



Australian Government
**Australian Communications
and Media Authority**

Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

www.acma.gov.au

Convergence in action – the new ACMA

Speech by Chris Chapman

Australian Broadcasting Summit
Sydney 2006

Thank you Malcolm (Long). As mentioned already this morning, Malcolm is, along with me, one of seven members of the Australian Communications and Media Authority, or perhaps that should be the 'Convergence Authority'.

I am very fortunate to have on the authority someone of Malcolm's experience, intellect and understanding of 'old' and 'new media'. Indeed it seems to me that the government has assembled an authority of significant experience, diversity, intellectual capacity and very importantly, harmony and collegial goodwill ... and recent experience suggests that in itself is an outstanding platform.

I'm delighted to be with you today and to offer some inaugural public comments as chairman of the authority.

Today I'd like to give you some initial sense of the purpose, vigour and direction of the new organisation, discuss a number of contemporary issues relevant to the broadcasting sector and briefly raise what the authority sees to be a number of emerging issues that we, that is all industry stakeholders including the regulator (or 'the policeman' as someone so uncharitably, and I hope, so outdatedly called it) will be perforce required to address in the future ... and on a relentless basis.

My short five weeks as chairman of the authority and chief executive of the agency of just on 500 staff has been, as I had anticipated, intellectually stimulating and personally satisfying ... it has also been at times physically draining. By night, my head has ached with the volume, diversity and sheer challenging content!

I've also made it the highest priority to engage with the staff of ACMA and have already met many people in the three central offices face-to-face and had video and telephone hook ups with many of the fascinating characters in our 14 regional offices.

I've also chaired three authority meetings and participated in discussions and decisions on everything from submarine cabling protection zones (and their environmental impact considerations), to consumer codes, to *Big Brother Uncut*.

What keeps striking me through all of this is the complexity of the communications market, the diversity of the issues, the innovation of the players, the expectations of consumers (principally through their advocate organisations) and the commitment by the new converged organisation and its staff to do the very best to meet the needs of all stakeholders.

An early indicator of the type of organisation that I want ACMA to be is the extent of our recent consultation efforts. We need to have the best possible understanding of the factors impacting on the provision of communications services, and of the needs of users.

ACMA recently hosted the Wireless Spectrum Strategies seminar. There was robust and useful discussion. Five authority members attended along with a number of senior staff. It struck me that we came away with a heightened understanding of relevant players' thoughts on options for the provision of wireless broadband services and, just as importantly, the reality that different perspectives are in play; and the sobering realisation that each perspective has validity in the debate. Equally, attendees should have come away hopefully with an initial insight that, just perhaps, this authority's early *modus operandi* is here to stay.

Similarly, authority members have attended the recent conferences held by ASTRA (the Australian Subscription Television and Radio Association), ATUG (the Australian Telecommunications User Group) and CTN (the Consumers Telecommunications Network). Each event provided a wealth of information and context that will be invaluable to the

authority in its work, and again, each was yet another opportunity for the authority to demonstrate its consultation bona fides.

At a personal level I've already had a number of meetings with key stakeholder groups and organisations. Our initial review suggested 59 major stakeholders – and that's just those in Australia. I plan to continue those meetings over the coming weeks and months.

The importance of the communications market to Australia

One of the first queries I raised with ACMA staff when I commenced was, 'what is the importance of the Australian communications sector, and how do we assess the extent to which the regulatory framework and the way the authority discharges its responsibilities make a difference in economic success, social wellbeing and our cultural development?'. In raising this query I am trying to get my bearings on just how important our work is, how damn hard we will need to work, and how smart we will need to be in adopting new approaches, finding new tools and communicating both externally to our stakeholders and, just as importantly in the context of organisational transformation, continuous improvement and the authority's integrity and coherency, to our staff.

ACMA's regulatory 'territory' extends from the traditional modes of communications such as free-to-air broadcasting and fixed telecommunications, to more recent phenomena like the internet and the even more recent realities of mobile TV and wireless broadband.

