications statistics](#), [online statistics](#), [telemarketing statistics](#) and [spam statistics](#).

### **Information products and transactional communications are accessible to stakeholders**

Ensuring efficient and effective stakeholder engagement at the everyday transactional level is also a key component to how the ACMA implements its regulatory remit.

From 2012, the ACMA has run over 170 strategic communications and engagement campaigns. Over this period, the ACMA has also developed a rich suite of digital communications tools and products to help maintain free information exchange with stakeholders at all levels. This includes the publication of 15 targeted e-bulletins and [newsletters](#) such as *Telco matters*, *Amplify* and *Cybersecurity news*, as well as 12 different [blogs](#), and maintenance of a social media presence across seven sites, including [Facebook](#), [Twitter](#) and [YouTube](#). As of May 2015, the ACMA's special interest e-bulletins had a subscriber total of 2,623. An ACMA infographic about IPND and Triple Zero was the ACMA's top Facebook page for 2014, seen by 189,000 unique Facebook users.

The following information products have also been developed to assist stakeholders in their interactions with the ACMA at the transactional level.

- > Since 2010, the ACMA has published [Regulatory guides](#) to assist stakeholders to understand how the ACMA undertakes specific regulatory activities under legislation. The ACMA also maintains up-to-date industry registers such as the [Register of telecommunications industry codes and standards](#), [Register of broadcasting codes and schemes index](#), [Register of licensed carriers and nominated carrier declarations](#), [Register of radiocommunications licences](#) and [Media ownership and control registers](#), which are accessible from the ACMA's website.
- > In 2013, the ACMA launched a series of webinar tutorials to assist stakeholders to use the ACMA's new Broadcast Licence Fees (BLF) online returns system. It also developed and launched the [Guide to children's television classification](#) for applicants for C and P programs.

### **Customer service processes are streamlined**

Streamlining and improving customer access has been a key priority for the ACMA over the last four years. Most notably, in 2015 the ACMA will complete a staged transformation of the way it interacts with its customers. Over the past three years, the ACMA has worked to establish a Customer Service Centre (CSC) as a single point of contact for customers seeking any ACMA product or service. Previously, customers had more than 100 touch points for contacting the ACMA, and feedback confirmed that having such a wide choice created inefficiencies for customers. These pathways have been progressively consolidated into the CSC.

The CSC became operational in March 2014, offering single contact points (telephone 1300 850 115 and email [info@acma.gov.au](mailto:info@acma.gov.au)) for customers contacting the ACMA's Communications Infrastructure Division. Since that time, the CSC has progressively



incorporated the customer service functions from other areas of the agency. This transition is expected to be complete in the second half of 2015. Since April 2015, the CSC has processed an average 3,200 customer interactions per month, of which an average of 96 per cent have been resolved within three working days.

Any complaints or feedback about an ACMA service are made by contacting the CSC or submitting an [online ACMA complaint/feedback form](#). The ACMA undertakes to keep all complainants informed of the progress of their complaints. In the event that a complainant is not satisfied with the ACMA's response the ACMA provides the complainant with the contact details for the Commonwealth Ombudsman. The number of complaints and compliments received about the ACMA, is reported in the ACMA's *Annual Report*. Table 2 shows that since 2009-10 the largest number of complaints received within a year was 29 (in the 2012-13 calendar year).

Table 2: **Summary of client service complaints and compliments received by the ACMA 2009-2014**

<i><b>Courtesy and respect</b></i>	<b>Total no. of complaints</b>	<b>Total no. of compliments</b>
2013-14	1	-
2012-13	2	2
2011-12	-	-
2010-11	-	-
2009-10	3	-
<i><b>Service delivery of individual staff members</b></i>		
2013-14	1	1
2012-13	3	3
2011-12	4	-
2010-11	2	3
2009-10	-	-
<i><b>Response time to complaint</b></i>		
2013-14	-	-
2012-13	5	-
2011-12	-	-
2010-11	3	-
2009-10	2	-
<i><b>Accessible information</b></i>		
2013-14	5	-
2012-13	19	1
2011-12	2	-
2010-11	7	-
2009-10	8	-

In addition, in July 2015 the ACMA refreshed its [Client service charter](#) which provides advice on how clients can contact the ACMA, service standards and complaints procedures. The new charter contains more sophisticated and transparent information about ACMA service delivery and reflects the ACMA's developing centralised customer service delivery model. It sets out target time frames for key ACMA service activities; clarifies the ACMA's approach to consultation; explains how the ACMA is accountable; and provides useful information, contact points and links.

#### **Stakeholder insights from the ACMA's annual *Stakeholder satisfaction* survey inform improvements in regulatory processes**

The ACMA has a strong commitment to being informed by, and informing stakeholders and to providing timely and transparent information about regulatory frameworks and

decisions. As part of this commitment, in 2014 the ACMA initiated an annual stakeholder satisfaction survey as a key vehicle to listen to stakeholders and collect evidence to inform future focus areas for improvement. The survey assesses satisfaction with the ACMA's level of stakeholder engagement, with a particular focus on formal regulatory processes, engagement with ACMA staff and information products.

This survey is a key element to inform the ACMA's continuous improvement program and to assist in refining the ACMA's stakeholder relations strategy. The initial 2014 survey provides a baseline for stakeholder satisfaction measurement, with the second survey conducted in June 2015. It will also be a key source for benchmarking and tracking the ACMA's performance against KPIs 2 and 5 for future RPF self-assessment reports.

## **Identified areas for improvement and focus**

Feedback from stakeholders consulted about the ACMA's implementation of the RPF and from the annual stakeholder satisfaction survey, indicates that the ACMA can make further improvements to the planning, transparency and accountability of decision-making processes that result from public consultation.

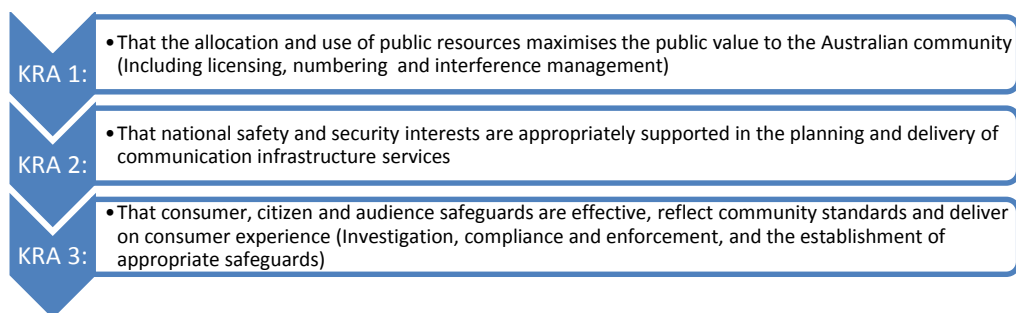
Areas for improvement identified by stakeholders includes a need for earlier engagement on problem-solving and regulatory consultation, simpler ways to engage in regulatory processes, and a more consistent approach to providing feedback and explaining regulatory decisions.

During 2014/15, Communications Alliance and the ACMA agreed on a project plan outlining steps for the development and approval for registration of consumer codes. One key improvement is that both parties will convene an initial discussion to agree the scope, timing, key process steps and liaison necessary to revise, amend or create a consumer code. This approach will be trialled with the review of Chapter 9 (industry's compliance and monitoring arrangements) of the *Telecommunications Consumer Protection Code*.

In 2015–16, the ACMA will implement an online consultation engine to provide easier channels for stakeholders to engage in regulatory processes, and as a way for the ACMA to reach out to individual stakeholders who would not otherwise engage in formal consultations. Key features will include improvements to the format and navigation paths through consultation papers, and use of a comments form and function to make providing comments easier. This function will also enable the publication of comments, replies and answers to questions while the consultation paper is open and within 24 hours.

# KPI 3: Actions undertaken by regulators are proportionate to the risk being managed

## ACMA functions relevant to the achievement of KPI 3:



## Performance measures

The ACMA will report annually on the following performance indicators to measure its performance against KPI 3:

- > cost
- > transparent approach to compliance and enforcement (proportionate to risk)
- > use of information strategies; and rewarding good behaviour.

In gathering evidence in support of this KPI, the ACMA sought to answer the following questions:

- > Were the compliance and enforcement actions taken by the ACMA in proportion to the risk of harms being managed?
- > Does the ACMA's approach to compliance and enforcement support effective and efficient allocation of resources?

