

Chapter 2

ACMA and the regulatory framework

Much work is needed to flesh out the policy framework for communications to provide clear direction to the newly integrated regulator. Integration of the regulators offers an opportunity to assess the entire regulatory system for communications, to ensure it is well suited to the future development of a dynamic sector incorporating broadcasting, telecommunications and audiovisual production.¹

Introduction

2.1 The regulation of Australian communications is complex, and has been subject to considerable reform over the last decade. There are eight pieces of legislation that regulate the communications industry:

- *Australian Communications Authority Act 1997*;
- *Telecommunications Act 1997*;
- *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- *Radiocommunications Act 1992*;
- *Spam Act 2003*;
- *Broadcasting Services Act 1992*;
- *Trade Practices Act 1974* (TPA); and
- *Prices Surveillance Act 1983*.

2.2 The regulatory powers are shared between six different regulatory bodies:

- Australian Broadcasting Authority (ABA);
- Australian Communications Authority (ACA);
- Australian Competition and Consumer Commission (ACCC);
- Australian Communications Industry Forum (ACIF);
- Department of Communications, IT and the Arts;
- Telecommunications Industry Ombudsman (TIO).

2.3 The *Telecommunications Act 1997* (TA) developed a framework with greater emphasis on self-regulation. The ACA has responsibility for technical matters on telecommunications, and the ACCC has responsibility for competition issues. Industry self-regulatory bodies, particularly ACIF, play a key role on the development of codes

1 The Media Entertainment and Arts Alliance, *Submission 11*, p. 1.

of practice for telecommunications.² Industry participants, independent communications experts, and consumer groups have argued to this inquiry that the current communications regulatory environment is inadequate because:

- there remains a lack of competition in communications, especially telecommunications;
- rural and regional areas do not have universal access to telecommunications;
- self regulation has failed to meet the needs of consumers;
- regulators often lack the teeth or resources to enforce behavioural change;
- the regime is too fragmented to deal with issues arising from the convergence of technology. For example, there is regulatory uncertainty that surrounds content services on mobile devices.³

2.4 Mr Paul Budde submitted that due to a lack of strong government policy and focus for telecommunications regulation the current regulatory regime is fragmented and problematic. He argued that 'the regulatory structure in our country is a hodgepodge.'⁴

2.5 The Committee heard that since the introduction of the *Telecommunications Act 1997*, the regulation of telecommunications has occurred in a fragmented manner:

As a consequence of the market realities, telecommunication policies in Australia have consisted largely of a number of reactive, haphazard, stop-gap decisions, in an endeavour to overcome the many problems generated by the self regulatory regime.⁵

2.6 The establishment of a new regulatory authority is seen by the Government and ALP and many in industry and the wider community as a first step in addressing inadequacies in communications regulation. This chapter sets out the current key features of the communications regulatory environment and outlines the developments leading up to the ACMA proposal. It discusses evidence to the Committee about the creation of a new authority and presents the Committee's conclusions in regard to the need for a new regulatory authority.

Current institutional arrangement

2.7 In previous reports⁶ this Committee has provided a detailed overview of the history of communications regulation in this country. The Committee, therefore, will

2 Alasdair Grant (ed.), *Australian Communications Regulation (3ed.)*, UNSW Press, Sydney, 2004, p. 45.

3 Communications Law Centre *Submission 7*, p. 2.

4 Paul Budde Communications Pty Ltd, *Submission 1*, p. 5.

5 Ibid.

6 Senate Environment, Communications, Information Technology and the Arts References Committee, *Competition in broadband services*, August 2004.

not repeat that discussion; rather, the functions and structure of each of the agencies involved in the current regulatory framework are outlined briefly below.

Australian Communication Authority

2.8 The Australian Communications Authority (ACA) is a government regulator of consumer and technical issues for radiocommunications and telecommunications.

2.9 Established in July 1997 under the *Australian Communications Authority Act 1997*, (by a merger of AUSTEL and SMA), the ACA exercises powers under the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Radiocommunications Act 1992*, the *Spam Act 2003*, and other related legislation.

