

Overview of ACMA's first year

EXTRACT FROM CHRIS CHAPMAN'S SPEECH TO THE AUSTRALIAN TELECOMMUNICATIONS SUMMIT 2006

What a challenge it is for a regulator in such a broad, dynamic environment, an environment that is undergoing enormous change.

Let's just take some random examples:

- Telstra recently started to project itself as a 'media comms' company, which presumably means it's a company that creates, aggregates and distributes purposive content over an increasing number of platforms and is not just restricted to owning and managing a telecommunications network.
- Apple, an ailing computing company a couple of years ago, reversed its fortunes and created and dominates a market with yet another gadget that you can carry around to play music. Television production companies now sell individual programs over the internet using iTunes—software developed to support that gadget.
- We are being asked to think of mobile phones as multimedia computers, offering high quality photo and music features—connect to the internet, check email, download songs, or even update your blog.

Will the next revolution in the telecommunications world be VoIP? Will it develop to the point of being the next most disruptive technology? ... Developments in technology have relentlessly driven change and contributed to the drive for a strong regulator ... with the capacity and flexibility to respond quickly to a rapidly converging communications environment, a willingness to fully enforce the rules and yet have the confidence and smarts to do so in a meaningfully targeted way... under ACMA's own Corporate Plan, we have resolved to become a leading convergence communications regulator, and to benchmark ourselves internationally.

The government's principal response to these pressures for change was to create ACMA from the two former regulators ... divided by what was really an artificial boundary around what the spectrum is used for. It was also driven by concrete evidence of convergence: content regulation issues were emerging in the telecommunications sphere, traditionally the province of the broadcasting regulator. The spread of audio-visual content to mobile phones is a 'live' example of blurring boundaries in this emerging new world.

Our introspection over the last year has merely reconfirmed the need for a broader cross-organisation perspective so ACMA can support the delivery of an efficient and effective communications market and ensure that consumers, customers and viewers are well-informed and well-served—the government's baseline expectations. ACMA's new internal structure ... reflects the converging nature of our environment and is designed to increasingly provide stakeholders with access to a more cohesive arrangement of responsibilities. The structure aligns our operations to reflect inputs to industry and outputs from industry.

RECENT INITIATIVES

An initiative we introduced earlier this year, as part of our commitment to consult with our stakeholders, was the use of public seminars and briefings as adjuncts to the publication of ACMA discussion papers. A successful example of this was the Wireless Spectrum Strategies 2006 seminar in March—an opportunity for informed stakeholders to engage in a robust



and useful discussion with the Authority and other stakeholders.

We have also released discussion papers on topics such as identity check processes for pre-paid mobile services and the future use of unassigned television channels, and are considering submissions. We have established a permit regime for submarine cables and are soon to release proposals for protection zones for cables of national significance. We have registered an enhanced code from ACIF for local number portability, developed a scheme to reimburse industry bodies and associations their consumer code development costs, and registered new wiring rules for installing customer cabling. We have introduced measures to encourage more consistent practices by the telecommunications industry and

improve information for consumers about changes to a standard form of agreement.

We released a guide for mobile chat providers on how to make their services safer for children and, seven weeks ago, launched the spamMATTERS reporting button so now you can delete and report spam at the click of a button. Since then, 3.8 million separate pieces of spam have been reported using this facility.

We're battling four for four in prosecutions of late, and last week confiscated transmitter equipment after the successful conviction of an unlicensed radiocommunications operator. We have also seen a person convicted for failing to comply with a notice under the Telecommunications Act—a criminal conviction. As the culmination of ongoing attempts by ACMA and its predecessors to

achieve compliance, we have secured a criminal conviction for operating an overpowered transmitter—a breach of the Radiocommunications Act. We succeeded in getting a 'very clean' judgement under the Spam Act and have made robust submissions as to penalty.

The message will come to be understood that ACMA is comfortable in taking enforcement action when it is necessary to do so ... although our unreserved preferred position is to secure negotiated outcomes through early dialogue. But when our goodwill is over-taxed, we'll act.

