



The Hon Malcolm Turnbull MP

MINISTER FOR COMMUNICATIONS

26 NOV 2013

Deregulation: Initiatives in the Communications Sector

The Coalition Government has made a strong commitment to reduce the regulatory burden for business and the community.

This is a high priority and focus in the Communications portfolio – and I am keen to move quickly on potential areas for reform. My Parliamentary Secretary, the Hon Paul Fletcher MP, will take the lead in assisting me in this work. Our aim is to deliver real reform in the communications sector through better regulation which lowers the cost burden on business while maintaining necessary consumer and other safeguards.

Real reform will only be achieved through careful consideration of a vast range of complex policy issues across the portfolio. The deregulation agenda therefore is not just a short-term process. We will need to work together over the coming months on aspects of the existing framework that are not easily removed or adjusted.

That does not mean that we cannot commence the process now of removing redundant or unnecessary regulation and reducing costs of regulatory administration. The Government intends to hold its first “Regulation Repeal Day” in the Parliament in early 2014, and I would like to seize this chance to remove unnecessary regulation in the Communications portfolio.

Already there have been some excellent suggestions from companies and organisations in the communications sector. I am now writing formally to call for your advice in three key areas at this stage. I also expect you will distribute this letter widely through your membership.

Redundant regulation

Firstly I would welcome your input on areas for reform that could be implemented in a short timeframe—potentially for the first Regulation Repeal Day—with a particular focus on burdensome and redundant regulation. What we are looking for here is regulation which has manifestly outlived its usefulness, is burdensome on companies in the sector without adding any value to industry or consumers, or which mandates the production of information that no-one uses.

It would be helpful if you could frame your responses in the form of the template at **Attachment 1**.

Reducing regulation: longer term

Second, I would appreciate your early advice about longer term regulatory changes. These are ones you think are important, and would produce real savings for companies in the sector—but which involve harder decisions for Government. You might also want to think about how existing regulation could be replaced with lighter touch, less intrusive or less costly regulation. The brief discussion paper at **Attachment 2** might be helpful in framing your responses in this area.

This input will assist the Government in deciding the relative priorities for reform and the appropriate process and timing for considering these more complex issues.

Measuring and Quantifying the Cost of Regulation

Third, I would welcome your thoughts about the approach we plan to take on measuring the cost impact of regulation in the communications sector on businesses, not-for-profits and individuals. This will be part of our Government-wide approach to estimating the cost of compliance with regulation today – and the savings to be achieved as we reduce regulatory burden.

Attachment 3 outlines our current thinking on cost elements. Does this framework make sense to you? How should costs in each category be measured? In time we will be asking for data about the costs incurred by companies in the sector in each category. Would this be better gathered from individual companies or through their related industry bodies? Are there other types of costs we are missing?

Next Steps

I would welcome an initial response from you, particularly on the near term opportunities, by **18 December 2013**. Responses should be sent to Deregulation@communications.gov.au.

You should feel free to speak with my Parliamentary Secretary Mr Fletcher (02 9465 3950) about your response. You can also speak with Ms Nerida O'Loughlin, the Department's deregulation officer, on 02 6271 1534 or at Nerida.O'Loughlin@communications.gov.au.

My Parliamentary Secretary and I look forward to working with you on this important reform agenda.

Yours sincerely



Malcolm Turnbull

Attachment 1: Proposals for short-term deregulation reform

		Response
1.	Description of relevant regulation	
2.	Policy underlying regulation	
3.	Reasons regulation is no longer needed/could be amended	
4.	Proposal to remove or amend (if amend, please describe amendment)	
6.	What impact removal/amendment will have on industry	
7.	What impact removal/amendment will have on consumers/individuals	

**DEREGULATION IN THE COMMUNICATIONS PORTFOLIO
FRAMING PAPER
NOVEMBER 2013**

Context

The Australian Government is committed to reducing the regulatory burden on industry to encourage innovation and boost productivity across the economy.

Although some degree of regulation may be an essential element of efficient markets, excessive and unnecessary regulation can reduce productivity and investment and stifle growth.

The communications sectors—broadcasting, telecommunications, and radiocommunications—are subject to substantial levels of regulation. This regulation goes well beyond market design and technical regulation. It reflects a complex balance of public policy objectives including access and social inclusion, competition and choice, consumer protection, public safety, privacy and reliability.

The Government considers that there is substantial opportunity for reducing the regulatory costs of business in the communications sector, while maintaining important and enduring outcomes for the Australian community.