2.10 The ACA works with the communications industry to achieve active self-regulation, while ensuring industry compliance with licence conditions, codes and standards and monitoring the effect of regulations to ensure they are responsive to the community's needs.⁷

2.11 Under TA, the ACA may require an industry body to develop a code or standard, and registers these once developed, or it imposes its own standards and monitors the effectiveness of these codes and standards. The radiocommunications regulatory role of the ACA involves the allocation of licences, preparation of spectrum plans, marketing of spectrum and management of interference. Its powers allow it to set standards, including health and safety standards for transmission.⁸

2.12 Funded through the federal Budget, the ACA collects substantial revenue on behalf of the Commonwealth. Revenue is collected through telecommunications carrier and radiocommunications licence fees and charges, as well as through charges on telecommunications numbers, which generate \$60 million a year. The ACA also collects revenue from price-based allocation of spectrum. More than \$3 billion dollars has been raised through auctions of spectrum licences since 1997.

2.13 The main functions of the ACA are to:

- Represent Australia in international regulation of communications
- Manage access to the radiofrequency spectrum through radiocommunications licensing
- Resolve competing demands for spectrum through price-based allocation methods
- Investigate and help in resolving radiocommunications interference

7 Australian Communication Authority website, 8 February 2005, at: http://internet.aca.gov.au/ACAINTER.2818080:STANDARD:1984425067:pp=DIR1_4,pc=PC_6

8 Alasdair Grant (ed.), *Australian Communications Regulation* (3ed.), UNSW Press, Sydney, 2004, p. 45.

- License telecommunications carriers and ensure compliance with licence conditions and carriage service provider rules
- Regulate industry compliance with mandatory standards and voluntary codes of practice
- Administer legislative provisions relating to powers and immunities of carriers in constructing telecommunications facilities
- Monitor compliance with consumer safeguards and service guarantees
- Report on telecommunications industry performance
- Administer the Telecommunications Numbering Plan
- Inform industry and consumers about communications regulation
- Regulate transmission of unsolicited electronic email.⁹

2.14 The ACA has a full-time Chair and Deputy Chair, and between one and three full-time or part-time members, appointed for terms of up to five years. The ACA is currently made up of the Acting Chairman, the Acting Deputy Chairman, a full-time Member, a part-time Member and Acting Associate Member. Day-to-day business at the ACA is managed by an executive team - currently the Chairman, the Deputy Chairman, the full-time Acting Member, two Senior Executive Managers and nine Executive Managers.

2.15 The ACA employs around 440 staff in offices across Australia. It has central offices in Canberra and Melbourne, and regional offices and operations centres around Australia. Regional offices provide access to the radiofrequency spectrum through licensing and frequency assignment services, and undertake interference investigations and audits to ensure compliance with regulatory requirements.¹⁰

2.16 The ACA has powers to conduct public inquiries and investigations into carriage services, content services and any matter relevant to the ACA's functions and powers as contained in sections 486-7 and 508-10 of the TA.¹¹

Australian Broadcasting Authority

2.17 The Australian Broadcasting Authority (ABA) is an independent statutory authority constituted under Part 12 of the *Broadcasting Services Act 1992* and responsible, through the Minister for Communications, Information Technology and

9 Australian Communications Authority, *Submission 5*, Attachment A.

10 Australian Communications Authority website, 8 February 2005, at: http://internet.aca.gov.au/ACAINTER.2818080:STANDARD:1984425067:pp=DIR1_4,pc=PC_6#works

11 Alasdair Grant (ed.), *Australian Communications Regulation* (3ed.), UNSW Press, Sydney, 2004, p. 46.

the Arts, to Parliament.¹² The *Broadcasting Services Act* defines the role of the regulatory authority, gives the ABA a range of powers and functions, and sets out explicit policy objectives. The objectives include the desirability of program diversity, limits on concentration of ownership and foreign control of the mass media and the need for media to help foster an Australian cultural identity, report news fairly and respect community standards.¹³

2.18 The Broadcasting Services Act provides for the appointment of a Chairperson, a Deputy Chairperson and at least one, but not more than five, other Members who may be full-time or part-time. The Members of the ABA are appointed by the Governor-General for periods of up to five years and are eligible for reappointment on one occasion only. The Minister may appoint persons to be Associate Members of the ABA, either generally or for particular investigations or hearings.¹⁴