ACTIVITIES OVER THE NEXT 12 MONTHS

Do Not Call Register scheme

We are working hard on the implementation of the Do Not Call Register scheme for it to be operational next year. We have developed a comprehensive project plan and established a steering committee, with representatives from DCITA and the Office of the Privacy Commissioner to advise the Authority. Input by industry will be critical to the success of this project. We plan to conduct a public tender process for the operation of the register and we will also seek the views of industry and the wider community on the arrangements to administer it.

We will develop a telemarketing standard before the register begins, and will release a discussion paper for comment and meet with key stakeholders. We are also conscious of the need to make the standard such that we give industry enough time to prepare for its start. On the consumer side, ACMA is developing a wide-ranging education program so consumers will have the information they need about the scheme.

New approach to consumer consultation

We have developed a new approach to consumer consultation because ACMA is committed to consulting with its diverse range of consumer and industry stakeholders to make sure that this regulatory framework

addresses the broad concerns of the community. The consultation may occur through means such as direct discussions with interested organisations and people, formal submissions, research and public forums, as well as formal advisory committees.

ACMA inherited eight such committees and is reviewing them to determine whether they still provide the most appropriate and effective means of engaging with stakeholder groups on particular issues. Three new sets of advisory committee

arrangements have been established since the creation of ACMA.

And the way we renewed our Consumer Consultative Forum provides a good example. We asked questions such as: what role does or should institutionalised consumer consultation perform? How can we use institutionalised consultation to get the best out of our work with consumer groups? How can we consult in a way that's efficient for everyone concerned?

So we proposed a new model for consumer consultation and invited key policy, regulatory and quasi-regulatory bodies with an interest in telecommunications consumer issues to participate in their own right. These new arrangements provide a means for ACMA to consult with greater flexibility, such as maintaining a list of subject-specific experts to draw on for assistance on particular matters. And, in conjunction with the soon-to-be-formed Communications Alliance, we are introducing an annual consumer conference ... our congratulations to ACIF and SPAN on this forward-looking and convergent approach to the telecommunications industry.

We are determined to work assiduously with other sister regulatory bodies ... For example, the senior management teams of DCITA

and ACMA have instituted a monthly 'round table'. We are about to commence this initiative with the ACCC, have proposed this with Attorney-General's (especially in view of the heightened security focus) and have just agreed with the TIO to do likewise on a quarterly basis.

Security

ACMA's involvement in national and international security is at several levels, and includes a role in issues such as legal telecommunications interception and phone jamming. For

example, the 2005 Blunn review looked at changes in the legal interception legislation. The recommendations of the Blunn report are expected to be implemented in stages, subject to parliamentary consideration.

There has been an amendment to introduce a warrant regime for stored communications, such as email and SMS, and equipment-based interception. Other changes are also being considered and discussed with the telecommunications industry, such as an enhanced regime for the mandatory retention of telecommunications data. ACMA's role in enforcing industry compliance with interception obligations remains unchanged. We have created the necessary regulatory tools to allow importation and testing of mobile phone jammers in a shielded room. If this testing is successful, it may lead to a trial of mobile phone jamming in select Supermax prisons.

Some strategic challenges in telecoms

As we look forward, one of our strategic challenges in telecommunications is managing the transition from legacy regulation of services to a next-generation environment, in which applications, content and connection

will each have a different supplier. A great deal of existing telecommunications regulation is directed, either explicitly or implicitly, towards voice services, and there are embedded assumptions about the technologies that are used to provide the service.

For example, the numbering plan has been built up over the years based on zoning assumptions that in turn were premised on the capabilities of telephone exchanges of 20 years ago. Numbering or 'naming and addressing' is central to the design of any telecommunications network. New networks and services will outgrow the present numbering scheme and we will need new identifiers to support a more sophisticated range of services and provider supply models.

As new technologies like VoIP and its probable successors continue to allow 'applications' (like voice) to split out from the technologies over which they are provided (like the broadband networks), industry, policy makers and regulators like ACMA are going to have to take a journey together and think through what things that regulation has traditionally provided are important, what practical options exist for delivering those important things, and how to manage any transition that needs to occur ... ACMA will work and partner with industry to identify Australia's requirements and advocate these in international fora as we support industry innovation and make necessary changes to existing numbering arrangements.