The rapid changes in the communications sector also make it timely to consider whether the current communications regulatory framework remains appropriate for the modern communications environment.

For example, while radio and television continue to be popular and influential in Australian civic life—with commensurately high level of regulation—their position is being challenged by a combination of general economic conditions and the rapid growth in online and mobile services. These new services and sectors compete with traditional brands for advertising and erode audiences. Demand for high-quality programming remains strong, but consumers increasingly want to see and use content on different devices at a time convenient to them.

Similarly, in telecommunications, radiocommunications and post, rapid technological change and innovation is changing the way most Australians communicate and the services they use. The rise of the digital economy and the digital citizen raises issues for existing regulatory structures in all these areas.

This short paper is intended to help frame a conversation about deregulation for communications industries and provide a backdrop for a more specific set of consultations on a range of short, medium and long-term regulatory issues.

It draws on current thinking on communications regulation as it relates to the traditional telecommunications, broadcasting and radiocommunications sectors to set out, at a high level, principles and concepts that might underpin any incremental assessment of communications policy and regulation, and guide a deregulatory agenda.

It is an important first step in what will be a complex debate about what parts of the current communications and media regulatory framework should be removed, simplified, or retained.

Existing objectives for communications policy

Broadcasting

The existing aims of broadcasting policy are enshrined as objects in section 3 of the *Broadcasting Services Act 1992* (BSA). There are 19 in all, which represent an accumulation of long-standing and more recent cultural, social, and economic aspirations for the broadcasting and production industries.

They also reflect the views of parliaments over more than two decades about (primarily) traditional broadcasting and include elements of the role of these media in 'nation-building':

- expressing a national cultural identity
- connecting remote communities
- informing the public
- underpinning the democratic processes.

The breadth of the objects of the BSA also means that unambiguous policy objectives for broadcasting are difficult to discern. It also means that measures often need to be balanced against a number of objectives, which presents issues for administration of regulation, particularly where there is a requirement that regulatory activity be focused specifically on 'furthering the objectives of the BSA'.

Telecommunications

There are currently 14 regulatory objectives for the telecommunications sector. These are set out in Section 3 of the *Telecommunications Act 1997* (Tel Act) and also apply to the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, which brings together consumer specific regulation related to telecommunications.

The objects must be read in conjunction with Parts XIB and XIC of the *Competition and Consumer Act 2010* which apply a telecommunications-specific competitive access regime. There are additional specific objectives for NBN Co Limited included in the *National Broadband Network Companies Act 2011* which set out Parliament's ownership and wholesale-only intentions for the company.

The primary objectives for telecommunications policy are to:

- foster the long-term interests of end-users
- promote the efficiency and competitiveness of industry
- promote the availability and affordability of services.

The regulatory framework is based on long-standing competition principles and telecommunications concepts including any-to-any connectivity; choice; and technological neutrality. As with broadcasting regulation, there is some tension between the regulatory objectives, however, such tension generally reflects legitimate competing interests in the telecommunications sector (as in others) which must be taken into account.

Radiocommunications

There are eight objects of the *Radiocommunications Act 1992*, all of equal weight. The most often referred to are the first two objects:

- to maximise the overall public benefit from using the radiofrequency spectrum by ensuring the efficient allocation and use of the spectrum
- to make adequate provision of spectrum for defence, national security, law enforcement and emergency services agencies, and other public or community services.

Regulation impacts the traditional telecommunications and broadcasting sectors and many small spectrum users (e.g. amateurs, wireless microphones), the government (especially the Department of Defence) and the scientific community. Again, there is some tension between objectives, particularly the first two. This reflects the legitimate competing interests for spectrum and also tension between notions of value (economic value versus broader concepts of value).

Principles of regulation – rationale for intervention

While it is the clear objective of the Government to reduce the overall burden of regulation, a commonly-accepted set of principles will help guide the way in which regulation is structured or whether any regulation should be retained in an area.

On a first principles basis, effective and appropriate regulation may embody a number of key elements.

- It should serve clearly identified public policy goals, and be effective in achieving those goals.
- It should establish rules that are clear, simple and practical for all users and that have a sound legal and empirical basis.
- It should produce benefits that outweigh the costs, including those imposed on industry (compliance), government (enforcement) and consumers (reduced innovation, fewer services, and higher prices).
- It should minimise market distortions and harness competition to deliver policy outcomes by aligning market incentives with regulatory objectives.
- It should be consistent with other regulations and policies, including those relating to competition, trade and investment.
- It should be as technologically neutral as possible, to avoid creating regulatory distinctions between similar services that are delivered differently.

