Regulator Performance Framework
Performance assessment 2016–17

DECEMBER 2017

communicating facilitating regulating

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

Contents

Introduction

This is the Australian Communication and Media Authority's (the ACMA's) second self-assessment report under the Regulator Performance Framework (RPF), covering regulatory performance over the 2016–17 financial year.

As with the previous year, this report demonstrates our performance in satisfying the requirements of the six RPF key performance indicators (KPIs). The RPF and its KPIs are designed to encourage regulators to minimise regulatory burden, improve the transparency of decision-making and focus on continuous improvement. It focuses on the efficiency and effectiveness of regulators in achieving results through better administration and the good design of regulatory frameworks. In responding to the RPF, the ACMA demonstrates its commitment to better regulatory design and positive regulatory outcomes for stakeholders.

The primary requirement of the RPF is for regulators to conduct an annual self-assessment against the six KPIs covering common activities of regulators.

Figure 1: Regulator Performance Framework KPIs

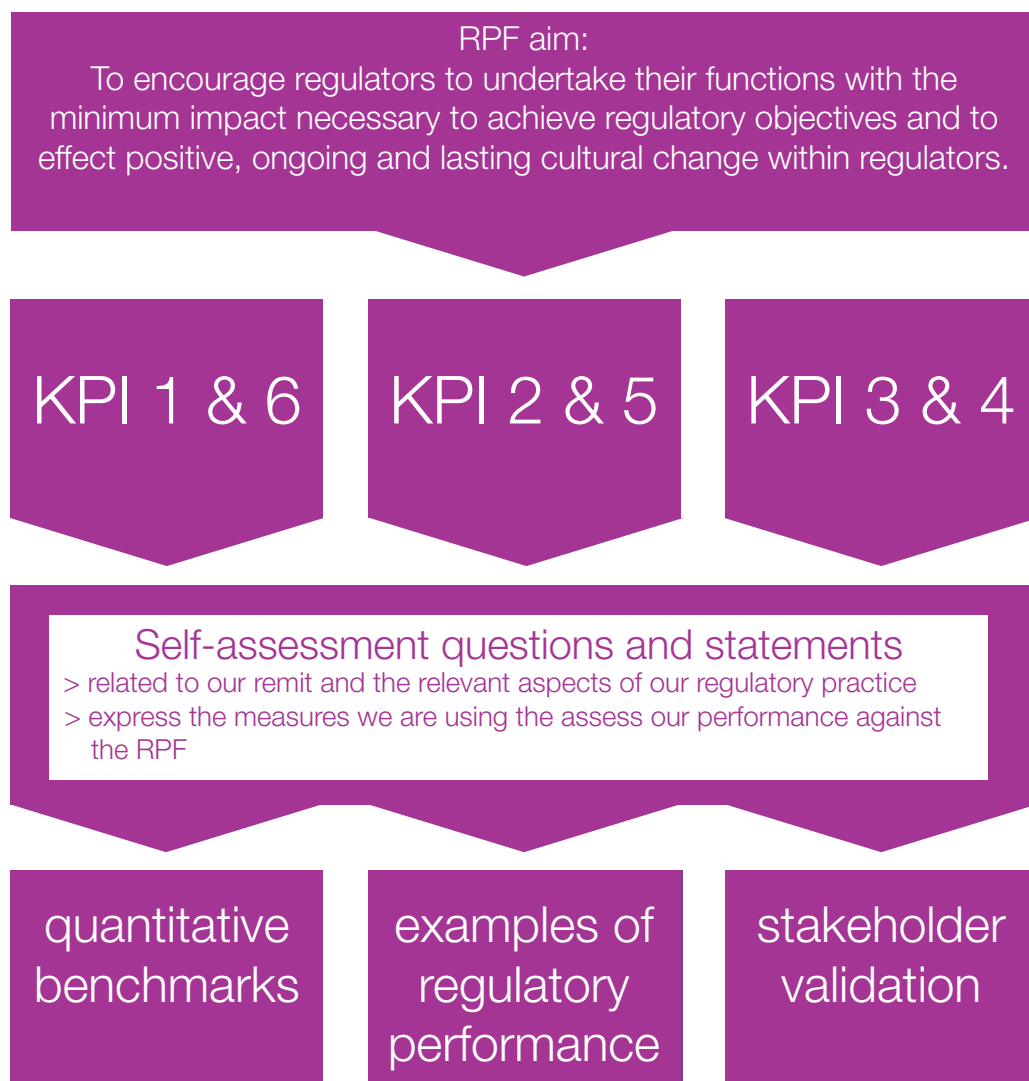|		
1 Regulators do not unnecessarily impede the efficient operation of regulated entities	**2** Communication with regulated entities is clear, targeted and effective	**3** Actions undertaken by regulators are proportionate to the risk being managed
4 Compliance and monitoring approaches are streamlined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

The RPF also includes a requirement for regulators to undergo an external review of performance once during consecutive three-year cycles. During 2015–16, the government assessed that the review of the ACMA undertaken by the Department of Communications and the Arts (DoCA) satisfied this requirement.

Interpreting the ACMA's RPF performance assessment 2016–17

The ACMA's performance assessment methodology can be found on our website. Our self-assessment framework is constructed around the twin principles of better regulation administration and better regulation design.

These principles assist our efforts towards reducing unnecessary regulatory burden on industry and the community as we fulfil our remit. The ACMA's self-assessment methodology focusses on a series of performance measures that test our progress against meeting the RPF KPIs. These performance measures are adapted from the self-assessment questions outlined in last year's report and summarised as outcome statements. Figure 2 illustrates the ACMA self-assessment methodology—in particular, the alignment between high-level aims and meaningful metrics.

Figure 2: The ACMA's self-assessment methodology

RPF aim:
To encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive, ongoing and lasting cultural change within regulators.

KPI 1 & 6

KPI 2 & 5

KPI 3 & 4

Self-assessment questions and statements
> related to our remit and the relevant aspects of our regulatory practice
> express the measures we are using the assess our performance against the RPF

quantitative benchmarks

examples of regulatory performance

stakeholder validation

Our performance measures are a combination of quantitative statistical analysis and qualitative descriptive evidence. These are drawn from existing internal reporting and data collection processes, including surveys, statistical information, and analysis and research. The nature of the available evidence against each performance measure will vary according to sector, environmental factors, consumer behaviour, technological innovation and risk profile, as well as legislative and statutory requirements.

The ACMA uses a descriptive approach to explicitly make links between evidence and the outcomes through our regulatory activity. Appendix A contains a consolidated set of quantitative data tables covering our core transactional activities and summaries of compliance investigation and enforcement activities. These data tables provide further insight into our overall regulatory profile. The ACMA intends to collect, analyse and interpret this data over a number of years to provide a more accurate trend indication of our regulatory performance.

Structure of the self-assessment

Adopting a similar structure to the previous year, we have presented our performance assessment in three sections. The six KPIs are presented in pairs we consider to have a natural alignment and where similar evidence would apply. Each KPI is individually addressed with performance evidence in response to the questions initially set out in our self-assessment methodology. The three pairings are:

Figure 3: The ACMA's pairing of KPIs focusing on natural alignment and similar evidence

KPI 1 & 6	These KPIs relate to applying measures of efficiency and effectiveness to minimise regulatory burden and improve regulatory frameworks on a continuous basis.
KPI 2 & 5	These KPIs relate to achieving better regulatory practice through effective communication and a commitment to transparency and openness.
KPI 3 & 4	These KPIs relate to the application of a proportionate, risk-based and coordinated approach to compliance monitoring and enforcement.

Given the interrelated nature of the KPIs, some regulatory activities satisfy more than one KPI or KPI pairing and may then be referenced more than once. Rather than repeating material in full, the examples will refer to information specific to those paired KPIs.

Background

The ACMA engages with industry and consumers through a variety of informal and formal mechanisms, and seeks to use these processes to inform the development of our regulatory practice and outcomes.

RPF validation

The ACMA values the feedback we receive from members of the community, industry and consumer groups. We use a variety of informal and formal mechanisms to inform the development of our regulatory practices and outcomes, and improve the transparency of our decision-making processes.

In 2016–17, the ACMA sought feedback from 38 key stakeholders from across our regulatory community on the validity of our proposed RPF self-assessment. We also published the validation process as an issue for comment on our website.

Overall, a large majority of respondents (76.9 per cent) were either satisfied or very satisfied with the ACMA's year-round consultation on regulatory processes. In the ACMA *Corporate plan 2017–21*, a performance target relating to enhancing regulatory design and administration is that 'over 50 per cent of RPF stakeholders agree with the ACMA's annual RPF self-assessment'. Fifty per cent or more of stakeholders either agreed or strongly agreed with our self-assessment against each of the six KPIs, so we are satisfied we have achieved this corporate plan performance target.

Stakeholder suggestions for improvement can be broadly categorised as matters associated with:

> transparency, accountability and openness of the decision-making process
> tailoring compliance and enforcement activities
> consistency in consultation processes
> expansion of the regulatory reform agenda.

These themes are consistent with those raised in the 2015–16 RPF and with key recommendations of the ACMA Review. Table 1 highlights our planned responses to performance improvement themes.

