



Australian Government
**Australian Communications
and Media Authority**

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

www.acma.gov.au

Overview of ACMA's 1st year – including commentary on its new guidelines for enforceable undertakings in relation to telecommunications obligations

Speech by Chris Chapman to the
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I've been asked to comment in part on the Authority's new guidelines for enforceable undertakings in relation to the telecommunications space. But given that the Authority just recently passed its first anniversary (and after 20 weeks in the role as Chairman and Chief Executive, with a little more mileage under my belt), given that there's an extraordinary amount going on in the space and this is a 'summit', and given that the Authority's guidelines concerning its enforceable undertakings powers are really a proxy for a plethora of requisite re-assessments, philosophical mindsets and regulatory guidelines that we have recently issued (and started to 'operationalise'), or will issue in draft for discussion over coming months and will continue to iteratively consider and release in coming years, then I need to cover again some other territory before I get to the enforceable undertakings and the regulatory sentiment that they more generally reflect.

I'm therefore going to use this opportunity to:

- provide some observations about the communications convergence environment;
- remind you again of our recent internal changes and the rationale;
- run through a myriad of our activities in the telco space since I started; and
- highlight the issues to be addressed over the next 12 months, and strategically thereafter.

What a challenge it is for a regulator in such a broad, dynamic environment, an environment that is undergoing enormous change.

Why do I say this? – because the fundamental constant in any discussion in the communications sector today is the pressure for change on every player and broader stakeholder, including us, as the newly converged regulator.

If you don't accept that proposition as to change (fundamental and constant) you shouldn't really be in this room. Let's just take some random examples:

- Telstra senior management recently started to project itself as a 'media comms' company, which presumably means that it's a company that creates, aggregates and distributes purposive content over an increasing number of platforms and is not just restricted to owning and managing a telecommunications network;
- Apple, an ailing computing company a couple of years ago, reversed its fortunes and created and dominates a market with, unbelievably, yet another gadget that you can carry around to play music. Television production companies now sell individual programs like *Desperate Housewives* over the internet using iTunes – software developed to support that gadget; and
- we are being asked to think of mobile phones as multimedia computers, offering high quality photo and music features. They connect to the internet, you can check email, download songs, or even update your blog while on the go.

And as to this one – you're in a better position to assess this than me: will the next revolution in the telecommunications world be VoIP; will it develop to the point of being the next most disruptive technology?

The pressure is on, change is happening. In the new world, do you need to get bigger, get smarter, get out, perhaps converge?!

Suffice it to say, developments in technology have relentlessly driven change and contributed to the drive for a strong regulator: a strong regulator with the capacity and flexibility to respond quickly to a rapidly converging communications environment, a willingness to fully enforce the rules and yet have the confidence and smarts to do so in a meaningfully targeted way.

I recently visited some of my counterparts in North America to test this proposition, and the same issues are pushing them:

- these regulators are confronting a situation where technological changes, which are driving market changes, mean that historical regulatory approaches and solutions are being put to the test. There is no simple response to how to regulate a converged communications market and no single regulator has all the answers;
- these regulators are doing their best to confront today's issues with in traditional legislative frameworks, industry is continuing to develop new products and services which will further test these frameworks and put increasing pressure on existing business models. The widespread availability of high-speed broadband and networked appliances, and their nascent new business models, confirmed our related intuition that a review of regulatory frameworks from first principles may be necessary; and
- demand for spectrum will continue to increase as more and more devices are deployed, and as consumers expect greater speeds coupled with greater mobility. While developments such as cognitive radio will assist in addressing this development, regulatory frameworks will still nonetheless have to adjust accordingly.

At the Authority, we're looking at all this through this simple construct which I've found effective in forcing you to step aside from the noise and distractions of your day-to-day activities. The construct works this way:

- identify the 'Pressures for Change' ... and the implications thereof, a principal implication being, as the Minister herself has consistently acknowledged, that the legacy legislation may come to have a 'use by' date;
- review your 'Clear Shared Vision' ... do you really have one, is it meaningful in the light of those implications, can it be re-affirmed or is it the seed of, for example, a diminished regulatory effectiveness?
- assess what is your true 'Capacity for Change' ... can you respond cross-functionally, do you have the organisational elasticity to experiment, in all likelihood make mistakes and be tolerant of the same, work smarter and then provide effective outcomes and solutions on a reinvigorated and sustained basis?
- decide what 'Actionable First Steps' you are going to actually take ... and are you good enough, bold enough, clever enough to walk the talk and execute?