2.19 The ABA's main functions are to:

- plan the availability of segments of the broadcasting services bands for analog and digital broadcasting
- allocate, renew, suspend and cancel commercial and community broadcasting and narrowcasting licences, and collect any fees payable for those licences
- formulate and vary commercial and national television digital conversion schemes and approve the implementation plans for digital conversion for commercial television broadcasters
- oversee compliance with the BSA and other regulations, including program standards about Australian content and children's programs
- investigate complaints that the BSA or a mandatory condition or standard has been breached
- register and keep under review codes of practice relating to content and complaints handling for broadcasting and online content
- undertake reviews, surveys and research on the performance of broadcasters, programming matters, technological advances and service trends in the broadcasting industry, and other broadcasting issues.¹⁵

12 There are additional administrative provisions in Schedule 3 of that Act.

13 Australian Broadcasting Authority, website, 8 February 2005, at: <http://www.aba.gov.au/aba/index.htm>

14 Australian Broadcasting Authority, Annual Report 2003-2004.

15 *Proposal for new institutional arrangements for the Australian Communications Authority and the Australian Broadcasting Authority: Discussion paper*, DCITA, Canberra, August 2003, p. 4.

Australian Competition and Consumer Commission

2.20 The Australian Competition and Consumer Commission (ACCC) is an independent statutory authority formed in 1995 to administer the *Trade Practices Act 1974* (TPA) and the *Prices Surveillance Act 1983*. The ACCC has a Chairman, a Deputy Chair, five full-time Commissioners and several associate and ex-officio members and a Chief Executive Officer. Appointments to the ACCC involve participation by Commonwealth, state and territory governments.

2.21 The ACCC administers the economic and competition aspects of telecommunications regulations, having taken these functions over from the former industry-specific regulator, AUSTEL, in 1997. It is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcing the TPA and the state/territory application legislation. The ACCC outlined its powers in its submission:

The current regulatory regime was introduced with the deregulation of the telecommunications sector in 1997. Changes to the Trade Practices Act 1974 (TPA) saw the introduction of the telecommunications-specific access regime (Part XIC) and anti-competitive conduct provisions (Part XIB). These provisions apply in addition to the general access and competition provisions that apply to the economy more broadly, as contained in Parts IIIA and IV of the TPA respectively.¹⁶

2.22 The ACCC promotes competition and fair trade in the market place and regulates national infrastructure services. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws.¹⁷

2.23 Competition regulation is primarily under the TPA. Part XIB of the TPA provides mechanisms to address breaches of the telecommunications-specific 'competition rule'. Under the rule, a carrier or carriage service provider must not engage in anti-competitive conduct. A carrier or carriage service provider is said to have engaged in anti-competitive conduct if it has a substantial degree of market power in a telecommunications market and takes advantage of that power with the effect, or likely effect, of substantially lessening competition. In comparison, the general anti-competitive provisions in Part IV of the TPA have a higher purpose threshold.¹⁸ However, as the ACCC submitted:

In introducing the telecommunications-specific regime, the Government considered that total reliance on the general provisions in Parts IIIA and IV of the TPA would not achieve its objectives as, among other things :

16 ACCC, *Submission 13*, p. 2.

17 Australian Competition and Consumer Commission, website, 8 February 2005, at: <http://www.accc.gov.au/content/index.phtml/itemId/54137/fromItemId/3744>

18 ACCC, *Submission 13*, p.3.

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- telecommunications is a complex, horizontally and vertically integrated industry;
 - anti-competitive cross-subsidies by the incumbent from non-competitive markets to markets in which competition exists or is emerging is a particular threat to the establishment of a competitive environment;
 - due to the fast pace of change in the industry and the volatile state of the industry, anti-competitive behaviour can cause particularly rapid damage to competition; and
 - there is considerable scope for the incumbent to engage in anti-competitive conduct because competitors in downstream markets depend on access to networks or facilities controlled by the incumbent.

The ACCC is of the view that the significance of these factors has not diminished over the time that the telecommunications-specific regime has been in place.¹⁹

ACIF

2.24 ACIF is an industry owned, resourced and operated company established to implement and manage communications self-regulation within Australia. Established as the peak self-regulatory body of the communications industry it has primary responsibility for the development of consumer codes, operational codes and technical standards. The ACIF was incorporated as a company of limited guarantee in June 1997.

