

Senate Standing Committee on Environment and Communications

Answers to Senate Estimates Questions on Notice

Budget Estimates May 2017

Communications Portfolio

The Australian Communications and Media Authority

Question No: 174

The Australian Communications and Media Authority

Hansard Ref: Written, 07/06/2017

Topic: ACMA Review

Senator Urquhart, Anne asked:

1. How does implementation of the ACMA Review recommendations impact ACMA priorities, and what ACMA work, if any, will be deprioritised as a result?
2. What staffing changes, if any, will be required to implement the recommendations of the ACMA Review?
3. What key process steps, contingencies and timeframes are estimated to be involved in ACMA implementation of each recommendation of the ACMA Review?
4. How do the recommendations of the ACMA Review impact the ACMA's work to implement the recommendations of the Final Report of the Spectrum Review?
5. With respect to Recommendation 6 of the ACMA Review on the Do Not Call Register, what aspects does the ACMA consider could be outsourced to industry for self-regulation?

Answer:

1. How does implementation of the Australian Communications and Media Authority (ACMA) Review recommendations impact ACMA priorities, and what ACMA work, if any, will be deprioritised as a result?

Throughout the Review process the ACMA has continued to undertake all of its core roles and responsibilities.

The Review report envisages the process of amending the ACMA's remit will be a gradual one, commencing with amendments to the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to give effect to revised governance arrangements, and updated further in light of the planned future reform agenda that would similarly amend other communications legislation. This phased approach will allow the ACMA to transition priorities according to available resources, while it continues to explore ongoing efficiency improvements in its operational and regulatory program delivery.

2. What staffing changes, if any, will be required to implement the recommendations of the ACMA Review?

In its submission to the draft report the ACMA estimated that a move to at least a five full-time member Authority would result in a net increase in Authority operating costs of around \$1 million per annum, compared with the current two-full time and two part-time member model.

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The transfer of the Australian Internet Security Initiative (AISI) will result in the transfer of 2.51 average staffing level (ASL) from the ACMA to the Attorney-General's Department (AGD) from 1 July 2017.

With regard to new functions under proposed amendments to the Interactive Gambling Act, the ACMA is still working through the resourcing implications of its expanded responsibilities with the Department and other interested departments. A more pro-active implementation approach to these additional responsibilities would need to draw on more of the ACMA's available resources.

In relation to the implementation of other ACMA review recommendations, the ACMA will continue to review its operations and organisational structure with the aim of achieving the best possible efficiency from the resources it has available.

3. What key process steps, contingencies and timeframes are estimated to be involved in ACMA implementation of each recommendation of the ACMA Review?

The key process steps, contingencies and timeframes for implementation of each of the 27 recommendations of the ACMA review are outlined further below.

Recommendation 1: That the Australian Communication and Media Authority's (ACMA) remit cover all the layers of the communications market, including infrastructure, transport, devices, content and applications.

The ACMA will assist the Department as required on the analysis of alignment and relevance of legislative and regulatory frameworks against a layered model of the communications and media environment, building on its exploration of this model in its 2011 Enduring Concepts and 2013 Connected Citizens papers and the further development of its internal structures to reflect this approach.

Recommendation 2: That the ACMA's cybersecurity programs, where appropriate be transferred, along with staff and funding, to the Attorney-General's Department (AGD).

The ACMA has worked with the AGD to develop a transition plan to move the Australian Internet Security Initiative (AISI) to AGD from 1 July 2017. The following resources are to transfer from the ACMA to the AGD: Budget of \$436,173 in the 2017-18 year comprising ASL of 2.51.

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

The ACMA will continue to engage with the Department on coordination of research priorities and focus, while retaining the capacity to undertake research to support the ACMA's statutory responsibilities.

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Recommendation 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.

The ACMA will continue to provide advice to assist Australian delegations to international meetings, to participate as needed and support the Department in its role as Head of Delegation to key international policy-setting forums. ACMA spectrum subject matter experts are liaising with the Department's officers about involving them in preparatory arrangements for the WRC-19 meetings.

Recommendation 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 will assist the Department in its analysis by providing information about the scope of current activities and the practicalities and implications of options for change for both government and industry.

Recommendation 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 (IPND)**
- > **Do Not Call Register (DNCR)**
- > **Unsolicited communications, including spam.**

The ACMA regularly explore further opportunities for self-regulation in consultation with industry.