Breakthroughs in information and communications technologies over recent years are fundamentally transforming the way Australians work, live and play, particularly the younger generations.

And, as I will revert to later in my remarks about issues we see emerging in coming years, this is a transformation that is far from over! But you know that.

All of us here would accept as a truism the assertion that the increasingly intensive uptake of digital technologies and the use of information and knowledge is driving value creation, productivity and economic growth ... and has provided an ongoing challenge to prove up or otherwise the sustainability of traditional media business models.

Recent research shows, for example, that:

- Over the 17 years to 2001–02, information and communications technologies contributed up to 85 per cent of productivity growth in the Australian manufacturing sector and 78 per cent of productivity growth in our services sector
- the economy-wide benefits to Australia from the 1997 telecommunications reforms and subsequent market developments in 2004–5 were about \$12.4 billion.¹
- The ABS tells us that the total value of orders carried over the internet in Australia for 2004–5 was \$40 billion.²

And these very topline statistics don't reflect the social importance and impact of this convergence, nor the real challenges to and opportunities for our cultural development. They are equally important considerations which, again, are logically best addressed through a convergence dimension.

¹ ACMA Telecommunications Performance Report 2004–2005 p21

² ABS Business use of Information Technology Report 8129.0 p6

Answers to my more challenging queries that I alluded to remain understandably work in progress, but let me assure you that I intend to unstintingly pursue them.

It may be important for you to understand this: the expectation that satisfactory answers can be discerned and solutions and new approaches implemented goes to the heart of why I took on this challenge.

ACMA – scope and diversity

So the creation of ACMA recognises the accelerating degree of convergence occurring in the communications sector. The new authority offers scope for much more strategic responses to the issues arising in this ever-changing environment and this is another direction in which I want to guide the organisation.

ACMA has, for all intents and purposes, recently completed its formal transition from the two former regulators.

In its first six months, the transitioning ACMA was, understandably, inwardly focused, working out how to create a converged organisation where before there had been basically three silos: broadcasting, essentially Sydney-based; telecommunications, Melbourne-based; and radiocommunications, Canberra-based.

As you may be aware, ACMA announced its new internal structure in January. I started at the end of February and, as of about a fortnight ago, all of our new senior executives (the five divisional heads) are on board. And, like my earlier comments on the composition of the authority, it's my instinct that Lyn Maddock and Chris Cheah have recruited very well in filling these senior appointments.

So my sense of the 'vibe' is that the new authority is looking to the future with confidence. Our converged structure should enable us to think and deal with matters across all the sectors and legislation for which we are responsible. It should give us the capacity to respond to changing needs, be proactive and facilitate new thinking about issues in ways that will benefit all of us.

And what of the new chair? Some of you know me already, but many of you will be wondering what my credentials are, and how they qualify me to lead Australia's new converged regulator.

Malcolm's introduction described me as 'well seasoned', thanks to my time not just in the broadcasting, film, internet and telecommunications worlds, but also the infrastructure management world and their various interactions with government and regulators. And my origins as a lawyer undeniably bind it all together.

This gives me, I think, a diversity of experience and, probably more importantly, a diversity in ways of thinking. Diversity of thinking suggests that I need to make sure that we are prepared for the opportunities and the challenges that the countless manifestations of the new digital world will present, that we are ever ready, flexible and capable pulling together multi-disciplinary project teams.

In my first five weeks at ACMA, I've been particularly struck by the diversity of what we do.

Our issues range from satellites to cable labelling, commercial broadcasting to amateur radio. Our licensees embrace the local community group, some of Australia's largest companies and organisations like the Department of Defence and state utilities. We allocate

spectrum and allocate numbers, 17 million last year. Generally the numbers involved are quite staggering.

ACMA also investigates complaints, and takes action on breach findings. We have responsibility for technical standards and content standards. We register codes for broadcasting services, internet content, telecommunications and e-marketing. And we monitor carriers' compliance with their obligations.

And in view of the minister's announcement earlier this morning concerning the establishment of the 'Do not call' register, we'll also manage this program.