And under the Authority's own Corporate Plan, we have resolved to become a leading convergence communications regulator, and to benchmark ourselves internationally. The Federal Government's principal response to these pressures for change was to create ACMA from the two former regulators: the Australian Broadcasting Authority and the Australian Communications Authority.

So, in part, the Authority represents a merger of two spectrum regulators, one regulator rather than two divided by what was really an artificial boundary around what the spectrum is used for. It was also driven by concrete evidence of convergence: content regulation issues were emerging in the telecommunications sphere, traditionally the province of the broadcasting regulator. As I just alluded to, the spread of audio-visual content to mobile phones is a ‘live’ example of blurring boundaries in this emerging new world.

The legislation that created ACMA focused almost exclusively on merging the organisations. It did not change the legislation we administer. The Government was sending a very clear message that it expected ACMA to organise itself early as a converged regulator in anticipation of convergence continuing apace.

We are grateful for this staged opportunity: we have been, and are, thinking through what a converged regulator could and should look like, and addressing the practical challenges created by inheriting two previous organisations, without also having to deal with new regulation at the same time. It also has allowed us to think about the best ways of exploiting the enhanced scope that a larger organisation (with influence over a broader sweep of the raw inputs to communications world) provides for more strategic responses to the issues arising in this rapidly changing environment.

In a subsequent development and in the recent lead up to the Budget, the Government recast the Authority’s mandate to better reflect the individual silos we have left behind. That mandate is to:

- provide a regulatory environment that supports an efficient communications sector; and
- contribute to meeting the communications products and services needs of the Australian community by enabling an effective information, standards and safeguards regime.

Indeed, our introspection over the last year has merely reconfirmed the need for a broader cross-organisation perspective so ACMA can support the delivery of an efficient and effective communications market and ensure that consumers, customers and viewers are well-informed and well-served: the Government’s baseline expectations of this Authority.

The new internal structure (in effect, turned 90° on its side) reflects the converging nature of our environment and is designed to increasingly provide stakeholders with access to a more cohesive arrangement of responsibilities. The structure aligns our operations to reflect, firstly, inputs to industry and secondly, outputs from industry. This better reflects the realities of an increasingly convergent communications industry, as opposed to the historically separate worlds of telecommunications, radiocommunications and broadcasting.

The inputs division is primarily concerned with the regulatory services that industry needs from Government to operate. The division coordinates spectrum, creates technical standards, allocates channels, licences, spectrum and telephone numbers, and it performs a range of compliance and enforcement activities such as investigating interference to wireless services.

The outputs division is primarily concerned with the what industry produces that is regulated, such as the telecommunications services that ordinary Australians use, the wide range of ‘new media’ matters, spam regulation, with a significant focus on consumer awareness and education.

However, we are in varying stages of effectiveness in this ‘one stop shop’ philosophy. I do acknowledge that.

One of the more difficult matters for me to run to ground has been a meaningful assessment of the Authority’s capacity for change. That too is important work in progress.

Our current round of first actionable steps is to develop structures and activities that support our operation as a converged regulator. Principally, we have been looking at our internal committee structures, our decision-making frameworks and processes, and our governance arrangements. And we’ve been doing all of this on a ‘first principles’ basis.

Further, there are a few areas we’re working on now that arise out of the Authority’s ‘re-engineering of thinking’ approach.

All areas have been busy in concluding their 2006–07 business plans, supplemented by a detailed development of internal budgets, in preparation for getting our house in order ahead of the funding review later this year. The Government agreed to review ACMA’s funding requirements following its formation and first two years of operation, to ensure it is appropriately resourced to meet its statutory outcomes and other Government requirements.

The reality is that the organisation is frenetically busy at the moment ... working hard on every front to bridge to the future, increasingly-converged world. But we’ve also been going about our ‘day job’ and what follows are some of our achievements in the last 12 months where it has been very busy indeed on the telecommunications front.

Recent initiatives

An initiative we introduced earlier this year, as part of our commitment to consult with our stakeholders, was a stronger move towards the use of public seminars and briefings as adjuncts to the publication of ACMA discussion papers. A successful example of this was the Wireless Spectrum Strategies 2006 seminar in March which afforded the opportunity for informed stakeholders to engage in a robust and useful discussion with the Authority and with other stakeholders. As you are no doubt very much aware, there are few shrinking violets in the communications sector.