Table 1: Performance improvement themes from stakeholder validation

Performance theme	ACMA response
Transparency, accountability and openness	Transparency, accountability and the openness of the decision-making process will be addressed by implementing recommendations of the ACMA Review associated with Authority structure and governance arrangements.
Tailored compliance and enforcement	The ACMA is increasingly taking an evidence-based approach to our compliance activities and regulatory intervention, particularly for current consumer issues. In 2016–17, we expanded our successful priority compliance area (PCA) program to focus on telecommunications consumer protection. NBN services and direct carrier billing were key priorities.
Greater consistency in our consultation processes	The ACMA is in the process of finalising a consultation framework to improve our ability to engage effectively, including providing more information on timing/scheduling of consultations, decision-making processes and reasons for decisions.
Expansion of our regulatory reform agenda	Where possible, the ACMA will continue to work with industry, community and government stakeholders to review, update and/or remove legacy legislation. In 2017–18, our regulatory reform priorities include changes to media ownership legislation, radiocommunications legislation to allow for more flexible spectrum management practices and a review of telecommunications consumer protections. Implementing the recommendations of the ACMA Review associated with Authority structure and governance arrangements will further enable us to improve current regulatory frameworks.

The RPF engagement process was constructive and will provide a valuable input to our regulatory practices. Specific areas for improvement that were identified during this process will be actioned as part of our Better Regulatory Practice Initiative (BRPI, previously the ACMA's Continuous Improvement Program).

The BRPI allows the agency to embed our feedback mechanisms in a more structured and systematic way, informed by ongoing stakeholder engagement and internal review. Our BRPI activities focus on improving our performance reporting framework, timeliness of decisions, transparency of decision-making and how we involve stakeholders within the regulatory process.

Appendix B provides a summary of all stakeholder submissions and ACMA responses in further detail. Stakeholder submissions are also available on the ACMA website.

Performance and planned improvements

The ACMA will further improve our performance reporting and assessment through the ongoing analysis of performance exceptions, the BRPI and our response to the recommendations of the ACMA Review. The ACMA examined where we did not meet our benchmarks, and has outlined intended strategies to meet these targets in future years. These performance exceptions will also be included within the self-assessment below. As these exceptions are instances where the ACMA did not meet benchmarks in processing of enquiries, applications and investigations, they most strongly align with KPI 1 and KPI 6. Table 2 outlines which areas were subject to performance exceptions during 2016–17.

Table 2: Areas subject to performance exceptions in 2016–17

Performance exception	ACMA response
Long-term community radio broadcast licensing (Appendix A, Table 1A)	The average completion time for processing applications decreased from 107 days in 2015–16 to 41 days in 2016–17. Three of the 177 applications exceeded the target timeframe of processing applications within 90 days of receipt date. This was unavoidable due to circumstances specific to those applications.
Children's and preschool program classification assessments (Appendix A, Table 2A)	The average completion time for assessments decreased from 54 days in 2015–16 to 36 days in 2016–17. However, the benchmark of completing 100 per cent of these assessments within 60 days was not achieved due to one application requiring additional work based on the decision to refuse classification.
Broadcast content compliance investigations (Appendix A, Table 8A)	94 per cent of standard enquiries were actioned within two days in 2016–17, which did not meet the benchmark of 100 per cent set by the ACMA. We will review our performance and consider how to better achieve our benchmark objective in the future.
Spam compliance investigations (Appendix A, Table 9A)	No investigations met the benchmark established for investigations relating to spam. Two of the three investigations raised complex issues relating to affiliate marketing networks and arrangements. The ACMA has concluded these investigations and issued two infringement notices, which helped to set compliance expectations for participants using affiliate networks.

The final report of the Review of the ACMA was released on 22 May 2017, and found that 'the organisation has performed its regulatory role efficiently and well over the last 10 years'. The ACMA Review also pinpointed areas of our remit where improvements can be made. Table 3 outlines the major recommendations that relate to regulatory performance and how they will be addressed. In our 2017–18 RPF self-assessment, we will include a final update on outcomes achieved in response to the ACMA Review.

Table 3: Proposed regulatory responses to ACMA Review recommendations

Recommendation	Relevant RPF KPIs	ACMA response
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.	1 & 6	The ACMA intends to address the efficiency and timeliness of decision-making through the RPF reporting processes, namely self-assessment reports in December 2017 and 2018.
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.	3 & 4	The ACMA has taken early action to consult with industry and determine revised radiocommunications PCAs for 2016–17. The ACMA is revising its interference management principles and has, more broadly, made a number of improvements to its communication and engagement on compliance monitoring and enforcement. Progress will be reported in the 2017–18 RPF report.
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.	2 & 5	The ACMA is working to improve transparency of decision-making by better explaining its planning priorities, and publishing the outcomes of regulatory decisions. The ACMA commissioned Woolcott Research & Engagement to undertake a Stakeholder Satisfaction Survey during July 2017, which sought feedback on transparency initiatives, among other aspects of stakeholder engagement with the ACMA. Progress will be reported in the 2017–18 RPF report.

ACMA Regulator Performance Framework self-assessment 2016–17

Australian Government | acma

communicating | facilitating | regulating

The self-assessment report focuses on achieving positive outcomes for industry, community and the ACMA through better administration and design of regulatory frameworks.

KPI 1: Regulators do not unneccessarily impede the efficient operation of regulated entities
KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

Average completion time for issuing carrier licences decreased from

20 days to 15 days

$8.2 million reduction in regulatory costs through regulatory reform activities

1,420 compliance complaints or enquiries resolved without formal investigation

THE ACMA
> Seeks regulatory effectiveness and efficiency
> Makes timely decisions
> Minimises cost to industry

The RPF requires a self-assessment of performance against six KPIs that cover common activities of regulators, validated through consultation with stakeholders.

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

81% user satisfaction for Customer Service Centre

Over 30 public consultations, 140 targeted e-bulletins and 44 media releases

79 broadcast content investigation reports published

THE ACMA
> Communicates with purpose
> Reports on our performance
> Communicates across multiple platforms

The ACMA has paired KPIs that have a natural alignment and where similar evidence would apply.

KPI 3: Actions undertaken by regulators are proportionate to the risk being managed
KPI 4: Compliance and monitoring approaches are streamlined and co-ordinated

INVESTIGATIONS COMPLETED WITHIN BENCHMARKS

Local content quota: 100%
Radiocommunications: 96%
Do Not Call Register: 100%
Telco consumer codes: 97%
Interactive gambling: 100%

54% broadcasting investigations found at least one breach

76 total informal warnings or advice issued

457 total formal warnings or advice issued

THE ACMA
> Applies evidence-based decision-making
> Sets compliance priorities
> Considers flexible enforcement approaches

Self-assessment against the RPF

As with the Annual Performance Statements within the ACMA *Annual report 2016–17*, results have been assessed as:

MET—target outcomes achieved or exceeded in 2016–17

PARTIALLY MET—majority of target outcomes achieved in 2016–17

NOT MET—major target outcomes not achieved in 2016–17.

Regulatory efficiency and effectiveness (KPI 1 & 6)

Regulatory effectiveness relates to how well the outcomes of a single regulation or broad regulatory program achieve their stated objectives or desired outcomes. Efficiency is the measure of how well our inputs (for example, staff resources) are converted to outputs. The ACMA strives for regulatory effectiveness and efficiency to minimise regulatory burden, reduce compliance costs and facilitate economic development of the communications sector.

Our actions against KPI 1 and KPI 6 fall under three broad strategies:		
Improvements in transactions and processes to improve efficiency and reduce red tape burden.	Employing consultation and collaboration to support continuous improvement of regulator frameworks.	Applying evidence and regulatory analysis to reduce regulator burden on industry and support review of legislation.

Improvements in transactions and processes to improve efficiency and reduce red tape burden

Over 2016–17 we committed to improving processes for implementing decisions in a timely manner, having regard to the complexity of the decision and cost considerations.

We also undertook to seek opportunities for process improvements, including through stakeholder engagement on the progress and evaluation of regulatory initiatives, the regular review of the stock of regulation and ACMA business processes, and the reduction of red tape associated with ACMA administrative requirements.

Overall rating

While the ACMA continues to implement processes to increase efficiency and manage an increasing volume of enquiries, several benchmarks were not met during 2016–17. We are taking further action to achieve these targets, as they have direct impact on the activities of our regulated entities.

Timely decision-making processes

> The ACMA's benchmark for making decisions on whether to register operational codes made by third parties is within two months of receipt. This year, we considered three codes for registration—NBN Access Transfer Code, Connect Outstanding Industry Code, and Handling of Life Threatening and Unwelcome Communications Code (HLTUC Code). The decision to register the NBN Access Code was made within two months and the HLTUC Code in two months and two days. The Connect Outstanding Industry Code was registered within three months. Its registration was delayed at the request of industry to enable it to be considered at the same time as the NBN Access Transfer Code.

> **Performance exception:** Benchmarks of delivery were not met for:
>> The average completion time for children's and pre-school program classification assessments—one assessment out of the 34 completed exceeded the target timeframe of 60 days.
>> Standard broadcast content compliance investigation enquiries—94 per cent of standard enquiries were actioned within two days.
>> Spam compliance investigations—all exceeded the target timeframe of 15 days.
>> Processing times for long-term community radio licences— three out of 177 applications were not completed in the target timeframe of within 90 days of receipt date.