Where available within required timeframes, the ACMA has used 2014–15 performance data in reporting against KPI 3. The ACMA has also sought to use 10-year historical time-series quantitative data to demonstrate its performance trends where possible.

The ACMA's commitment to better regulation administration over the last 10 years is evidenced in the evolution of its compliance and enforcement programs, which minimise harms through a graduated and risk-based approach. The Australian communications industry, cultural and societal demands, as expressed in government policy and consumer behaviour, and its own operational experience have been considerations in the use of a graduated approach. This consciousness has allowed the ACMA to develop a compliance and enforcement regime that results in a balanced approach that is in proportion to the types of risks being managed, and allows the ACMA flexibility and efficiency in how it responds to current and emerging risks.

### **The ACMA's actions are in proportion to the harm being managed, wherever possible**

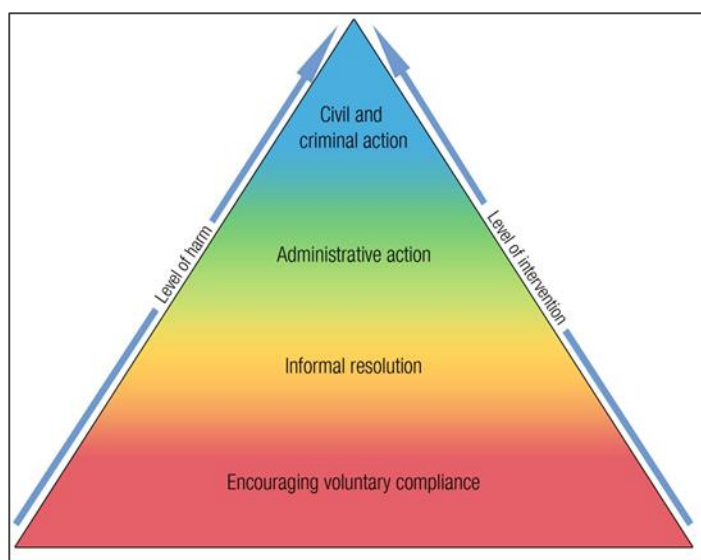
The ACMA's actions are limited by what is available to it in law. This may restrict the ACMA's discretion as to the form or choice of action. Where flexibility is available, the ACMA applies a risk-based approach that is expressed in its agency-wide, publically

available [compliance and enforcement policy](#). The ACMA's policy is underpinned by the benchmarks and best practice guidance of the [Australian Government Investigations Standards 2011](#) (AGIS), and the ACMA's organisational outcomes as expressed in its corporate plan.

The ACMA's compliance and enforcement approach is to take action that is commensurate with the seriousness of the conduct, which includes consideration of the consequences of the conduct and any detriment and damage caused. **Figure 5** sets out the remedies and options available to the ACMA, according to the degree of influence and impact a particular option or remedy may have. Using this approach the ACMA is able to:

- > identify significant regulatory risks
- > develop considered, flexible and strategic solutions to problems and issues
- > respond effectively and efficiently to those risks, problems and issues.

**Figure 11: The ACMA takes a graduated approach to compliance and enforcement**



### **ACMA compliance and enforcement actions are targeted and commensurate with the level of risk**

This risk-based approach has allowed the ACMA to respond with flexibility and agility to changes in the regulatory environment, and target resources accordingly. This means that resources and performance targets can be allocated according to levels of harm.

The Online Content Scheme, operating as the ACMA Hotline, for reporting of prohibited online content, is a high-risk area and consequently shorter investigation performance time frames are utilised<sup>30</sup>. The ACMA Hotline attracts high volumes of complaint notifications, which the ACMA has continued to process successfully within very short performance time frames in an environment of restricted resourcing. Complaints relating to child sexual abuse material are processed within two business days. Investigations about prohibited online content are processed within 20 business days. The ACMA Hotline received over 25,000 complaints, investigated over 26,000

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<sup>30</sup> As of 1 July 2015, these functions were transferred to the Office of the Children's eSafety Commissioner. The ACMA Hotline is operating within the Kids Helpline.

items of online content and took action on more than 14,000 items of prohibited or potential prohibited content, between 1 January 2000 and June 30 2013.

**Compliance and enforcement actions are proportionate to risk**

Premium-rate short message services (SMS) and multimedia messaging services (MMS) emerged in the early 2000s as a new platform for providing information and entertainment content to consumers via mobile devices. Examples of premium services include mobile ringtones, mobile wallpaper, and games and chat services. The Mobile Premium Services (MPS) Code was first registered in 2009 as a key element of a package of regulatory measures introduced in response to significant increases in complaints about premium messaging services. Related regulatory measures that sought to improve compliance with the main requirements of the MPS Code were:

- > a rigorous compliance monitoring program, which established the frequency, timing, format and high-level content for reports, and involved auditing MPS providers on around 300 metrics
- > two companion service provider determinations, which provided for barring mechanisms, and the do not contract rule and do not bill rule.

More recently, it has become apparent that high compliance rates and changing industry circumstances justify a winding back of some of these measures, and that other pre-existing self- and co-regulatory measures would provide an adequate approach. There is now a better understanding of the MPS market and supply chains, with the provision of third-party services now a familiar business model in the communications market. Furthermore, there has been an ongoing decline in the MPS market, with these services migrating to other platforms, such as mobile apps.

There are a variety of incentives to comply with the MPS Code. Together with the do not bill, do not contract and barring mechanisms, the ACMA's enforcement powers under Part 6 of the Telecommunications Act provide appropriate sanctions to enforce compliance and penalise non-compliance, and provide industry with a clear incentive to comply. The degree of consumer detriment has reduced significantly. MPS Code compliance has been high, and TIO complaints about MPS have been at low levels—around one per cent of all complaints received since June 2012. In light of the consistently high compliance rates, low complaints levels and decline in the MPS market, in 2014 the ACMA decided that the rigorous monitoring requirements were no longer proportionate to the level of risk and degree of consumer detriment. The MPS Code was reviewed during 2014-15, with amendments including the removal of industry reporting requirements. The ACMA will continue to have access to TIO data on consumer complaints about MPS, and so will still have visibility of any resurgence in consumer detriment arising from the sector. Furthermore, the ACMA's powers to investigate compliance failures and take appropriate action, including obtaining relevant information, remain in place.

Unsolicited communications, incorporating both telemarketing (refer **Figure 1**) and spam, has high volumes of activity in the form of consumer complaints and reports. The ACMA takes a graduated approach to addressing suspected non-compliance with the *Do Not Call Register Act 2006*, the *Telemarketing and Research Calls Industry Standard 2007* and the *Spam Act 2003*. This approach to compliance begins with education and awareness activities, aimed at both the regulated community and consumers. The ACMA considers that harm can be minimised by encouraging voluntarily compliance with the law by industry participants and by teaching consumers self-protective behaviours that will minimise the impact of unsolicited communications. Through undertaking education and awareness activities the regulated community can better understand the regulatory environment and engage in conduct that will minimise the need for regulatory intervention by the ACMA. The effectiveness of this graduated

approach is illustrated by the fact that in 2013-14 only eight to 12 per cent of businesses that received compliance warnings from the ACMA went on to receive a subsequent warning.

In October 2014, the ACMA gained the power to apply discretion in its decision-making as to whether to investigate complaints about broadcasting matters in the public interest. This allows it to tailor its actions in proportion to the issues. In the period 17 October 2014 (commencement date) until 30 June 2015, the ACMA exercised its discretion in relation to the investigation of broadcasting complaints in the public interest to investigate 61 valid complaints and declined to investigate 35 valid complaints. Discretion allows the ACMA to streamline the investigation process, limit the burden on industry and commit resources to where the public interest is greatest.