Our intended emphasis is to again make these seminars and briefings more iterative.

We have released a range of discussion papers on other topics as well, such as improving identity check processes for pre-paid mobile services and the future use of unassigned television channels, and are considering submissions.

We have established a permit regime for submarine cables and are soon to release proposals for protection zones for cables of national significance.

We have registered an enhanced code from ACIF for local number portability and developed a scheme to reimburse industry bodies and associations their consumer code development costs.

We registered new wiring rules for installing customer cabling.

We have introduced measures to encourage more consistent practices by the telecommunications industry and improve information for consumers about changes to a standard form of agreement.

We released a guide for mobile chat providers on how to make their services safer for children.

We released, seven weeks ago, the spamMATTERS reporting button so now you can delete and report spam at the click of a button. Since then, 3.8 million separate pieces of spam have been reported using this facility.

We are now batting four for four in prosecutions of late, and last week confiscated transmitter equipment after the successful conviction of an unlicensed radiocommunications operator. In recent weeks, we have also convicted a person for failing to comply with a notice under the Telecommunications Act – a criminal conviction. As the culmination of ongoing attempts by ACMA and its predecessors to achieve compliance, we have secured a criminal conviction for operating an overpowered transmitter – a breach of the Radiocommunications Act. We succeeded in getting a ‘very clean’ judgement under the Spam Act and have made robust submissions as to penalty. The message will come to be understood that ACMA is comfortable in taking enforcement action when it is necessary to do so ... although our unreserved preferred position is to secure negotiated outcomes through early dialogue. But when our goodwill is over-taxed, we’ll act.

All of these matters have been publicly released but I want to assure you that, although the content of a certain television program may have grabbed the public eye, our attention is fully focused on all our responsibilities. And I will further reinforce this by sharing with you a little detail on some of the activities engaging us now.

Activities over the next 12 months

DNC Register scheme

We are working hard on the implementation of the Do Not Call Register scheme for it to be operational next year. We have developed a comprehensive project plan and established a steering committee, with representatives from DCITA and the Office of the Privacy Commissioner, to advise the Authority.

Input by industry will be critical to the success of this project. We plan to conduct a public tender process for the operation of the register and we will also seek the views of industry and the wider community on the arrangements that could be put in place to administer it.

We will also develop a telemarketing standard before the register begins, and in keeping with our commitment to consult, we will release a discussion paper for comment, and following that we will meet with key stakeholders. We are also conscious of the need to make the standard such that we give industry enough time to prepare for its start.

On the consumer side, ACMA is developing a wide-ranging consumer education program so consumers will have the information they need about the scheme.

New approach to consumer consultation

Based on our ‘first principles’ mindset, we have developed a new approach to consumer consultation because ACMA is committed to consulting with its diverse range of consumer and industry stakeholders to make sure that this regulatory framework addresses the broad concerns of the community. The consultation may occur through a number of means such as

direct discussions with interested organisations and people, formal submissions, research and public forums, as well as formal advisory committees.

ACMA inherited eight such committees from its predecessors and is reviewing them to determine whether they still provide the most appropriate and effective means of engaging with stakeholder groups on particular issues. This of course does not in any way undervalue the role these committees have played and the contribution of their members: rather, as I've repeatedly indicated, this is a reflection of how we are re-examining all that we do.

Three new sets of advisory committee arrangements have been established since the creation of ACMA. And the way we renewed our Consumer Consultative Forum provides a good example of the ways we have been thinking about consumer consultation: we asked questions such as: what role does or should institutionalised consumer consultation perform? How can we use institutionalised consultation to get the best out of our work with consumer groups? How can we consult in a way that's efficient for everyone concerned?

So we proposed a new model for consumer consultation and invited key policy, regulatory and quasi-regulatory bodies with an interest in telecommunications consumer issues to participate in their own right. These new arrangements provide a means for ACMA to consult with consumers with greater flexibility, such as maintaining a list of subject-specific experts for ACMA to draw on for assistance on particular matters. And, in conjunction with the soon-to-be-formed Communications Alliance, we are introducing an annual consumer conference. And here I must add our congratulations to ACIF and SPAN on this forward-looking and convergent approach to the telecommunications industry.

And the arrangements for the Emergency Call Services Advisory Committee (ECSAC) were also established following a review of the equivalent committee from the ACA time. The terms of reference, membership and meeting arrangements have been updated to reflect ACMA's regulatory responsibilities as we go forward, and to ensure the relevance and diversity of committee membership.

