

### Question 1 - What are the core design principles for collaborative regulation?

Digital transformation and the emergence of new technologies and business models is challenging our existing regulatory ecosystem on a domestic and global scale. Regulatory approaches, such as exclusively rules-based regulation, may lack the agility in responding to this dynamic environment. Collaborative and adaptive regulatory approaches which are focused on outputs, such as outcomes-based or principles-based frameworks<sup>1</sup>, may provide a more contemporary and targeted way of addressing some of these challenges across different platforms.

However, there is also potential for core elements of collaborative regulation to be adopted across other regulatory approaches such as direct and co-regulation. Three broad stand-alone design principles could be explored for embedding more collaborative principles into a range of regulatory approaches as follows:

- ***Regulation needs to move beyond traditional sectoral definitions***

Regulation of communications markets in a hyper-connected global environment and the increasing reliance on digital infrastructure by global economies means it may no longer be possible for regulators to focus efforts exclusively on regulated entities that fall within traditional sectoral definitions. Effective collaborative regulation will require regulators to regulate across various communications services layers (or the 'communications stack'<sup>2</sup>) and embrace a more expansive outlook of markets. This approach may see longer value chains and new partnerships emerging across related sectors and markets. A recent example in Australia is the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry currently underway, which is examining whether digital platforms should be brought into the regulatory framework for content delivery. It is also examining whether there is a need to regulate the activities of digital platforms in areas such as advertising market power, news literacy and choice, privacy and use of personal data and unfair contract terms.

- ***A focus on building trust and collaborative engagement***

Regulation of communications markets requires agencies to place a greater focus on building trust and partnering across both industry sectors and government, domestically and internationally. Collaborative regulation can be accountable in its design and implementation by including regular and transparent engagement and building co-operative partnerships. The ACMA has adopted new and innovative ways of working through efforts to disrupt illegal offshore gambling. We have seen early successes in working collaboratively with international gambling regulators, software distributors and platform operators. These new international partnerships have resulted in several prominent illegal gambling operations exiting the Australian market, while creating new opportunities for Australia to learn from the experiences of colleagues and participate in joint enforcement operations.

- ***Responsive, flexible and fit-for-purpose regulatory approaches, balanced with adequate compliance programs***

Collaborative and effective regulatory frameworks are fit for purpose, with different regulatory approaches adopted in response to different market conditions and consumer needs. Regulatory outcomes developed should be evidence based and measurable with the needs of various industry players recognised and considered. Regular review and evaluation of regulatory frameworks is also essential to ensure settings remain appropriate. However, this flexibility must be balanced with appropriate compliance and enforcement settings, with a greater emphasis placed on monitoring and data collection to minimise the risk of regulatory failure. The ACMA has recently established [a Scam Technology Project](#), following research and analysis into the effectiveness of current regulatory settings around unsolicited communications. Our research highlighted a need to consider more flexible approaches to managing scams. The project is investigating innovative and practical responses to disrupt scam call activity in telecommunications networks. It takes a collaborative approach to regulation of scams in the communications market by involving industry and regulatory agencies in the development of fit-for-purpose solutions to combat this growing problem.

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<sup>1</sup> A description of how outcomes based regulation differs to principles based regulation is outlined in Financial Services Authority, [A regulatory response to the global banking crisis; Feedback on the Turner review and DPO 9/2](#), September 2009, pg. 21

<sup>2</sup> Department of Communications and the Arts, [Review of the Australian Communications and Media Authority: Final Report](#), 2016, pg. 32

## **Question 2 - What benchmarks for regulatory excellence and market performance can form the basis for digital infrastructure regulation?**

As an evidence-based regulator, the ACMA has a strong focus on building our data, research and analytics capabilities to inform regulatory decision making and identify emerging regulatory issues. Our [compliance priorities](#) outline our key areas of focus for the year. Our research program covers industry, consumer and market research. The ACMA tracks key industry metrics relating to the state of digital infrastructure in Australia, which are published in our annual [Communications Report](#) series. These include the number of home and mobile internet subscribers, volume of data downloaded by access technology, levels of complaints about service providers, and information about the most popular categories of online activities for Australians. Where possible, the ACMA compares Australia's performance against that of other countries. The ACMA also monitors the financial performance of key industry players, including the capex, opex and revenue share of various companies, and we report on the main interests in major commercial television and radio networks and associated newspapers via our [media interests snapshots](#).

The OECD Best Practice Principles on the Governance of Regulators<sup>3</sup> is a framework which could be considered for measuring regulatory performance in digital infrastructure. This framework provides suggested regulatory principles for performance measures, indicators and evaluation.<sup>4</sup>

## **Question 3 - What new regulatory tools and approaches are at hand for enabling digital experimentation?**

Historically, Australia's regulatory settings have relied on traditional models of regulation, like co-regulation, self-regulation and rules-based regulation. Global digital communications, cross border digital platforms, technological change, consumer mistrust, and the emergence of new and unforeseen harms mean that these models are sometimes proving to be less effective in today's ecosystem. These challenges mean regulators need to tailor regulatory approaches to ensure they are fit-for-purpose and adaptive to the needs of consumers, industry and government. This may mean the adoption of alternative regulatory approaches or reviewing the appropriateness of regulatory settings and tools within current frameworks to embed more collaborative and responsive practices.

Outcomes-based regulation is one regulatory option which may provide alternative solutions to these regulatory challenges. By focusing on the outcomes or objectives that must be achieved, without prescribing the means of doing so, both regulators and regulated entities are better placed to adapt to changing environments, while allowing for innovative regulatory approaches to emerge organically.

Regulation in a digital ecosystem for the digital era must enable innovation. To this end, the ACMA is also actively monitoring the development and use of new regulatory tools that can provide industry with greater levels of flexibility and facilitate experimentation within current regulatory frameworks. We see benefit in examining successful examples of regulatory sandboxes, to see if this concept could have applicability in some aspects of the communications portfolio, such as spectrum management.

Evidence-based data-driven regulation is a key priority for the ACMA as articulated in our corporate plan. By employing data science, big data, AI, Internet of Things, and predictive analytics, data-driven regulation has the potential to improve regulatory efficiency and decision making, allowing for regulation to identify and respond quickly to harms built on a more robust evidence base moving away from 'one-size-fits-all' models. We would be interested in learning about successful examples of data driven regulation in other jurisdictions.

Various Australian government entities are also considering how new regulatory approaches could better enable industry to benefit from new technologies. Australia's independent scientific research agency, the CSIRO, has been piloting a 'regulation as a platform' project, seeking to reduce compliance costs by designing an easy-to-use platform that translates regulatory rules into digital logic. Other ideas being considered include a regulatory concierge service to help industry navigate technology regulation, guides and tool to clarify complex legislation, government statements of expectations to encourage regulators to more actively promote innovation and experimentation and issuing policy statements to provide industry with greater investment certainty prior to legislative processes being finalised.

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<sup>3</sup> OECD, [The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy](#), OECD Publishing, 2014.

<sup>4</sup> Ibid, pgs. 105-110