

THE CONVERGENCE REVIEW

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The Convergence Review was announced by the Australian Government late last year with the goal of bringing our media and communications laws up to date in the face of new technology like smart TVs, smart phones, and tablet devices, such as iPads.

The Convergence Review Committee — which also includes my colleagues Malcolm Long and Louise McElvogue — has already met with a number of industry groups and we have received close to 200 submissions on various papers that we have put out for comment.

The Committee also traversed the country back in August for a series of public meetings in 8 metropolitan and regional centres where it met Australians face-to-face to discuss the many issues at hand.

There may be some of you here today who are not sure what convergence is, and that is perfectly understandable. The word itself is a bit confusing, but the reality of convergence can be seen all around you.

Think of convergence like this: A few years ago we watched TV in the lounge; maybe listened to radio in a bedroom, your newspaper arrived on the front steps, you talked to friends on the phone, and had a stack of video tapes on the shelf.

Everything was neatly separated, not only in your house, but also for businesses and the government rules that applied to them. TV stations, Telcos, newspapers, the music and film industry all knew where they stood.

Things have changed. Now, on a smart TV you can download movies and music, watch catch-up TV or surf the web. I actually bought a smart TV recently and the choice of content is quite remarkable. You can also do all this on your mobile phone.

This is convergence: everything is available on a single device.

These changes are certainly not bad; they create a lot of opportunity. But the government rules, designed 20 years ago, are under pressure and it is not clear anymore who the rules apply to and what industry needs to do. This is not good for innovation and not good for consumers or industry.

Just one quick example: Australian content. TV stations have to show a minimum amount of Australian programs, but these rules don't apply to content on the internet, so what happens now as more people use the internet for their entertainment?

We have to ask the fundamental questions, what is Australian content in a converged environment, and where, when and how do people want to see it?

There is no doubt that internet viewing of video is only expected to increase in Australia — particularly as the National Broadband Network progressively takes hold across Australia over the next several years.

Communications regulation in Australia up until now

Australia's key communications legislative framework was introduced in the 1990s: the *Broadcasting Services Act* and the *Radiocommunications Act* were enacted in 1992; the *Telecommunications Act* was enacted in 1997. Each piece of legislation has been tailored to achieve different public policy objectives.

Our broadcasting legislation was designed to provide flexible regulation to promote objectives such as the availability throughout Australia of a diverse range of broadcasting services that entertain, educate and inform — a broadcasting industry that is efficient, competitive, and responsive to audience needs; and diversity in control of the more influential media services.

The social and cultural focus of the *Broadcasting Services Act* was highlighted in its accompanying Explanatory Memorandum:

it is widely accepted that television is a powerful medium with the potential to influence public opinion, and that television has a role to play in promoting Australia's cultural identity.

Our telecommunications legislation, on the other hand, emphasises the long-term interests of end users of telecommunication services and the efficiency and international competitiveness of the Australian telecommunications industry — while the *Radiocommunications Act* is designed to promote the efficient allocation and use of spectrum to maximise public benefit.

When the current regulations were being designed, there was little understanding of a future where anyone could easily download a movie to the home TV, view TV programs on a mobile phone, make a telephone call via an internet service, upload personal videos for all to see, or watch content online whenever they like.

In just 20 years, Australia has moved from analog phones to smartphones, from dial-up to broadband, and from five analog free-to-air broadcast television channels to 15 or more digital channels, TV and radio content delivered via internet, online video and a subscription broadcast industry offering a vast range of television and radio channels from a variety of providers.

The switch to digital-only television and particularly the rollout of the National Broadband Network will ensure that Australians are well placed to take advantage of these exciting new technological innovations.

These changes have implications for Australia's communications regulations, because the obligations imposed by the current framework often differ depending on the type of platform the content or service is delivered on.

So every time there are major changes in the technology or business models, the regulation has to change with it — as an indication when the *Broadcasting Services Act* was enacted it was around 100 pages, today it is just under 1000.

The implications of convergence for Australian content and culture are also enormous.

When audiences can watch, listen to or read content from anywhere at any time, then the role of the media in forming and nurturing our national identity will have to adapt.

The need for shared experience will remain, but it is incumbent on us to get the settings right to ensure Australian stories are there to be shared.

These changes have implications for Australia's communications regulations, because the obligations imposed by the current framework often differ depending on the type of platform the content or service is delivered on.

It is therefore timely to consider whether these differences continue to be relevant and how we can continue to achieve public policy objectives.

Main policy challenges in the convergence era

So what are the main issues or 'big rocks' that the Convergence Review will cover?

At the centre of the review is how to ensure the ongoing distribution and availability of Australian and local content in an environment where eyeballs are increasingly turning to services not covered by the existing rules, e.g. catch-up TV.

Also on the table is the topical area of media diversity and pluralism including cross media ownership rules and competition laws, for example exclusive content arrangements.

The review will also consider how to allocate and manage scarce spectrum in an environment where there is increasing ‘contestability’ for spectrum from a variety of established and emerging uses.

Another key group of issues could be loosely called ‘protection of community standards’ — this includes the range of Internet content policy issues including inappropriate material, but also issues that are controversial including advertising standards and allegations of accuracy and bias in the media.

Most importantly the review will advise the government on a new framework for addressing the media, one that gets away from the old silos of the past such as broadcasting and telecommunications, towards a framework that is more functionally descriptive, for example, one that could focus on layers such as infrastructure, networks, content, applications and devices, rather than industries, or possibly content value chains from production to channels to devices and ultimately, to consumers.