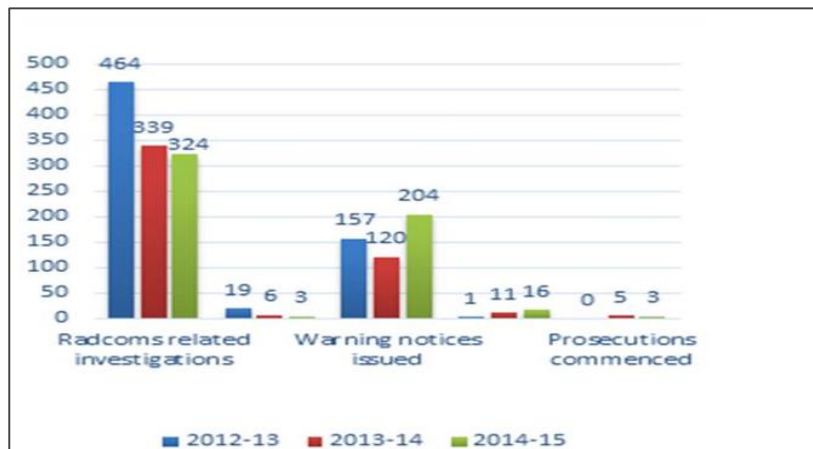
Since 2012, the ACMA has utilised a priority compliance area (PCA) program to guide its technical radiocommunications compliance activities. This targeted approach enables the ACMA to adapt its resource allocation to more fully reflect the variable risk levels associated with interference and harm in the communications environment. Table 1 outlines the priority compliance areas that have been targeted over the last three years. The ACMA publishes its PCAs annually on its website, alerting industry to its upcoming work program. The outcomes of each year's PCAs are outlined in the ACMA's annual report.

Table 3: **Priority Compliance Area program focus areas**

2012–13	2013–14	2014–15
Non-compliant Digital Enhanced Cordless Technology (DECT) devices	Radiocommunications standards compliance	Technical regulation <ul style="list-style-type: none"> <li>&gt; Lighting electromagnetic compatibility (EMC) standards compliance</li> <li>&gt; Wireless microphone compliance</li> </ul>
Mobile phone repeaters	Illegal mobile phone repeaters and prohibited devices	Wireless device Electromagnetic energy (EME) compliance
Prohibited devices (Jammers)		Radiocommunications transmitter licence compliance
Online suppliers		

As **Figure 6** illustrates, the outcome of using risk based priorities has been an increase in the efficiency of the ACMA's radiocommunications compliance program. Over the period since its introduction in 2012 the ACMA has achieved a reduction in the overall number of radiocommunications investigations conducted, offset by an increase in the number of warning notices, and infringement notices issued. This has flow on cost benefit for industry, as a more targeted investigation program reduces the administrative burden on compliant industry participants.

**Figure 12: Radiocommunications compliance activity, 2012–15**



### ***Transparent approach to compliance and enforcement***

An example of the efficiency benefits of the Priority compliance areas (PCA) program is the regulation of wireless microphones. In 2014–15, the ACMA made wireless microphones one of its PCA targets. This enabled it to focus resources on the issue, proactively educating industry and the public about the impending changes through:

- > a dedicated website [wirelessmicrophones.gov.au](http://wirelessmicrophones.gov.au)
- > the provision of information on the [ACMA website](http://acma.gov.au)
- > an [online channel finder](#)
- > a monthly e-bulletin.

This was supported through the PCA audit of a sample of wireless microphone suppliers, which found that there was no evidence of non-standard microphones being supplied or causing interference. The outcome was a smooth transition to the new regulatory arrangements for industry and consumers, with minimal additional regulatory or administrative burden.

In 2013–14, the ACMA continued to respond to all radiocommunications interference complaints related to safety-of-life issues immediately on receipt. Prioritising the support of safety and security interest in the delivery of communications services and infrastructure as per KRAs 2 and 3. Of the public protection complaints that were affected by external interference, the ACMA resolved 83 per cent within 10 days. The ACMA also located 16 inappropriately activated Emergency Position Indicating Radio Beacons (18 in 2012–13).

In 2011 media reform legislation gave the ACMA a range of new enforcement powers under the BSA, which increased the ACMA's flexibility in regulating the broadcasting industry. The ACMA has developed [Regulatory Guidelines](#) to provide transparency on how this is applied. More flexibility enables the ACMA to better tailor its approach to compliance and enforcement and target its resources according.

The ACMA takes all factors into consideration when investigating non-compliance and understands that the regulated community has different imperatives that affect conduct. The ACMA also recognises that there are those whom the ACMA regulates who:

- > actively and genuinely seek to comply with the law
- > may wish to, but are unwilling or an unable, to comply with the law, and/or
- > have no desire or intention to comply with the law.

However, the ACMA's ability to apply previous conduct as a mitigating factor in its application of regulation can be limited by the proscriptive nature of some of the legislation it administers. Where its remit enables this, the ACMA has implemented a system for compliance and enforcement which embeds consideration of factors such as prior conduct into the compliance process.

***The ACMA rewards good behaviour***

In 2013 the ACMA revoked the Broadcasting Services (Commercial Radio Advertising) Standard 2012 and registered a new commercial radio advertising code requiring advertisements on commercial radio to be distinguishable to listeners as advertising. The decision followed a commitment made by the ACMA at the end of 2011 that the standard would be revoked if the commercial radio industry presented a code of practice that provided appropriate community safeguards. In making this decision the ACMA recognised the industry's high level of compliance with the obligation to ensure advertisements are distinguishable, and worked collaboratively with the industry to achieve an optimal co-regulatory outcome.

## **Identified areas for improvement and focus**

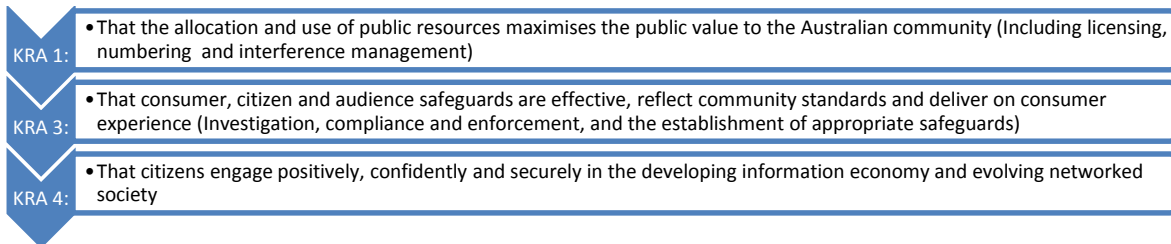
During the ACMA's planning for implementation of the RPF, feedback from stakeholders indicated they would like to see greater use of forward work plans for the ACMA's consultation program. The ACMA has proposed to adopt this recommendation as part of its continuous improvement strategy.

As part of its implementation of the RPF, the ACMA identified that it would develop baseline measures for future benchmarking to better track and assess its performance.



# KPI 4: Compliance and monitoring approaches are streamlined and co-ordinated

## ACMA functions relevant to the achievement of KPI 4:



## Performance measures

The ACMA will report annually on the following performance indicators to measure its performance against KPI 4:

- > timeliness
- > use of alternatives to traditional regulation
- > transparent approach to compliance and monitoring (proportional to risk)
- > stakeholder satisfaction.

In gathering evidence in support of this KPI, the ACMA sought to answer the following questions:

- > Has the ACMA worked to streamline and co-ordinate its compliance and monitoring programmes to ensure they do not place unnecessary compliance burdens on regulated entities?
- > Did the ACMA make use of alternatives to traditional regulation in its effort to co-ordinate and streamline its compliance and monitoring programs?

Where available within required timeframes, the ACMA has used 2014–15 performance data in reporting against KPI 4. The ACMA has also sought to use 10-year historical time-series quantitative data to demonstrate its performance trends where possible.

The ACMA's broad remit requires it to manage compliance and enforcement activities across some 26 Acts and administration of over 400 regulatory instruments. The ACMA has implemented an organisation-wide compliance and enforcement policy, which encompasses the breadth of its remit and is underpinned by the values of flexibility, adaptability, and proportionality, and which is evidence informed. A cohesive approach to the management of compliance and enforcement ensures the ACMA is able to better administer its regulation and consistently streamline its activities. Streamlining and coordination of compliance approaches enables the ACMA to target its activities appropriately, minimising the compliance cost burden to industry, in terms of time and resources, and enabling the ACMA to make the most effective use of limited resources.

### **Compliance and enforcement actions are proportionate and transparent**

As previously noted, the ACMA's [compliance and enforcement policy](#) is publically available and based on the benchmarks and guidance outlined in AGIS, which details best practice for information gathering in relation to investigations and compliance and enforcement activities. AGIS establishes minimum standards for investigation practices, which outline the importance of 'obtaining and recording the best evidence available to maximise the possibility of a successful outcome for an investigation'.<sup>31</sup> The ACMA has a range of information and evidence gathering powers under the regulation it administers, including:

- > calling for written submissions from the public
- > requiring documents to be made available for inspection
- > compelling the production of information/documents
- > searching and seizing items with consent
- > obtaining a warrant to enter property and seize items.