We have agreed to establish the Submarine Cable Protection Zone Advisory Committees and are appointing members to the New South Wales committee initially. We expect the first meeting will be held shortly.

ACMA is reviewing the status of the remaining six legacy advisory committees (and all of these have met since ACMA formed or will soon), and as we have done in the other reviews, will consult closely with existing committee members and other stakeholders. The consultation will conform to principles designed to ensure that ACMA engages with its stakeholders in a consistent, iterative and coordinated manner, and that ongoing arrangements provide the most effective means of engaging with stakeholders on each issue. ACMA takes its consultative role very seriously and, as evidence of this seriousness, each committee will be chaired by a full-time member of the Authority.

Before I leave the subject of consultation, and again on a matter of an iterative nature, let me mention that we are determined to work assiduously with other sister regulatory bodies. These are unprecedented times and there could be no excuse if we were to let emerging issues or opportunities slip between us. For example, the senior management teams of DCITA and the Authority have instituted a monthly 'Roundtable'. We are about to commence this initiative with the ACCC, we have proposed this in principle with the

Attorney-General's Department (especially in view of the heightened security focus) and we have just agreed with the TIO to do likewise on a quarterly basis.

These are rigorous engagements we are committing to.

Security

As I just touched on in mentioning the Attorney-General's Department, matters of national and international security understandably occupy all our minds these days.

ACMA's involvement in national and international security is at several levels, and includes a role in issues such as legal telecommunications interception and phone jamming. For example, you may be aware that the 2005 Blunn review looked at changes in the legal interception legislation. The recommendations of the Blunn report are expected to be implemented in stages, subject to parliamentary consideration.

There has been an amendment already to introduce a warrant regime for stored communications such as email and SMS and equipment-based interception. Other changes are also being considered and discussed with the telecommunications industry, such as an enhanced regime for the mandatory retention of telecommunications data. ACMA's key role in enforcing industry compliance with interception obligations remains unchanged.

In the longer term, challenges in the security and enforcement regulatory environment need to be addressed by the relevant central departments, with ACMA support. Interception of telecommunications is a serious matter and must be subject to clear checks and balances. The interaction between international tensions and highly innovative services and processes continually tests our existing models and frameworks.

Consistent with this approach, we have created the necessary regulatory tools to allow the importation and testing of mobile phone jammers in a shielded room. If this testing is successful it may lead to a trial of mobile phone jamming in select Supermax prisons.

Some strategic challenges in telecoms

There is of course a bigger picture behind all of this.

As we look forward, one of our strategic challenges in telecommunications over the next few years is going to be, in a practical sense, managing the transition from legacy regulation of services to a next generation environment, in which applications, content and connection will each have a different supplier. A great deal of existing telecommunications regulation is in fact directed, either explicitly or implicitly, towards voice services, and in some cases there are embedded assumptions about the technologies that are used to provide the service. For example, the numbering plan has been built up over the years based on zoning assumptions that in turn were premised on the capabilities of telephone exchanges of 20 years ago. Numbering or 'naming and addressing' is central to the design of any telecommunications network. New networks and services will outgrow the present numbering scheme and we will need new identifiers to support a more sophisticated range of services and provider supply models.

As new technologies like VoIP and its probable successors continue to allow 'applications' (like voice) to split out from the technologies over which they are provided (like the

broadband networks), industry, policy makers and regulators like ACMA are going to have to take a journey together and think through what things that regulation has traditionally provided are important, what practical options exist for delivering those important things, and how to manage any transition that needs to occur.

I think everyone here would understand it when I say we all are starting to find ourselves at the 'pointy end' of developments, where technology and market change are starting to rub up against historic constructs.

And this is a useful segue to our international obligations: ACMA will work and partner with industry to identify Australia's requirements and advocate these in international fora as we support industry innovation and make necessary changes to existing numbering arrangements.

On this subject, we are rethinking our international engagement: why do we do it, how can we do it better, be more effective?

A major focus of our international engagement is preparing for the ITU Pleni-Potentiary Conference scheduled for this November and the World Radiocommunications Conference at the end of next year. We are working very hard, along with other stakeholders, to satisfy the needs of industry and Australia in developing positions and proposals on agenda items that will have an impact on Australian communications so that we achieve our aim of agreement within the Asia-Pacific region through the Asia-Pacific Telecommunity.