In fulfilment of **Recommendation 6**, over the next 12 months the ACMA will undertake the following actions:

In order to guide the work associated with examining each of the regulatory areas identified by this recommendation, the ACMA will develop an analysis framework incorporating recent regulatory best practice to provide a consistent approach.

Technical Standards: In conjunction with its work to implement the outcomes of the Review of Spectrum Management, the ACMA will explore opportunities for incorporating greater industry involvement in technical regulation in consultation with regulated community and representative bodies, including Communications Alliance, the Consumer Electronics Suppliers Association (CESA), the Australian Industry Group (AiG) and the Australian Communications Consumer Action Network (ACCAN).

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IPND: The ACMA will commence this analysis with a detailed examination of the individual components of the IPND including provision and maintenance of the IPND, administration of access to IPND data, and industry requirements to populate the IPND.

DNCR: The ACMA will start with a detailed examination of the components that comprise management of the Do Not Call Register, including a review of overseas models of DNCR management, analysis of methods of outsourcing DNCR management, and options to address quality of DNCR data and the costs of administration.

Unsolicited Communications: The ACMA will in the first instance conduct a detailed examination of the individual components of the current spam, telemarketing and fax marketing regulatory arrangements, including types of delivery mechanisms addressed by current arrangements (e.g. phone calls, fax calls, email, SMS), types of harms addressed by current arrangements, models for responding to harms, the nature of businesses involved and their ability to respond.

In addition, the ACMA is exploring with industry additional opportunities for industry self-regulation in relation to industry-managed numbering administration.

Recommendation 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.

The ACMA will assist the Department in its analysis of regulatory options and on further work for the transitioning of classification functions. The ACMA continues its on-going staff level liaison with the Department's line areas responsible for classification issues.

Recommendation 8: That the Interactive Gambling Act 2001 (IG Act) 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**
- > **enforce civil penalties for breaches of the Act.**

The ACMA is working on preparations to operationalise this recommendation in order to be ready for implementation after relevant legislative amendments to the Interactive Gambling Act have been passed, and is working through the resourcing implications of its expanded responsibilities.

The ACMA notes that this amendment was passed by the House of Representatives on 21 June 2017 and is scheduled to come before the Senate in the 2017 Spring sittings.

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

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The ACMA has collaborative arrangements in place with the Australian Competition and Consumer Commission (ACCC) and will continue to strengthen them so that issues of relevance to both agencies can be considered. The ACMA and ACCC refreshed a Memorandum of Understanding in 2016 to further facilitate information sharing and collaboration mechanisms between the two agencies.

Recommendation 10: That cross-appointment arrangements between the ACMA and Australian Competition and Consumer Commission (ACCC) be strengthened in order to benefit both ACMA and ACCC decision-making.

The ACMA welcomes this proposal and notes that Authority appointments are a matter for consideration by the Government.

Recommendation 11: That the current institutional arrangements for communications consumer protections be retained.

In addition to discharging its statutory responsibilities, the ACMA will continue to conduct systematic review of the on-going relevance and effectiveness of regulatory frameworks, through its existing Regulation Reform, Sunseting and Regulator Performance Framework programs and otherwise as appropriate.

Recommendation 12: That, as a priority as future reform is undertaken, the government provide the ACMA with a clear set of overarching policy objectives to guide its decision-making

The ACMA will provide advice to the Department on request.

Recommendation 13: That the commission model of decision-making be retained

The ACMA will use the Regulator Performance Framework assessment process to continually assess, and seek stakeholder feedback on, the efficiency and transparency of ACMA decision-making processes under the retained commission model of decision-making.

Recommendation 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.

The ACMA will provide advice to the Department on request.

Recommendation 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.

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The ACMA will provide advice to the Department and the Minister on request, and will work through the resourcing implications of this recommendation.

Recommendation 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 Chief Executive Officer (CEO).

The ACMA will review decision-making structures including delegation of powers in accordance with its legislative responsibilities and provide advice to the Department on request.

Recommendation 17: That provision be made in the ACMA Act for the Authority to establish sub-boards consisting of experts who could provide advice to the Authority or a Division of the Authority on specific areas of activity. The Chair of any such sub-boards be a member of the Authority but not be the Chair of the Authority.

The ACMA will provide advice to the Department and the Minister on request, and is working through the resourcing implications of this recommendation.