The use of these powers are informed by the ACMA's guidelines for delegation, which includes a risk analysis. Identification of fit-for-purpose compliance and enforcement options influences the use of information-gathering powers, as different outcomes (civil penalty vs legal prosecution) have different evidentiary requirements. Where possible, the ACMA seeks to use information already in its possession. This approach enables the ACMA to be efficient and effective in administering its compliance and enforcement programs, minimising the burden on industry and maximising regulatory outcomes.

### **Information requirements are streamlined and coordinated**

Where appropriate, the ACMA seeks to limit the resource burden on industry of complying with information requests associated with:

- > statutory reporting obligations through consultation with affected parties (for example, the development of the annual section 105 data requests under the *Telecommunications Act 1997*)
- > business processes
- > record-keeping and reporting requirements.

The ACMA works to maximise the efficiency and effectiveness of the information requirements associated with its compliance and enforcement activities through regulatory reform to streamline business processes and simplifying regulation. Since 2013, the ACMA has contributed \$53 million in deregulatory savings and removed 131 legislative instruments as part of the government's deregulation and red-tape reduction programs.

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<sup>31</sup> [Australian Government Investigations Standards 2011](#)

### ***The ACMA seeks to limit industry compliance and reporting burdens***

As part of the ACMA's ongoing deregulation work program, in 2014 it reviewed the type and nature of the information sought from industry including:

- > Data sourced via the s. 105 data request. As a result, the ACMA data requests have been reduced by approximately 50 per cent, through the use of alternative data sources, including company annual reports, secondary sources and a data sharing arrangement with the ACCC. The reduction in the scope of information sourced from the communications industry will lead to a saving of \$0.24 million.
- > Removal of reporting and notification requirements for television broadcasters relating to children's content schedules, with an estimated annual compliance saving of \$0.22 million.
- > Streamlining of ACMA business processes relating to online complaint and enquiry forms and broadcast licence fees and datacasting charge forms, with an estimated compliance saving of \$0.008 million and \$0.006 million annually.
- > Streamlining of reporting and record-keeping requirements for material of local significance for regional commercial radio licensees, saving an estimated \$0.005 million in compliance costs annually.
- > Streamlining of reporting requirements on the IPND Manager, saving an estimated \$0.003 million in compliance costs annually.

### **Collaboration and information-sharing with other agencies to minimise information and compliance burdens**

The ACMA engages across multiple levels with stakeholders and other regulators to harmonise information-sharing arrangements and promote cooperative compliance strategies wherever appropriate, with the aim to further limit the burden on industry in relation to information provision. Internationally, over 10 years, the ACMA has developed significant partnerships with regulators, law enforcement agencies and industry to enable it to more effectively administer its regulatory functions across communications sectors. The ACMA recently published its revised [international engagement strategy](#) outlining the role of its international engagement in both protecting and promoting Australia's communications and media interests. International engagement is an important tool for the ACMA to advance policies and programs that will reduce harms and promote outcomes and interests of Australian business and the community.<sup>32</sup> It allows the ACMA to explore alternatives to traditional regulation in global markets, where the ACMA may not have access to appropriate regulatory mechanisms.

External agreements the ACMA participates in take the form of:

- > Memoranda of Understanding (MoUs)
- > [Mutual Recognition Agreements](#) (MRAs)
- > Deeds of Agreement
- > Treaties.

These agreements provide a framework for consultation and cooperation on matters of mutual interest and facilitate information-sharing practices. The ACMA has over 55 external agreements currently in place. The ACMA has MoUs with a variety of international organisations, including international regulators such as the Korea Communications Commission in Korea, the U.S. Federal Trade Commission in the

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<sup>32</sup> [The ACMA's international engagement—regulating in a globalised communications and media environment](#), June 2015.

USA and the Office of Fair Trading in the UK. The use of agreements such as MRAs provide benefits for industry in relation to providing:

- > an opportunity to test and certify products at a single time for the requirements of multiple markets, and ship those products without further conformity assessment
- > increasing certification efficiency for products exported to foreign markets, thus increasing export opportunities for small and medium-sized enterprises (SMEs)
- > decreasing time-to-market for companies manufacturing telecommunications equipment with increasingly short product life cycles, thus maximising export opportunities and allowing rapid reinvestment in research and development for next-generation technologies.

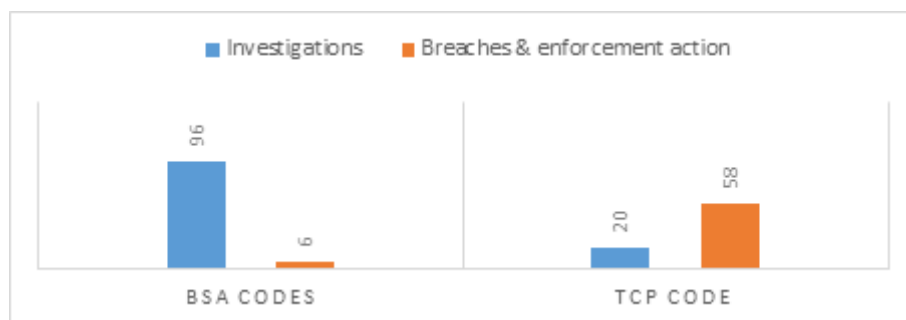
Further details of these arrangements can be found on the [ACMA's website](#).

### The ACMA engages cooperatively with stakeholders to regulate industry sectors

The ACMA has a co-regulatory or self-regulatory role across its legislative remit and recognises the importance of engaging with the regulated community to obtain to the greatest extent possible, voluntary compliance. Co-regulatory schemes recognise the ability of industry sectors to work cooperatively with the ACMA in the management of harms and the delivery of policy outcomes. Self-regulatory schemes similarly recognise the ability of industry to take responsibility for the provision of consumer safeguards and other policy objectives. The ACMA's analysis of the range of regulatory tools available within the self-and co-regulatory arrangements have been examined and streamlined since 2010 in its [Optimal conditions research series](#) (the latest iteration released in June 2015). Under these co-regulatory schemes, the ACMA generally has a role in registering an industry code of practice, and in complaints-investigations in relation to breaches of these codes.

The ACMA, as at December 2014, had 37 industry codes within its remit. Figure 7 outlines the ACMA's compliance activity in relation to the BSA codes and TCP code. The ACMA does not have a compliance role in relation to all codes. The ACMA may also employ safety-net powers for compliance under Sections 121 and 122 of the Telecommunications Act. Further details of the ACMA's telecommunications codes and standards are available on the [register](#). The use of alternative regulatory compliance approaches has been effective, as reflected in fewer instances of the need to undertake enforcement action.

**Figure 13: Code related compliance activities in 2014–15**



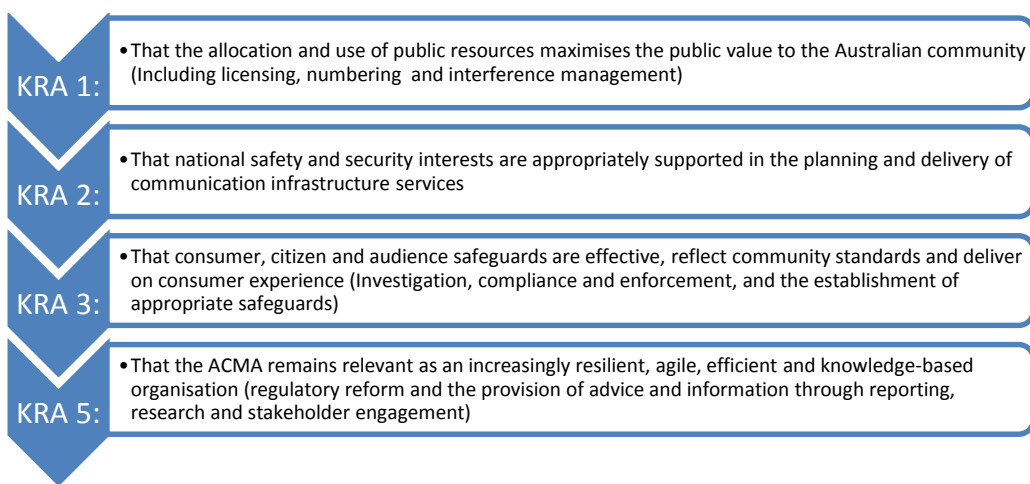
### Identified areas for improvement and focus

During the ACMA's planning for implementation of the RPF, feedback from stakeholders indicated they would like to see greater use of forward work plans for the ACMA's consultation program. The ACMA has proposed to adopt this recommendation as part of its continuous improvement strategy.