On this subject, we are rethinking our international engagement: why do we do it, how can we do it better, be more effective? A major focus of our international engagement is preparing for the ITU Plenipotentiary Conference this November and the World Radiocommunication Conference at the end of next year. We are working very hard, along with other stakeholders, to satisfy the needs of industry and Australia in developing positions and proposals on agenda items that will have an impact on Australian communications [and]

achieve our aim of agreement within the region, through the Asia-Pacific Telecommunity.

We are preparing for our role in the inaugural Regional Telecommunications Independent Review Committee, expected to be convened by the Minister in 2008, to review the adequacy of telecommunications services in regional, rural and remote parts of Australia. We are working with DCITA and Telstra in preparing for future communications facilities so that regional Indigenous communities are not excluded from the promise of the future. We are participating in a working group, established by the Minister, on the closure of Telstra's CDMA network and its replacement by a new 3G network ... to advise the Minister, primarily on equivalence of coverage.

We are very actively investigating complaints about 'missed call' marketing—very short duration calls made to mobile phones with unknown numbers appearing on the mobile handset ... And we will shortly welcome the submission for approval of a self-regulatory scheme for consumer safeguards for users of mobile premium content by the Australian Mobile Telecommunications Association and the Australian Direct Marketing Association. Consumers will benefit again from increased protection.

Industry responsibility & code compliance

We want to make 'industry responsibility' work so we are reviewing the ways we interact with industry. One of these is our approach to compliance with industry codes. We aim to encourage self-regulation in the telecommunications industry by promoting a compliant industry that ensures the integrity of its industry codes. In doing this, we plan to be an evidence-based regulator.

ACMA will release in the next month or so a discussion paper that outlines a proposed approach to tackling code and related compliance issues. While the details have not been



fully decided, it is likely to encompass a structured, clearly-articulated approach that moves through well-defined stages of compliance action with a degree of certainty for all parties. This is based on a graduated regulatory approach, as articulated in ACMA's regulatory philosophy, and is common sense. The stages involve things like investigation, breach finding, remediation and sanction.

The approach is likely to involve more systematic and formalised communication with industry players with the aim of giving everyone more certainty about how non-compliance will be handled. We also will have a greater willingness to make public the details of individual cases when we have used our regulatory powers.

We are keen to work closely and cooperatively with partners in the self-regulatory framework, such as the TIO. ACMA and the TIO will work through issues together, particularly on an agreed approach to systemic complaints... Compliance and enforcement must work effectively in a self-regulatory environment and we each have a strong role to play in that.

... Industry needs to ensure consumers are aware of how they can complain and to whom. And that includes the TIO. I think AAPT's recent initiative to include TIO details on its invoices is a good example of going the necessary extra mile.

Enforceable undertakings

We have released guidelines about how we will make use of enforceable undertakings associated with compliance with telecommunications obligations and will generally publish the enforceable undertakings on our website. The undertakings are aimed at encouraging behavioural change in an organisation. They can address systemic problems rather than simply penalise isolated instances of non-compliance or misconduct.

This power has been successfully used by other regulators to require compliance, in a cost-effective and tailored manner. It is not dissimilar to the powers of the ACCC, ASIC and the Australian Prudential Regulation Authority to accept enforceable undertakings.

This strategy will, we hope, signal and reflect a robust approach towards

consistency and transparency in decision-making in the interests of an efficient market in the long term interests of end-users.

Effective regulation in a self-regulated industry relies on the premise that the regulator will take action when necessary. The acceptance of enforceable undertakings is part of a suite of regulatory measures available to ACMA and will be used as an alternative to, or in addition to, the exercise of other enforcement powers. ACMA seeks to use the minimum power or intervention necessary to achieve a sustained and ongoing commitment to compliance from regulated entities, and sees the increasing use of enforceable undertakings as a reflection of the more responsive, targeted and flexible regulatory regime that it will seek to foster.

The full text of Mr Chapman's speech is on the ACMA website at www.acma.gov.au (go to ACMA > Speeches).