Seeking process improvements to reduce the volume and cost of red tape associated with ACMA administrative requirements

> In 2016–17, the ACMA continued to meet portfolio regulation reform objectives through better-targeted regulation, advice on legislative reforms, removal or updating of redundant and outdated regulation and reporting requirements, and working with industry to revise a range of industry codes. These initiatives have delivered a reduction of $8.2 million in regulatory costs while maintaining key consumer safeguards.

> We dealt with 99 per cent of spam and 98 per cent of telemarketing complaints within 15 days, exceeding our target of 90 per cent. This was despite a 59 per cent increase in spam complaints and reports, and a 23 per cent increase in complaints about telemarketing.

> In response to recommendations in the 2016 customer satisfaction survey, the Customer Service Centre implemented several customer experience and business process improvements. These included initiating a new quality assurance framework, trialling new end-to-end reporting arrangements, launching an improved customer online enquiry portal and initiating work to improve usability of the ACMA website. In February 2017, we contracted Woolcott Research and Engagement to repeat the 2016 customer satisfaction research and used the previous results as benchmarks to evaluate the performance and trends for the Customer Service Centre. The survey found 80 per cent of respondents reported overall satisfaction. These findings will be used to further improve customer satisfaction.

Employing consultation and collaboration to support continuous improvement of regulatory frameworks

In 2016–17 we continued to use stakeholder forums, advisory committees and reference panels to collaborate with stakeholders on the progress, review and improvement of regulatory arrangements or initiatives.

Our commitment to improving regulatory frameworks includes the use of wide and early consultation when canvassing options to address regulatory issues or revise regulatory settings, actively seeking stakeholder input to identify best practice approaches, and identifying potential cost burdens and other impacts.

We sought to continue departmental representation on our forums, advisory committees and reference panels, as well as staff-level communication and liaison with counterparts across line areas to share information and identify potential for regulatory improvements.

Overall rating

ACMA was highly active within the communications community in 2016–17, creating and strengthening connections with industry, community and the government. Productive engagement will continue to be vital in achieving our regulatory goals.

Utilising external reference groups to improve regulatory efforts

> Stakeholder engagement, including through regular events like tune-ups and RadComms, is a cornerstone of the ACMA's regulatory program. In 2016–17, we conducted over 30 public consultations and sent over 140 targeted e-bulletins to stakeholders.

> We convened meetings of the Consumer Consultative Forum and the Numbering Advisory Committee, allowing for open dialogue on a range of relevant issues and the potential for collaborative problem solving.

> We convened the Emergency Call Service Advisory Committee (ECSAC) and participated in the National Emergency Communications Working Group — Australia-New Zealand (NECWG-A/NZ) to ensure regulatory settings support the needs of law enforcement, emergency services and national security organisations.

> We used a joint industry and government agency working group to facilitate a review of the regulatory arrangements for prepaid mobile services.

Actively seeking stakeholder views to address regulatory settings

> The *Australian Content Conversation* in May 2017 brought together key stakeholders from the Australian production industry, content distributors such as broadcasters, as well as funding, policy and regulatory bodies. The conference attracted over 190 participants and generated broad and inclusive conversations around Australian content, policy and regulation.

> Development of the Priority Compliance Areas (PCAs) for 2016–17 was informed by the *Shaping our technical priorities* tune-up. Held on 8 March 2017 in conjunction with RadComms 2016, this tune-up provided industry representatives with the opportunity to engage with the PCA process and the development of future priorities. The attendees also discussed the important role of education and awareness in improving compliance, and the need for an industry focal-point for best practice.

> The ACMA recently revised the application process for renewal of community radio broadcasting licences, with the new form effective from 1 July 2017. In revising the form, the ACMA considered feedback received from community broadcasting licensees, revised business practices adopted by the ACMA and feedback from the industry group, Community Broadcasting Association of Australia. The revised form is intended to streamline processing and reduce completion time for community radio broadcasting licensees.

Seeking collaboration and input from DoCA to improve communications and media regulation

> The ACMA is working closely with DoCA on implementing Spectrum Review recommendations, and has provided ongoing input to the exposure draft of the Radiocommunications Bill. The new legislation and changes to spectrum management will allow for increased flexibility of spectrum usage arrangements while also retaining provisions for industry and end-users.

> The ACMA collaborated with DoCA and Screen Australia to convene the *Australian Content Conversation* in May 2017. Bringing together key stakeholders, this dynamic forum focused on Australian content, the changing ways people access and engage with content, and the effect of government interventions on screen industries.

Applying evidence and regulatory analysis to reduce regulator burden on industry and support review of legislation

Over 2016–17 we committed to collecting information on evolving technology and market pressures affecting communications and media industries to identify risk and emerging areas of harm, and assist in the application of regulatory practice.

When considering new initiatives we undertook to review relevant evidence and options, including cost and benefits. These actions are undertaken to reduce the risk of negative impacts on industry, consumers and citizens, including the exploration of international experience and best practice.

Overall rating

The ACMA has delivered a robust research program that collects large volumes of evidence from across its broad remit. Both primary and secondary research is utilised to inform regulatory decision-making, comply with legislative obligations and connect with stakeholders.

Collecting research and information on evolving technology and market

> To inform the development of the ACMA's _Five-year spectrum outlook_ (FYSO), the ACMA scans the domestic and international spectrum environment to identify trends in spectrum use and likely future pressure points on spectrum. The evidence collected ensures that the ACMA's work priorities are closely linked to emerging demand pressures, and provides industry with certainty about the ACMA's priorities.

> The ACMA commissioned Analysys Mason to conduct research on _International Best Practice for Spectrum Management_ and its implications for improving spectrum management in Australia. This research, published in May 2017, is informing the ACMA as we prepare to implement the recommendations of the Spectrum Review. The research report highlighted a number of overseas developments, including more sophisticated approaches to valuing spectrum, real-time dynamic spectrum access and approaches to spectrum sharing to meet increasing demand.

> The research**acma** program provides evidence to inform our regulatory decision-making and understand the implications of market trends, evolving communications and content use, and changes in consumer and community attitudes that have implications for the effectiveness of regulation. We released seven individual research reports and one snapshot as part of the 2016–17 program. The program provides the strategic context for our research activities, and is updated as our research requirements evolve.

Considering and analysing operational implications of regulation on affected stakeholders (including a review of international best practice)

> The ACMA management of spectrum planning, allocation and pricing arrangements throughout the year ensures that spectrum resources are utilised to achieve maximum public benefit. Gathering and utilising evidence on how other regulatory agencies respond to spectrum demand is a key input to this process. Deliverables for 2016–17 included:
> > commencing consultation on the review of the 1.5GHz band
> > completion of the 900 MHz band review
> > commencement of the implementation of the 803–960 MHz band review
> > implementing government policy for the allocation of remaining spectrum in the 700 MHz band. These efforts ensure that spectrum resources are utilised to achieve maximum public benefit.

> In 2016–17, the ACMA responded to the unacceptable level of risk from unlicensed services operating in the 400 MHz band through an integrated and robust communication strategy. Non-regulatory solutions included presenting at five industry conferences, working cooperatively with industry peak bodies to develop a differential GPS compliance message and ongoing communication with major 400 MHz users, industry groups and suppliers of differential GPS systems.

Communication, transparency and openness (KPI 2 & 5)

The ACMA considers effective communication and a commitment to transparency and openness as central to meeting KPI 2 and KPI 5. For the ACMA, this requires information that is available and accessible to the public, and that regulated entities are regularly communicated with. Open channels of communication, education and outreach allow all parties to make decisions about their future with certainty and confidence.

Our actions against KPI 2 and KPI 5 fall under two broad strategies:

The use of an adaptable and targeted communication strategy to assist industry to understand regulatory obligations and communicate our approach to risk.	A transparent approach to consultation, performance reporting and explaining decisions, while respecting confidentiality and fairness.

The use of an adaptable and targeted communication strategy to assist industry to understand regulatory obligations and communicate our approach to risk

During 2016–17 we undertook to implement a clear communication strategy and set of public messages for communicating with affected stakeholders, and to publish up-to-date information in a range of formats.

This included using our expertise to assist stakeholders in their understanding of complex communications and media regulatory arrangements, and to communicate our approach to organisational risk management.

Overall rating

The ACMA's overall communications strategy continues to evolve to ensure it captures the needs of our diverse stakeholder base. The ACMA continues to work on communicating with its stakeholders across multiple platforms to deliver key messages.

Clear communications strategies to engage targeted stakeholders

> Online communication is increasingly used to engage with key stakeholders. In 2016–17, traffic to our website grew to over 2.6 million page views, reflecting consistent interest from consumers and industry on issues like spam, TV reception, radiocommunications licensing and product labelling. The ACMA is also active on numerous social media channels including Facebook, Twitter and Instagram. Regular content focused on consumer tips and updates to industry.

> The ACMA held tune-ups with industry stakeholders on radiocommunications compliance matters. A spectrum planning work program tune-up was held in July 2016 to discuss current spectrum planning projects and ongoing activities. The *Shaping our technical priorities* tune-up in March 2017 allowed for open discussion of the ACMA's PCAs.

