

10 June 2016

Mr Andrew Madsen
The Project Office
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Dear Mr Madsen

ACMA Submission - Response to the Review of the ACMA Draft Report

The Australian Communications and Media Authority (ACMA) has welcomed the release of the ACMA Review Draft Report and is pleased to make a submission that provides information and additional evidence to support further consideration by the Department of the draft proposals outlined in the Draft Report.

A detailed submission responding to each of the 27 draft proposals is attached.

For further information about any of the matters raised in the submission, the relevant contact officer is Linda Caruso (03 9963 6920) or linda.caruso@acma.gov.au.

Yours sincerely



Richard Bean
Acting Chairman

Attachment: ACMA Submission

Australian Communications and Media Authority submission

Response to Department of
Communications Review of the Australian
Communications and Media Authority draft
report

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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

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Introduction

The Australian Communications and Media Authority (the ACMA) welcomes the release of the Review of the Australian Communications and Media Authority Draft Report (the draft report) proposals and the opportunity to provide further comment and additional information.

The Authority is pleased to note that the draft report provides a strong positive endorsement of its performance to date, as well as offering specific suggestions for continuing improvement.

The central proposition of the draft report is that there remains 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 very challenging environment over the next 10 years. Similarly, the planned path for regulatory reform outlined in the draft report is a useful indication for both the regulator and regulated entities about the prioritisation of regulatory reform activities.

This response to the draft report focuses on three main groups of issues that, operating together, establish the institutional design of the regulator and will shape its capacity to implement the ambitious regulatory reform program outlined in the draft report. The three groups of issues are:

1. Remit and functions—it is important that there is a clear and coherent rationale to underpin remit as it describes the breadth of economic and social activity for which the regulator has responsibility for regulatory action or oversight. It also informs regulated entities, consumers and citizens who engage with the regulatory system about the scope of the government's interest in the sector.
2. Governance structure—which is critically important in setting the strategic direction and organisational leadership for the organisation.
3. Regulatory reform, future regulatory objectives and regulator principles—these settings interact to inform how the regulator exercises its regulatory disposition and the choice of regulatory and non-regulatory powers. These settings are critical to achieving the delivery of the government's intended policy outcomes for the sector.

These design elements are integrally linked in shaping the characteristics of the regulator needed to secure appropriate outcomes for modern Australian communications and media. In its response to the proposals outlined in the draft report, the ACMA has focused on these areas because, in its view, modifying aspects of the proposals will improve the clarity of the final report, and more importantly, shape reform proposals adapted to practical implementation. The following discussion explores these institutional design issues in more detail.

This submission also includes commentary on the draft proposals dealing with performance and resourcing.

A summary of the ACMA's view on each draft proposal is outlined in the table below.

Table 1: Summary of ACMA position on the draft report proposals

Draft proposal number	ACMA view
<p>1. That the ACMA's remit cover all the layers of the communications market, including infrastructure, transport, devices, content and applications.</p>	<p>Support the proposal.</p> <p>It would be beneficial for the final report to provide further guidance regarding the ACMA's intended purpose or the extent to which it would be required to become involved in each of the identified communications layers—we suggest such a purpose might be described as 'to support the confident use of communications services by businesses and citizens by:</p> <ul style="list-style-type: none"> > facilitating the underlying mechanisms used in the supply of communications services and > addressing actual and potential harms associated with the supply of those services'. <p>The ACMA also suggests that Figure 7 should clarify the inclusion of unsolicited communications regulation with the future remit of the regulator.</p>
<p>2. That the ACMA's cybersecurity programs be transferred, along with staff and funding, to the Attorney-General's Department.</p>	<p>Notes the proposal.</p> <p>There are three related components of the ACMA's cyber-security programs.</p> <p>The ACMA supports the proposed transfer of the Australian Internet Security Initiative (AISI) to the Attorney-General's Department and notes there are clear synergies between the AISI and the work currently undertaken by CERT Australia in the Attorney-General's Department.</p> <p>The synergies between the Phishing Alert Service and the work of CERT Australia are less apparent and the argument for colocation is less compelling than in the case of the AISI. The ACMA's Phishing Alert Service depends on the automated analysis of the spam reports received by the ACMA in connection with its role under the <i>Spam Act 2003</i>, and it is unlikely to be practicable to transfer the Phishing Alert Service to another agency.</p> <p>Outreach activities should be aligned with the agency ultimately charged with program delivery. If the AISI is transferred to the Attorney-General's Department, the associated outreach activities should also transfer. However, assuming the ACMA retains responsibility for fostering compliance with the <i>Spam Act</i> (as the draft report suggests it should), it should also retain responsibility for associated outreach activities.</p>

Draft proposal number	ACMA view
<p>3. That the Bureau of Communications Research assume the lead in taking forward research about the emerging environment and market trends, with ACMA's regulatory research program focusing on supporting the effectiveness of regulatory functions and harms that are affecting businesses and consumers.</p>	<p>Notes the proposal.</p> <p>The ACMA considers it inappropriate that an independent regulator should be constrained in or prohibited from accessing and undertaking analysis it considers necessary if, for example, another agency has a different set of priorities.</p> <p>The ACMA considers the discussion of the proposal as outlined in the Executive Summary, that the Department and ACMA 'further develop shared strategies ... to avoid duplication and confusion and making the most of their shared skills and expertise', more appropriately reflects the practice that should exist between the Bureau of Communications Research and the ACMA and recommends the proposal be amended along these lines.</p>
<p>4. That the Department of Communications and the Arts be responsible for head of delegation roles to key international policy-setting forums, including the World Radiocommunications Conference, and that clear guidance and negotiating parameters be provided by the Department to heads of delegation.</p>	<p>Notes the proposal.</p> <p>The effective implementation of the proposal would require departmental leadership in WRC processes at many stages of the preparation process, not simply the appointment of a Departmental head of delegation for the WRC alone.</p> <p>If the government chooses to adopt this proposal, the ACMA recommends that the Department consider adopting a similar approach to engaging in ITU-T and ITU-D processes as well as ITU-R. The ACMA would, of necessity, continue to provide input and support to the Department for these meetings on technical and regulatory matters.</p>
<p>5. That further work be undertaken to determine whether it may be more efficient for another body, such as the Australian Taxation Office, to undertake the revenue collection functions currently performed by the ACMA</p>	<p>Supports the proposal.</p> <p>The ACMA encourages any reassessment of revenue collection functions to consider the efficiency and appropriateness of revised arrangements—not only from the perspective of government, but also from the view of affected licensees and regulated entities to assess whether there is a net benefit in implementing change proposals.</p> <p>The ACMA recommends that the final report clarify which agency is responsible for implementation of the proposal.</p>

Draft proposal number	ACMA view
<p>6. That, within the next 12 months, the ACMA examine whether some or all of the following functions can be referred to industry for self-regulation, in consultation with relevant industry bodies:</p> <ul style="list-style-type: none"> > technical standards > Integrated Public Number Database > Do Not Call Register > action on unsolicited communications, including spam. 	<p>Supports the proposal.</p> <p>The ACMA welcomes an opportunity to give further consideration to whether particular functions could be referred to industry for self-regulation in consultation with relevant industry bodies. This analysis should include whether there are opportunities to outsource regulatory administration activities, as well as opportunities for industry to take on matters currently subject to direct regulation or co-regulatory arrangements, that is, to consider whether they are suitable for self-regulation.</p>
<p>7. That the Department will undertake further work on the potential to expand the ACMA's remit to include the functions of the Classification Board and Classification Review Board Scheme.</p>	<p>Supports the proposal.</p> <p>The ACMA supports the proposal to implement a single harmonised national classification scheme to be administered by the ACMA. The ACMA agrees that there is a strong case for any planned work by the Department to achieve a more coherent approach to content regulation across the Commonwealth's responsibilities. This should include consideration of online content and the further examination of functions being performed by the Office of the Children's eSafety Commissioner returning to or becoming functions of the ACMA.</p>
<p>8. That the Interactive <i>Gambling Act 2001</i> be amended to require the ACMA to:</p> <ul style="list-style-type: none"> > handle all complaints relating to interactive gambling services and advertisements 	<p>Notes the proposal.</p> <p>The ACMA looks forward to further consultation on the draft legislation.</p>

Draft proposal number	ACMA view
<ul style="list-style-type: none"> <li data-bbox="215 288 568 440">> conduct the same investigation process, irrespective of whether the content is hosted in Australia or overseas <li data-bbox="215 464 546 520">> enforce civil penalties for breaches of the Act. 	
<p data-bbox="170 552 546 703">9. That the current institutional arrangements for economic regulation of the communications sector be retained.</p>	<p data-bbox="584 552 819 584">Notes the proposal.</p> <p data-bbox="584 616 1760 743">While this is largely a matter for the ACCC, the ACMA is comfortable with the discussion supporting the draft proposal, and notes that while no change to institutional arrangements for economic regulation of the communications sector is contemplated, there are elsewhere current proposals to change some aspects of competition assessments in spectrum allocation.</p>
<p data-bbox="170 791 573 975">10. That cross-appointment arrangements between the ACMA and ACCC be strengthened in order to benefit both ACMA and ACCC decision-making.</p>	<p data-bbox="584 791 853 823">Supports the proposal.</p> <p data-bbox="584 855 1771 1015">The ACMA strongly supports the continued use of the cross-appointment mechanism and would take the opportunity afforded by renewed appointments to discuss with the ACCC opportunities to strengthen the use of what has proved to be a useful and flexible arrangement. In the ACMA's view, strengthening of communication between the regulators may be achieved without legislative or other formal action by government.</p>
<p data-bbox="170 1070 546 1190">11. That the current institutional arrangements for communications consumer protections be retained.</p>	<p data-bbox="584 1070 853 1102">Supports the proposal.</p> <p data-bbox="584 1134 1760 1222">The ACMA notes the intention to retain the concurrent and complementary requirements of the economy-wide Australian Consumer Law and the industry-specific requirements of communications consumer protections.</p>
<p data-bbox="170 1278 528 1398">12. That, as a priority as future reform is undertaken, the government provide the ACMA with a clear set of</p>	<p data-bbox="584 1278 853 1310">Supports the proposal.</p>