2.25 ACIF's main functions include:

- the timely delivery of Standards, Codes and other documents to support competition and protect consumers;
- driving widespread compliance; and
- the provision of facilitation, coordination and implementation services to enable the cooperative resolution of strategic and operational issues.

2.26 ACIF comprises a Board, an Advisory Assembly standing Reference Panels, task specific Working Committees, Industry Facilitation Groups, Consumer Advisory Bodies, and a small Executive. It is the communications industry's peak body, leading the delivery of best practice in industry self-regulation. Membership of the ACIF is open to all participants in the communications industry, with fees assessed with regard to industry category and annual revenue. The ACA must be satisfied that ACIF represents all sections of the communications industry and consults all interested parties when developing codes and standards.²⁰

19 ACCC, *Submission 13*, p.3.

20 Alasdair Grant (ed.), *Australian Communications Regulation (3ed.)*, UNSW Press, Sydney, 2004, p. 47.

Telecommunications Industry Ombudsman (TIO)

2.27 The Telecommunications Industry Ombudsman was established in 1993 to provide free and independent alternative dispute resolution scheme for small business and residential consumers in Australia who have a complaint about their telephone or Internet service.

2.28 The role and powers of the TIO are set out in Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Its Constitution and Memorandum and Articles of Association govern the TIO's operations. It is administered by a Council and Board (appointed by and from industry, with the exception of an independent director) and managed by an independent Ombudsman.²¹

2.29 The Council is comprised of five TIO member representatives and five consumer representatives, with an independent Chairman. While the Ombudsman has responsibility for the day to day operations of the scheme, the Council provides advice to the Ombudsman on policy and procedural matters.

2.30 The TIO is an industry-funded scheme, deriving its income solely from members who are charged fees for complaint resolution services provided by the TIO. Members consist of telecommunications carriers, telephone carriage providers and Internet Service Providers (ISPs). A member is only charged complaint handling fees if the TIO receives a complaint from one of its customers. Therefore, the funding system acts as an incentive for members to keep TIO investigations to a minimum by developing and maintaining effective complaint handling and customer service procedures.²²

2.31 The TIO has the authority to make Binding Decisions (up to the value of \$10,000) that are legally binding upon the telecommunications company, and Recommendations (up to the value of \$50,000). The TIO also has the power to exercise its discretion not to investigate a case further if it is of the view that all relevant facts in the matter have been considered.

2.32 The TIO can only investigate a complaint if:

- The consumer has given the service provider a reasonable opportunity to address the complaint;
- The complaint is made within 12 months of the consumer becoming aware of the circumstances surrounding the complaint. The time limit may be extended by a further 12 months in certain cases;
- Legal proceedings have not commenced;

21 Alasdair Grant (ed.), *Australian Communications Regulation* (3ed.), UNSW Press, Sydney, 2004, p. 243.

22 TIO website, 17 February 2005, at: http://www.tio.com.au/about_tio.htm

- The complainant was resident in Australia at the time that the circumstances surrounding the event occurred;
- The complaint is made in good faith; and
- The complaint type is within the TIO's jurisdiction (set out below)

2.33 The TIO has jurisdiction to investigate complaints about:

- The standard telephone service;
- Mobile services;
- Internet access;
- Pay-phones;
- Delays in telephone connections;
- Printed and electronic White Pages;
- Fault repair;
- Privacy;
- Land access; and
- Breaches of the Customer Service Guarantee and industry Codes of Practice.²³

Institutional reform

2.34 In 2000 the Productivity Commission conducted a major review of broadcasting with a view to improving competition, efficiency and consumers' interests in broadcasting services.²⁴ The review referred to 'a degree of overlap' between the functions of the ABA and the ACA, and noted that 'a single spectrum manager would remove these overlaps' and improve efficiency in spectrum management.²⁵ However, the Commission concluded that while combining the two bodies might lead to some administrative efficiencies, there would be drawbacks if a single body were required 'to pursue multiple and sometimes conflicting objectives'. The Commission concluded that 'social and cultural objectives are better pursued independently, by an organisation separate from that which allocates spectrum'.²⁶

2.35 In August 2002, the Department of Communications, Information Technology and the Arts (DCITA) released a discussion paper on spectrum management.²⁷ The paper focussed in particular on whether changes in the roles and responsibilities of the

23 TIO website, 17 February 2005, at: http://www.tio.com.au/about_tio.htm

24 Productivity Commission, *Broadcasting*, Report no. 11, AusInfo, Canberra, 2000.

25 *ibid*, pp. 213-214.