As part of its implementation of the RPF, the ACMA identified that it would develop baseline measures for future benchmarking to better track and assess its performance, thereby identifying areas for continuous improvement.

# KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

The following ACMA functions have key relevance to the achievement of KPI 6:



## Performance measures

The ACMA has determined that the following performance measures are relevant to measuring its performance against KPI 6:

- > collaborative partnerships and facilitation
- > use of alternatives to traditional regulation
- > engagement in regulatory reform
- > research and environmental scanning
- > stakeholder satisfaction.

In gathering evidence in support of this KPI, the ACMA sought to answer the following questions:

- > How did the ACMA seek to understand regulated entities and contribute to continuous improvements of regulatory frameworks?
- > How did the ACMA make it easier for regulated entities to operate their business?
- > How did the ACMA seek to minimise costs for regulated entities?
- > What outcomes did the ACMA deliver for regulated entities?

The majority of data used for self-assessment against KPI 6 is from the 2014–15 reporting period, with additional historical data included where available. Qualitative narrative evidence is sourced from a range of activities and programs conducted since 2010.

Ensuring regulation remains efficient, effective and reflects changes in industry environment and risk-profile requires a range of strategies targeted to the design, implementation, and transactional levels of the ACMA's regulatory remit. The ACMA

delivers outcomes for its regulated population in terms of better regulation administration and design, by operating a continuous improvement program aimed at operational and transactional activities, together with a broad regulatory reform program that addresses regulatory cost savings and deeper reform.

### **Regulatory frameworks are continually improved through engagement and collaboration with stakeholders**

A range of formal and informal stakeholder consultative mechanisms are convened by the ACMA to canvas regulatory reform options, discuss regulatory issues and support continuous improvement initiatives:

- > [Emergency Call Service Advisory Committee](#) (ECSAC)—facilitates discussion from stakeholders across the telecommunications industry, emergency service providers and DoC to advise the ACMA in its role to support the national Emergency Call Service. This allows emergency service providers to directly discuss with industry the progress and impacts of Emergency Call Service regulatory initiatives as they are being implemented.
- > [Consumer Consultative Forum](#) (CCF)—provides the ACMA with informed and representative advice about telecommunications consumer issues from multiple perspectives, by convening consumer and citizen advocates, telecommunications industry representatives and government bodies, including DoC, the ACCC and the TIO. The forum meets periodically and facilitates discussion and evaluation of regulatory responses to consumer issues in the communications market as they evolve and emerge.
- > The annual [RadComms conference](#)—provides an opportunity for stakeholders to meet with ACMA key decision-makers while hearing about spectrum developments through information sessions and expert panel discussions. RadComms conferences facilitate exchange of knowledge, which forms an important input to the ACMA's forward planning in relation to spectrum management, as communicated through its [Five-year spectrum outlook](#) and [priority compliance areas](#), both of which are made publically available through the ACMA's [website](#).
- > [Spectrum Tune-ups](#)—to flag emerging radiocommunications issues of significance
- > Participation in WRC—cross-government liaison processes
- > [Citizen Conversations](#) series—conversation-based forums discussing convergent media content. The conversation series feature contributions from a broad range of diverse stakeholders.
- > [Numbering Plan consultation stakeholder workshops](#) and [Numbering Advisory Committee](#) meetings.

While consultation processes form an important source of evidence for the ACMA in improving regulatory frameworks, the ACMA also actively seeks to minimise cost associated with participation in these processes through:

- > development of a guideline on effective consultation to assist stakeholders in formulating formal submissions to the ACMA.
- > maintaining a register of current, completed and sunseting issues for comment as a matter of public interest and record on its website. Since 2011, the ACMA sought public comment from stakeholders on over 200 issues for comment.
- > development of an online consultation engine—in late 2015, the ACMA plans to pilot an engine to provide simpler and more efficient channels for stakeholders to engage in regulatory processes.

Recent feedback received from stakeholders as part of the ACMA's development of its response to the RPF indicates that stakeholders would like the ACMA to engage

earlier with them on a range of regulatory initiatives. The ACMA has incorporated this into its forward work program (see improvements section below).

### **Contributing to regulatory review and reform**

Over 10 years, the ACMA's ongoing commitment to better regulation administration and design, through improving the overall efficiency and effectiveness of regulatory frameworks for regulated entities, has been achieved through:

- > The recently released retrospective paper [\*Evidence-informed regulatory practice an adaptive response 2005–15\*](#) outlines how the ACMA's research program has contributed to its regulatory practice and risk management over the last 10 years. The paper looks at how the ACMA has used research in an environment of ongoing change to document and build evidence, inform public debate about regulation and build capability among those most affected by regulatory activities.
- > Publication of the *Broken concepts* series (originally published in August 2011, updated in 2013), which analysed the currency and future utility of the key underpinning legislative concepts of regulation.
- > Publication of the *Enduring Concepts* paper (published in November 2011), which looked at the enduring public interest outcomes from media and communications regulation and asked whether these outcomes could be delivered more efficiently in different ways.
- > Publication of the *Connected Citizens* paper (released in June 2013), which explored the use of regulatory powers with a particular focus on the communication, facilitation and regulatory powers available.
- > Publication of the [\*Optimal conditions for co/self-regulatory arrangements\*](#) research series (published 2010, updated in 2011 and again in 2015) to explore new risks and problems arising from internet-enabled technology and service developments.

#### ***Consumer research into telecommunications reforms – Reconnecting the Customer***

In February 2013, the ACMA commissioned a national consumer survey to assist in the evaluation of effectiveness of changes to the Telecommunications Consumer Protections (TCP) Code and other outcomes of the Reconnecting the Customer (RTC) inquiry.

The RTC inquiry was conducted by the ACMA to examine customer service and complaints-handling in the telecommunications industry. The RTC inquiry concluded in 2011, with the ACMA seeking changes to the industry's TCP Code. A revised TCP Code took effect in 2012.

The 2013 research provided a baseline to better understand and track outcomes from the RTC inquiry and the implementation of a number of consumer protections under the revised TCP Code.

Research findings confirm the usefulness for consumers of the new measures under the TCP Code, notably those which assist in comparing offers and tracking usage. They also highlight areas for further monitoring as the changes to the TCP Code are fully implemented.



### ***Research into broadcasting safeguards – Contemporary community safeguards inquiry***

In 2013-14, the ACMA commissioned community and economic research to examine current broadcasting industry codes.

The community research explored attitudes to, experiences of and expectations of content broadcast on television and radio, while the economic research examined the cost of code interventions on commercial broadcasters, subscription television broadcasters and community broadcasters.

This body of research was a key input to the ACMA's Contemporary community safeguards inquiry (the CCSi). The inquiry's objective was to ensure that broadcasting codes of practice are fit for purpose in a converging media environment. Other inputs to the CCSi included stakeholder consultations, public forums and insights from the ACMA's experience in administering complaints under the current codes.

The inquiry findings are informing upcoming code reviews and broader discussions about future directions for broadcasting regulation in Australia.

### ***Research into economic benefits of mobile broadband***

In 2013-14, the ACMA conducted an innovative study on the effect of spectrum planning and allocation decisions on the Australian economy. Released in April 2014 - The economic impacts of mobile broadband on the Australian economy, from 2006 to 2013 research was undertaken to understand the economic impacts of the mobile broadband on the Australian economy. The study also informs the ACMA's spectrum management activities by analysing the factors that influence the requirements for spectrum in the future, such as the increased take-up and use of mobile broadband technologies.

The study informed the development of the ACMA's strategic priorities regarding spectrum management in two key areas:

Informed the ACMA's Five Year Spectrum Outlook 2014-18, which describes the spectrum demand environment and the ACMA's strategic direction and spectrum priorities in response to this demand for the 2014-18 period.

Input to the development of a mobile broadband strategy to identify and prioritise spectrum planning and allocation activities that the ACMA will undertake for mobile data services. Maintaining appropriate spectrum arrangements for mobile broadband services remains a major element of the ACMA's spectrum management work program.

### **Research into young Australian's experience of social media**

Released by the ACMA in August 2013, the *Like, Post, Share: Young Australians' experience of social media* research report outlines key trends in online use amongst children and teenagers, and also how their parents view their child's online world.