Draft proposal number	ACMA view
<p>overarching policy objectives to guide its decision-making.</p>	<p>The ACMA recommends that the final report clarify whether there is an intended hierarchy, how the various reform and regulatory practice principles are intended to apply, and when and how they are intended to interact with each other (proposals 12, 18 and 27).</p> <p>The ACMA also notes that the process of updating public policy objects for the sector will also require revision of the relevant regulatory policy objects of the <i>Telecommunications Act 1997</i> and the <i>Broadcasting Services Act 1992</i>. This may necessarily include revocation of policy objects, in order to reduce potentially competing or conflicting ‘regulatory principles’, and minimise the risks of new sources of administrative and judicial challenge arising.</p>
<p>13. That the commission model of decision-making be retained.</p>	<p>Supports the proposal.</p>
<p>14. That the skill set to be covered by Authority members be outlined in legislation to ensure an appropriate and diverse mix of abilities to respond to the future needs of the ACMA.</p>	<p>Supports the proposal.</p> <p>The ACMA sees that there are significant benefits for the quality of decision-making, where the Authority acting as a collective whole is able to draw on a range of skills from its membership.</p> <p>The ACMA observes that any legislative articulation of skill requirements should be neither exhaustive nor prescriptive, but rather indicative, to ensure that the government and the Authority are able to respond flexibly over time as Members leave and appointments are made.</p>
<p>15. That all members of the Authority be appointed on a full-time basis and that the Authority consist of a Chair, a Deputy Chair and at least three other full-time members.</p>	<p>Not supported.</p> <p>The ACMA notes the draft report’s acknowledgement that the current legislative arrangements provide flexibility for the government of the day to choose the balance between full and part-time membership and the ACMA supports the view that this should be maintained so as to not preclude a range of approaches in the future.</p> <p>In the ACMA’s view, a full-time member model may introduce significant new and different risks to be managed, while not offering any clear mitigation of the weaknesses stated to exist under the current governance model comprising full and part-time members.</p>

Draft proposal number	ACMA view
	<p>A full-time member model may diminish, rather than enhance, the ACMA's access to current commercial expertise and knowledge. Part-time members bring insights from their contemporary market experience and new perspectives on issues at the Authority table that is less likely to be available than with an all full-time Authority membership in which Members must leave behind their contact with the market.</p> <p>The designation of specific areas of responsibility for individual members risks the creation of silos and the breakdown of effective collective decision-making, with a real or perceived shift towards a representative member arrangement with its associated risk of stakeholder capture.</p> <p>The proposal for a full-time member model is also cited as a way to mitigate the risk of potential conflicts of interest among part-time members. The ACMA notes that the potential for conflicts also exists with full-time members—particularly if they are appointed to represent particular interests.</p> <p>The proposal that regulatory decision-making and management structures merge introduces a new set of issues by having a common group of people act as:</p> <ul style="list-style-type: none"> > a set of independently appointed peers around the Authority table (where, for example, the view of the Chair/agency head is but one among many), and > a 'hierarchy' around an executive management table (where the agency head/Chair can and should have the capacity to direct her or his colleagues on matters). <p>Governance arrangements in such a model would also risk making unworkable the valuable option currently available to the Chair of appointing a Chief Executive Officer or Chief Operating Officer to whom he or she may be able to delegate day-to-day administration responsibilities.</p> <p>A merged regulatory decision-making model, in which commissioners play both an executive (management) role and a non-executive (governance) role, was strongly criticised by stakeholders and the review panel in the recent ASIC Capability Review. The ACMA notes that other regulators that have full-time commissioner appointments, such as the ACCC, continue to carefully and deliberately maintain separate management structures to support the decision-making at the commissioner level, even where commissioners may have agreed between themselves to focus on specific areas of the agency's responsibilities. Such arrangements maintain an important separation</p>

Draft proposal number	ACMA view
	<p>between staff advice and the decision-making entity. In the ACMA's view, it is an important governance principle to maintain a clear separation between non-executive and management roles</p> <p>A move to at least five full-time members will incur higher costs than the current full- and part-time membership model. Based on current cost estimates, a move to a five full-time member model would result in a net increase in Authority operating costs of around \$1 million, compared with a model of two-full time members and three part-time. This would also add to the costs to be recovered from industry participants under existing cost recovery arrangements.</p>
<p>16. That the existing arrangements are maintained where the Chair is the Accountable Authority with an ability to delegate powers, duties and functions, to the extent permitted by the PGPA Act, to a CEO.</p>	<p>Notes the proposal.</p> <p>While the draft report has mentioned delegation to a Chief Executive Officer, the ACMA would be concerned if this created a separate statutory power of delegation and removed the current flexibility for the Chair to delegate powers under legislation to a range of agency staff.</p>
<p>17. That provision be made in the ACMA Act for the Authority to establish sub-boards to manage subject matter not requiring the full commitment of the Authority, or to manage issues that would otherwise diminish the Authority's capacity to focus on its key decision-making or direction setting responsibilities. That the Chair of any such sub-boards be a member of the Authority but not be the Chair of the Authority.</p>	<p>Notes the proposal.</p> <p>The ACMA notes that the sub-board arrangement is intended to provide flexibility for the ACMA to manage subject matter not requiring the full commitment of the Authority, where it is both necessary and cost effective to do so. We note that this proposal differs from the current power of the Authority to delegate certain matters to a division of the Authority.</p> <p>The ACMA seeks further clarification about the proposal, in particular, whether the intended power to create sub-boards will be appointments made by the Authority or recommendations to the minister to make appointments in line with the existing process for appointment of Authority members.</p>

Draft proposal number	ACMA view
<p>18. Legislate the following four regulator principles in the ACMA's enabling legislation:</p> <ul style="list-style-type: none"> > The ACMA have regard that its regulatory settings do not unnecessarily hinder competition, innovation or efficient investment. > The ACMA should apply a risk-based approach to regulation, compliance and enforcement activities. Regulatory intervention should be targeted, evidence-based and commensurate with risk. > The ACMA should implement continuous review of regulation to reduce burden and streamline approaches where the benefits exceed the costs. > The ACMA should be transparent in its actions and clearly indicate the priorities and objectives that inform its decision-making to regulated entities and the broader public. 	<p>Notes the proposal.</p> <p>The ACMA recommends that a set of regulator performance principles should reflect one base-level toolkit available to the regulator.</p> <p>In the ACMA's view, this toolkit should provide powers of intervention to address, in a proportionate way, public policy concerns within its oversight and regulatory remit.</p> <p>This toolkit should include rule-making powers and a graduated set of compliance and enforcement powers, as well as a set of 'soft' non-regulatory powers and responsibilities, such as communication, education and facilitation that recognises the role that the regulator can play in addressing issues to either avoid the need for more direct regulatory intervention, or reduce the intensity of any such regulatory intervention required.</p> <p>The ACMA also recommends that the final report clarify whether there is an intended hierarchy, how the various reform and regulatory practice principles are intended to apply, and when and how they are intended to interact with each other (proposals 12, 18 and 27).</p>

Draft proposal number	ACMA view
<p>19. That the minister provide the ACMA with an annual Statement of Expectations and the ACMA respond by publishing a Statement of Intent outlining how it will seek to deliver on the government's expectations.</p>	<p>Notes the proposal.</p> <p>The ACMA suggests that further clarification be provided on the level of detail proposed, and when and how the Statement of Expectations is intended to interact with the proposed regulator principles (proposal 18).</p>
<p>20. That the minister provide the ACCC with an annual Statement of Expectations and the ACCC respond by publishing a Statement of Intent outlining how it will seek to deliver on the government's expectations.</p>	<p>Notes the proposal.</p>
<p>21. That timeliness of decision-making be established as a key area of focus and accountability for future cycles of the ACMA's Regulator Performance Framework, and government consider legislative amendment to support more timely decision-making, where necessary.</p>	<p>Notes the proposal.</p> <p>The ACMA agrees with the findings that there is scope to improve the timeliness of rule-making and planning processes. The ACMA will continue to monitor and report on the timeliness of its regulatory processes, as part of its legislative responsibilities and whole-of-government accountabilities under the PGPA Act and Regulator Performance Framework.</p>
<p>22. That the ACMA publish information on the steps it takes to ensure stakeholders have a clear understanding of the relationship between its actions and its compliance and enforcement policy.</p>	<p>Supports the proposal.</p> <p>The ACMA will continue to make its compliance and enforcement policies publicly available, and will further explore opportunities to communicate with stakeholders about the application of its compliance and enforcement policies to its regulatory decisions.</p>

Draft proposal number	ACMA view
23. That the ACMA publish a report to the minister every two years on initiatives undertaken to identify and reduce regulatory burden on industry and individuals.	Supports the proposal.
24. That the ACMA produce a public report on steps taken to improve the transparency and consistency of its decision-making processes, and that implementation and stakeholder satisfaction be independently assessed by the end of 2017.	Notes the proposal. The ACMA recognises that stakeholder feedback provides valuable information to guide the ACMA's continuous improvement programs.
25. That it would be timely to review the policy objectives of revenue collection from the communications sector and evaluate whether new business models and OTT services are contributing appropriately.	Supports the proposal The ACMA supports such a review, but suggests that the final report clarify which agency will have responsibility for conducting it.
26. That the ACMA should further analyse its cost base, in light of the proposed function changes, to ensure it is efficiently delivering on its responsibilities and minimising costs to industry.	Notes the proposal. The ACMA continuously monitors its cost base and notes that it would be beneficial if the final report gave further consideration to the areas within the scope of the ACMA's future remit that may be suited to alternative funding models, for example, the scope for regulated entities to contribute to the costs of the administration of regulation.
27. To enable the communications sector to reach its full potential as an enabler of innovation and	Supports the proposal. The ACMA will continue to support regulatory reform activity proposed by the government and agrees that the enduring concepts that underpin the policy objectives of media and communications

Draft proposal number	ACMA view
<p>productivity, the government commence a coordinated program of regulatory reform to establish a contemporary communications regulatory framework.</p>	<p>regulation continue to provide a strong reference point for testing and developing future regulatory reform proposals (see for example, the ACMA's Enduring Concepts analysis).</p> <p>The ACMA also recommends that the final report clarify whether there is an intended hierarchy, how the various reform and regulatory practice principles are intended to apply, and when they are intended to interact with each other (proposals 12, 18 and 27).</p>

1. Remit and functions

The ACMA supports **draft proposal 1**.¹ Clarity of remit is vitally important to convey a clear and coherent rationale to guide the scope of regulatory intervention in the market, inform stakeholders about the areas of government interest in the communications sector, help underpin confident engagement by regulated entities with the regulatory system, and underpin confident engagement by citizens in media and communications markets.