26 *ibid*, p. 214.

27 *Options for structural reform in spectrum management: discussion paper*, DCITA, Canberra, August 2002.

ACA and the ABA would be likely to lead to efficiencies or other improvements. Submissions from both the ABA and the ACA supported a merger of the two bodies. Specifically, the paper sought industry and public views on three institutional reform options:

- a) creation of a single agency with responsibility for broadcasting, telecommunications, radiocommunications and online regulation
- b) transfer of the ABA's spectrum planning, licence allocation and enforcement functions to the ACA
- c) transfer of the ABA's broadcasting spectrum planning functions to the ACA.

2.36 Following this process, the Government determined that the only viable alternative to retaining the existing regulators as separate entities was the merging of the ACA and ABA into a single organisation with responsibility for broadcasting, telecommunications, radiocommunications and online regulation (option (a) above).²⁸

2.37 In August 2003, DCITA released a further discussion paper,²⁹ focussing on the key issues that would need to be addressed if the two bodies were merged. The discussion paper specifically ruled out any proposal to assume the ACCC's responsibility for competition regulation.³⁰

The Australian Communications and Media Authority

2.38 On 11 May 2004, in association with the 2004–05 Budget, the Government announced its intention to merge the two bodies, to create a new communications and media regulator called the Australian Communications and Media Authority (ACMA).³¹ It was argued that the creation of ACMA would have few implications for industry and the community, as there was no changes to the existing regulatory and spectrum planning frameworks for telecommunications and broadcasting. ACMA would retain the existing offices of the ACA and ABA throughout Australia, although it was proposed that some functions may be co-located over time.

2.39 It was proposed that in establishing ACMA the existing responsibilities of the ACA and the ABA regulating broadcasting, online content, radiocommunications and telecommunications be placed within a single regulator, thus enabling a coordinated regulatory response to converging technologies and services in areas as diverse as spectrum management and content regulation. Additionally, the ACA argued that the single regulator would also be better placed to respond to the statutory reviews of

28 DCITA website, 17 February 2005, at: www.dcita.gov.au

29 *Proposal for new institutional arrangements for the Australian Communications Authority and the Australian Broadcasting Authority: Discussion paper*, DCITA, Canberra, August 2003.

30 *ibid*, p. 2.

31 Hon D Williams AM QC MP, 'Australian Communications and Media Authority', *Media release*, Canberra, 11 May 2004.

digital television required in 2004 and 2005 under the Broadcasting Services Act 1992.³²

2.40 In his second reading speech for the main Bill, The Hon. Peter McGauran outlined the need for establishing ACMA:

The formation of ACMA is in response to convergence within the communications industry.... New regulatory structures are required to deal with these changes. It is becoming increasingly difficult for two separate regulators, one of which is primarily focused on infrastructure and carriage issues, to provide a holistic response to convergence. The establishment of ACMA will enable a coordinated regulatory response to converging technologies and services. The new authority will be better placed to take a strategic view of wider convergence issues.³³

2.41 The establishment of the new authority had in principle support from the ALP. Labor's Stephen Smith MP argued:

Labor supports this legislation as a necessary first step in addressing the increasing regulatory problems posed by the emergence of convergent technologies. It is the first step towards addressing this issue – a much delayed one at that, but in the final analysis it is a step in the right direction.³⁴

2.42 An outline of the main provisions of the ten bills which establish the ACMA and make consequential changes to existing legislation is provided in Chapter 3.

2.43 Technological convergence was argued by the government as being a key factor in the establishment of the ACMA. Similarly, Telstra submitted the importance in addressing issues of technological convergence:

Telstra understands that the policy motivation for the merger is to respond to technological convergence within the communications industry. Telstra agrees with the Explanatory Memorandum to the ACMA Bill that digital technologies are reshaping traditional telecommunications and broadcasting industry sectors by allowing new types of devices and services, necessitating a policy response.