At one level, the application of these principles could lead to a minimalist or purist set of objectives for communications regulation. This would provide the bare minimum of government intervention to enable the market to coordinate activities and produce services.

In practice, however, high-level concepts of ‘market failure’ alone are unlikely to be particularly helpful in guiding the development of communications regulation given societal expectations on the wide set of public policy outcomes to be delivered by the communications and media sectors.

A more practical conversation is needed about which objectives stand the test of time given the rapid movements in technology, services and consumer or citizen expectations.

‘Enduring concepts’

A more useful approach would seek to identify the broad groups of public policy objectives for the communications sector that have stood the test of time, regardless of changes in technology and consider the rationale for present and future intervention. The following list of such concepts draws on the *Enduring Concepts—Communications and media in Australia* paper prepared by the Australian Communications and Media Authority (ACMA) in November 2011.

- **Access to services / participation in society.** Citizens should enjoy reasonable and equitable access to communications infrastructure, services and the content necessary to promote their effective participation in society and the economy. Increasingly this extends to ‘digital literacy’.
- **Competition.** Markets should be open and competitive so as to encourage investment, innovation and diversity of choice. Regulatory settings should embody competitive neutrality across platforms and among market participants and minimise potential market distortions.
- **Efficient allocation and use of resources.** Policy settings should be coherent, appropriately calibrated and predictable so that a minimum level of service is available to all and public resources are used efficiently over time. This would include ensuring that radiofrequency spectrum is allocated efficiently, managed for technical and dynamic efficiency (i.e. efficient use over time) and efficient pricing. This should be balanced with rights holders being able to secure an appropriate return on their investment and/or intellectual property.
- **Diversity of voices.** There should be a diversity of major sources of information and perspectives expressed in the public sphere to provide and sustain an informed citizenry and health democracy. It is equally important that this information be fair, accurate and transparent.
- **Australian identity.** Australians should be able to experience Australian voices and stories when using or consuming media and communications services.
- **Values and safeguards.** Services should reflect community standards, meet community needs and be ‘fit-for-purpose’. Users should be provided with effective and accessible avenues of complaint and redress if standards are not met. In relation to content, children, in particular, should be protected from harmful material.
- **National Interest.** The communications sector settings should reflect the national interest both domestically and through international forums (for example, radiocommunications planning is governed by treaty). Citizens should be confident that their use of these services is secure and they are protected, for example, from electronic attacks and fraud. Ensuring adequate access to spectrum resources for defence, national security, law enforcement, emergency services and other public and community services (such as meteorology and the scientific research community) is also important.

Each of these concepts arguably remain in the public interest regardless of the technology providing the service or the industry in which those services are produced – that is, they are, or should be, technology neutral. These concepts will form the initial basis for discussion with industry, consumers and government on future focus of government intervention.

Tools

The effect of convergence is fundamentally changing the efficacy of the tools available to government to address these enduring concepts.

Significant among these changes is a move from ‘siloes’ production and delivery – where services are produced and delivered by vertically integrated providers using a particular platform to a particular consumer device – to one of a ‘layered’ IP-based service delivery model which is ‘agnostic’ to infrastructure and distribution, and consumption potentially taking place on multiple devices, with multiple interactions in real-time (e.g. Twitter).

Layered approaches are reflected to a degree within each of the existing acts. However, layering is not considered across the acts. For many traditional services, reorientation to a layered regulatory model across current regulatory boundaries will be a significant shift.

At a practical level, the growth of online and mobile platforms and use of over-the-top and social media platforms profoundly challenges the way communications services are

regulated, and indeed whether regulation will be effective at all. For example, international jurisdictional issues are now at play which previously had virtually no impact on traditional content businesses. Other non-regulatory tools may be available and prove more effective.

The following provides an outline of the range of 'tools' available to government to deal with the enduring concepts.