In its [response to the Department of Communications Review of the ACMA Issues Paper](#), the ACMA noted that the agency's institutional design and remit should be shaped so that it exhibits or is capable of:

- > managing the transition from existing legislation
- > accommodating new developments in media and communications.

In the ACMA's view, the proposed 'layers' approach to identifying the scope of government interest in the communications sector provides the flexibility to address both these aspects of regulatory design. The ACMA's layers analysis published in its [response to the Department of Communications Review of the ACMA Issues Paper](#) included a fifth consumer layer.² Further comments are made about consumer issues below, and the ACMA notes the intention expressed in the draft report that consumer issues be dealt with within each of the four layers remaining in Figure 6.

The ACMA broadly supports the proposed areas of functional remit as outlined in Figure 7 (page 54)³ of the draft report. In particular, the ACMA welcomes the clarification provided in the draft report in relation to a remit focused on resource planning and management, licensing, technical regulation, national interest matters, accessibility, content regulation—including consideration of classification functions and online content (currently associated with the Office of the Children's eSafety Commissioner), revenue collection, consumer protection, unsolicited communications and provision of information to the public and advice to the Minister as outlined on pages 33–34. However, we draw attention to the fact that Figure 7 appears to have omitted unsolicited communications activity. This may, however, be unintended.

Purpose

In the context of the discussion about remit, the ACMA supports the draft report's emphasis on the regulator enabling communications industry activity across each of the layers and adopting a forward-looking approach in order to address harms arising from new developments in communications. The outcome of each of these areas of activity could equally be expressed as the desired outcomes arising from the exercise of the intended remit. The achievement of these outcomes is the regulator's purpose.

While the draft report proposals provide guidance about the scope of the ACMA's intended future remit, it is less clear about the ACMA's intended purpose or the extent

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

² ACMA submission, [Response to Department of Communications Review of the ACMA Issues Paper](#), August 2015, p. 45. See also the communications layers analysis in the ACMA's [Broken Concepts](#) and [Enduring Concepts](#).

³ Page references cited are for the Review of the Australian Communications and Media Authority, May 2016, PDF version.

to which ACMA would be required to become involved in each of the identified communications layers—that is, the policy objectives that the regulatory scheme and regulator should seek to deliver or facilitate through its actions within the defined remit.

Taking the lead from the draft report, the ACMA suggests that a statement of purpose could identify that the regulator is required ‘to support the confident use of communications services by businesses and citizens by:

- > facilitating the underlying mechanisms used in the supply of communications services
- > addressing actual and potential harms associated with the supply of those services’.

Achieving these outcomes will involve a mix of:

- > enabling activities that
 - > facilitate market entry and authorise communications activities through the allocation of public resources and licensing
 - > protect market operations through the use of standards including technical regulation and content standards
 - > provide information to market participants and the public such as through content classification
- > harm mitigation and prevention activities that
 - > respond to market failures such as by intervening to promote accessibility to communications networks, services and content
 - > facilitate industry responses to address identified risks and harms
 - > protect communications users by setting behavioural standards through consumer protection measures and unsolicited communications requirements
 - > minimise the risk of harm to consumers by the application of technical standards and other technical regulation arrangements to end-user equipment
 - > deliver information and advice to communications users to support confident engagement in communications activities.

The draft report also acknowledges in its discussion of institutional ambiguity that new issues may arise that do not fit within the remit as described in the draft report, issues may require attention by another regulator, or issues may require new powers to address a particular harm (pages 32–33).

The draft report, appropriately, does not propose that attempts be made to sharply delineate responsibilities among regulators in an attempt to ‘hold back the tide’: Ambiguity is a fundamental characteristic of a digitalised economy and connected society. Decisions about the ownership of an issue are appropriately a matter of policy for the government, so that where the ACMA recognises a lack of clarity in the boundaries of remit, it will frame advice to government reflecting on the following sets of practical considerations:

- > what is the problem—the scope and scale of the identified harm to assess whether it is appropriately a matter for government or industry to address
- > who can act—whether there are powers available to the ACMA or another regulator

- > how the problem is best addressed:
 - > the capacity of the agency to give priority attention to communications and media issues
 - > whether by government, an independent regulator or by the market, taking account of the desirability for decision-making independence from government
 - > the likely transaction and coordination costs for government, consumers and industry where multiple agencies are involved
 - > the technical expertise required to monitor and analyse the communications and media sectors.

The ACMA also notes that **draft proposal 10**⁴ to strengthen cross-appointment arrangements with the ACCC, offers one immediate and practical way to resolve any issues on the boundaries of remit between ACMA and ACCC. Cross-appointment arrangements currently exist, and strengthening of communication between the regulators may be achieved without legislative or other formal action by government.

In relation to the consideration of other emerging issues, for its part, the ACMA will continue to work cooperatively with other regulators where issues arise on the boundary of remits that may benefit from further clarification from the government. As remit issues arise over time, the ACMA notes that the intended Statement of Expectations from the government (**draft proposal 19**⁵) provides another mechanism to update and clarify the government's expectations on priority areas for regulatory attention.

Functional activities identified for change

The ACMA supports the draft report's conclusion that 'the majority of the ACMA functions are appropriate and necessary to ensure its continued smooth and efficient operations' (page 9).

The ACMA's comments on the functional activities identified for change in **draft proposals 2–9 and 11**, are mainly directed to identifying relevant implementation issues and clarifying the supporting rationale for change, considered:

- > in the context of the proposed future remit covering the layers of the communications sector activity as described in **draft proposal 1**
- > in the context of the Government's Contestability Framework (designed to determine whether performance can be improved through alternative structures, processes or provider arrangements).

⁴ Draft proposal 10: That cross-appointment arrangements between the ACMA and ACCC be strengthened in order to benefit both ACMA and ACCC decision-making.

⁵ Draft proposal 19: That the minister provide the ACMA with an annual Statement of Expectations and the ACMA respond by publishing a Statement of Intent outlining how it will seek to deliver on the government's expectations.

Cybersecurity (draft proposal 2)⁶

The draft report proposes that the ACMA's cybersecurity programs and associated staff transfer to the Attorney-General's Department, with the ACMA retaining responsibility for Spam Act administration. It refers to the affected programs as the Australian Internet Security Initiative (AISI), the cybersecurity news-e-bulletin, the Phishing Alert Service, and the spam and cybersecurity public awareness pages on the ACMA website.

AISI

The ACMA supports the proposed transfer of the AISI.

There are clear synergies between the AISI and the work currently undertaken by CERT Australia in the Attorney-General's Department. A transfer of the kind proposed would co-locate programs with a shared 'threats and vulnerabilities' focus, albeit programs directed to different user groups and with different communications needs. Potentially, any resulting efficiencies could support program enhancements. Importantly, it would add weight to the development of an authoritative single voice in government, expressed through the Australian Cyber Security Centre, about cyber threats and vulnerabilities for all user groups.

Given the data inputs to the AISI and the bespoke software it uses, it is likely that an orderly transfer could begin within three to six months of a firm transfer decision and be completed as the priorities for implementation of the Cyber Security Strategy allow.

Phishing Alert Service

The synergies between the Phishing Alert Service and the work of CERT Australia are less apparent and the argument for colocation is less compelling than in the case of the AISI.

Currently between 3000 and 4000 phishing alerts are provided each month to program participants. The alerts are generated following an automated analysis of the spam reports received by the ACMA in connection with its role under the *Spam Act 2003*. These are a small subset of the spam reports that the ACMA receives, of which 5.6 million have been received in the first four months of 2016. It is often not apparent to citizens and businesses that a spam message they have received is a phishing message—this may only become evident after close analysis.

The ACMA depends on the spam reports it receives to guide its spam compliance and enforcement work. Moreover, citizens and businesses wishing to report spam reasonably expect to be engaged with the agency charged with administering the *Spam Act*.

For these reasons, in the ACMA's view, it is unlikely to be practicable to transfer the Phishing Alert Service to another agency.

However, other options could be considered. For example, CERT Australia may be able to incorporate an alert service into its existing work, which the ACMA could feed the 'phishing' intelligence it gleans from spam reports made into it.

⁶ Draft proposal 2: That the ACMA's cybersecurity programs be transferred, along with staff and funding, to the Attorney-General's Department.

Outreach

The draft report's supporting analysis for **draft proposal 2** also notes that the ACMA undertakes cybersecurity outreach activities including *the spam and cybersecurity public awareness website* and the *cybersecurity news e-bulletin*.

The ACMA makes available statistical and other information on its website about the AISI program and the AISI portal. It publishes a [cybersecurity blog](#) on its website, which is sent directly to subscribers as an e-bulletin. The cybersecurity blog comprises periodic posts about malware, service vulnerability and phishing issues.

The ACMA website also contains general information about spam, how to complain about or report spam, information about spam compliance and enforcement, and information about the AISI program and portal.

In the ACMA's view, outreach activities should be aligned with the agency ultimately charged with program delivery.

For example, if the AISI is transferred to the Attorney-General's Department, the associated outreach activities should also transfer. However, assuming the ACMA retains responsibility for fostering compliance with the Spam Act (as the draft report proposes), it should also retain responsibility for associated outreach activities. Under this arrangement, it would remain open to the ACMA and CERT Australia to link to the outreach materials of each other, to ensure citizens and businesses can easily find the information they need.

Research (draft proposal 3)⁷

The draft report notes that the ACMA will 'need to understand the market dynamics as the number of parties involved in delivering services to customers is increasing as supply chains lengthen' (page 27).

It adds that 'the regulator will increasingly need to understand how previously distinct market players are competing with each other and operating across multiple layers', and that the complexity of the market and the pace of change 'will require the ACMA's decision makers to have a comprehensive and authoritative knowledge of the communications market and emerging technologies' (page 28).

The ACMA agrees.

On one reading, the draft report's view of the future capabilities required by the ACMA may not sit well with draft proposal 3—that the 'Bureau of Communications Research assume the lead in taking forward research about the emerging environment and market trends'.