Telstra supports the merger of the ACA and ABA. Greater coordination at the institutional level is a legitimate first step towards addressing technological convergence.³⁵

32 ACA website, 17 February 2005, at: http://internet.aca.gov.au/ACAINTER.5308464:STANDARD::pp=PC_4,pc=PC_1501

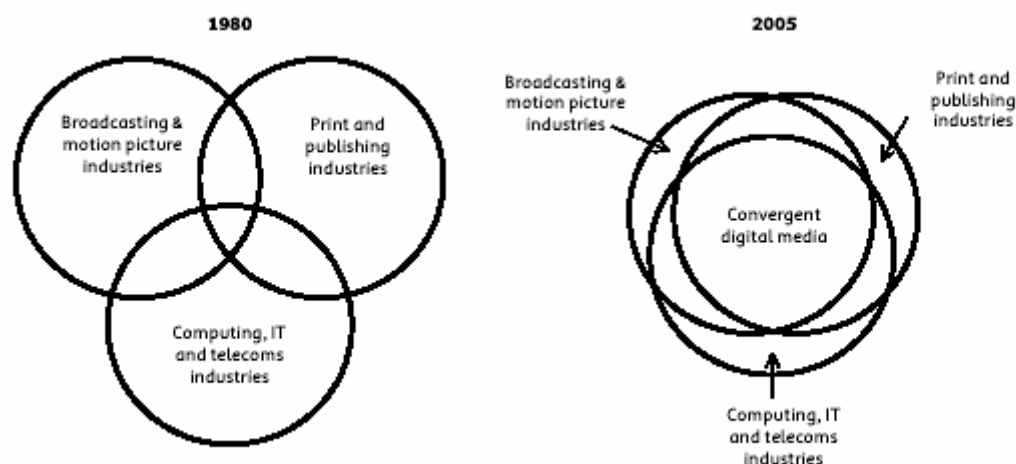
33 The Hon. Peter McGauran, *House of Representatives Hansard*, 2 December 2004, p. 4.

34 Mr Stephen Smith MP, *House of Representatives Hansard*, 9 February 2005, p. 88.

35 Telstra, *Submission 15*, p. 2.

2.44 Telstra noted in their submission that the term 'convergence' is generally taken as referring to the ability of different media to be provided over essentially the same type of digital platform. They illustrated this by the diagram in Figure 1 below.

Figure 1: Conceptual illustration of convergence over the last 25 years³⁶



2.45 In evidence the Australian Consumers Association outlined the significance of technological convergence in a digital environment:

Perhaps the most important change is the end of technological imperatives to vertically integrate the method of delivery and the form of content. In a fully digital world, this association is weakened or breaks down completely. A newspaper masthead could migrate to the Net – no printing press there. Voice could be carried over data channels over pay-TV cables, bypassing traditional exchanges. The Internet could deliver TV over the copper pair cables in homes currently used for voice – no need for radio frequency transmission. On the other hand mobile telephone data spectrum can be used for digital TV or radio.³⁷

2.46 The Committee was told that the new generation of mobile phones which offer Internet and SMS was an illustration of convergence and the regulatory challenges this poses, as the ACA had traditionally dealt with SMS issues, whilst the ABA had dealt with Internet and content issues.

2.47 The Committee notes that convergence which is argued by the Government as being a key factor in establishing ACMA is not a new trend. The Australian Consumers Association, Charles Britton told the Committee that problems posed by convergent technologies have been known for 10 to 15 years now. Internationally, Governments of other countries have attempted to address this issue for over half a decade. The Singaporean government established the merger regulator Infocom

³⁶ Telstra, *Submission 15*, p. 4.

³⁷ Australian Consumers Association, *Submission 4*, p. 1.

Development Agency (IDA) in 1999, similarly, the UK government established Ofcom in 1999.