> The ACMA monitors international developments and Australian industry and government spectrum requirements and objectives, including by participating in preparations for the 2019 World Radiocommunication Conference, undertaking measures to implement the government's Spectrum Review, and conducting conferences and seminars.

Providing expert advice on communications regulation across multiple platforms

> An ACMA sub-committee worked with representatives of Commercial Radio Australia to facilitate the review of the Commercial Radio Industry Code 2013. ACMA advice and stakeholder engagement ensured an efficient, robust and rigorous process. The ACMA registered a new code, which became effective in mid-March 2017.

> The Consumer Consultative Forum (CCF) met twice in 2016–17 to discuss emerging telecommunications matters, while CCF consumer representatives also met separately on several occasions to discuss issues of particular interest, with these discussions informing the agenda of the wider CCF meetings.

> The ACMA provided submissions on communications matters including the Productivity Commission's review of the Universal Service Obligation, the DoCA review of consumer representation in the telecommunications industry and the independent review of the Telecommunications Industry Ombudsman.

> The *Five-year spectrum outlook 2016–20*, including an updated mobile broadband work program, was published in October 2016. Stakeholder views were sought during a consultation process on ACMA's spectrum management priorities. The ACMA's mobile broadband strategy was also included in the latest FYSO for the first time.

> This year, the ACMA focused on improved provision of consultations, including a timetable of upcoming consultations with stakeholders, a guide to making submissions, and internal processes to ensure that consultation responses are handled in a consistent and timely manner.

A transparent approach to consultation, performance reporting and explaining decisions, while respecting confidentiality and fairness

In 2016–17 we committed to engaging early with industry stakeholders when contemplating regulatory changes and consulting with a clear purpose directly linked to regulatory outcomes.

We continued to follow clear and transparent processes for the resolution of enquiries, applications, investigations and complaints. We also undertook, where possible and appropriate, to publish our decisions and accompanying reasons in order to promote awareness and understanding of the application of the communications and media regulatory framework and our decision-making.

We committed to further transparency in the reporting of performance results through publishing data sets of value to our stakeholders and the community.

Overall rating

Activities like the development of our PCA program have been well received by regulated entities for their transparent and collaborative approach to compliance and enforcement. We introduced further transparency in our reporting with the assessment and rating of our performance against key targets. This will enable comparative benchmarking over time.

Consulting early and with purpose

> Development of the 2016–17 PCAs was informed by stakeholder engagement, including the *Shaping our technical priorities* tune-up held in March 2017.The ACMA's proposed PCAs for the year were also made available for comment through our website. The PCA program applies a risk-based methodology to strategically address high-risk compliance issues in a coordinated manner.

> During the reporting period, the ACMA approved the transfer of a community radio broadcasting licence held by the University of Adelaide to Educational Broadcasters Adelaide Inc. (EBA). The ACMA engaged with the University and EBA to help them to understand the ACMA's expectations of community broadcasting licensees, including how they could demonstrate compliance with the codes of practice and licence conditions. EBA provided written assurances to the ACMA to illustrate their planned adherence to licence arrangements.

Timely and professional management of enquiries, applications, investigations and complaints

> We issued a total of 5,049 compliance warnings to identified Australian entities undertaking potentially non-compliant telemarketing, fax marketing or e-marketing activity, and engaged in direct escalated engagement with 521 entities in response to compliance warnings. We received no further consumer complaints alleging non-compliance for 71 per cent of the businesses issued with a warning.

> We completed 114 broadcasting investigations, all within our benchmark of six months. The average time taken to complete an investigation in 2016–17 was 1.3 months, improving on the 2015–16 average of 1.6 months.

> The ACMA received three complaints and enquiries about the Triple Zero service. All of these related to handling of calls by emergency service organisations (ESOs) rather than the Emergency Call Person, and were referred to the relevant ESO within four days without any formal investigation by the ACMA. No post-complaint investigations into compliance with emergency call service obligations were undertaken in 2016–17.

Proactive publication of decisions to promote awareness of regulatory process

> We published our 2016–17 international operational plan on 28 October 2016. The plan is an annual prioritisation process, highlighting the key international engagement activities undertaken each financial year.

> The ACMA engaged effectively with industry on our compliance decision-making principles, with the provision of published investigation reports and regularly updated *Investigation concepts* papers. In 2016–17, this included updates of the privacy guidelines for broadcasters, and compliance requirements for broadcasting political matter and election advertisements.

> The ACMA reviewed planning and allocation arrangements for spectrum in consultation with stakeholders, including publishing a five-year spectrum outlook and work program, and holding spectrum auctions where appropriate.

> Our commitment to improved communication is illustrated through our proactive publication of activities proposed as part of the BRPI, our reinstated Forward Work Plan, the calendar of upcoming consultations, and reporting against the whole-of-government regulatory reform agenda.

Transparent reporting of regulator performance results

> Our *Corporate plan 2016–17* was published on 29 August 2016 and our first Annual Performance Statement was tabled in the *Annual report 2015–16* on 13 October 2016. We published our first performance assessment report under the RPF on 8 December 2016, fulfilling our responsibilities for 2015–16 under the RPF framework. We have applied the requirements of the ACMA Risk Management Framework to ensure timely delivery.

> The ACMA *Corporate plan 2016–17* identifies our objectives and priorities, as well as the necessary strategies to achieve them. The ACMA also prepared its Portfolio Budget Statements to inform government and the public on our proposed allocation of resources for the year.

> To educate industry stakeholders and the Australian community, the ACMA regularly publishes broadcasting investigation reports and updates the *Investigation Concepts* series. Investigation reports serve as case studies of the application of the broadcasting regulatory framework, making clear to industry stakeholders how the ACMA identifies and interprets relevant provisions in real world examples. In 2016–17, the Broadcasting Investigations Section published 79 investigation reports and eight related media releases to highlight and explain essential elements of high profile decisions.

> Following the government's Declaration of Open Government, data.gov. au was developed to provide an easy way to find, access and reuse public datasets. The ACMA currently makes information available on planned television services, broadcasting licence areas and licensed broadcasting transmitters through data.gov.au.

Appropriate compliance monitoring and enforcement (KPI 3 & 4)

The ACMA is empowered to uphold a range of legislation through effective compliance and enforcement techniques. A best practice regulator requires a proportionate, risk-based and coordinated approach to compliance monitoring and enforcement to meet its various challenges. The ACMA is confident that our approach to compliance monitoring and enforcement meets our objectives.

Our actions against KPI 3 and KPI 4 fall under two broad strategies:

Using evidence and risk assessment to prioritise compliance activities and apply proportionate responses.	Reviewing compliance monitoring approaches to minimise the information burden.

Using evidence and risk assessment to prioritise compliance activities and apply proportionate enforcement responses

Over 2016–17 we continued our program of allocating or realigning resources for monitoring and enforcement of compliance in proportion to stakeholder detriment or risk. This includes an approach to compliance and enforcement that provides flexibility to adjust compliance and enforcement responses, together with consideration of previous conduct and community value of a regulated entity when making decisions.

We continued to identify areas for reduction in regulatory burden informed by a risk assessment.

Overall rating

A significant increase in complaint volumes in areas such as spam challenged our ability to meet key benchmarks within resourcing constraints. A comprehensive approach to risk enforcement and compliance flexibility can assist in adapting to future activity surges.

Allocating compliance resources in proportion to perceived risk to stakeholders

> Our discretion to decide whether to conduct investigations into broadcast content complaints has enabled us to improve our year–on–year performance. In 2016–17, the average time taken to complete broadcasting investigations was 1.3 months. This compares to an average time taken of 1.6 months in 2015–16 and 2.6 months in 2014–15. In 2016–17, 100 per cent of investigations were completed within six months, an improvement from 97.5 per cent in 2015–16 and 92.5 per cent in 2014–15.

> The ACMA has an active monitoring and compliance program directed at minimising unacceptable interference to radiocommunications services. In 2016–17, interference complaints were resolved on average within 33 days, which was well within the published KPI of 45 days. Our interference management regime takes a balanced approach that is proportionate to the types of risk being managed, and allows us flexibility and efficiency in how we respond to current and emerging risks.

Utilising both regulatory and non-regulatory tools in a flexible approach to compliance and enforcement

> During 2016–17, the ACMA facilitated the early resolution of six complaints received about the lack of captioning on specified free-to-air television channels. As the television channels were required to meet captioning obligations, these complaints could have led to formal investigations, which may have caused delays for the complainant in accessing captions and required the broadcaster to spend time taking part in the investigation process. The resolution of these complaints allowed the complainant to access captions as early as possible, allowed the broadcaster to direct appropriate resources to effectively resolve the issues and reduced the time and cost of interacting with the ACMA.

> The *Privacy guidelines for broadcasters* were revised and publicly released on 9 September 2016. The revised guidelines reflect amendments to codes of practice since 2011, included new case studies and updated references to personal information and the ACMA's approach to consent, material in the public domain and children's privacy. Following the release of the revised guidelines, the ACMA ran an industry information session involving organisations who had made submissions to the review of the guidelines.

