

**Senate Standing Committee on Environment and Communications**

**Answers to Senate Estimates Questions on Notice**

**Additional Estimates Hearings February 2014**

**Communications Portfolio**

**Department of Communications**

**Question No: 2**

**Program No. Corporate**

**Hansard Ref: Pages 6/7 (25/2/2014)**

**Topic: Best Practice Regulation Reports**

**Senator Ruston asked:**

I would like to ask you about the best practice regulation reports of 2012 and 2013. Those reports show that the Department made an exceptional circumstances claim for not doing a regulatory impact statement with regards to the convergence review. Specifically, it states:

A range of measures including the introduction of Australian content requirements; a decision not to issue spectrum or broadcast licenses for a fourth free-to-air television network; and the repeal of the “75 per cent reach rule”.

Also the extension of the Telstra retail price controls to June 2014 and in relation to the problem gambling initiative. What were the circumstances that led to the request and the granting of exceptional circumstances in relation to not doing a regulatory impact statement?

**Mr Clarke:** I don't think we are going to be able to give you a comprehensive answer from the floor. But your question is, what was the basis of the request?

**Senator Ruston:** Yes. What were the circumstances that led up to applying exceptional circumstances to not doing a regulatory impact statement in relation to that.

**Mr Clarke:** When you say 'circumstances' do you mean, what was the basis of the claim?

**Senator Ruston:** Yes. What was that basis and the justification for the decision? I suppose it would be interesting to know, had you been required to do a regulatory impact statement, what kind of level of work and resources would have needed to be applied to it. Further to that, did the department have a view of what the likely impact would have been had you actually undertaken it? This may all play out in the reasons why you actually chose to seek that in the first place.

**Mr Clarke:** We can possibly give you a partial answer now, which I will ask Mr Rizvi to respond to. But I think the bulk of your question will need to be taken on notice.

**Mr Rizvi:** In respect to the IGA review, we were in close contact with the Office of Best Practice Regulation on the conduct of that review. The intention was that, to the extent that the government may have decided to proceed with the recommendations to modify the IGA, then a comprehensive regulation impact statement would have been developed. As it turned out, the previous government did not proceed to modify the act as a result of that review. As a result, a regulation impact statement was not required.

**Senator Ruston:** I will be interested in your detailed response. Okay. I am being wound up by the Chair.

**Answer:**

**Convergence review**

The former Prime Minister's decision to grant an exemption from the requirement to complete a Regulation Impact Statement (RIS) for proposals stemmed from the previous government's consideration of the Convergence Review Final Report. The Department is not in a position to provide further information on the decision making processes of a previous government.

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Where a proposal proceeds (either through the Cabinet or another Australian Government decision maker) without an adequate RIS, the resulting regulation must be the subject of a post-implementation review (PIR). The PIR must commence within one to two years of the regulation implemented, and is required regardless of whether or not an exemption from the requirements for exceptional circumstances was granted by a Prime Minister.

The Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet publishes the details of required PIRs in a document titled *Post-implementation Review Status and Compliance*. This indicates that a PIR is required to be initiated by 1 January 2015 examining various changes to the Australian content rules for commercial television broadcasters implemented by the *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013*. The Department will commence this review in the second half of 2014.

#### **Telstra retail price controls**

In relation to the issue of the extension of retail price controls, the existing retail price control arrangements were due to expire on 30 June 2012. The previous government made the decision to extend the current arrangements for a further two years to 30 June 2014.

The former Prime Minister's decision to grant an exemption directly related to the previous government's consideration of retail price control arrangements. Therefore, the Department is not in a position to provide further information on this matter.

The Department is currently undertaking a PIR of retail price controls. We are consulting with the OBPR on this process.

#### **Problem gambling initiative**

The measures relating to problem gambling listed in the Best Practice Regulation Report of 2012-13 were announced on 21 January 2012, prior to the completion of the Department's review of the *Interactive Gambling Act 2001*. The Department did not seek an exceptional circumstances exemption or prepare a RIS in relation to pre-commitment for online betting services, and limits on betting inducements and credit requirements for online sports betting companies, as these are all matters which have traditionally fallen within the jurisdiction of the states and territories. These measures were to be implemented in cooperation with the states and territories. The Department would prepare a RIS if Commonwealth regulation was required.

In relation to banning the promotion of live odds during sports coverage, the previous government announced it was considering legislative action in relation to this issue. However, the Government did not proceed with legislation so no RIS was prepared. The OPBR document *Post-implementation Review Status and Compliance* acknowledges this measure was not implemented. The broadcasting industry separately developed its own Codes of Practice to restrict the promotion of live odds during sports coverage and these Codes were registered by the Australian Communications and Media Authority in July 2013.