We also investigate electromagnetic interference, a principal role for our team recently at the Commonwealth Games – an issue which is rarely top of mind but, which, when it occurs, can not only be annoying but potentially life-threatening.

Many interference problems are intermittent and not easily sourced – and I'd like to relate to you a tale which was relayed to me from one of our technical staff in the field when I asked for a feel for the serendipity that their role provides.

A few years ago one of our regional offices was repeatedly called about widespread TV interference, which always lasted for about five minutes at about 7:10 pm. This is a very small window of opportunity, so finding the source was very difficult, exacerbated by the fact that the interference was in a town four hours drive from our Wodonga office. Over a number of visits, our officer got a little closer to finding the source, and after two years he finally located the house. What happened was this: the elderly owners, a frugal couple, had a faulty masthead amplifier: and all they watched was the ABC news each night at 7. The amplifier worked fine for about 10 minutes, until it warmed up - it then not only caused interference to most of the town but also to their own TV. So the couple turned off the TV and went to bed. Being of frugal habits they also turned off the power to the TV and masthead amplifier, so the interference ceased.

If the interference had been continuous, we could have tracked down the source in about half an hour.

Issues confronting ACMA and the industry

Enough of the anecdotes for the moment. I'd like to now raise a number of the contemporary issues confronting the authority.

The government has committed to reforming Australia's media ownership laws, while protecting the public interest through a diverse and vibrant media sector. The minister has recently released a discussion paper on this issue which examines means of implementing its commitment, as part of a wider program of reform addressing a number of aspects of broadcasting regulation, including the future of digital television. The authority has an important role in much of this work.

For our part we recently released a paper, supplementary to the government's and more technically orientated, on the use of two unreserved television channels available across Australia – and I will say more about that shortly.

The minister's paper also raises a number of prospective pieces of work for the authority. Not the least is involvement in the development of a Digital Action Plan, planning the strategy for switchover and the reclaiming of analog spectrum.

The paper also adds a new dimension to the anti-siphoning issue by proposing the introduction of a 'use it or lose it' approach.

The Government has previously directed the authority to monitor use of events on the anti-siphoning list by free-to-air and national broadcasters from 1 January 2006 onwards. We're to report to the minister at least every six months on which events have been acquired by free-to-air commercial or national broadcasters, how those rights were used, and whether unused or partially-used rights were offered to other broadcasters, including subscription TV. These reports are to be submitted after the completion of each sport for the year or, as is appropriate, by the provision of a report after the conclusion of the 'winter' and 'summer' seasons.

We've completed the database development, have begun populating it and should be providing our first report in June.

The minister has indicated a preference that a public version of the report be made available. If ACMA is directed to publish it, commercial confidentiality issues will, of course, be taken into account before publication.

Unreserved TV Channels

I'll now turn to the use of two unreserved television channels which are available across Australia.

The minister has indicated that her preferred option is to allocate these channels as soon as practicable in 2007. We are currently preparing for possible allocation of these channels and have released the discussion paper I mentioned, seeking comments on various issues. Broadly, they are:

- 1) the potential uses for the unreserved television channels from 1 January 2007, including datacasting, subscription television, open narrowcasting and mobile television (whether delivered to fixed or mobile television receivers)
- 2) the level of industry demand for these and other possible applications
- 3) marketing issues, such as possible allocation methods, area sizes, competition limits and spectrum packaging options, and
- 4) technical issues, such as spectrum availability and priorities in as-yet unplanned areas, technical licence conditions and characteristics, compatibility requirements with digital television standards and management of interference to existing analog and digital television services.

But let me stress, the paper is totally agnostic as to outcomes. One industry organisation very recently raised a concern with us that the paper implicitly favoured one application over another. Not so.

ACMA's invitation to comment represents a real opportunity for you to help shape how the government allocates the two channels. Comments are due by Wednesday 26 April. If you'd like to meet with ACMA to discuss any aspect of the issues raised in the paper, ACMA's Mark Loney and Brendan Vernon are probably the best people to speak to. They are here this morning and are available over the next two days of the conference. Alternatively, you can contact us to arrange a meeting over the coming weeks. Again, we welcome active engagement on the discussion paper.