Consideration of previous stakeholder conduct when making compliance enforcement decisions

> The New Eligible Drama Expenditure (NEDE) scheme requires subscription television broadcasting licensees and channel providers to maintain minimum levels of expenditure on new eligible drama programs. Subscription licensees and channel providers are required to lodge annual returns about their program expenditure. After a history of late returns, the ACMA introduced a process of sending compliance reminder notices to each of the relevant licensees and channel providers. The introduction of this step into the process resulted in a high level of compliance.

> The PCA program is developed annually, and takes a strategic approach to combating high-risk compliance issues in a coordinated manner. In the assessment of risk, the volume of past complaints is a valuable indicator of the need for potential action.

Red tape reduction processes informed by risk assessment

> In 2016–17, the ACMA's red tape reduction efforts resulted in the following estimated savings:
> $6 million from making the Telecommunications (Telemarketing and Research Calls) Standard 2017,
> $0.206 million from a review of the Commercial Radio Code,
> $0.887 million from revising the Telecommunication (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017,
> $1.048 million from a variation to the Radiocommunications (Citizen Band Radio Stations) Class Licence 2015.
> To address changes to PGPA Act reporting requirements, we are working to build our performance reporting capability. Activities include realigning activities and implementing new ways of providing quantitative and qualitative performance updates. We apply our Risk Management Framework to this process to ensure that efficiency is increased without a reduction in the robustness of our reporting.
> In 2016–17, the ACMA facilitated the sunsetting of 16 instruments. Of these, three instruments were automatically repealed, and we revoked and replaced 13 instruments prior to the instrument's sunset date.

Reviewing compliance monitoring approaches to minimise information burden

In 2016–17 we continued to engage with stakeholders on the most effective way to minimise the impact of data requests while still acquitting legislative reporting requirements. This included engaging stakeholders and other regulators on opportunities to share or re-use existing information for our purposes to the extent allowable under legislation.

We continued to prioritise compliance monitoring according to a risk assessment of evident harms and engage cooperatively with stakeholders on monitoring and inspection activities when there is no danger of compromising an investigation or enforcement activity.

Overall rating

Where possible, the ACMA re-purposes a range of collected data through regular and ad hoc publications, although these efforts can often be constrained by legislation. The ACMA has a proven track record of collaboration and cooperation with stakeholders to achieve compliance and enforcement objectives.

Minimising information burden through internal clearance processes and targeted information requests

> The single point-of-contact Customer Service Centre has replaced multiple different entry points for contact and enquiries, aiming to provide a consistent standard of service and a systematic method of tracking enquiries.
> The ACMA signed an updated Memorandum of Understanding (MoU) with the Australian Competition and Consumer Commission (ACCC) to promote effective cooperation and communication between agencies. The MoU creates a framework to facilitate engagement between the agencies, including consultation, collaboration and information sharing.

Requesting only such data from stakeholders as is necessary to inform compliance monitoring

> As part of our graduated approach to compliance and enforcement, the ACMA will generally use the minimum power or intervention necessary to achieve the desired result. This extends to seeking only information from stakeholders that is relevant to compliance monitoring activities.

> All commercial television licensees are required to report to the ACMA on the levels of Australian content and children's programs broadcast each year. Given the high levels of compliance by the regulated entities, the ACMA reviewed its monitoring practices and decided to change the frequency of reporting from the historic monthly basis to annually from the 2016 compliance period. The net effect of this change has resulted in reducing the administrative burden on licensees. It also allowed the ACMA to continue to assess and publish compliance results in a timely manner.

Re-using existing information to the extent allowable under legislation

> More in-depth analysis and comparison of decisions of interest and trends related to broadcasting investigations are communicated through online articles such as 'Media matters'. Industry subscribers to the engage e-bulletin also receive news of noteworthy investigation outcomes, including details of the ACMA's decision-making rationale.

> The annual communications report and associated research publications collate data and information the ACMA has a legislative obligation to collect. By preparing and publishing such information in a professional release, our government, industry and community stakeholders all benefit from our initial data collection.

> The ACMA occasionally publishes the outcomes of compliance and enforcement investigations to explain its responses to particular issues and provide guidance on compliance to industry.

Seeking stakeholder cooperation on monitoring and inspection activities

> Supporting law enforcement, emergency services and national security organisations, including through meetings of Emergency Call Service Advisory Committee (ECSAC) and the Australia–New Zealand Emergency Communications Working Group (NECWG-A/NZ), and revising rules relating to carriage service provider interception capability plans.

> An investigation by the ACMA, the Australian Federal Police, Victoria Police and Airservices Australia led to a Victorian man being charged and convicted with unlawful interference with air traffic control and endangering the safety of aircraft at two Victorian airports.

Feedback

We welcome feedback on all elements of our RPF 2016–17 performance assessment. Please email us at regframe@acma.gov.au.

Appendix A—ACMA 2016–17 self-assessment against the Regulator Performance Framework: Data tables

Data shown in red indicates where a target or benchmark is not met.
Data shown in green indicates where a target or benchmark has been met.
Data shown in purple indicates where a target or benchmark has been exceeded.
Unless specified, all values relate to the 2016–17 reporting period.

Table 1A indicates processing volumes and completion times for community broadcasting activities, including newly expanded metrics relating to timeliness. Benchmark targets are aligned to those for spectrum related licensing for consistency. The target benchmarks allow for constraints imposed by certain legislative consultation requirements, as well as allowing for proper examination of applications and reasonable time for applicants to respond to ACMA queries that may arise.

Table 1A: Community broadcast licensing activities (non-spectrum licensing)

Evidence (transactional processes)	Benchmark/ target	Volume	% time benchmark met	Average completion time, 2014–15	Average completion time, 2015–16	Average completion time, 2016–17	Minimum completion time	Maximum completion time
Trial community television licences	Applications processed within 90 days of receipt date	3	100%	34 days	47 days	4 days	4 days	4 days
Long-term community radio broadcasting licences	Applications processed within 90 days of receipt date	177	98%	116 days	107 days	41 days	1 day	326 days
Temporary community broadcasting licences	Applications processed within 90 days of receipt date	95	100%	42 days	47 days	16 days	1 day	90 days

Table 2A indicates processing volumes and times for assessment of media control and content quota requirements, including newly expanded metrics related to timeliness. Benchmarks for media control and content assessment activities reflects the inherent diversity and complexity involved in these functions. Media control benchmarks reflect current legislative requirements, while benchmarks for content assessment are built around differing levels of complexity and burden on stakeholders, and the need to allow reasonable timeframes for respondents to reply to ACMA queries that may arise.

Table 2A: Media control and content assessment activities

Evidence (transactional processes)	Benchmark/ target (if applicable)	Volume	% time benchmark met	Average completion time 2014–15	Average completion time 2015–16	Average completion time 2016–17	Minimum completion time	Maximum completion time
Media control—prior approvals (s67 BSA)	Completed within 45 days	0	N/A	15.8 days	23.2 days	n/a	15.8 days	23.2 days
Media control—extensions (s68 BSA)	Completed within 45 days	0	N/A					
Media control—extensions (ss61AJ, 61AK BSA)	Completed within 45 days	0	N/A					
Media control registers—entry, alteration or removal	Completed within 2 business days	8	100%	1.4 days	1 day	1.4	1	2
Media control registers—confirm or cancel entry, alteration or removal	Completed within 28 days	166	100%	2.6 days	2.9 days	1.8	1	4
Media control investigations	N/A	0	N/A	N/A	35 days	N/A	N/A	N/A

Evidence (transactional processes)	Benchmark/ target (if applicable)	Volume	% time benchmark met	Average completion time 2014–15	Average completion time 2015–16	Average completion time 2016–17	Minimum completion time	Maximum completion time
Australian content quota and sub-quota compliance assessments (including children's television quota assessments)	Completed within 90 days	530	100%	110 days	79 days	79 days	76 days	85 days
Captioning exemption orders/target reduction orders	Completed within 90 days	71	100%	54.7 days	78.1 days	85.2 days	71 days	89 days
Children's and pre-school program classification assessments	Completed within 60 days	34	97%	46 days	54 days	36 days	2 days	83 days
Interactive gambling content assessments	Completed within 5 months	6	100%	47 days	90 days	36.2 days	13 days	68 days

Table 3A sets out the number of transactions and processing times for both radiocommunications licences and complaints about access to VAST (viewer access satellite television). For radiocommunications licences, information is provided about both the issue of new licences and the renewal of existing licences. The benchmark for licence allocation and VAST complaint resolution focuses on providing a consistent turn-around for processing, within a timeframe that allows proper examination of applications and reasonable time for respondents to reply to ACMA queries that may arise. The benchmark for renewal of commercial broadcasting licences and the issue of special event licences supports the uninterrupted provision of service by commercial broadcasters and allows complete coverage of special events.