It would not be appropriate that the ACMA's capacity to undertake the evidence gathering and research it considers necessary for its decision-making activities be in any way limited. In particular, it would not be appropriate for an independent regulator to be constrained in or prohibited from accessing analysis it considers necessary, if for example because another agency has a different set of priorities.

The ACMA considers the discussion of the proposal as outlined in the Executive Summary, that the Department and ACMA 'further develop shared strategies ... to

⁷ Draft proposal 3: That the Bureau of Communications Research assume the lead in taking forward research about the emerging environment and market trends, with ACMA's regulatory research program focusing on supporting the effectiveness of regulatory functions and harms that are affecting businesses and consumers.

avoid duplication and confusion and making the most of their shared skills and expertise', reflects the practice that should exist between the Bureau of Communications Research and the ACMA.

The ACMA notes that its research staff and the Bureau currently share research program planning annually to ensure that there is no overlap in activities and that there is a clear delineation of individual research projects between agencies. Contact between annual planning activities is, and should be, frequent.

The ACMA recommends that the final report clarify this recommendation along the lines of the description of the proposal found in the Executive Summary.

International engagement (draft proposal 4)⁸

The ACMA notes the proposed change under which the Department would head delegations to the World Radiocommunication Conference (WRC).

In its response, the ACMA has considered its international engagement through the WRC processes as well as its supporting engagement on telecommunications standardisation activities.

WRC

That the ACMA has historically provided heads of WRC delegations is explained by the nature of the process—whereas the Department is the minister's policy adviser, the lengthy, sustained and overwhelmingly technical nature of most of the work in developing Australian positions means that appointing an ACMA head of delegation for the duration of the study cycle (three to four years) has a number of advantages.

Examination of overseas practice reveals only that some major delegations are headed by a ministerial official while others are headed by a representative of the regulator, with no strong pattern emerging.

The draft report does not suggest, and the ACMA is not aware of, any evidence that the current arrangement does not operate effectively.

This suggests that any change, if desired, should be implemented if it results in no overall loss of effectiveness, and it should be noted that any such change will result in additional effort being required to ensure a fully cohesive process.

To be effective at WRC, a head of delegation should attend and participate in a range of events in the lead up to a conference. Heading the domestic preparatory process ensures familiarity with and sensitivity to the issues and positions of importance to Australia. Leading international engagement at key preparatory meetings for WRC equips the head of delegation with the international profile and relationships with other delegation heads to help progress contentious issues in Australia's interest.

For these reasons, the ACMA's practice has been for the planned head of the Australian delegation to take charge, from early on in the cycle, of the Australian WRC preparatory process leading to the conference. Combining these roles ensures the head of delegation can properly promote and defend national positions at the conference.

⁸ Draft proposal 4: That the Department of Communications and the Arts be responsible for head of delegation roles to key international policy-setting forums, including the World Radiocommunication Conference, and that clear guidance and negotiating parameters be provided by the Department to heads of delegation.

As the draft report notes, the ACMA would of necessity continue to take a leading role in a technical and regulatory capacity, including leading delegations on primarily technical matters. This will continue to comprise the bulk of the WRC preparatory process. In that context, the ACMA recommends that any departmental officer, who is to be the head of delegation at WRC, also lead or be present at the following international and domestic meetings:

- > the final three of the five preparatory meetings of the Asia-Pacific Preparatory Conference Group for WRC
- > the ITU Conference Preparatory Meeting for the World Radiocommunication Conference (usually one meeting, 12 months ahead of a WRC)
- > the peak Australian stakeholder engagement working group, the ACMA Preparatory Group for World Radiocommunication Conference (PG WRC), which meets two to three times a year.

ACMA preparations are coordinated through a steering group that includes an Authority member, the relevant divisional general manager and the head of delegation. Early involvement of any incoming departmental head of delegation in this or a similar forum would assist the two agencies in the cohesive management of preparations for WRC.

While it should be possible under departmental leadership to preserve and build on the current effectiveness of the WRC process, without involvement at key stages of the preparation process, the appointment of a departmental head of delegation at WRC alone is likely to be counter-productive.

On a separate issue, the draft report suggests the WRC is

‘transforming from a technical to policy forum where microeconomic spectrum reform is settled at treaty-level.’

The ACMA is not convinced that this assertion is correct. Certainly, international spectrum harmonisation outcomes of a WRC can influence the highest value use of a band domestically. However, they are only one input into domestic planning processes, and WRC processes are not designed to play a larger role than they do currently in settling domestic spectrum policy and micro-economic reform decisions. In addition, recognising the clear separation of international and domestic planning processes is important to limit opportunities for the pursuit of domestic planning agendas to overwhelm ITU and WRC preparatory processes.

Telecommunications standardisation activities

Draft proposal 4 focusses on the WRC. The draft report is silent on the delegation arrangements for the ITU-T (Telecommunications Standardization) Sector.

At present, the ACMA is the lead agency for the sector, including for the peak meeting of the section—the ITU World Telecommunication Standardization Assembly (WTSA).

The arguments for the Department to take over ITU-T leadership are arguably stronger than for WRC.

Leadership by the regulator of ITU-T originated when the domestic industry was involved in international technical standards-making activities conducted by ITU-T. Industry no longer makes such use of ITU-T processes.

Conversely, those processes now involve a growing number of matters that lie outside the scope of the ACMA’s remit, such as international internet governance, digital

economy related activities, financing and budget of the ITU-T, tariffs and charging. To date, the Department has restricted its role to providing assistance on these matters.

If it is wished to proceed with the WRC recommendation, the ACMA recommends that the Department adopt a similar approach to engaging in ITU-T forums. The ACMA would continue to provide input and support to the Department for these meetings on technical and regulatory matters.

Revenue collection (draft proposal 5)⁹

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

The draft report observes that over time the ACMA has become the third largest tax collector in the Commonwealth, but argues that this is not a core function for the regulator to administer (page 39). The ACMA notes that the current sources of revenue comprise a mix of resource taxes for spectrum licensing and telephone number allocations, industry levies that support the delivery of social objectives such as the universal service obligation (that account for more than a third of the total revenues), and charges that recover the costs of regulation.

Each of these different sources of revenue serves a different purpose and has a different supporting process that would need to be examined as part of any further review work.

In the context of the planned remit, the review contemplates that the ACMA continue to undertake spectrum and numbering resource planning, allocation and management functions. An important ongoing element of those functions is to apply a price for a resource that is allocated, currently expressed in particular legislation in terms of a tax or a charge.

Under its existing business systems, the ACMA has integrated the calculation of an amount for a licence, licence invoicing, revenue collection and licence issue, so that a licensee need deal only with a single transaction with the ACMA. The ACMA notes that a proposal to separate out the revenue collection component of the process would need to generate efficiencies within government, as well as efficiencies for licensees, in order to deliver a net benefit to stakeholders.

The ACMA sees value in reviewing the appropriate responsibilities for revenue collection, but considers that this review should also consider all elements of the revenue stream, encompassing:

- > calculation (charge, tax or levy)
- > assurance (eligibility to pay and confirming payment amounts)
- > invoicing for amounts to be paid (terms and timing of payments)
- > collection
- > issuing licences/resources
- > debt recovery.

⁹ Draft proposal 5: That further work be undertaken to determine whether it may be more efficient for another body, such as the Australian Taxation Office, to undertake the revenue collection functions currently performed by the ACMA

The ACMA also encourages any assessment to consider the efficiency and appropriateness of such arrangements—not only from the perspective of government, but also the affected licensees and other regulated entities, in order to assess whether there is a net benefit in implementing change proposals.

The ACMA also recommends that the final report clarify which agency should be responsible for implementation of the proposed review.

Revitalising self-regulation (draft proposal 6)¹⁰

The ACMA supports the proposal that it give further consideration to whether particular functions could be referred to industry for self-regulation in consultation with relevant industry bodies.

This analysis should include whether there are opportunities for outsourcing or devolution of regulatory administrative activities, as well as opportunities for industry to take on matters currently subject to direct regulation (Do Not Call Register and spam administration) or co-regulatory arrangements (technical regulation), and to consider whether they are suitable for self-regulatory arrangements.

Unsolicited communications

The ACMA welcomes the proposal that it should explore opportunities for greater outsourcing and/or industry self-regulation in connection with the *Spam Act 2003* and the *Do Not Call Register Act 2006*. Reviews of this type are consistent with similar processes undertaken by the ACMA recently (for example, numbering services). Moreover, a fundamental look at the regulation of unsolicited calls and other communications may be appropriate after more than a decade under current legislation, especially in light of new and evolving data-driven marketing techniques, which are shaping consumer and business expectations and experience.

Depending on their scope, any such reviews should consider the technological changes and new ways in which businesses and citizens are engaging with commercial messaging, including:

- > the ongoing relevance and efficacy of the existing safeguards
- > combinations of regulation, self-regulation, outsourcing and / or delegation that might best meet government policy objectives into the future.

In relation to specific elements of the proposals supporting discussion, the ACMA agrees with the view that the Do Not Call Register scheme is mature, but notes its formal compliance actions referred to in the draft report (formal warnings and infringement notices) reflect only formal compliance actions taken. A great deal of less formal action is taken, for example:

- > 17,554 complaints about telemarketing and fax marketing calls were received by the ACMA in the period July 2015 – April 2016 and
- > 1,417 informal compliance warnings were sent by the ACMA to businesses that have been the subject of complaints over the same period.

Informal compliance warnings can lead to intensive engagement and education of individual businesses or industry sectors, actions that have proven effective in

¹⁰ Draft proposal 6: That, within the next 12 months, the ACMA examine whether some or all of the following functions can be referred to industry for self-regulation, in consultation with relevant industry bodies: technical standards; Integrated Public Number Database; Do Not Call Register; action on unsolicited communications, including spam.

fostering compliance outcomes without the need to intervene by measures nearer the 'peak' of the compliance and enforcement pyramid.

Integrated Public Number Database

The ACMA notes that the Department conducted an extensive review of the Integrated Public Number Database that reported in April 2015, considering the effectiveness and continued need for the IPND, in light of changes to telecommunications technology.