Our work will undoubtedly provide input to the government's consideration of media reform issues generally and the formation of a Digital Action Plan to promote and encourage the take up of digital television.

Digital radio

As you would be aware and as the minister reiterated this morning, Digital television is relatively better established in Australia than digital radio which is still in the testing phase.

In October 2005, the minister announced the policy framework for the introduction of digital radio. The framework included the government's view that technical trials of digital radio technologies, including Digital Radio Mondiale (or DRM), need to be undertaken to determine which technologies or combinations of technologies will best serve people living in regional and remote Australia. DRM is better suited than most other digital radio technologies at covering the wide regional areas due to its ability to use the MF band.

This morning the minister has announced the start date and roll out timeframe for digital radio, starting in capital cities on 1 January 2009, or perhaps earlier.

At its authority meeting last week, ACMA revamped its policy guidelines for digital radio trials using the broadcasting services bands. I can inform you this morning that the new guidelines take account of the minister's policy framework, broaden the scope of the guidelines to include the MF-AM band and set out a broader range of factors that the authority will take into account in considering whether to approve trials. These guidelines will be made available on our website this morning.

At the same meeting, the authority also decided to make spectrum available in the MF-AM band on 1386 kiloHertz in the Wollongong region for a digital radio trial. TJH Systems, a broadcasting engineering consultancy firm, will be permitted to immediately operate a six-month trial using the DRM technology.

The decision follows consideration of all requests to use the 1386 kHz frequency in Sydney and surrounding areas (including Wollongong). There is interest in its use for community radio and open narrowcasting radio broadcasting, and there were competing applications to trial the technology.

Finally, the authority decided to exercise its power to make spectrum available on a short term basis for a digital radio trial while leaving the frequency nominally in the Sydney licence area plan for potential use as an analog community radio service.

All three decisions are being released this morning. I'm also advised that we have already been provided with some interesting empirical data as a result of some current digital radio trials in both Sydney and Melbourne. This kind of information is invaluable if ACMA is to add value to long-running discussions about the respective merits and use of L band and VHF band III for Eureka coverage.

Big Brother Uncut

Moving from issues of transmission to one of content, you're probably aware that ACMA recently determined that the 4 July 2005 episode of *Big Brother Uncut* went beyond the level of suitability for the MA (15+) classification and therefore breached the code of practice.

The classification scheme set out in that particular code reflects well-accepted community standards and provides safeguards against the broadcast of inappropriate material.

Following earlier breach findings relating to *Big Brother Uncut* in September 2005, the Ten Network provided ACMA with undertakings about the approach it will take in classifying the 2006 series to ensure that future programs do not contain material that exceeds the MA (15+) classification criteria.

We welcome Ten's cooperation over the course of these investigations, and acknowledge the breadth of Ten's undertakings for future series of *Big Brother Uncut*. Having taken what I feel is a refreshing course of action in ACMA publicly acknowledging the depth of the Ten Network response, we will be looking to Ten to deliver on these undertakings for future series of the program. Simply put, it is imperative that broadcasters stay within the code's limits.

All of us are equally aware that the *Big Brother Uncut* series engendered considerable public debate and there has been a corresponding and considerable interest in our investigations. We are aware of the importance of timely outcomes of these investigations and an impartial observer may question the effectiveness of a process that opines on a content matter in the circumstances of a *Big Brother* type program nine months after the broadcast. Let me therefore take this opportunity this morning to advise the industry that we have been reviewing our procedures more generally to ensure that they happen as expeditiously as fairness permits. This is an excellent example of the need for more dynamic responses. We are reviewing internally the question of how we can both expedite the procedures and simultaneously improve procedural fairness. Our new unified Legal Division, under the leadership of Marcus Bezzi, should sharpen up our investigative process right across the board.