Table 3A: Spectrum licensing activities—Apparatus licences, national and commercial broadcast licensing

Evidence (transactional processes)	Benchmark/target (if applicable)	Volume 2015–16	Volume 2016–17	% time benchmark met, 2015–16	% time benchmark met, 2016–17
Assigned apparatus licences—allocation	90% within 90 days	13,218	13,275	99%	99%
Assigned apparatus licences—renewal	90% within 90 days	132,031	129,961	99%	99%
Non-assigned apparatus licences—allocation	90% within 90 days	1,293	1,259	100%	99%
Non-assigned apparatus licences—renewal	90% within 90 days	24,285	23,347	100%	99%
Transmitter licences issued—commercial radio and TV	90% within 90 days	23	29	99%	100%
Radio and TV broadcasting retransmission licences	90% within 90 days	114	90	99%	90%
Radio and TV apparatus licences—variations	90% within 90 days	33	15	99%	100%
Commercial radio broadcasting licences—renewal	Prior to expiry	77	9	100%	100%

Evidence (transactional processes)	Benchmark/target (if applicable)	Volume 2015–16	Volume 2016–17	% time benchmark met, 2015–16	% time benchmark met, 2016–17
Commercial television broadcasting licences—renewal	Prior to expiry	17	56	100%	100%
Special event broadcasting licences	Prior to event	153	169	99%	100%
Actioned complaints about access to VAST	4 weeks	251	207	100%	N/A
Complaints about access to VAST	90% within 90 days	251	207	N/A[1]	95%

[1] Commencing in 2016–17, the benchmark for VAST complaints has been revised. The benchmark now measures the finalisation of VAST complaints against the standard benchmark for radiocommunications licensing activities of 90 per cent completion in 90 days.

Table 4A relates to processing volume and completion times in telecommunications licensing and telephone number resource management.

Table 4A: Telecommunications licensing and numbering activities

Evidence (transactional processes)	Benchmark/target (if applicable)	Volume	% time benchmark met 2015–16	% time benchmark met 2016–17	Average completion time 2014–15	Average completion time 2015–16	Average completion time 2016–17
Carrier licences issued	Within 20 business days	33	100%	100%	20 business days	20 business days	15 business days
Nominated carrier declarations issued	Within 20 business days	8	100%	100%	20 business days	20 business days	14 business days
Telecommunications numbering allocations (application for mobile and geographic number resources)	2014–15: competed in 10 business days or less; 2015–16: automated process (from 3 August 2015)[2]	57	100%	100%	5 days	0 seconds	0 seconds

[2] The 2014–15 benchmark was completion within 10 business days. The numbering system was automated from 3 August 2015, at which point the benchmark was increased to 'instantaneous'.

Tables 5A to 7A cover results relating to volume, processing times and service satisfaction for the first year of operation of our single point of contact CSC. Table 5A indicates the distribution of enquiries received across our remit, with radiocommunications licensing making up the majority (73 per cent) of enquiries.

Table 5A: ACMA Customer Service Centre—Resolution of enquiries

ACMA enquiries (all sectors excluding DNCR)	Volume	% time benchmark met (target = 95% of enquiries resolved in three business days or less) 2015–16	% time benchmark met (target = 95% of enquiries resolved in three business days or less) 2016–17
Total enquiries	51337	97%	96%
Broadcasting total	1147	98%	96%
Telecommunications total	4482	96%	97%
Cabling	1205	98%	99%
Carrier licensing	321	N/A	100%
Consumer interests	255	97%	96%
Labelling	1463	95%	97%
Network safeguards	357	98%	98%
Non-compliant devices	123	94%	96%
Numbering	156	99%	98%
Smartnumbers	185	96%	99%
Supplier	80	96%	99%
Telecommunications infrastructure	233	95%	94%
Unlabelled devices	104	98%	70%
Spam total	1084	98%	96%
Radiocommunications total	37303	97%	95%
400 MHz implementation	204	99%	98%
Accredited persons	9	94%	100%
Interference	2256	99%	96%
Licensing	33161	97%	95%
LPON	57	97%	89%
Marine radio	649	95%	93%
TV reception issues	688	98%	98%
VAST	279	95%	86%
Other total	**7246**	**98%**	**98%**

Table 6A provides a summary result of enquiries relating to ACMA service, with the biggest volume of these relating to service compliments.

Table 6A: ACMA Customer Service Centre—ACMA service feedback

Nature of feedback	Volume	Proportion of feedback 2015–16	Proportion of feedback 2016–17
ACMA service total	**84**	**100%**	**100%**
Enquiries	31	6%	37%
Complaints	16	11%	19%
Compliments	37	83%	44%

Table 7A provides a more comprehensive survey of customer satisfaction, indicating an improvement of satisfaction levels across many elements.

Table 7A: ACMA Customer Service Centre (CSC)—Satisfaction survey results

Respondent numbers and profile	2015–16	2016–17
Total respondents	1,551	1,231
Organisation respondents	444	466
Satisfaction levels reported by respondents	**Percentage of respondents**	
Ease of contact with CSC (easy + very easy)		
Total respondents	75%	65%
Organisation respondents	73%	71%
Overall satisfaction (slightly satisfied or better):		
Total respondents	70%	81%
Organisation respondents	71%	79%
Overall Satisfaction by reason for enquiry—all respondents (slightly satisfied or better):		
Licencing question	85%	87%
Other question	63%	81%
Complaint (something ACMA regulates)[3]	42%	48%
Satisfaction by handling procedure—all respondents (slightly satisfied or better):		
CSC answered enquiry directly	90%	93%
CSC and other ACMA staff member answered enquiry	79%	80%
Enquiry forwarded to other ACMA staff member	74%	78%
Satisfaction with elements of service—all respondents (slightly satisfied or better):		
Staff polite and courteous	90%	95%
Staff easy to understand on the phone	88%	94%
Friendliness of staff	89%	95%
Staff patient and not rushing enquiry	87%	94%
Understanding of enquiry	83%	89%
Staff knowledgeable	83%	90%
Quick resolution of enquiry	74%	87%
Waiting time was short	78%	86%
Follow-up to resolution of enquiry	65%	77%

[3] To improve the validity and relevance of customer satisfaction data, the survey conducted in 2016–17 reviewed the 'type of interaction', replacing the 'type of customer' reported on in 2015–16.

Table 8A provides a high level summary of compliance investigation activity across the majority of key ACMA-regulated sectors. Varying benchmarks for completion times across the sectors reflect the diversity of stakeholder industries and the different regulatory frameworks under which this work is carried out.

Table 8A: Summary of ACMA compliance investigation activities (not including spam, telemarketing and Do Not Call Register)

Investigations and findings activity/legislative investigation type	ACMA	Broadcast content	Telecommunications consumer codes	Telecommunications—other[4]	Radiocommunications	Interactive Gambling Act
Compliance complaints/enquiries received from consumers and citizens	2,089	1,028	153	535	591	283
Compliance complaints/ enquiries resolved without formal investigation required	1,420	951	153	535	N/A	276
Benchmark/target to action complaints/ enquiries ('days' refers to business days)	N/A	Standard enquiries: 2 days Complex issues: 20 days	Standard: 1–3 days Complex issues: 20 days	1 day	Compliance investigations completed on average within 90 days	2 days

[4] Includes compliance investigation activity across a number of ACMA-regulated telecommunications sectors including number portability, pre-selection, operational codes, powers and immunities, regulation of prepaid mobile services.

Investigations and findings activity/legislative investigation type	ACMA	Broadcast content	Telecommunications consumer codes	Telecommunications—other[4]	Radiocommunications	Interactive Gambling Act
% complaints/ enquiries actioned in benchmark	N/A	100% actioned in 7 days[5] Standard enquiries: 94% Complex issues: 100%[6]	93%	88%	100%	100%
Average time to action complaint/ enquiry	2.2 days	1 day	2 days	1 day	5.9 days	1 day
Investigations commenced (including finalised after period end)	753	118	33	6	591	6
Investigations finalised (including launched prior to period start)	719	114	36	5	559	6
Benchmark for completing investigations	N/A	Standard : 3 months from launch Complex issues: 6 months from launch	6 months	6 months	Compliance investigations completed on average within 90 days	90 days

[5] As per annual report broadcasting compliance table.

[6] Additional data provided for further detail.

Investigations and findings activity/legislative investigation type	ACMA	Broadcast content	Telecommunications consumer codes	Telecommunications—other[4]	Radiocommunications	Interactive Gambling Act
% of investigations meeting benchmark	N/A	Standard : 94% Complex issues: 100%	97%	60%	96%	100%
Minimum investigation completion time	1	7 days	0.3 months	2.7 months	1 day	13 days
Maximum investigation completion time	19.2 months	163 days	6.5 months	19.2 months	321	68 days
Average time to complete investigation 2016–17	N/A	1.3 months	3.4 months	8.2 months	24 days	36.2 days
Average time to complete investigation 2015–16	N/A	1.6 months	3.5 months	6 months	24 days	3 months
Average time to complete investigation 2014–15	N/A	2.6 months	N/A	6 months	N/A	47 days
Instances of exercising discretion not to investigate	78	77	Nil	0	N/A	1

Investigations and findings activity/legislative investigation type	ACMA	Broadcast content	Telecommunications consumer codes	Telecommunications—other[4]	Radiocommunications	Interactive Gambling Act
Investigations resulting in non-breach finding	62	50	8	4	N/A	0
Investigations where at least one breach found	95	64	24	1	0	6
Investigation reports published	83	79	3	1	0	0[7]

[7] There are a range of reasons why the ACMA may not publish investigations reports, ranging from considerations of confidentiality and fairness, to maintaining the integrity of investigative processes.

