

**SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS COMMITTEE:
INQUIRY INTO THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY.**

**SUBMISSION BY THE DEPARTMENT OF COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS.**

The Government announced on 11 May 2004 that the Australian Broadcasting Authority (ABA) and Australian Communications Authority (ACA) will merge to form the Australian Communications and Media Authority (ACMA) by 1 July 2005. This commitment was also confirmed as part of the Government's policy in the 2004 Federal election.

The merger of the ACA and ABA focuses on institutional arrangements. There is no intention to change the existing regulatory and spectrum planning frameworks for telecommunications and broadcasting as part of the merger process.

Rationale for the Merger

The administrative merger of the ABA and the ACA is part of the ongoing attention to emerging convergence issues in communications and broadcasting.

Convergence is having a profound impact on the communications sector (including broadcasting) and the way consumers, both residential and business, use communications services. Changing business strategies, market structures and consumer expectations mean that the existing regulators are faced with new issues which often cross the traditional regulatory boundaries of their respective roles. It will become increasingly difficult for two separate regulators to respond to this changing environment.

The formation of the ACMA will facilitate a coordinated regulatory response to converged technologies. A combined authority will be better positioned to understand and respond to emerging market trends.

The responsibility of the ACMA for all spectrum management functions will enable the long-term regulation of spectrum management to be better coordinated, and to take into account both telecommunications and broadcasting interests. However, convergence will not remove the necessity to continue the often distinctive policy objectives for broadcasting and telecommunications. For this reason, the establishment of the ACMA will not mean the removal of the current, separate broadcasting and telecommunications regulatory environments. Changes to these frameworks will be addressed as and when needed.

The ACMA will also be well placed to respond to the outcomes of the statutory reviews of the digital television framework required to be undertaken in 2004 and 2005 under the *Broadcasting Services Act 1992* (BSA).

Consultation on Merger Options

A range of possible options were considered pertaining to the possible merger of the ABA and the ACA. These options included a full merger, retention of the status quo and the transfer of some functions between the ACA and ABA.

Stakeholders were consulted on these options in August 2002 and August 2003 through public discussion papers. The Government announced in May 2004 its intention to fully merge the ABA and the ACA.

Proposed Regulatory Functions of the ACMA

The ACMA will be responsible for regulating telecommunications, broadcasting, radiocommunications, and online and broadcasting content. The regulatory functions of the ACMA will be the combined functions of the ABA and ACA.

Under the *Radiocommunications Act 1992*, the ACMA will be responsible for the efficient allocation, administration and use of the radiofrequency spectrum. This spectrum is used for all types of wireless devices from television and radio through to remote controls and mobile telephones. The ACMA will be responsible for administering the non-competition related aspects of the telecommunications regulatory regime as set out in the *Telecommunications Act 1997*, and the *Telecommunications (Consumer Protection and Services Standards) Act 1999*. This regime includes consumer safeguards, universal service arrangements, technical standards and the management of numbering.

The ACMA's regulation of television and radio services will be provided under the BSA. This will include the licensing and content regulation of broadcasters as well as the regulation of Internet content.

The ACMA will also have a primary role in representing Australia's interests on communications issues at international forums such as the International Telecommunications Union.

As noted above, the merger of the ACA and ABA will focus on institutional arrangements. There will be no changes to the existing regulatory and spectrum planning frameworks for telecommunications and broadcasting, other than minor adjustments resulting from the creation of a single authority – for example where, under current arrangements the two agencies have formal obligations to consult each other before taking an action.

Outline of Legislative Package

The Australian Communications and Media Authority Bill 2004 establishes the ACMA and deals with matters such as functions, membership and meeting arrangements.

The Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004 contains transitional provisions and consequential amendments related to the establishment of the ACMA – for example changing references to the ABA and ACA to references to the ACMA in other Commonwealth Acts.

The 8 minor tax Bills make minor amendments to existing taxation legislation to reflect that the ACMA will assume the roles currently performed by the ACA and ABA under that legislation. There are 8 separate Bills for constitutional reasons. (Under section 55 of the Constitution, laws imposing taxation may only deal with the imposition of taxation and one subject of taxation only. As there may be an argument that the minor amendments to the taxation legislation modify the manner in which tax is imposed by that legislation, by reflecting the merger of the ACA and the ABA, the amendments to each Act are the subject of a separate Bill).

A detailed explanation of the regulatory provisions may be found in the Explanatory Memoranda.

Membership of the ACMA

The ACMA will be a body corporate consisting of a full time Chair, a full time Deputy Chair and between one and seven other members (who may be either full or part time). As with the current regulators, members will be appointed by the Governor-General. The Minister may also appoint such associate members as he or she thinks fit for special purposes including inquiries, investigations and hearings. The ACMA's staff will comprise persons appointed or employed under the *Public Service Act 1999*.

A member or associate member is to be appointed for a period of up to five years and is to be paid such remuneration as is determined by the Remuneration Tribunal. A person will not be able to be appointed, or re-appointed, as a member or associate member of the ACMA if the sum of the person's appointments as a member or an associate member of the ACMA exceeds 10 years. Previous appointments as a member or associate member of the ACA or the ABA will count towards this period.

The ACMA and the Financial Management Accountability Act

Following the Uhrig review of the Corporate Governance of Statutory Authorities and Office Holders, the Government has been considering appropriate governance arrangements for statutory agencies. The Government considers that establishing the ACMA under the *Financial Management and Accountability Act 1997* (FMA Act) is the most appropriate arrangement given that the ACMA will be administering regulation on behalf of the Government, will be almost exclusively dependent on the Government for its funding, and will collect public money. The FMA Act financial management arrangements will allow an appropriate degree of accountability to Government by the ACMA.

The Chair of the ACMA will be the Chief Executive for the purposes of the FMA Act.

The Government is aware of the need for continued independence for the regulator of the communications sectors. Thus the ACMA will be a body corporate and the power of the Minister to direct the ACMA will be equivalent to the current powers of the Minister to give directions to the ABA and the ACA.

The Minister's Powers to direct the ACMA

The Minister will have the power to give the ACMA written directions in relation to the performance of its functions and the exercise of its powers. However, the Minister will only be able give the ACMA a direction in relation to ACMA's broadcasting, content or datacasting functions, or its powers relating to the those functions, that is general in nature except as otherwise provided in any other Act. The power of the Minister to direct the ACMA would be equivalent to the current powers of the Minister to give directions in relation to the telecommunications, spectrum management and additional functions performed by the ACA and in relation to the functions of the ABA.