While we do have a reasonable range of fact-finding and information gathering tools more generally, we wish to more appropriately match investigative tools to the nature, complexity and gravity of the issues being investigated. We're of the view that such an approach will lead to more efficient and quicker processes than in the past and will be of benefit to all parties.

On this note, I should remind you that the minister in her discussion paper also indicated that there is a sound basis for making some targeted enhancements to the powers of the authority.

Strengthening ACMA's capacity to deal effectively with regulatory breaches, and to be seen to be dealing with them effectively, especially in key areas covered by broadcaster codes of practice and licence conditions, should assist in ensuring the continued integrity of the regulatory framework. For its part, ACMA would welcome such amendments and this is an issue that we will be discussing with stakeholders in coming weeks.

Emerging Issues

While ACMA must deal with the here and now, it is important that we continually scan the horizon for emerging issues and start developing ranges of responses before issues and opportunities become problems, before we're forced to so counterpunch that we lose our stakeholders' confidence and trust.

We see a number of issues on the horizon that are likely to occupy our thinking in the near future – in fact a very recent review within ACMA generated just over 60 emerging issues. While I broadly raise a few of these today I don't for a moment suggest that I have responses or solutions. I raise them because I simply want to flag that our strategic planning and subsequent regulatory philosophy and approach is going to need to accommodate a mature consideration of these issues.

These emerging issues can be categorised into a number of themes, including:

- media literacy
- regulatory convergence
- the digital action plan
- technology and services innovation
- network security and integrity
- allocation and spectrum management, and
- industry responsibility.

I'd like to make a few brief comments on each of these themes to set the scene for another day.

Questions around media literacy have ramifications for the deployment, take up and exploitation of new communications and media services. Unquestionably, this is an issue of common interest to both ACMA and the industry.

Regulatory convergence reflects the blurring boundaries of the traditional communications sectors. The minister's recent discussion paper couldn't have been more to the point when it stated that, 'From the government's perspective, the impact of digital technologies means the current regulatory settings, which are largely designed for an analog world, require review'. ACMA certainly aims to contribute to that debate.

I've already briefly mentioned the Digital Action Plan, which no doubt will be a priority issue in the coming months.

I also commented earlier about the impact of technology on our economic and social wellbeing, and cultural development. As research shows, technology and service innovation will not stop any time soon and we must position ourselves to help ensure that we collectively maximise the benefits they will deliver.

Network security and integrity is a key concern of everyone. Critical infrastructure protection is a 24/7 task. Issues of trust and confidence again raise their heads. In the online environment they are fundamental to the continued take up of e-business and business use of technology. Spam, viruses and malware will continue to be profound issues requiring our constant attention.

Spectrum allocation and management will take on new perspectives as demand rises, technologies change and noise and congestion issues continue to impact. This is going to be an increasingly demanding aspect of our work.

Efforts to encourage further industry responsibility will continue as we seek to develop best practice regulatory principles. As I hope I've strongly telegraphed to you, I see the development of best practice regulatory principles, broadly communicated and appreciated, adhered to with integrity and common sense, as an integral part of the development of ACMA and important to meeting the challenges ahead.

Let me conclude by pulling these wide-ranging observations together. Our task is multi-faceted but includes, among other things:

- aligning our internal operations as best is possible under current arrangements to put in place more harmonised and consistent treatment of regulatory issues

- developing frameworks (and having them widely understood) to support the authority's decision-making matter-by-matter, while having regard to the bigger picture
- highlighting impediments to more effective regulation which might arise from the current environment and which are beyond our control
- providing rigorous economic and other analysis of impediments to more effective regulation and well considered responses to evolving circumstances
- working closely with our stakeholders to communicate the impacts of current arrangements and the benefits of enhanced arrangements.

And let me hasten to add that it does not necessarily involve more extensive regulatory powers; rather we seek a more productive regulatory role.

I trust that you take from my comments this morning the clear message that ACMA is an organisation committed to achieving excellence, with an eye to the forward agenda and with unbridled enthusiasm for all its work. And I look forward to regularly updating you on our progress.

Thank you for the welcome you have afforded me so far. May I now earn it going forward.