Around the world, more and more media and communications regulators are moving towards convergent organisational structures, though with differing interpretations of what constitutes “convergent”. The FCC in the USA and the CRTC in Canada have been convergent for many years. Italy, Switzerland, Ghana, South Africa have set up convergent regulators in more recent years.³⁸

2.48 Australia's late move towards a converged regulator has resulted in reactive and superficial administrative response to converged technologies which are already available. It was submitted that:

In our view Australia has erred on the side of delay, and the changes proposed in the creation of ACMA are belated and do not sufficiently address the imperatives in the marketplace. The issues related to this dilemma have emerged particularly in the realms of media ownership, access to infrastructure resources at reasonable prices, the reverse problem of access to content by competing carriers, technical standards and consumer protection rules, complaints handling, and dispute resolution.³⁹

2.49 The delay in responding to converging technologies has led to both gaps and duplication in regulation and regulatory responsibility. These are discussed in more detail in Chapter 5.

2.50 Evidence to the Committee indicates that there was approval for the establishment of the new authority from the telecommunications industry. Many witnesses were critical of the current regulatory landscape which was argued to be complex and unfocused. Therefore, ACMA was seen as a streamlining of regulatory processes and was in keeping with current international developments:

The plethora of regulators we now have, is becoming increasingly difficult to maintain. The necessary focus is lacking, as well as, perhaps even more importantly, the necessary power to act decisively on the many contentious political and commercial issues the industry is facing. The trend around the globe is to bring the various regulatory authorities together under one umbrella. If it were vested with the appropriate powers, such a body would be able to regulate the rapidly converging industries.⁴⁰

2.51 AAPT noted that 'the merger of the ACA and ABA is an important step in improving the Australian communications regulatory regime.'⁴¹ Optus argued:

38 Mr Richard Hooper, *Convergence & Regulation*, Paper given at the TIO Conference, Melbourne, Australia, 25 November 2003. TIO website, 1 March 2005, at: http://www.tio.com.au/publications/other_publications/RichardHooper.PDF

39 Australian Consumers Association, *Submission 4*, p. 2.

40 Paul Budde Communications Pty Ltd, *Submission 1*, p. 9.

41 AAPT, *Submission 8*, p. 6.

Optus supports the merger of the Australian Communications Authority (ACA) and the Australian Broadcasting Authority (ABA) as put into effect via the ACMA Bill 2004. We consider that an integrated structure will allow emerging issues (including in respect of internet regulations and mobile content) to be optimally addressed in a manner which avoids jurisdictional overlap and associated inefficiencies and regulatory uncertainty.⁴²

2.52 Support for the authority was more fragmented within the broadcasting sector.⁴³ The Screen Producers Association of Australia⁴⁴, the Australian Film Commission⁴⁵, and the Media Entertainment and Arts Alliance⁴⁶, all supported the proposed merger providing that the social and cultural objectives of broadcasting regulation were maintained. The Committee heard that the merger:

has the potential to bring cohesion and certainty to the convergence of telecommunications technology with traditional broadcasting functions.⁴⁷

2.53 However, in contrast the ABC raised its concerns about the proposed merger:

The Corporation has consistently maintained that such a merger is unnecessary. It believes that the current regime operates very effectively, providing audiences across Australia with diverse and high quality broadcasting services, and it is unclear whether there is any advantage to be gained from changing it.

However, the ABC has also argued that if such a merger is to occur, it should be administrative only and not be accompanied by an alteration of the regulatory frameworks governing broadcasting and radiocommunications.⁴⁸

Conclusion

2.54 The Committee supports the establishment of ACMA and acknowledges that it is a necessary first step in reforming current regulatory inadequacies. However, the merging of two regulators with differing cultures and responsibilities without any review of their underlying powers and responsibilities will do little to improve the regulatory environment. The Committee is concerned that serious shortcomings with the current regulatory arrangements have not been addressed in the ACMA bill and examines these in subsequent chapters. It is of the view that the foundation of the ACMA represents an opportunity to update and improve the regulatory arrangements

42 Optus, *Submission 9*, p. 1.

43 Free TV Australia, *Submission 6*.

44 Screen Producers Association of Australia, *Submission 16*.

45 Australian Film Commission, *Submission 20*.

46 The Media Entertainment and Arts Alliance, *Submission 11*.

47 Screen Producers Association of Australia, *Submission 16*, p. 2.

48 ABC, *Submission 3*, p. 1.

for communications and media, meeting the challenges of technological change, infrastructure investment, consumer protection and cultural diversity in a competitive, commercial environment. That the Government has chosen an administrative merger rather than a more wide ranging modernisation of the regulatory arrangements is a lost opportunity for Australia.