The ACMA's study also looked at children and young people's perceptions of the challenges they face online, and the role of other people—family, friends and teachers—in helping them navigate their way safely and positively.

The research informed the ACMA's work in managing national cybersafety community education activities and the Cybersmart outreach program (which are now part of the Office of the E-Safety Commissioner as of 1 July 2015).

- > Contributions to the following government policy reviews:
  - > Copyright and the digital economy (ALRC)—2013
  - > Serious Invasion of Privacy (ALRC)—2013
  - > Review of Spectrum Management (Department of Communications)—2014
  - > Contemporary Community Safeguards inquiry (ACMA) - 2013
  - > Superfast Broadband Access Service Declaration Inquiry (ACCC) – 2015
- > ACMA initiated regulatory reforms—for example, outsourcing of numbering allocation and services, introduction of more efficient identity checks for pre-paid mobile services, simplification of processes for local number portability, simplification of age verification requirements for access services, reform of eligible revenue requirements, and reducing information collection requirements on the telecommunications industry.
- > Implementation of the red-tape reduction program and better regulation initiatives. Support for the government's deregulation agenda has resulted in the identification and implementation of a range of initiatives that contribute to business processes improvements, better and more efficient regulation and red-tape reduction for industry. As part of its contribution to the deregulation agenda, the ACMA has:
  - > reduced the total number of legislative instruments by 131 since September 2013
  - > provided approximately 56 separate pieces of advice to DoC on deregulatory reform initiatives
  - > contributed to over \$53 million in portfolio savings to date
  - > continued to liaise with the Department of Communications about ongoing matters such as Migration Assurance Policy, NBN reviews, VDSL2 infrastructure competition, NBN battery back-up, SCAWG, and telecommunications consumer safeguards.

### **Engagement with industry and the public on reform**

The ACMA's successful execution of its role in the national transition from analogue to digital television demonstrates the effective and efficient use of consultation and planning to assist Government to achieve public policy objectives. A key economic benefit of transition to digital television broadcasting is the resulting release of valuable, previously unusable spectrum (commonly referred to as the 'digital dividend') and consequent 'restack' process.

Under its spectrum management functions, the ACMA was responsible for the 'restacking' of Australia's broadcast television channels prior to the realisation of the digital dividend. A key element of this restack program was forming the Restack Planning Advisory Group (RPAG), to assist the ACMA's industry consultation requirements. RPAG was open to parties directly affected by the restack program, including commercial licensees, national broadcasters, government entities, television and radio industry advocates. The group was a source of advice and information about cost and logistical implications of alternative approaches to channel planning. RPAG working group meetings were presented with restack channel planning proposals by the ACMA. Television markets were progressively addressed in each of these RPAG meetings and these meetings allowed the broadcasting industry to provide feedback on the proposed channel plans and reach an agreed position. In this way, the evidence gathered through RPAG made a vital contribution to the ACMA's decision-making and planning in relation to the restack task.

The ACMA also released public discussion papers to allow for wide community consultation on the issue. In February 2011, the ACMA released the restack discussion paper, *Clearing the digital dividend: Planning objectives and principles for restacking digital television channels*. The primary role of the discussion paper was to consult on a proposed set of planning principles that would pave the way for restack channel plans to be developed in order to clear the digital dividend. This was followed in May 2011 with the release of a paper that reported the results of the February consultation and the decisions made, providing a resource to industry and the community while demonstrating transparency of its processes. Through consultation and collaboration with industry the ACMA was able to resolve the initial uncertainties associated with the restack process and successfully meet the government's deadline of completing the necessary channel planning by the end of 2012. The channel plan decided by the ACMA paved the way for the eventual realisation of the digital dividend making valuable spectrum available for new uses and creating on-going economic benefit for the Australian economy.

### **Stakeholder satisfaction surveys inform regulatory reform initiatives**

Effective contribution to productive regulatory reform initiatives requires an understanding of stakeholder needs and satisfaction. In recognition of this, in 2014, the ACMA introduced a stakeholder satisfaction survey.

This survey is a key element to inform the ACMA's continuous improvement program and to assist in refining the ACMA's stakeholder relations strategy. The initial 2014 survey provides a baseline for stakeholder satisfaction measurement, with the second survey conducted in June 2015. The ACMA intends to publish a report of the results from both surveys in the second half of 2015. It will also be a key source for benchmarking and tracking the ACMA's performance against KPIs 2 and 5 for future RPF self-assessment reports.

### **Identified areas for focus and improvements**

The ACMA intends to make better use of published forward work plans for its expected consultations, which it hopes will benefit stakeholders in terms of being able to better

plan consultation resources and identify the engagement opportunities of greatest value to them. This will include consideration of how the ACMA can engage stakeholders earlier in the process of developing regulatory reform initiatives.

The ACMA also considers it could explore a greater role for its standing advisory committees and stakeholder forums to identify opportunities for streamlining regulatory requirements that may overlap with other regulators, or where mutual benefit may be derived from aligning regulatory measures and establishing information-sharing arrangements.

# Attachment A—ACMA performance measures

## Key principles of efficiency and effectiveness

The ACMA believes that measures which evaluate both efficiency and effectiveness of ACMA activities will provide its stakeholders and government with meaningful information about its performance.<sup>33</sup>

**Efficiency** relates to the production of the ACMA's processes and outputs at least cost. This is an important consideration in its own right, but certain key efficiency measures such as timeliness of decision-making and cost of decisions (particularly in a cost recovery environment), also contribute to the effectiveness of decision-making and the achievement of the objective.

**Effectiveness** is a key concept to test the extent to which the strategic outcome of not impeding the efficient operation of regulated entities is achieved. In the ACMA's view, effectiveness is achieved through good decision-making and the implementation of those decisions that create beneficial outcomes for industry, consumers and citizens. In practice, the ACMA's decision-making is supported by a range of mechanisms to gather evidence for decisions, test the development and design of fit for purpose interventions, and apply the most effective action to manage the risk and achieve public interest outcomes.

Measures that have regard to efficiency and effectiveness together will contribute to a comprehensive evaluation of the ACMA's achievement of better regulation design and better regulation administration within the Australian communications and media environment, and ultimately, the ACMA's progress in reducing unnecessary regulatory burden on industry, while balancing the needs of citizens and consumers.

## Selection of performance measures

In selecting measures of efficiency, the ACMA has focused on performance measures that assess the extent to which the ACMA's operations and decisions about regulatory design and practice takes into account the impact on efficient operations of our regulated community. In selecting measures of effectiveness, the ACMA has drawn on the set of interventions in use in the communications and media self- and co-regulatory environment, as documented in the ACMA's regulatory practice paper [Optimal conditions for effective co- and self-regulation](#).

Selected measures are described below:

**Timeliness**—a measure of how responsive or expeditious the ACMA is in carrying out its activities. Time taken to make decisions, process applications or respond to enquiries for example, can have cost implications for industry in relation to delay (which can translate to expenses incurred or lost opportunities for revenue). Timeliness serves as a measure of current performance against existing benchmarks, as well as improvements over time from the ACMA's efforts to streamline processes. Evidence could include average time taken for approvals or decisions, and stakeholder satisfaction with ACMA responsiveness to requests. Timeliness needs to be

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<sup>33</sup> Department of Finance (2014), [Resource Management Guide No. 131 Developing good performance information](#).

considered in the context of factors such as risk and complexity, and needs to have regard to constraints such as due process.

**Cost**—refers to evidence of the ACMA having regard to the cost of regulation on regulated entities. This includes activities aimed at reducing costs related to compliance, enforcement or administration through streamlining processes, and activities that assess potential cost when developing new regulation. Evidence under this indicator can provide an assessment of the ACMA's efforts to undertake its functions with the minimum impact necessary to achieve regulatory objectives. The ACMA is guided in this by the total welfare standard, which requires evaluation of both the benefits and costs of regulation. The Office of Best Practice Regulation describes the total welfare standard in terms of an expectation that net benefits to the community exceed the costs of regulation. Evidence could include processes like consultation on regulatory proposals and results of stakeholder satisfaction with ACMA consultation, as well as outputs such as Regulatory Impact Statements that include cost-benefit analyses.

**Stakeholder satisfaction**—tracking indicators that measure the level of stakeholder satisfaction with the ACMA allows assessment of how well the ACMA has integrated continuous improvement, accountability and transparency practices into its operations. In addition to serving as supporting evidence for matters such as timeliness of ACMA decision-making, it can provide information useful for identifying and prioritising areas for potential improvement.