Data on compliance investigations for unsolicited communications activity (see Table 9A) is separated from other regulated sectors because of the very high volume of activity involved.

Table 9A: Summary of compliance investigations and findings—spam and Do Not Call Register

Investigations and findings activity	Result: spam	Result: DNCR
Complaints/reports received from consumers and citizens	849,928	28,259
Benchmark to action complaints/enquiries	15 days	15 days
% complaints/enquiries actioned in benchmark	99	98
Average time to action complaint/enquiry	3 days	4 days
Investigations commenced (including finalised after period end)	5	3
Investigations finalised (including launched prior to period start)	3	2
Benchmark for completing investigations	Completed in 8 months or less	Completed in 8 months or less
% of investigations meeting benchmark	0%	100%
Minimum investigation completion time	9 months	6 months
Maximum investigation completion time	11 months	8 months
Average time to complete investigation 2015–16	9.7 months	6.9 months
Average time to complete investigation 2014–15	7 months	9 months
Investigations resulting in non-breach finding	2	1
Investigations where at least one breach found	1	1

Table 10A provides an overview of the compliance enforcement responses across the majority of key ACMA-regulated sectors. The table illustrates the ACMA's use of informal enforcement responses, demonstrating a compliance regime based on risk-assessment and a graduated approach to the type of enforcement action necessary. More serious measures are used where significant detriment or contraventions have occurred, or where non-compliance represents greater risk to consumers or the community.

Table 10A: Summary of ACMA compliance enforcement responses, (not including spam, Do Not Call Register, interactive gambling)

Enforcement responses/ actions	ACMA	Broadcast content	Telecommunications consumer codes	Telecommunications— emergency services & other	Radiocommunications
Total informal warnings/advice issued	76	76	0	0	N/A
Total formal warnings/advice issued	457	0	15	0	442
Total enforceable undertakings	1	1	0	0	0
Total infringement notices/take-down notices issued	4	0	0	0	4
Total directions to comply	11	0	9	0	2
Total court actions	4	0	0	0	4
Total number of ACMA enforcement decisions appealed or challenged	5	0	2	1	2
Number of successful appeals or challenges to ACMA decisions	2	0	0	0	2

Table 11A illustrates our extensive use of low-impact enforcement responses, demonstrating our risk-based and proportionate approach to compliance and enforcement. Data on enforcement responses for unsolicited communications is separated from other regulated sectors because of the very high volumes of activity involved. As with compliance action for other sectors, the statistics demonstrate our regular use of informal enforcement responses, demonstrating a compliance regime based on risk-assessment and a graduated approach to the type of enforcement action necessary. More serious measures are used in cases of significant contraventions.

Table 11A: Summary of compliance enforcement responses/actions—spam and Do Not Call Register

Enforcement responses/actions	All unsolicited communications	Result: Spam	Result: Telemarketing & DNCR
Total informal warnings/advice issued	5,049	2,769	2,280
Total formal warnings	1	0	1
Total enforceable undertakings	0	0	0
Total infringement notices issued	0	1	0
Total directions to comply	N/A	N/A	N/A
Total court actions	0	0	0
Total number of ACMA enforcement decisions appealed or challenged	0	0	0
Number of successful appeals or challenges to ACMA decisions	0	0	0

Appendix B—Stakeholder validation

A key requirement of the RPF is that regulators consult with stakeholders on their self-assessment. We undertook the stakeholder validation process for our draft 2016–17 performance assessment report in October 2017, inviting responses from stakeholders who had participated in previous RPF consultation efforts. In addition, we sought comment via the issues for comment section of our website. From 38 invitations to comment, we received a total of 13 submissions.

Feedback was sought from communications and media companies, industry groups and peak bodies. As with previous years, the ACMA also sought comment from stakeholders that are not regulated entities to bring a broader perspective to its self-assessment. This may mean the responses of non-regulated stakeholders adopt a different focus to that of the KPIs. It may also be helpful to note that stakeholders did not rate our regulatory performance for the year, but instead were asked to rate the extent to which they agreed (or disagreed) with the ACMA's self-assessment.

To encourage open and honest feedback and maximise the likelihood of response, organisations had the option of identifying themselves or remaining anonymous. For the first time, organisations were able to respond to questions via an online survey application. This process was introduced in response to comments made during the 2015–16 consultation process.

Of those stakeholders that did respond, the feedback was overwhelmingly positive. Overall, a large majority of respondents (76.9 per cent) were either satisfied or very satisfied with the ACMA's year-round consultation on regulatory processes. Importantly, no respondents were either dissatisfied or very dissatisfied with such consultation. This is an improvement on the responses to our self-assessment for the 2015–16 reporting period.

Respondents most strongly agreed with our assessment of our efforts to not necessarily impede the efficient operation of regulated entities, as well as efforts to clearly and effectively communicate with regulated entities. Respondents least strongly agreed with our assessment of continuous improvement activities, although a majority of respondents still either agreed or strongly agreed with our assessment. However, almost as many respondents neither agreed nor disagreed with our assessment. This possibly suggests the ACMA must increase our continuous improvement efforts, or communicate better about the various activities that sit under the umbrella of the BRPI.

In the ACMA *Corporate plan 2017–21*, a performance target relating to enhancing regulatory design and administration was that 'over 50 per cent of RPF stakeholders agree with the ACMA's annual RPF self-assessment'. Fifty per cent or more of stakeholders either agreed or strongly agreed with our self-assessment against each of the six KPIs, so the ACMA is satisfied we have achieved this corporate plan performance target.

Where practical and within our remit, we have also incorporated responses to the themes raised by submitters through this process into our BRPI program for 2017–18 and beyond, or sought to respond to stakeholder feedback within the discussion of our performance against specific RPF KPIs in this report. Where feedback raised policy or legislative issues not within the ACMA's remit, staff have identified these separately for provision of advice to DoCA on these matters.

Table 1B provides a summary of stakeholder feedback. A collation of all submissions is published on the ACMA website.

Table 1B: Summary of stakeholder feedback received from the 2016–17 RPF performance assessment validation

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 1	Most respondents agreed with the ACMA's assessment of our efforts to not unnecessarily impede the activities of regulated entities, with two respondents neither agreeing nor disagreeing. Three stakeholders provided additional feedback.	
	ACCAN noted that from a consumer's perspective, there needs to be a greater account of long-term interests of end users, and more consideration of how the ACMA approaches consumer issues in telecommunications. ACCAN referred to the latest TIO complaint figures for 2016–17 as evidence for more active regulation in telecommunications. An anonymous respondent commented that the ACMA needs to be more mindful of, and responsive to, the business needs of its regulated entities.	The review of the Telecommunications Consumer Protections Code (TCP Code), commenced in September 2017, providing an opportunity to maintain and strengthen consumer protections while also considering industry requirements. There is potential for the TCP Code to be augmented to address a wide range of emerging consumer issues.
	SBS commented that interactions with the ACMA did not unnecessarily impede the efficient operation of SBS during the reporting period, and that 'interactions with the ACMA in 2016–17 were consultative and constructive. SBS also noted there were future opportunities to reduce unnecessary administrative burden on broadcasters; in particular, simplifying captioning compliance forms.	
	Telstra singled out the ACMA's efficient efforts in converting 2 GHz apparatus licence terms and prioritising spectrum for the launch of 5G services. However, Telstra also identified the reduction of auction timelines and articulating how evidence and analysis led to decisions as two ways the ACMA could reduce regulatory burden on industry.	The ACMA has recently announced an initiative to considerably speed up spectrum auctions, including expanding the auctions team. By also running 'staggered' auctions in parallel, later bands in the anticipated reallocation program can be brought to market more quickly. Auction timings will also remain dependent on progress of international harmonisation/standardisation of bands and availability of ACMA planning resources, as well as investor appetite for multiple sequential auctions.

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 2	Most respondents agreed with the ACMA's assessment of its efforts to communicate with regulated entities. Three stakeholders provided additional comment.	
	Optus considered the ACMA's communication approach, strategy and timing to be of a high standard, particularly in the context of our broad regulatory mandate. Optus did identify some individual instances where ACMA communication could have been improved, but noted such instances are rare rather than commonplace. Examples were offered more as a reminder of the need for ongoing vigilance.	
	Telstra welcomed the specific feedback the ACMA provided in response to past submissions (singling out feedback on multiband spectrum auction instruments), and would encourage similar levels of engagement in the future. Telstra also acknowledged the ACMA 'has a vital role to provide specialist advice to government with regard to the appropriate regulatory framework as we move to a digital economy'.	
	The Australian Radio Communications Industry Association (ARCIA) disagreed with the ACMA's assessment against KPI 2, and recommended increased transparency on spectrum engineering and planning decisions.	Spectrum embargoes are the only planning-type process where the ACMA does not consult. The reasoning for this is outlined on the ACMA website. All other planning and frequency assignment development work includes at least one public consultation step and, in some cases, involves additional public and informal consultation.
	SBS noted the ACMA engages with the broadcaster on a range of issues, and found the ACMA's communication to be regularly clear, targeted and effective during the reporting period. In particular, SBS appreciated the individual feedback received on its submission to the Making of the Broadcasting Services (Technical Planning) Guidelines.	