- **Black letter law:** primary or subordinate legislation (including regulations and delegated instruments) that requires or prohibits particular actions or behaviours from industry participants. Likely to have a place in establishing 'ground rules' for infrastructure provision and for industries that require some government authorisation (such as a licence), although shortcomings will remain at the application / service level and for user-generated media.
- **Administered law:** standards, directions or 'service provider rules' made by the relevant regulator (the ACMA or the Australian Competition and Consumer Commission) to affect the behaviour of participants in a particular sector or industry. More flexible than black-letter law, although with similar shortcomings.
- **Co-regulation:** a model whereby industry is given the opportunity to self-regulate in the first instance, supported by sanctions and a more explicit role for the regulator / legislation if self-regulation is found to fail. The experience of the past 5 to 10 years suggests that co-regulation is only effective where an industry is clearly defined with small number of participants. Fragmented and heterogeneous markets, as is increasingly the case for audio-visual content, are not well suited to co-regulatory models in which codes are required to be agreed by all or a substantial sector of the affected parties.
- **Quasi-market instruments:** for example, mandating a particular outcome via black-letter law or regulation (such as an overall target for children's content), and establishing tradeable quotas to allow this target to be produced in the most efficient manner. This has been contemplated but never given effect in media policy, in part due to the high costs of oversight and administration, and lack of immediate interest by affected industry sectors.
- **Contestable funding / tax incentives:** relevant for encouraging investment in infrastructure or services in non-commercial areas, Australian identity (provision of Australian content) and to a lesser extent, diversity of voice (provision of news services). The Government could make available incentives for the provision of particular infrastructure, services or content genres as an alternative to regulation.
- **Self-regulation:** allowing industry to establish appropriate benchmarks for the provision of services and to assess and respond to consumer complaints and concerns. As with co-regulation, this approach can work with clearly defined industries with few participants, but will struggle to accommodate fragmented and heterogeneous markets.
- **Education and awareness:** informing consumers of their rights and options in relation to communications and media. A consumer education function is likely to continue to have a place in terms of consumer protection initiatives (i.e. online safety and privacy).
- **Public sector provision:** Government can also directly fund activities required to achieve particular public policy outcomes, for example, as it does with content delivery through the SBS, ABC and NITV. However, this is a tool that is subject to fiscal pressures.

Different tools, or a combination of tools, will be required to effectively achieve outcomes. The relative merits of the use of these tools will also form part of the consultation process.

For more information

Deregulation Unit
Department of Communications
Email: deregulation@communications.gov.au

Attachment 3: Red tape costs

It is proposed that red tape costs will be classified as follows:

19. *Administrative costs:* These are costs incurred to demonstrate compliance with the substantive regulatory obligation or to allow Government to administer the regulation.

Examples of such costs are:

- (qq) making, keeping or providing records (eg, records of training, financial statements);
- (rr) preparing risk management plans or updating manuals and emergency plans;
- (ss) conducting tests and associated activities (such as storing information);
- (tt) making an application, for example, for a licence and associated costs, such as obtaining an expert report in connection with that application;
- (uu) notifying Government/a regulator of specific activities;
- (vv) conducting internal inspections and audits to demonstrate compliance with a regulation; and
- (ww) cooperating with Government inspections and audits.

20. *Substantive compliance costs:* These are costs incurred in relation to the substantive regulatory requirement and are typically capital or production costs.

Examples of such costs are:

- (ee) providing employees with training to ensure they understand and comply with a plan or other arrangements to meet regulatory requirements, including fees paid to a training provider or institution;
- (ff) providing information to third parties, such as preparing disclosure statements, labels and signage to provide information to consumers;
- (gg) undertaking actions set out in a risk management plan or undertaking actions and purchasing inputs to ensure compliance with a law;
- (hh) purchasing and maintaining plant and equipment to meet a regulatory requirement;
- (ii) operational costs such as personnel costs of staff, supervision, overseeing and coordinating costs of internal investigations.

21. *Delay costs:* These are costs incurred as a result of an application delay or an approval delay which, in either case, delays the commencement of a particular new business project.

This would include, for example:

- (m) application delay costs, which is the time that elapses whilst an entity is completing an administrative application requirement that prevents the applicant from commencing its proposed operations; and
- (n) approval delay costs, which is the average time taken between lodgement of an application and a regulator making a decision where the applicant is prevented from commencing its intended operations. This would include costs incurred by a telecommunications company as a result of time being taken to obtain a carrier licence once that had been applied for.

Such costs would include holding costs of assets, standby costs of capital and labour and lost income earning opportunities.

Red tape costs do not include 'business as usual' costs (for example, in carrying on normal business practice or complying with a State or Territory law). For the purposes of providing your response, please also do not consider financial costs (such as taxes or administrative charges)