**Research and environmental scanning**—refers to evidence of efforts made by the ACMA to understand the environment of its regulated community, including emerging issues of concern or harms, shifting profiles of risk and evidence of actual detriment. The ACMA's research activities provide a strong and objective evidence-base for identifying opportunities for improvement in the regulatory framework, or areas where regulatory burden can be reduced or removed. Processes such as the ACMA's published research program, and outputs such as ACMA research reports are evidence of this performance measure.

**Use of alternatives to traditional regulation**—covers a range of activities by the ACMA that demonstrate the use of alternatives to the application of direct regulatory practices. These include:

- > **better use of existing provisions**—examining whether regulatory aims or responsibilities can be met through existing arrangements (including those administered by other regulators), instead of the imposition of new obligations. This may be evidenced through consultation or review processes, and establishment of MoUs with other agencies.
- > **market-based instruments**—such as taxes or fines to signal acceptable practices and behaviour
- > **use of diverse monitoring tools**—evidenced by initiatives to achieve regulatory objectives through means other than imposing additional reporting obligations on industry. Outputs such as streamlined information requests, MoUs for information-sharing, and utilising existing data sources, are ways in which the compliance burden can be reduced while still acquitting regulatory responsibilities.
- > **rewarding good behaviour**—measures the ACMA's use of regulatory and non-regulatory actions that acknowledge or reward compliance with regulation. It may relate to actions that affect individual entities or sectors within an industry, as well as industry-wide initiatives. It serves as an indicator of the ACMA's application of risk-management principles and takes previous good conduct into consideration when making enforcement decisions. This could include actions such as reducing/removal of reporting or monitoring requirements, lifting of information obligations or instances of forbearance, or both.

**Engagement in regulatory reform**—is a mechanism for the ACMA to contribute to better regulation design and better regulation administration through the review of regulatory frameworks and contribution to reform consultation and deregulation initiatives (such as reviews by the Australian Law Reform Commission or the Department of Communications).

**Use of information strategies**—refers to a set activities that achieve regulatory objectives through information dissemination, education or communication. These can include:

- > **public education campaigns**—where the ACMA seeks to change the quality of the information available, or better target its distribution, to address information asymmetries or lack of knowledge among consumers, citizens or industry participants
- > **information disclosure** (including comprehensiveness of ACMA reporting)—relates primarily to activities that demonstrate transparency and accountability, or those which improve the operation of the regulatory framework through better communication and understanding of rights and benefits of regulatory arrangements. Outputs of information disclosure include publication of ACMA performance results and stakeholder satisfaction survey results, regulatory guidance materials, and publication of ACMA forward planning materials (such as a program of expected consultations, compliance priorities and the Five-year spectrum outlook).
- > **public statement of concerns**—about emerging issues to achieve regulatory objectives through deterrence. This also demonstrates transparency, and has particular relevance to reducing compliance and monitoring activities. As an intervention strategy, it seeks to avoid the imposition of further regulatory burden, and the potential ensuing compliance costs, by providing opportunities for industry to address regulatory problems without legislative action by the ACMA. Evidence of the ACMA applying this approach includes publication of compliance priorities, or keynote speeches by senior ACMA representatives canvassing emerging issues of concern.

**Transparent approach to compliance and enforcement (proportionate to risk)**—is an indicator of the ACMA's performance against transparency and accountability principles and its application of risk-management to regulation and compliance activities. It applies at the broader, organisational policy level. Outputs evidencing this measure may include publication of the ACMA's compliance and enforcement policies and priorities, or publication of complaint investigation reports that provide a clear statement of reasons for why a given decision was made.

**Collaborative partnerships and facilitation**—primarily relates to the ACMA's efforts to foster continuous improvement of the regulatory framework by engaging widely with stakeholders and facilitating information exchange and feedback loops, including liaison with the Department of Communications, or consulting with stakeholders on development of regulatory frameworks. Other examples include convening advisory committees or forums comprised of industry and government representatives to exchange ideas and explore alternative solutions to regulatory problems.

# Appendix 2— Analysis of applicable enduring communications policy objectives

**Appendix 2 Table: Enduring communications policy objectives relevant to internet-enabled communications and content environment**

Future enablers	Relevant concepts	Can the objective continue to be met in internet-enabled communications and content environment?
Infrastructure	Competition	<p>The traditional focus has been on competitive access to infrastructure through which communications services are supplied. In an IP-enabled environment infrastructure competition remains an important enabler to achieve the following outcomes:</p> <ul style="list-style-type: none"> <li>&gt; downstream services competition</li> <li>&gt; any-to-any connectivity for services that involve communications with end users. The concept of any-to-any connectivity is emerging as a key concept that will underpin the complex connections of the future environments as it moves towards internet enabled communications and content</li> <li>&gt; encourage efficient use of, and investment in infrastructure including through access to public resources.</li> </ul> <p>Competition-related aspects of digital content/information that facilitates the internet-enabled communications and content is an emerging area of attention concerning:</p> <ul style="list-style-type: none"> <li>&gt; the degree of control that network operators may exercise over the carriage of data on their network (net neutrality issues)</li> <li>&gt; the extent to which device interoperability and the availability of data portability features will facilitate competition and choice.</li> </ul>
	Quality	<p>Policy measures should continue to promote a range of quality internet-enabled communications and content to be accessible by Australians. With different operators providing different infrastructure, minimum quality standards are likely to remain relevant and are promoted through economy-wide trade and competition measures. Standards-making is one of the ways that quality can be achieved.</p>
	Efficiency	<p>In the internet-enabled communications and content environment, this concept remains relevant to</p> <ul style="list-style-type: none"> <li>&gt; ensuring the efficient allocation and use of public resources such as spectrum and telephone numbers that will support IOT connections</li> <li>&gt; ensuring the efficient operation of, and investment in communications networks.</li> </ul>



Future enablers	Relevant concepts	Can the objective continue to be met in internet-enabled communications and content environment?
	Protection of the public	Infrastructure that supports access to emergency services for the safety of users continues to be applicable in the internet-enabled communications and content environment.
	National interest	Defence, security and law enforcement agencies will continue to have communications requirements in the internet-enabled communications and content environment to protect the security of Australia. Complex connections potentially amplifies the impacts of any network or national security breaches. This may require new technological solutions and/or standards specification to address the interception and access requirements of law enforcement and national security agencies.
	Confidence	Reliability and the security of communications infrastructure is likely to remain an important feature in instilling confidence in the users of services that operate on infrastructure that their information and transactions will be carried in a safe and secure environment.
Devices	Competition	Competition in the device market will continue to be a key element in promoting innovation, diversity and affordability because of the increasing interconnectedness of devices and the demand for any-to-any connectivity and interoperability of devices across networks.
	Quality	Quality objectives most relevant device layer concern technical and product performance in service delivery. These are primarily achieved by network performance, device standards and licence obligations. The methods for delivering on these quality objectives are currently tied to specific licence and service types, but provide a basis for further enabling internet-enabled applications.
	Redress	Complex and global supply chains are creating challenges for the existing avenues for resolving disputes. The blurring of boundaries between suppliers in the internet-enabled communications and content environment can create ambiguity.
	Access	Access is no longer facilitated solely with a service. Any-to-any connectivity and an increasing number of points of interconnectedness mean that the applicable of access objective at the device layer is key for socioeconomic participation.
	Confidence	In the internet-enabled communications and content environment, intelligence is shifting to the periphery of networks and devices. Some uncertainty in obligations and entitlements as a result of these technological advancements challenge the technical proficiency of participants in managing multiple devices.
	Protection of the public	As wearables (including devices and clothing) embed IP-communications receivers and transmitters in their design, emission standards to protect individuals will become an increasingly important feature of wearables design.
	National interest	As noted above, device standards may play a more important role in meeting the national security and law enforcement objectives in the connected internet-enabled communications and content environment.
Services and apps	Competition	At the services and apps layer, the degree of control that network operators may exercise over the carriage of data on their network (net neutrality issues) will be an emerging concern, including the relationship between apps and the content delivered via those apps.