The ACMA has been working with the Department to progress incremental regulatory change for the IPND in line with the IPND Review Report (*Review of the Integrated Public Number Database*) and Implementation Plan.

However, the ACMA would welcome the opportunity to review the operation of the IPND regime end to end, focussing on options for outsourcing and enhanced industry self-regulation.

Technical regulation

The ACMA has been working with the telecommunications industry to explore opportunities for industry to take a more active role in technical standards regulation, including conducting a detailed review of [telecommunications equipment regulatory arrangements](#) in 2014. At that time, there was no support from industry for changed arrangements. This may reflect that the established approach to technical regulation means that the cost and risk of establishing and managing the equipment compliance regime is borne by the regulator and suppliers of regulated equipment. In implementing the ACMA review proposal, the ACMA will give further consideration to the purpose that technical regulation or technical standards play in managing technical and operational risks in a contemporary communications environment.

A distinction should also be made between technical regulation and technical standards. Technical standards are the technical requirements that apply to individual items of equipment. Technical regulation refers to the combination of standards, labelling and record-keeping requirements that apply at the point of supply of regulated equipment to the market. The telecommunications industry—through Communications Alliance and Standards Australia—is already responsible for the development of technical standards, which are then referred to in the ACMA's equipment supply arrangements.

In implementing the ACMA review proposal, the ACMA will give further consideration to the relevance of technical regulation and technical standards in managing technical operational and consumer risks in the current and emerging communications environment. Given that the focus of technical regulation is on end-user infrastructure—that is, radiocommunications devices, end-customer equipment and customer cabling—the ACMA would also expect to consider these issues in the context of the layered approach to regulation referred to under **draft proposal 1**.

Classification (draft proposal 7)¹¹

The ACMA supports the proposal to implement a single harmonised national classification scheme to be administered by the ACMA.

Classification is, and is likely to remain, a key safeguard for those engaging with audiovisual content, irrespective of delivery platform. Any system of content regulation needs to be able to deal with the challenges of media convergence and the volume of

¹¹ Draft proposal 7: That the Department will undertake further work on the potential to expand the ACMA's remit to include the functions of the Classification Board and Classification Review Board Scheme.

media content now available to Australians. Building on the ALRC's [National Classification Scheme Review](#) recommendations, such regulation should be:

- > coherent across platforms
- > clear in scope
- > the minimum necessary
- > co-regulatory—maximising the use of industry self-regulation
- > informed by evidence—thereby reflecting community standards.

The ACMA agrees that there is a strong case for this review to achieve a more coherent approach to content regulation across the Commonwealth Government's responsibilities, overseen by a single expert regulator with contemporary and appropriate legislation.

The ACMA also notes the comment in the draft report that 'consideration be given to making the Children's eSafety Commissioner a member of the Authority at some stage in the future', (page 61), which would further consolidate a coherent approach to content regulation (especially online content) within the communications and the arts portfolio.

This approach would involve the functions being performed by the Office of the Children's eSafety Commissioner, along with those others coloured in light blue in Figure 7 (p. 54), returning to, or becoming functions of, the ACMA. Were the Commissioner to become a Member, appropriate changes to powers and performance of functions would follow to ensure a coherent governance structure (for example, it would not be appropriate for one member of the Authority to have his or her own statutory responsibilities different from other members, with attendant sources of potential conflict regarding resourcing and collective decision making).

Interactive Gambling Act (draft proposal 8)¹²

The ACMA notes that the government has indicated its intention to amend the *Interactive Gambling Act 2001* (the IGA) to enable a streamlined complaints and investigations process to deal with interactive gambling services and advertisements. The ACMA looks forward to further consultation on the draft legislation.

Economic regulation (draft proposals 9 and 10)¹³

The ACMA is comfortable with the discussion supporting **draft proposal 9**, and notes that while no change to institutional arrangements for economic regulation of the communications sector is contemplated, there are other current proposals to change some limited aspects of competition assessments. In particular, the ACMA notes the Department's consultation [Legislative Proposals Consultation Paper - Radiocommunications Bill 2016](#). This consultation paper outlines a proposal to change

¹² Draft proposal 8: That the *Interactive Gambling Act 2001* be amended to require the ACMA to:

- > handle all complaints relating to interactive gambling services and advertisements
- > conduct the same investigation process irrespective of whether the content is hosted in Australia or overseas; and
- > enforce civil penalties for breaches of the Act.

¹³ Draft proposal 9: That the current institutional arrangements for economic regulation of the communications sector be retained.

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

ACCC and ACMA responsibilities in relation to competition limits assessments for spectrum allocations.

The ACMA also notes that **draft proposal 10** to strengthen cross-appointment arrangements with the ACCC is relevant to the future consideration of matters that may involve elements of economic regulation of interest to both the ACMA and ACCC.

The draft report comments that the cross-appointment arrangements have lapsed. This is only partially correct, with the current arrangements for an ACCC appointee to the ACMA continuing until July 2016.

In practice, the cross-appointment arrangements provide a formal basis for consultation on matters of economic and consumer protection regulation, but this is only one element of collaboration.

Other mechanisms such as frequent consultation and information-sharing on issues for decision-making are used by both agencies. The ACMA strongly supports the continued use of a cross-appointment mechanism and would take the opportunity afforded by renewed appointments to discuss with the Department and the ACCC opportunities to strengthen, and make more flexible, what has proved to be an effective arrangement. The ACMA would not support specifying compulsory attendance.

Consumer protections (draft proposal 11)¹⁴

The ACMA supports the draft proposal to retain current institutional arrangements for consumer protection matters and notes the supporting analysis reflecting the concurrent and complementary requirements of the economy-wide Australian Consumer Law and the industry-specific requirements of communications consumer protections.

The ACMA notes that the planned review of telecommunications consumer safeguards will give further consideration to future arrangements for relevant consumer protections in telecommunications.

¹⁴ Draft proposal 11: That the current institutional arrangements for communications consumer protections be retained.

2. Governance

The ACMA understands that the proposed changes to the ACMA's governance structure are intended to improve the ACMA's operations, while also achieving an alignment between the ACMA's governance and that of other commonwealth (industry) regulators. These include, most notably, the appointment model of the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC), which are mentioned as comparison models in the draft report (page 13). The ACMA's comments address all of the related governance proposals (**draft proposals 13 to 17**).

The ACMA supports a number of the draft governance proposals. In particular, the ACMA:

- > notes and supports **draft proposal 13**¹⁵ that the Authority retain a 'commission model of decision making'
- > supports **draft proposal 14**¹⁶ (pages 14 and 59) to outline in legislation the skill sets to be covered collectively by Authority members, and sees that there are likely to be significant benefits for the quality of decision-making where the Authority acting as a collective whole is able to draw on a range of skills from its membership. The ACMA observes that any legislative articulation of skill requirements should be neither exhaustive nor prescriptive, but rather indicative, to ensure that the government and the Authority are able to respond flexibly over time as members leave and appointments are made.
- > notes **draft proposal 16**¹⁷ that the existing arrangements be maintained under which the Chair is the Accountable Authority for the purposes of the Public Governance and Accountability Act (PGPA Act), noting that the Chair has the ability to delegate powers, duties and functions, where permitted under the PGPA Act. While the draft report has mentioned delegation to a Chief Executive Officer (CEO), the ACMA would not support the creation of a separate statutory power of delegation to a CEO and removing the current flexibility of the Chair to delegate powers under various legislation to other staff of the agency.
- > notes the flexibility that would be provided under **draft proposal 17**¹⁸ (pages 14 and 61–63) to amend the ACMA Act to allow for the establishment of sub-boards to manage subject matter not requiring the full commitment of the Authority, where it is both necessary and cost effective to do so. The ACMA notes that this proposal differs from the current power of the Authority to delegate certain matters to a division of the Authority. The ACMA seeks further clarification about the proposal, in particular, whether the intended power to create sub-boards will be appointments made by the Authority or recommendations to the minister to make appointments in line with the existing process for appointment of Authority members.

¹⁵ Draft proposal 13: That the commission model of decision-making be retained.

¹⁶ Draft proposal 14: That the skill set to be covered by Authority members be outlined in legislation to ensure an appropriate and diverse mix of abilities to respond to the future needs of the ACMA.

¹⁷ Draft proposal 16: That the existing arrangements are maintained where the Chair is the Accountable Authority with an ability to delegate powers, duties and functions, to the extent permitted by the PGPA Act, to a CEO.

¹⁸ Draft proposal 17: That provision be made in the ACMA Act for the Authority to establish sub-boards to manage subject matter not requiring the full commitment of the Authority, or to manage issues that would otherwise diminish the Authority's capacity to focus on its key decision-making or direction setting responsibilities. That the Chair of any such sub-boards be a member of the Authority but not be the Chair of the Authority.

The evidence cited in the report in support of this model mentions the Ofcom Content Board as an example of a subsidiary board. The ACMA notes that there are significant differences in the content regulation models in the United Kingdom and Australia. Ofcom is the first point of contact for content-related complaints resulting in large numbers of sometimes routine matters, unlike in Australia where broadcasters have the primary responsibility for complaint resolution. In the event that classification issues form part of the ACMA's remit, this area of activity may prove an appropriate activity for a sub-board, if funding is made available to support the sub-board's activities.

Full-time and part-time members

The ACMA wishes to point out significant difficulties inherent in **draft proposal 15**¹⁹ (pages 14–15 and 61–63), that all members of the Authority be appointed on a full-time basis.

The ACMA notes the report's acknowledgement that the current legislative arrangements provide flexibility for the government of the day to choose the balance between full and part-time membership and supports the view that this should be maintained so as to not preclude alternative approaches in the future.

In the ACMA's view, a full-time member model introduces significant new and different risks to be managed, while not offering any clear mitigation of the weaknesses stated to exist under the current governance model comprising full and part-time members.

The draft report argues that a full-time member model is required in an environment where:

... the interconnected and global nature of the communications sector will mean that in more and more cases decision makers need to understand specific details or regulatory decisions, which requires a substantial commitment of time. (page 60).

Further, the review has identified that a full-time member model would bring the ACMA into alignment with the models of other commonwealth regulators, notably governance models of the ACCC and that of ASIC.