In considering all of these issues the Committee will need to take into account a range of overarching issues that are a constant theme in the review.

These include the idea of ‘regulatory parity’ the idea that like services should be regulated in a like manner regardless of the underlying technology, platform or business model.

These questions of ‘regulatory parity’ are relevant not just to Australian and local content obligations, but also to issues such as media diversity, including cross media ownership, licensing and planning, and community standards in the media.

As one example current measures for the protection of community standards range from industry self-regulation to pre-broadcast warnings about inappropriate content, to the complaints based system for online content — but they are different according to the platform even though the underlying content is often the same.

However, regulatory parity is a starting proposition only — there are good reasons why some content could be treated differently depending on the platform it is delivered on and the business model.

For example, regulation that may be appropriate for programmed or linear content, such as broadcast classification time zones, may not be appropriate to an on-demand or non-linear delivery mode — even though the content is often the same.

In addition, regulatory parity — in both a technology or platform sense — may need to be informed by community expectations or wider public policy objectives.

For example, consumers may still expect that certain types of content are restricted when delivered through free-to-air broadcasting but consider them acceptable on other devices which are used in different environments or circumstances.

Another key issue is the capacity for any new policy framework to remain adaptable in the face of the endless change that we have come to expect in the modern communications and media environment.

If the existing *Broadcasting Services Act* was designed in the early 1990s and still operates now — the new regime may need to still be effective in the early 2030s. So a key question for the Committee is how do we design a new policy framework so that its key assumptions are still valid in 20 years time.

Another key issue is that of transparency — most of you would agree that existing regulation reflects a history of political compromise between Government and key interest groups.

I'm not saying that there won't be compromises in the future but ideally a new policy framework would be designed so that any discriminatory treatment between services or content is visible and transparent, and that any subsidies or imposts can be clearly measured or assessed.

Detailed discussion papers

Clearly then there are a plethora of issues that we need to address in the Convergence Review.

The Committee has received some very high quality submissions to the review over the past 6 months or so and these have helped inform the Review.

Some of these submissions played a critical role in the development of five detailed discussion papers the Committee released in mid-September. These papers have even further generated discussion on the key issues under the microscope.

I hear you ask why 5 discussion papers. I agree it does sound a lot until you consider the quite complex and far reaching issues we are dealing with here.

The papers focused on the five following themes:

- Layering, Licensing and Regulation
- Australian and Local Content
- Spectrum Allocation and Management
- Media Diversity, Competition and Market Structure
- Community Standards

I think it's important to break these down so I will briefly outline each paper to give you more of an idea of the significance of these issues in the converged media environment.

The Media Diversity, Competition and Market Structure paper identifies the key issues that impact on the diversity and competition in Australia's communications and media market. It discusses key rules that support media diversity and competition, and describes some of the key issues and challenges that convergence poses to them.

The Spectrum Allocation and Management paper discusses the ways of allocating and managing broadcasting and other spectrum in a converged media environment. It also discusses some key policy questions that might arise if spectrum was planned, managed and allocated in a more convergent way.

In the Community Standards paper, we addressed community expectations about media content. This includes a range of issues, such as harmful and offensive content, cultural sensitivity and discrimination, as well as matters such as privacy, accuracy, fairness and transparency.

For the Australian and Local Content discussion paper, the focus is on how to ensure the production and distribution of Australian and local content in a world where Australia will be a leader in communications and media connectivity with the NBN, digital-only television and new spectrum-enabled wireless communications technologies.

Finally, the Layering, Licensing and Regulation discussion paper essentially addressed three areas:

1. Potential approaches to media regulation in a convergent world such as using a layering approach which separates content from their delivery platform
2. The administrative complexity around the licensing of content services that use traditional and emerging media platforms.
3. The inflexibility of much current regulation and jurisdictional issues in dealing with new forms of content delivery.

As many of you would be aware the independent media inquiry may also touch on some of the media standards and diversity issues. We will incorporate their report into our final document when we report to government in March next year.

The Committee has received considerable feedback from both industry and the Australian public on these discussion papers as they are clearly issues at the centre of the convergence debate in Australia today.

We are currently in another writing phase at the moment working an interim report which we hope to release in about a month's time.

Both of these reports will have been substantially influenced by the reaction from both the Australian public and industry to the five detailed discussion papers I just referred to.

It has been of vital importance that the Convergence Review Committee has heard Australian voices and Australian stories in our work this year, but we don't want to stifle new players with red tape, so we need to look at all the issues.

This is the first review of its kind anywhere in the world so we have wanted to make sure we covered all the key issues and consulted across the board.

This review is about asking whether we still need rules in a range of areas, and if we think we do, making sure the rules keep up with technology so that the market remains competitive and all Australians have access to a very wide range of services, content and devices.

One thing is clear however, that the growth of the digital economy, underpinned by rapid improvements in network technologies, Internet connection speeds, and smart devices are the main driving influences towards this thing we all call convergence.

Media and communications industries affect the lives of every Australian, and the Convergence Review will have important outcomes for our society.

My Committee has been asking all interested Australians to contribute ideas, comments or suggestions to assist the review as it is crucial that all voices are heard in this important conversation about our future as a nation.

Thank you for the opportunity to speak to you today.