Future enablers	Relevant concepts	Can the objective continue to be met in internet-enabled communications and content environment?
	Quality	Minimum service standards support access by Australians to communications services, and as internet-enabled communications services increase in volume, realignment of regulation to reflect the environment-specific quality metrics is likely to be required. For example, quality of service for PTSN telephone services will be less applicable as voice services migrate to VOIP. Due to the disaggregated and globalised nature of service delivery in an online, digital environment, many aspects relating to quality of service (including industry providers) are likely to increasingly fall outside the current regulatory sphere and challenge the existing frameworks.
	Redress	Fragmentation of roles and responsibility is creating challenges in identifying the appropriate industry participants to seek redress from at the services and apps layer in the internet-enabled communications and content environment.
	Access	Access to online digital services, not only access to broadcasting and voice services, is now a key driver of socioeconomic participation. Regulated minimum service standards are increasingly less effective as mechanisms for ensuring access in the internet-enabled communications and content environment.
	Confidence	Consumers' participation with apps and services will be enhanced if they are confident that appropriate safeguards exist and they understand rights and responsibilities. In the internet-enabled communication and content environment, the obligations are shared between government, industry participants and users (business and citizens).
	Protection of the public	Reliable access to communications in an emergency is a fundamental concept. Internet-enabled communications are currently complementing transitional services to facilitate management of emergency and public safety situations. The applicability of current framework that establishes standards for access to emergency services is likely to be under pressure as internet-enabled communications increase in volume.
Digital content/information	Competition	Control of access to digital content rights is an ongoing area of interest to competition policy as well as to traditional measures of control related to the influence of particular forms of content.
	Quality	<p>Information standards that enable consumers to compare products and plans, including service quality, will remain an important quality assurance tool.</p> <p>In the future environment, the requirement for seamless transmission of large quantities of information between devices may require additional attention on the underpinning standards needed to support information transfer, as well as provide certainty to those providers of information how such information will be collected, transmitted and stored.</p> <p>In the context of the framework for facilitating public access to broadcasting or streamed content services, quality remains relevant. Citizen views on what characterises quality broadcasting content will continue to evolve, but are likely to continue to include aspects of community standards relating to 'decency', 'fairness', 'accuracy' and 'privacy' amongst other areas.</p>
	Redress	There are established redress mechanisms within communications and media regulation for content. However, the broadening of internet-

Future enablers	Relevant concepts	Can the objective continue to be met in internet-enabled communications and content environment?
		enabled content providers across the economy, underpinned by complex connections and supply chains, brings into question whether there will be effective redress mechanisms, and avenues of complaint for the suite of internet-enabled content streams.
	Access	<p>Equitable access to digital content/information to promote effective participation in society and the economy will remain key. In the future environment, access to digital content and information is predicated on technical proficiency of the user in using devices and identifying sources of content (access is linked to the enduring concept of digital citizenship).</p> <p>Whilst program captioning requirements (access for hearing-impaired) are included in legislation, these requirements are tied to existing concepts such as broadcasting. In the future, digital content/information streams may create challenges for comprehensive access for all to content.</p>
	Confidence	The delivery of content across multiple digital platforms and the different regulatory regimes applying to the different streams of content delivery is creating ambiguity about obligations and entitlements. This ambiguity can undermine confidence in using and engagement with opportunities arising from new communications and media services.
	Digital citizenship	Proficiency and critical skills to evaluate content and information as well as an understanding of rights and responsibilities will remain of key relevance in the internet-enabled communications and content environment. The growth of user-generated content is also relevant in considering the concept of digital citizenship.
	Diversity of voices	The regulatory frameworks for traditional streams of content encourage diversity in control of the more influential broadcasting services. Emerging streams of internet-enabled content are often global in nature and if the balance of influence shifts between broadcasters, print news and content streaming, then a further consideration of the applicability of the current frameworks may be required.
	Australian identity	There remains a community expectation that broadcasting or broadcast-like content services should reflect and enhance Australian identity. With globalisation as well as the growth of user-generated content, content environment providing alternative distribution platforms, this is likely to require a recalibration of the existing interventions if they are to be applied to new digital content/information streams.
	Community values	The expectation endures that digital content/information reflects community values. The applicability of classification and the role of information for standards will remain relevant considerations in the design of a coherent framework for safeguards that address classification of content, placement of advertisements, decency, or inciting hatred/vilification.
	Localism	Fragmentation of audiences and a greater number of channels of digital content/information delivery in the internet-enabled communications and content environment places pressure on how localism objectives are fulfilled by free-to-air and commercial radio broadcasters.

Future enablers	Relevant concepts	Can the objective continue to be met in internet-enabled communications and content environment?
	Ethical standards	<p>Accuracy, fairness and significant viewpoints, as well as transparency of advertising material, remain important standards for the community.</p> <p>Increasingly, blurred boundaries between news and editorial content, as well as the fragmented industry in the internet-enabled communications and content environment, may challenge the development of co- or self-regulatory arrangements that have traditionally supported these standards. As a consequence, there may be an argument for a stronger role for individuals and communities of interest to provide editorial quality and address ethical standards through digital etiquette or other behavioural-based interventions.</p>
	Protection of the public	<p>Three elements of this concept are most relevant, namely:</p> <ul style="list-style-type: none"> <li>&gt; individuals should be treated and dealt with fairly, and their right to privacy respected. These safeguards are applicable to the broadcasting environment and in the context of internet-enabled communications are related to enduring concept of digital information management below</li> <li>&gt; access to emergency services to protect life, health and safety. In a highly networked internet-enabled environment, applications may become another platform for general communications including accessing emergency service</li> <li>&gt; protection from harmful communications (including unsolicited electronic messages). The application of anti-spam regulation will depend on whether the internet-enabled communications path includes an electronic message component. The volume and complexity of machine-to-machine and internet-enabled communication connections is expected to challenge anti-spam rules that rely on the ability to identify the sender of a message.</li> </ul>
	Protection of children	<p>As content becomes increasingly globalised, some responsibility for protection of children may transfer to parents and communities. Technical solutions to restrict access to certain content in the internet-enabled communications and content environment are likely to supplement existing interventions such as classification and time zone requirements.</p>
	Digital information management	<p>The integrity of personal information, and the interoperability of devices and portability of data and information will be key underpinnings for the internet-enabled communications and content environment. Four elements of this concept may require further examination to provide certainty for suppliers of services about their obligations, as well as certainty for users in supplying information that is exchanged in the environment communications, including:</p> <ul style="list-style-type: none"> <li>4. how much control should be available to network operators over the carriage of data over their networks (for example, packet inspection)?</li> <li>5. how service providers and other rights-holders store, retrieve and use personal data provided to them by users</li> <li>6. how digital content providers balance respecting privacy and public interest</li> <li>7. device interoperability and portability of data between devices and networks.</li> </ul>

Future enablers	Relevant concepts	Can the objective continue to be met in internet-enabled communications and content environment?
Users (business and citizen)	Redress	The concept that there are appropriate avenues for dispute resolution so that users have meaningful rights of complaint and redress is expected to remain important in the future environment. There are established redress mechanisms within communications and media regulation. However, in the future environment, the complexity of connections and the broadening of providers at all layers will bring into question the effectiveness of redress mechanisms.
	Access	<p>The concept of citizen access to basic communications services—and the related concept of any-to-any-connectivity—has supported social and economic participation in Australia. While various subsidy, affordability and price control regulations have been the key mechanisms applied to particular technology and service types that have been used to support this objective to date; the magnitude of connections in the internet-enabled communications and content environment will potentially elevate the importance of access objectives to ensure that Australians are able to productively engage.</p> <p>Access will be predicated on the technical proficiency of users in being able to use devices, identify sources of services and manage digital information—which suggests a stronger emphasis on the importance of citizen skill initiatives to enable access to the internet-enabled communications and content environment.</p>
	Digital citizenship	The idea that Australians should have the technical proficiency and digital literacy for effective engagement in economic, social and civic life is closely linked to the regulatory concept of access. Skills that are expected to become more critical in the internet-enabled environment as business and individuals manage multiple devices and complex connections in daily life will include some technical proficiency, as well as managing security settings, identity and authentication requirements, and the digital footprint created by these communications.
	Confidence	Confidence in predictable regulatory settings is an important feature to enable the development and take-up of new communications services. Internet-enabled communications developments will magnify two processes that are challenging confidence in the capacity of existing regulatory settings to provide clearly defined obligations and rights, namely the globalisation of communications networks and information exchange, and decentralised modes of communications between end users that challenges regulatory models predicated on known entities and control points.
	Digital information management	In the internet-enabled communications and content environment, the information economy is increasingly networked, and a consequence of this is the collection of personal data by a significant number of organisations. For users, particular concerns relate to privacy, online anonymity, safety and reputation management.