The ACMA notes that the governance models of both the ACCC and ASIC were reviewed extensively within the previous 12 months under separate review processes.²⁰ Insights from these review processes provide a useful source of evidence to inform the governance considerations, in particular the strengths and weaknesses of a full-time member Authority model, which were extensively canvassed in these other agency reviews.

Authority member experience

The ACMA is concerned that a transition to an all full-time member model may diminish, rather than enhance, its access to acute expertise and knowledge.

In its experience, part-time members bring insights from their contemporary market experience and new perspectives on issues at the Authority table that are less likely to be available with an all full-time Authority membership, in which members must leave

¹⁹ Draft proposal 15: That all members of the Authority be appointed on a full-time basis and that the Authority consist of a Chair, a Deputy Chair and at least three other full-time members.

²⁰ [ASIC Capability Review Final Report](#), April 2016, [Competition Policy Review Final Report](#), March 2015.

behind their contact with the market. This current structure of a mix of full- and part-time Authority members works to ensure the Authority is outward looking and truly an independent decision-maker drawing on staff advice. The full-time members are able to develop the deep expertise, particularly in regulatory practice, noted in the draft report, while part-time members bring contemporary experience and community views.

Members as representative voices

The draft report offers the suggestion that insights from communications stakeholders as strong and effective advocates for their views through consultation processes, represent an alternative source of expertise to that of part-time members.

In the ACMA's view, insights from stakeholders who have an interest in the outcome of a particular decision, are no direct substitute for the views of statutory appointees obliged to consider matters objectively while bringing their own experience to bear.

Moreover, such language in the report reflects a possible wider confusion. A distinction must be made between the value brought to the Authority by members with knowledge and expertise about the sectors they regulate, and the idea that members might be appointed as 'representatives' of particular sectors.

This conflation is also reflected in the language on page 60, where the report notes that '... it is not practical for all voices to be represented on the regulatory authority through its membership'. It may also be the source of this observation at page 63:

... the Review considers there would be a more reasonable balance between the Chair (as the Accountable Authority) and the Authority members under a governance model that consists entirely of full-time members for the Authority each with specific areas of responsibility

although it is not made clear what is meant by 'a more reasonable balance' and no evidence is cited for a lack of balance under current arrangements.

While the draft report has confirmed the model of the ACMA's statutory decision-making powers vested in the Authority as a whole, the text quoted above implying specific oversight of particular regulatory matters by individual Authority members, would appear to create an expectation for stakeholders of specialised member attention that may create unnecessary tensions and unclear accountabilities under the collective decision-making model.

The Competition Policy Review (the Harper Review) examining the ACCC governance model has provided extensive analysis of the benefits and weaknesses of the role of specialised commissioners and noted that

... the expectation that such commissioners represent a particular sector is not congruent with the actual role Commissioners perform. Instead, all Commissioners are involved in all decisions of the Commission. At the same time, the presence of sectoral Commissioners could let other Commissioners 'off the hook' from having to consider the interests of small business and consumers in their decision making.²¹

²¹ [Competition Policy Review Final Report](#), March 2015, p. 466.

In the ACMA's view, the designation of specific areas of responsibility for individual members would risk the creation of silos and the breakdown of effective collective decision-making, with a real or perceived shift towards a representative member arrangement with its associated risk of stakeholder capture.

If it is not the intent of the review to designate areas of responsibility for full-time members, either formally or informally, then the ACMA would encourage a reconsideration of the supporting arguments to make this aspect of the proposed governance model clear.

It is a long-standing and vitally important principle that members of a regulatory Authority not be appointed to 'represent' regulated entities or a sub-section of those entities. The ACMA strongly recommends that the language in the report implying that such representative appointment might be appropriate should be removed.

Attracting high-calibre candidates and managing conflicts of interest

The proposal for a full-time member model is also cited as a way to mitigate the risk of potential conflicts of interest among part-time members. The ACMA questions the extent to which the potential for conflicts of interest challenges the value of part-time members. While it is clear that part-time members will usually have external interests or roles that could occasionally give rise to actual or perceived conflicts, in our experience, such conflicts have never rendered a member unable to contribute in a substantive way to the work of the Authority and have in all cases been able to be managed efficiently and appropriately. Moreover, the ACMA notes of course that the potential for conflicts also exists with full-time members—particularly if they are appointed to represent or focus on particular interests.

The draft report also suggests that 'the higher levels of remuneration for full-time membership and the offer of rewarding roles are also more likely to attract high calibre members' (page 60).

In the ACMA's experience, the offer of a full-time role is likely to be less attractive (regardless of remuneration) to an industry expert who might otherwise accept a part-time role. It is likely that many of the part-time members that have been with the ACMA would not have had an interest in a full-time role in a government agency—with the relatively lower remuneration than that available in the private sector, as well as the likely more important attendant requirement that they cease involvement in other activities in their career. Experience to date suggests that part-time ACMA members accept appointment because of the opportunity to contribute in the public interest, with remuneration a relatively minor consideration.

Risks where authority and executive management role separation is not maintained

The draft report notes that:

... an increased number of full-time members may mean that existing management structures can be reviewed. A subsequent restructuring of senior executive roles could assist to off-set any increase in costs from appointing more full-time members. (Page 60.)

The ACMA wishes to point out significant difficulties with proposals that would involve a merging of regulatory decision-making and management structures.

Such a model introduces new issues by having a common group of people act as:

- > a set of independently appointed peers around the Authority table (where, for example, the view of the Chair/agency head is but one among many)
- > part of a 'hierarchy' around an executive management table (where the agency head/Chair can and should have the capacity to direct her or his colleagues). Whether in fact an agency head could issue such directions to fellow statutory office holders is unclear, but the absence of such a capacity would simply change the character of the governance risk.

Governance arrangements in such a model would also risk making unworkable the valuable option currently available to the Chair of appointing a CEO or Chief Operating Officer to whom he or she may delegate day-to-day administration responsibilities.

A further risk in merging regulatory decision-making and management structures is a potential weakening of the safeguard provided by the Authority's ability to independently test evidence and review recommendations developed by staff for Authority decision.

As an agency with law enforcement powers, including the power to initiate criminal proceedings, seek significant civil penalties, and remove licences to conduct business, the current governance model offers an important safeguard, in that such matters are decided at the Authority level on the recommendation of expert staff, not by staff (see, for example, various parts of s.53(2) of the ACMA Act, which reserve such decisions to the Authority).

A merged regulatory decision-making model, where commissioners operate exercising both an executive (management) role and a non-executive (governance) role, was strongly criticised by stakeholders and the review panel in the recent ASIC Capability Review. The review panel noted:

... that a dual governance and executive line management role inherently undermines accountability. Despite best efforts, individuals responsible for particular executive functions are unlikely to be consistently able to detach themselves from their concerns as an executive, to take a fully independent and organisation-wide perspective when acting in their governance role, to hold the executive team (including themselves) to account. A body that merges a whole of organisation strategic function, with individual executive responsibility, will be less easily able to require its individual members to detail and account for their plans than a non-executive board would be able to in relation to the executives reporting to it.²²

The ACMA notes that other regulators that have full-time commissioner appointments, such as the ACCC, continue to deliberately maintain separate management structures to support the decision-making at the commissioner level, even where commissioners may have agreed between themselves to focus on specific areas of the agency's responsibilities. Such arrangements maintain an important separation between staff advice and the decision-making entity.

To the extent that the model being proposed for the ACMA is intended to mirror that of ASIC and the ACCC, the ACMA submits that it may be based on an imperfect understanding of those models.

²² [ASIC Capability Review Final Report](#), April 2016, p. 6 and 7.

The ACMA has sought but not found any governance model in the Commonwealth that mirrors the proposals outlined in the draft report. Indeed, as noted in the recent ASIC Capability Review, the Review Panel observed that:

The combined non-executive and executive role is unlike the models employed by large corporations and many other conduct regulators internationally ... it also has significant in-practice differences to the models deployed by the Australian Prudential Regulatory Authority (APRA) and also the Australian Competition and Consumer Commission (ACCC), including the latter delegating to a Chief Operating Officer (CoO), despite operating under similar legal frameworks to ASIC.²³

In the ACMA's view, it is an important governance principle to maintain a clear separation between non-executive and management roles.

Finally, the ACMA notes, and the paper acknowledges, that a move to at least five full-time members (**draft proposal 15**) will incur higher costs than the current full- and part-time membership model. The combination of the proposals of full-time, associate and sub-board members significantly increases the resourcing required to support such a structure from an agency with a resource base significantly smaller than either the ACCC or ASIC. Based on current cost estimates, a move to a five full-time member model would result in a net increase in Authority operating costs of around \$1 million, compared with a model of two-full time members and three part-time members. This would also add to the costs to be recovered from industry participants under existing cost recovery arrangements.

The ACMA also notes that its organisational structure is not top-heavy compared with other similarly sized Commonwealth entities, although no two are alike. For example at the Senior Executive Band 1 and 2 levels, the ACMA has 13 staff in a total of approximately 420, while the Department had 24 Senior Executive Band 1 and 2 staff, out of total staffing of 428, as at 30 June 2015. Important critical mass and career progression issues will also be created, if the top tier of management in an entity of this size is removed from the organisational structure to the sphere of statutory appointment.

²³ [ASIC Capability Review Final Report](#), April 2016, p. 6.

3. Regulatory reform, future regulatory objectives and regulator principles

There is an important interaction between the regulatory objectives for the sector, regulator principles that shape the operational culture of the regulator, and the choice of reform options and implementation paths for regulatory activity.

For these reasons, the ACMA has chosen to discuss draft proposals 12, 18 and 27 together.

Regulatory reform design principles

The ACMA supports, as it has long done, a comprehensive program of review of the legislative framework to ensure that regulation is fit for purpose (**draft proposal 27**)²⁴ and agrees that the enduring concepts that underpin the policy objectives of media and communications regulation continue to provide a strong reference point for testing and developing future regulatory reform proposals.

The draft report identifies sets of design principles, including proposals for a common set of high level intervention principles, to guide how and when governments should intervene in the market; a common set of regulatory reform principles to guide the construction of a revised regulatory framework; and common set of regulator principles to guide the decision-making disposition of the regulator.