And that's not all we are doing – telecommunications spreads far and wide.

We are preparing for our role in the inaugural Regional Telecommunications Independent Review Committee which is expected to be convened by the Minister in 2008 and, as you may recall, will review the adequacy of telecommunications services in regional, rural and remote parts of Australia.

We are working with the Department and Telstra in preparing for future communications facilities so that regional indigenous communities are not excluded from the promise of the future.

We are participating in a working group, established by the Minister, on the closure of Telstra's CDMA network and its replacement by a new 3G network. Along with Telstra, the Department (DCITA) and other relevant Government agencies on the working group, we have been asked to advise the Minister, primarily on equivalence of coverage.

We are very actively investigating complaints about 'missed call' marketing – very short duration calls made to mobile phones with unknown numbers appearing on the mobile handset. So watch this space.

And we will shortly welcome the submission for approval of a self-regulatory scheme for consumer safeguards for users of mobile premium content by the Australian Mobile Telecommunications Association (AMTA) and the Australian Direct Marketing Association (ADMA). Consumers will benefit again from increased protection.

Industry responsibility & code compliance

And again in thinking forward strategically, the self-regulatory environment is a key mindset. Obviously, ACMA will fulfil its statutory roles in this area, but we need to do this in a way that helps and that has an eye to the future.

We want to make ‘industry responsibility’ work so we are reviewing the ways we interact with industry.

One of these ways is through our approach to compliance with industry codes. We aim to encourage self-regulation in the telecommunications industry by promoting a compliant industry that ensures the integrity of its industry codes.

In doing this we plan to be an evidence-based regulator. To that end, ACMA will release in the next month or so a discussion paper that outlines a proposed approach to tackling code and related compliance issues.

While the details have not been fully decided, it is likely to encompass a structured, clearly-articulated approach that moves through well-defined stages of compliance action with a degree of certainty for all parties. This is based on a graduated regulatory approach, as articulated in ACMA’s regulatory philosophy, and is common sense. The stages involve things like investigation, breach finding, remediation and sanction.

The approach is likely to involve more systematic and formalised communication with industry players with the aim of giving everyone more certainty about how non-compliance will be handled. We also will have a greater willingness to make public the details of individual cases when we have used our regulatory powers. We will be increasingly of the presumption that going public about non-compliance is a better approach.

We are keen to work closely and cooperatively with partners in the self-regulatory framework, such as the TIO. ACMA and the TIO will work through issues together, particularly on an agreed approach to systemic complaints.

And I am also looking forward to John Pinnock’s presentation this morning on how the TIO is thinking about the issues of convergence for the sector.

Compliance and enforcement must work effectively in a self-regulatory environment and we each have a strong role to play in that.

I’m happy to be challenged on this but surely dealing with complaints effectively is a core ingredient of cost-effective customer service. Industry needs to ensure consumers are aware of how they can complain and to whom. And that includes the TIO. I think AAPT’s recent initiative to include the TIO details on its invoices is a good example of going the necessary extra mile.

Enforceable undertakings

And now to the part that your colleagues in the broadcasting silo will be really interested in — enforceable undertakings.

We have released guidelines about how we will make use of enforceable undertakings associated with compliance with telecommunications obligations, and we will generally publish the enforceable undertakings on our website.

The undertakings are aimed at encouraging behavioural change in an organisation. They can address systemic problems rather than simply penalise isolated instances of non-compliance or misconduct.

This power has been successfully used by other regulators to require compliance, in a cost-effective and tailored manner. It is not dissimilar to the powers of the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority to accept enforceable undertakings.

This strategy will, we hope, signal and reflect a robust approach towards consistency and transparency in decision-making in the interests of an efficient market in the long term interests of end users.

Effective regulation in a self-regulated industry relies on the premise that the regulator will take action when necessary. The acceptance of enforceable undertakings is part of a suite of regulatory measures available to ACMA and will be used as an alternative to, or in addition to, the exercise of other enforcement powers.

ACMA seeks to use the minimum power or intervention necessary to achieve a sustained and ongoing commitment to compliance from regulated entities, and sees the increasing use of enforceable undertakings as a reflection of the more responsive, targeted and flexible regulatory regime that it will seek to foster.

That sentiment reflects an emerging sentiment for the Authority right across its responsibilities. This is sentiment manifesting itself in the telecommunications world, that will inevitably bleed into the broadcasting world, with increasing convergence the match-maker.

Close

Thankyou.