Recommendation 18: Legislate the following four regulator principles in the ACMA's enabling legislation:

- > **The ACMA have regard to the importance of promoting competition, innovation and 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 timely and transparent in its actions and clearly indicate the priorities and objectives that inform its decision-making to regulated entities and the broader public**

Noting the Government response that this recommendation be addressed through the Minister's Statement of Expectations, the ACMA will detail in its Statement of Intent how it will give effect to the regulator principles in its regulatory decision-making and operations.

The ACMA will continue to integrate the Regulator Performance Framework performance indicators into organisational processes for systematic tracking and reporting of efficiency measures and alternative approaches to intervention, review of regulatory burden, risk-based compliance monitoring and enforcement and improved timeliness and transparency through better engagement and communication.

Recommendation 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.

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The ACMA will provide advice to the Department on request and upon receipt of the Minister's Statement of Expectations. The ACMA's Statement of Intent will respond to the Minister in light of the guidance provided under the Statement of Expectations.

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Recommendation 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.

No further action by the ACMA.

Recommendation 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

The ACMA will use the Regulator Performance Framework processes as a mechanism for regular review and analysis of its performance in addressing the efficiency and timeliness of decision-making, and to identify ongoing improvements in processes and regulatory structures. In December 2016 the ACMA published its 2015-16 Regulator Performance Framework Report with key focus areas reflecting issues raised during the Review, as well as input received from stakeholders through other engagement processes. The ACMA will provide advice to the Department and the Minister on request, including as to giving any proposed legislation practical effect.

Recommendation 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 taken early action to consult with industry and determine revised radiocommunications Priority Compliance Areas for 2016-17 <http://www.acma.gov.au/Industry/Suppliers/Product-supply-and-compliance/Priority-compliance-areas/priority-compliance-areas-2016-17>, with further work underway in the immediate term to revise interference management principles for diagnosing and resolving cases of interference to licensed radiocommunications services and domestic television. The ACMA has made a number of improvements to its communication and engagement on compliance monitoring and enforcement in recent times, as reported in the 2015-16 Regulator Performance Framework report <http://www.acma.gov.au/theACMA/About/Corporate/Accountability/regulator-performance-framework>.

Recommendation 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.

The ACMA will compile the report by, inter alia, drawing on information contained in Quarterly Regulation Reform reports, and annual Regulator Performance Framework report and Annual Performance Statement reporting, coinciding with the end of financial years.

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Recommendation 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

The ACMA has undertaken some early actions to improve transparency by better explaining its planning priorities, and through published explanations of regulatory decisions and investigation reports. Further planned improvements will be implemented.

The ACMA will commission an external provider to undertake a Stakeholder Satisfaction Survey to be conducted before the end of 2017, including to seek feedback on transparency initiatives.

Recommendation 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

The ACMA will provide advice as requested to the Department to assist a review of the policy objectives of revenue collection in connection with recommendation 27.

Recommendation 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.

The ACMA will continue its on-going reassessment of cost structures and the costs of regulation in line with its usual practice, functional changes, the principles of the Public Governance and Public Accountability Act, the Regulator Performance Framework and other Whole of Government initiatives.

Recommendation 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.

The ACMA will continue its research and analysis programs and will provide advice as requested to the Department to support a regulatory reform program.

4. How do the recommendations of the ACMA Review impact the ACMA's work to implement the recommendations of the Final Report of the Spectrum Review?

In light of the ACMA Review report recommendation, the ACMA will give further consideration to how it organises itself efficiently to give effect to the intent of the recommendation in the short term, and adjust over time, as other communications legislation is amended.

As indicated in our response to Question 3, the ACMA anticipates many of the Review recommendations can be accommodated through existing mechanisms and programs. For example, examination of additional industry self-regulation in the area of Technical Standards

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(as encompassed in Recommendations 6) could be accommodated through consultation processes occurring under the ACMA's Spectrum Review implementation activities.

5. With respect to Recommendation 6 of the ACMA Review on the Do Not Call Register, what aspects does the ACMA consider could be outsourced to industry for self-regulation?

The ACMA is currently conducting preliminary discussions with key stakeholders about issues and scope that will then inform development of potential proposals for further consultation. The ACMA will start with a detailed examination of the components that comprise management of the Do Not Call Register (DNCR), including a review of overseas models of DNCR management, analysis of methods of outsourcing DNCR management, and options to address quality of DNCR data and the costs of administration. This work is being undertaken as part of the ACMA's response over the next 12 months to Recommendation 6.