The ACMA sees these principles fitting broadly within a regulatory design framework that has these components:

- > principles informing policy objectives for the regulatory scheme—this is a matter for the government in legislative design
- > principles related to the design of powers (rule-making, compliance and enforcement, and other operational intervention powers like information, education and advice)—the design is a matter for the government to specify in legislation, but interacts with the regulator's practice in making choices about the appropriate exercise of particular powers
- > principles to inform the disposition of the regulator—this is a matter for government to provide guidance to the regulator, but also for the regulator to give practical effect to its disposition in regulatory practice and decision-making.

Overall, the ACMA is supportive of the individual principle descriptions, but offers some additional suggestions in relation to specific principles. However, in the ACMA's view, there is scope for the final report to offer some important additional clarification, in particular, about how the various design principles are intended to relate both to each other and to the other regulatory design components of remit, desired outcomes for the sector, rule-making compliance and enforcement, other intervention powers and the required organisational disposition of the regulator, including the relationship

²⁴ Draft proposal 27: To enable the communications sector to reach its full potential as an enabler of innovation and productivity, the government commence a coordinated program of regulatory reform to establish a contemporary communications regulatory framework.

between these various design components and the proposed annual Statement of Expectations.

There are multiple, and at times competing, desired outcomes expressed in the draft report and the ACMA considers that there is scope to further clarify the purpose of particular principles, including where within the regulatory design schema they are intended to have effect. Some of these difficult design tensions are illustrated, for example, in relation to competition objectives expressed differently in the high-level intervention principles and common regulator principles.

The common regulator principle proposes that in undertaking any intervention, the ACMA should not unnecessarily hinder competition, innovation or efficient investment (dot point 1 of draft proposal 18). That is, the agency should undertake all of its activities in a manner designed to create as little distortion of markets as possible. This principle though, would be very different from a policy object or outcome for the sector that seeks to promote competition and may have different effects to the proposed regulatory reform design principle, which exhorts competitively neutral intervention designs.

Critically, this example highlights the need for careful legislative drafting and it raises the question whether the principles need to be considered in a logical design hierarchy, or whether a suggested sequencing is needed to identify tensions and ensure a revised regulatory scheme is coherent.

The ACMA recommends that the final report clarify whether there is an intended hierarchy, how the various reform and regulatory practice principles are intended to apply, and when and how they are intended to interact with each other.

The ACMA also notes that the varied purposes of the ACMA's remit might mean that the goal of achieving a single set of common policy objects may not be appropriate. In any event, the process of updating public policy objects for the sector will also require revision of the relevant statutory objects of the *Telecommunications Act 1997* and the *Broadcasting Services Act 1992*. This may necessarily include revocation of those objects in order to reduce potentially competing or conflicting 'regulatory principles', and minimise the risks of new sources of administrative and judicial challenge arising.

The ACMA recommends that the common set of regulator performance principles as outlined in draft proposal 18 should replace rather than be additional to the existing regulatory policy objects outlined in legislation.

Intervention design choices

In relation to the choice of interventions, the ACMA notes the proposed regulatory design principle to promote the greatest practical use of co and self-regulation.

The ACMA supports the views implicit in this principle, that where regulatory action is appropriate it should be undertaken in a manner that involves the least necessary intervention, incorporates mechanisms to flexibly respond to changing circumstances, and draws wherever possible on industry design input.

When an identified risk or harm may warrant regulatory attention, as a matter of practice, the ACMA seeks to identify the conditions suitable for different intervention options. For example:

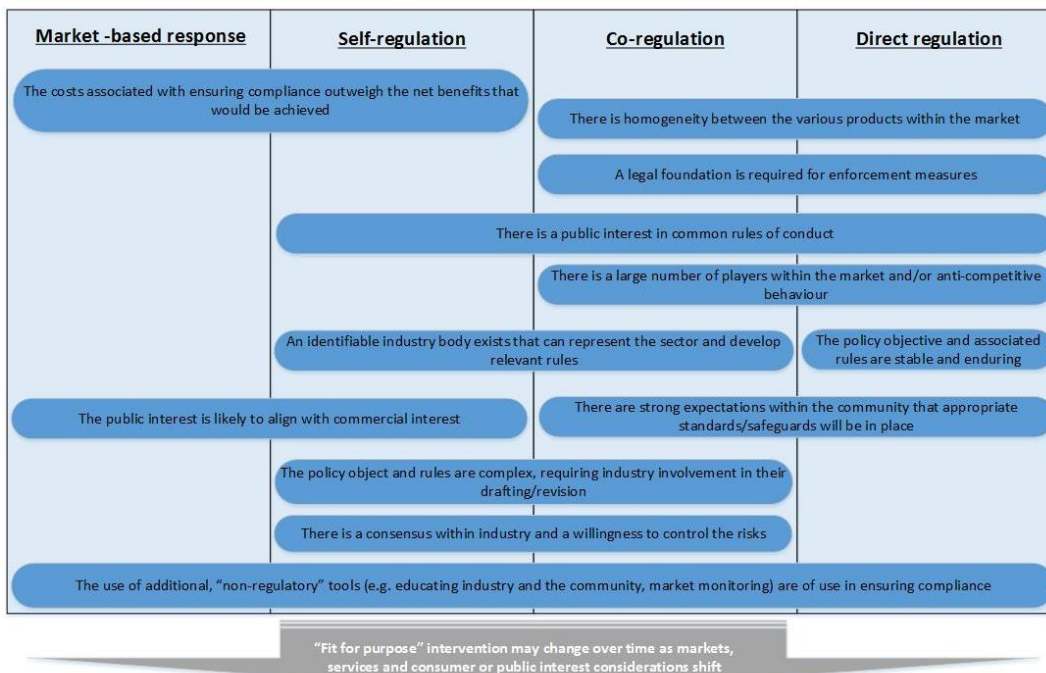
- > co-regulation provides a mechanism for industry to create (and over time revise) rules that take account of their complex commercial environment in areas where there is also a public interest that is unlikely to be fully addressed by industry alone,

thus requiring regulatory approval or oversight and regulatory compliance and enforcement mechanisms

- > effective industry self-regulation operates where there is a strong alignment between industry interests and the stated public interest outcome.
- > black letter law (or direct regulation) is inherently less adaptable and is often most appropriate where relatively clear obligations are required that do not need to be adjusted regularly to reflect market developments
- > a reliance on market-based responses is more likely to be appropriate where the market is operating effectively and where:
 - > there are either no significant public policy concerns, or
 - > market incentives can reasonably be expected to deliver any public policy objectives, or
 - > the cost of imposing regulatory obligations outweighs the benefit embedded in the public policy objective.²⁵

Figure 1 below provides an illustration of the sorts of considerations and range of intervention responses that may usefully inform the design of appropriate interventions, taking account of the high-level intervention and regulatory design principles outlined in the draft report.

Figure 1: Regulatory response continuum



The ACMA urges that the final report give a broader consideration to the appropriate suite of responses, including the mix of responses that may be needed to deal with emerging harms and risks arising in the communications and media environment.

²⁵ See for example, ACMA, [Optimal conditions for effective self- and co-regulatory arrangements](#), 2010.

Regulator powers of intervention

Finally, the ACMA notes the desire expressed in the draft report principles that the regulator achieve proportionate and targeted responses to an issue. In the ACMA's view, giving effect to this desired outcome will require a range of intervention powers available to the regulator, so that the regulator is able to develop differentiated responses that clearly recognise the differing risk and harm profiles that apply where there is a diverse range of industry participants and/or citizen involvement.

The ACMA notes that the draft report has given an emphasis to the 'hard' intervention powers of compliance and enforcement. In the ACMA's view, 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. This toolkit should include rule-making powers, a graduated set of compliance and enforcement powers, as well as 'soft' non-regulatory powers, and responsibilities such as communication, education and facilitation, which recognise the role the regulator can play in addressing issues to either avoid the need for more direct regulatory intervention, or reduce the intensity of any such regulatory intervention required.

As the ACMA has noted in its earlier submission to the *ACMA Review Issues Paper*, there is often an important distinction between the regulator's traditional powers of rule-making, its enforcement of these rules, and a wider set of interventions that can be used as ways to achieve:

- > behaviour 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 regulatory strategies.

Rule-making powers

The ACMA has previously noted that the regulator's rule-making powers sit within the wider context of rules made by parliament in legislation, by the government through ministerial or other determinations, and also rules made by the industry itself under co- and self-regulatory schemes.

The draft report proposes a regulator that is agile and innovative, able to respond to changing market and technological circumstances, and which places emphasis on co- and self-regulation.

While the making, revising and revoking of regulatory rules inevitably involves shared responsibilities between parliament, ministers and the regulator, an agile and responsive regulator should have appropriate capacity to make or change rules within a structure established by parliament.

The capacity to make or adjust rules, while different from compliance and enforcement and softer intervention powers, is nevertheless closely related to them. For example, evidence of systemic compliance failure may well be an indicator of a need for rule changes rather than renewed compliance effort. Further, while regulatory forbearance may be an appropriate short-term response to circumstances where an existing rule is no longer appropriate, an agile response would involve rule changing.

The ACMA urges the review to acknowledge the role that appropriately designed rule-making powers can play in enabling a regulator to respond agilely and effectively to changing circumstances.

Compliance and enforcement powers

The draft report (page 82) notes that

‘... any new regulation should be flexible enough to allow for the future removal or amendment of rules for which compliance has been consistent over prolonged periods’.