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 3	Most respondents agreed with the ACMA's assessment of its proportionate compliance and enforcement actions, although three parties disagreed and two parties neither agreed nor disagreed. Seven stakeholders provided additional comments.	
	Two anonymous respondents were dissatisfied with the ACMA's consultations on risks and the need for further action.	Each year, the ACMA holds a compliance tune-up, which gives industry the opportunity to engage with the ACMA about existing and emerging interference and compliance risks. The feedback derived from the tune-up informs our annual PCAs, which are published on the ACMA website.

In 2016–17, we moved towards a priority compliance approach to our telecommunications consumer protection program. NBN services and direct carrier billing were key priorities. |
| | It was also stated that quicker responses and meaningful discussions are needed about ACMA licensing decisions. | |
| | ACCAN's response said the ACMA gave industry too much time to resolve issues, generally taking a non-interventionist approach at the detriment of consumers. Although ACCAN acknowledged that a balanced response is needed from the ACMA, they felt that certain circumstances required prompt and swift intervention. They noted recent examples with third-party billing in telecommunications, and poor customer service that exacerbated the complexities of switching to NBN. | The ACMA takes an evidence-based approach to our compliance activities and regulatory intervention, particularly for current consumer issues.

The expansion of the priority compliance approach to our telecommunications consumer protection program highlights our ongoing commitment to proportionate compliance and enforcement responses. |
| | SBS considered the ACMA's regulatory responses to be in proportion to the risk managed. SBS specifically highlighted that 'the ACMA used a graduated and strategic risk-based approach'. | |
| | One respondent noted that 'the ACMA should be more open to tailoring the proportionality [of actions], having regard to the size and complexity of the entity they are dealing with'. | Each interference case is assessed and prioritised against a number of factors derived from the ACMA's interference investigations principles. This includes the seriousness of interference and potential harm. |

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 3	One respondent who agreed with the ACMA's assessment stated 'it's encouraging to see discretion frequently being exercised to decline to accept Code of Practice complaints for investigation'.	
	Optus noted the ACMA's assessment appears reasonable. However, Optus felt the ACMA's analysis of red-tape reduction and assessment of risk has historically occurred in isolation, missing opportunities to make more strategic linkages and substantial reforms. Furthermore, Optus suggested the schedule of activity appears to be led by the potential sunsetting instruments, rather than a more holistic program or an ongoing examination of the relevance and effectiveness of all areas of regulation. Optus suggested coordinating with industry partners to develop programs for reviewing certain areas of regulation. Optus highlighted an example of this coordination for the review of the re-registration of industry codes with Communications Alliance (CA), reiterating this was a practical way to manage this work.	The ACMA regularly liaises with CA about code reviews and the timeframes for registration. The ACMA will continue to look for ways to improve this process.
	Telstra commented there is additional opportunity to reduce information burden without increasing overall risk by reviewing the reporting arrangements under the Network Reliability Framework (NRF). Telstra also requested that interference to mobiles by unauthorised mobile repeaters remains a compliance priority for the ACMA.	The reporting arrangements under the NRF are conditions set out in legislation and are administered by DoCA. Any amendment to the NRF reporting requirements would require an amendment to legislation. The ACMA did, however, streamline Telstra's NRF regulatory forbearance reporting requirements in July 2017. The ACMA released updated information on mobile repeaters in May 2017. The management of interference caused by mobile repeaters is now a standalone area of compliance activity, forming part of a broader strategic approach to combating high-risk compliance issues in a coordinated manner.

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 4	The large majority of respondents agreed with the ACMA's assessment of streamlined and coordinated approaches to compliance and enforcement, while three regulated entities neither agreed nor disagreed.	
	A number of responses recognised ongoing ACMA efforts to streamline compliance and enforcement activities, while noting opportunities for further improvement. One anonymous respondent noted that regulation should not be developed or enforced on a 'one-size-fits-all' basis. Another anonymous respondent stated that the complaints-driven nature of some compliance activities leads to inconsistency of harm reduction and enforcement efforts.	Each year, the ACMA sets a PCA program, which takes a strategic approach to combating high-risk compliance issues in a coordinated manner. The PCAs for technical compliance are set after gathering intelligence about compliance issues and assessing the level of risk. Through this analysis, we identify systemic compliance issues requiring a robust compliance response.
	ACCAN noted the ACMA's research program is coordinated with the overall work plan, and would like to see this result in stronger compliance action.	
	SBS acknowledged the ACMA has taken a number of steps in recent years to streamline compliance processes. Telstra made similar acknowledgements, while recognising that existing regulatory requirements do not give the ACMA an adequate level of flexibility to amend reporting requirements. Telstra recommended the ACMA take a proactive approach to seeking government support for policy and legislative change.	The ACMA supports a comprehensive program of review of the legislative framework to ensure that regulation is fit-for-purpose. We agree that the enduring concepts underpinning the policy objectives of media and communications regulation continue to provide a strong reference point for testing and developing future regulatory reform proposals.
KPI 5	The large majority of respondents agreed with the ACMA's assessment of its openness and transparency, while two respondents did not agree. Five stakeholders provided additional comments.	

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 5	The two anonymous parties that did not agree with the ACMA's assessment considered there to be a lack of transparency in a number of areas. A particular issue related to ACMA requests for information with insufficient context or background information required. In these instances, it became more difficult to respond to requests in an efficient manner and further clarification may have been required, resulting in time and financial costs. Another party identified the management of code of practice investigations as an instance where substantial information request burdens are placed on regulated entities with insufficient context. Telstra recommended ongoing dialogue with industry stakeholders to ascertain compliance costs incurred as a result of ACMA activities.	Earlier this year, radio licensees were subject to an information request about some complaints-handling difficulties. This request was based on a level of Authority interest based on past non-compliance. The ACMA believes the requests did not place unreasonable burdens on the licensees, although, following a practical discussion with the licensees, early advice on the 'context' of inquiries is now part of broadcasting investigation processes.
	Optus agreed with the ACMA's assessment of its openness and transparency, though it noted inconsistent processes and procedures used to achieve transparency. Optus suggested greater use of standard processes (for example, for consultation on planning processes), with variations justified by need. Another party highlighted the need for more consistent decision-making, with information provided to justify those decisions.	The ACMA is finalising a consultation framework to enhance transparency and accountability to stakeholders and improve the agency's ability to engage effectively. This includes providing more information on timing/scheduling of consultations, transparency in decision-making, the process itself and reasons decisions are made. It will allow the ACMA to reflect back to industry where and how its input contributed to decision-making, to better strengthen stakeholder relationships. Given the broad range and sensitivities of issues consulted on, it is appropriate for the ACMA to preserve broad discretion as to the style, format and content, as well as the medium used for any response. However, for consultations on substantive issues, the ACMA will aim to provide extensive feedback, which includes a consolidated analysis of stakeholder views, the ACMA's decisions, and the reasons for these.

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 6	Half of all respondents agreed with the ACMA's assessment of our continuous improvement efforts. Almost half of all respondents neither agreed nor disagreed with our assessment. Four stakeholders provided additional comments.	
	ARCIA repeated its request for increased transparency in spectrum planning decisions, and ongoing consideration of the business or financial implications of such decisions. An anonymous response similarly called for decisions that are in the best interest of regulated entities and consumers.	All planning and frequency assignment development work includes at least one public consultation step and in some cases involves additional public and informal consultation, with the single exception that the ACMA does not consult before imposing embargoes on bands.
	Optus recognised that the ACMA program of sunsetting instruments illustrated a commitment to red tape reduction, although additional legacy regulation could be removed to encourage emerging technology. Optus viewed the changing communications landscape (using 5G as an example) as an opportunity for the ACMA to harness government and industry expertise to inform future actions. According to Optus, 'the ACMA has the opportunity to be proactively considering whether its instruments or frameworks actively encourage or block 5G or IoT development, and reacting accordingly'. These views were echoed by Telstra, who focused on the reform of legacy obligations associated with the delivery of fixed services over the copper network. Telstra highlighted 2014 amendments to their carrier licence conditions as a past example of regulatory amendments that had positive business outcomes without consumer detriment.	The ACMA supports a comprehensive program of review of the legislative framework to ensure that regulation is fit-for-purpose and, where possible, will continue to work with industry, community and government stakeholders to review, update and/ or remove legacy legislation. In 2017–18, regulatory reform priorities include changes to media ownership legislation, radiocommunications legislation to allow for more flexible spectrum management practices and a review of telecommunications consumer protections. Implementing the recommendations of the ACMA Review associated with Authority structure and governance arrangements will further enable us to improve current regulatory frameworks.

RPF KPI	Stakeholder comments	ACMA response to stakeholder suggestions for improvement
KPI 6	ACCAN highlighted the expansion of the National Broadband Network, and the different regulatory responses it will require, as further reason for a review of old or outdated legislation.	The ACMA has actively contributed to processes to review communications regulations including the Productivity Commission's review of the Universal Service Obligation. We conducted research to inform our understanding of the NBN consumer experience and are building on this work in 2017–18 with a detailed information-gathering exercise.

the**acma**

acma.gov.au