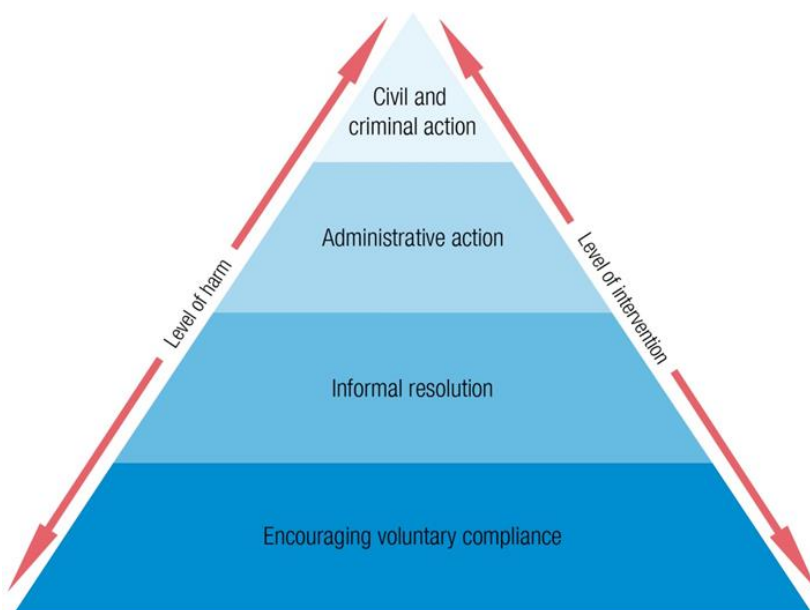
While high levels of compliance may well be an appropriate indicator that some regulatory interventions are no longer required (for example, in the recently registered Commercial Television Code of Practice, the ACMA agreed to the removal of provisions relating to reality television given a shift of behaviour by broadcasters in this area), it will not always be so. Evidence of a compliance culture does not necessarily mean that behaviour would not change if relevant rules are no longer in place (for example, there are generally high levels of compliance with the media ownership rules, but few would suggest that if those rules were to be removed, businesses would continue to operate as though they were still in place).

Rules concerning conduct serve to provide confidence to the community regarding services, or they operate to assist consumers to make informed choices. Of course, in these cases, high compliance levels, while welcome, do not of themselves obviate the value of having the rules in place.

Enforcement should be proportionate to the nature of the relevant breach. This means in practice that a range of remedies should be available to the regulator, to allow a proportionate response to the breach of the relevant regulation.

A best practice compliance and enforcement model generally provides for an escalated set of compliance actions to be undertaken in proportion to the scale and scope of detriment or harmful behaviour (as outlined in the Figure below).

Figure 2: Compliance pyramid



The ACMA's [response to the Department of Communications Review of the ACMA Issues Paper](#) noted that 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.

As part of implementing a revised and adaptive regulatory framework, the ACMA suggests that the Department continue to develop a coherent set of compliance and enforcement powers that would provide for escalated compliance and enforcement action commensurate with the nature of the harm.

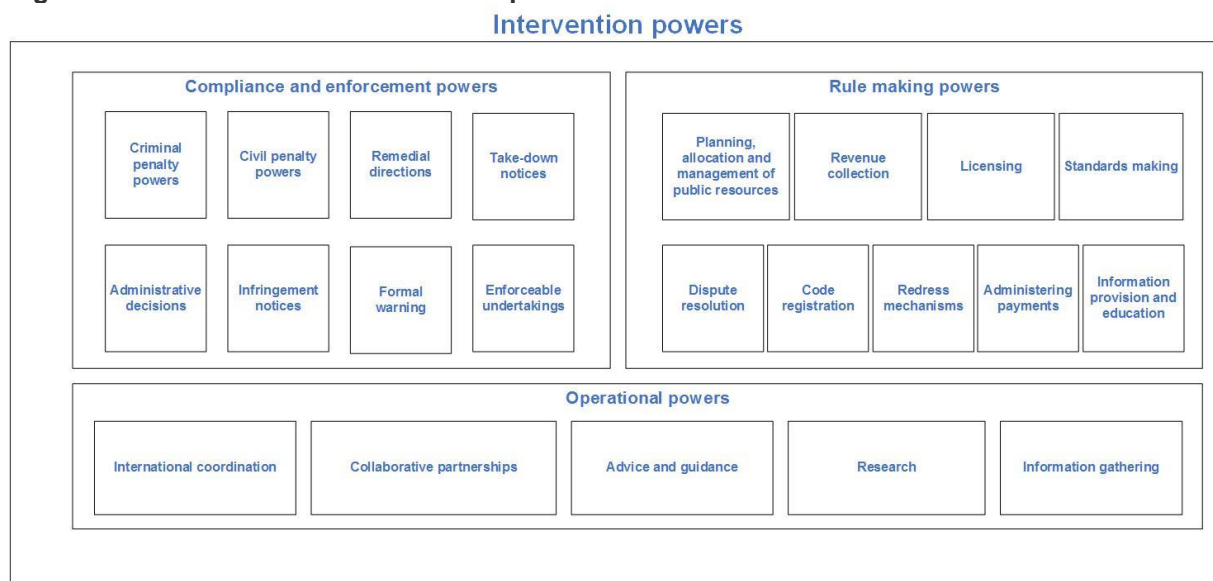
Non-regulatory intervention powers

The ACMA notes that a flexible set of non-regulatory powers is likely to be of critical importance to the regulator in responding to 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.

Non-regulatory interventions, such as collaboration and coordination powers to engage multiple parties in the design of responses, information-gathering, and advice, education and information provision, enable a regulator to respond to the demands of current and anticipated policy needs. They may 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.

In summary, the ACMA considers that a set of intervention powers (outlined in Figure 3 below) encompassing regulatory and non-regulatory interventions will be important to providing targeted and flexible responses to the issues arising in the communications environment.

Figure 3: A flexible set of intervention powers



The ACMA recommends that the final report acknowledge the need for a base-level, coherent toolkit of powers for the regulator to give effect to the recommendations of the ACMA Review.

4. Enhancing regulator performance

Proposals 18–24 seek to enhance the ACMA's regulatory performance. The preceding discussion has considered draft proposal 18 in relation to regulator principles, and the interaction of draft proposal 19 concerning the provision of a Statement of Expectations to the ACMA with the other proposed regulatory design principles. The balance of regulator performance proposals are considered in the following discussion.

The ACMA notes **draft proposal 20**²⁶, which concerns the ACCC.

In relation to **draft proposal 21**²⁷ concerning the timeliness of decision-making, the ACMA notes and agrees with the findings that there is scope to improve the timeliness of rule-making and planning processes.

The draft report refers to the time taken for a number of administrative decision-making processes, including the registration of industry codes under the Telecommunications Act (page 100), citing an average of 5.5 months for the registration of seven codes. While it is not clear what period is referred to, the ACMA notes that since December 2015, eight telecommunications industry codes have been registered or had variations approved by the ACMA, with average time taken of 2.3 months.

The ACMA will continue to monitor and report on the timeliness of its regulatory processes, as part of its legislative responsibilities and whole-of-government accountabilities under the PGPA Act and Regulator Performance Framework.

The ACMA supports **draft proposal 22**²⁸ requiring it to publish information on the steps it takes to ensure its stakeholders have a clear understanding of the relationship between its actions and its compliance and enforcement policies.

The draft report discussion cites concerns from broadcaster stakeholders (page 103) about the ACMA's approach to dealing with broadcasting complaints, suggesting an approach disproportionate to the level of the harm. The evidence cited is from one submitter, and relates to a broadcast in which the ACMA received more than 2,000 complaints. It followed the death of an individual involved in the broadcast, considered the conduct of a licensee previously found to have breached the codes and raised matters of considerable public interest. In all these respects, the investigation was an unusual one. In the ACMA's view, care should be taken not to represent it as typifying the experience of licensees in the broadcasting sector.

²⁶ Draft proposal 20: That the minister provide the ACCC with an annual Statement of Expectations and the ACCC respond by publishing a Statement of Intent outlining how it will seek to deliver on the government's expectations.

²⁷ Draft proposal 21: That timeliness of decision-making be established as a key area of focus and accountability for future cycles of the ACMA's regulator performance framework, and government consider legislative amendment to support more timely decision-making, where necessary.

²⁸ Draft proposal 22: That the ACMA publish information on the steps it takes to ensure stakeholders have a clear understanding of the relationship between its actions and its compliance and enforcement policy.

The ACMA has continued to improve the time taken to complete its broadcasting investigations. During 2014–15, the average time taken to investigate broadcast matters reduced to 2.6 months—from approximately 3.1 months per investigation. This is a significant reduction from the average of approximately 4.7 months five years ago.

The ACMA has taken steps, such as through its [Investigations concepts](#) series, to explain to stakeholders how it applies broadcasting regulatory concepts to its complaint and investigation activities.

The ACMA will continue to make its compliance and enforcement policies publicly available, and as part of a continuous improvement program, will further explore opportunities to communicate with stakeholders about the application of its compliance and enforcement policies to its regulatory decisions.

The ACMA notes **draft proposal 23**²⁹ proposing that the ACMA report to the minister every two years on initiatives to reduce regulatory burden on industry and individuals.

The ACMA notes **draft proposal 24**³⁰ suggesting that it report by the end of 2017 on steps to improve the transparency and consistency of decision-making processes and assess stakeholder satisfaction. To date, stakeholder feedback from satisfaction surveys has provided valuable information to guide the ACMA's continuous improvement programs and it would be efficient to address this proposal within the reporting timeframes required as part of the ACMA's annual Regulator Performance Framework.

²⁹ Draft proposal 23: That the ACMA publish a report to the minister every two years on initiatives undertaken to identify and reduce regulatory burden on industry and individuals.

³⁰ Draft proposal 24: That the ACMA produce a public report on steps taken to improve the transparency and consistency of its decision-making processes, and that implementation and stakeholder satisfaction be independently assessed by the end of 2017.

5. Resources

The ACMA notes **draft proposal 25**³¹ suggesting a review of the policy objectives of revenue collection from the communications sector. The ACMA supports such a review, but recommends that the final report clarify which agency will have responsibility for conducting it.

Draft proposal 26³² recommends that the ACMA further analyse its cost-base in light of the proposed function changes to ensure it efficiently delivers on its responsibilities and minimises costs to industry.

The ACMA supports the proposal and notes that it would be beneficial if the final report gave further consideration to the areas within the scope of the ACMA's future remit that may be suited to alternative funding models, such as, for example, the scope for regulated entities to contribute to the costs of the administration of regulation.

In the meantime, the ACMA continues to pass to industry cost reductions achieved from the streamlining of its activities. For example, the 2015–16 telecommunications Annual Carrier Licence Charge incorporates a 10.6 per cent reduction in the cost of the ACMA's telecommunications regulatory activities, as a result of streamlining of activities undertaken in the 2014–15 year.

³¹ Draft proposal 25: That it would be timely to review the policy objectives of revenue collection from the communications sector and evaluate whether new business models and OTT services are contributing appropriately.

³² Draft proposal 26: That the ACMA should further analyse its cost base, in light of the proposed function changes, to ensure it is efficiently delivering on its responsibilities and minimising costs to industry.