

Enduring concepts

Communications and media in Australia

NOVEMBER 2011

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Published by the Australian Communications and Media Authority

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Executive summary

Purpose

Enduring concepts is a companion piece to *Broken concepts* and forms part of the ongoing discussion from the Australian Communications and Media Authority (the ACMA) about the impacts of convergence on communications and media regulation.

Broken concepts sets out the problems convergence poses for the current legislative and regulatory framework for communications and media. Some of the existing regulatory approaches are under strain; some are broken.

This paper looks at the conceptual underpinnings for regulatory responses in communications and media markets. It seeks to identify those concepts that are of ongoing importance to media and communications in Australia notwithstanding the pressures of convergence—concepts which might therefore be characterised as enduring. The analysis:

- > considers the fundamental concepts that underlie the rationale for present and future intervention in media and communications markets ('enduring concepts')
- > briefly considers how these concepts may be applied in a converged media and communications framework.

The paper identifies the concepts that have been prominent in past policy thinking, together with several 'convergence concepts'; that is, enduring concepts that have been observed to coalesce around, or be accentuated by, the changes brought by convergence. The discussion that follows points the way to the possible application of enduring concepts to a layered technology framework for digital and IP-enabled media and communications.

Key conclusions

Enduring concepts

Concepts endure because they are of continuing significance to markets, government and society as a whole. Enduring concepts are not ways of responding—rather, they characterise the public interest objectives that regulation of media and communications might be expected to achieve.

Many of these concepts are manifest in existing media and communications frameworks. For example, existing media ownership and control mechanisms reflect the idea that a diversity of perspectives expressed in the public sphere is important to sustaining a vibrant and healthy democracy.

Convergence often requires concepts from existing frameworks to be recast, or the methods to achieve them re-evaluated, to accommodate contemporary realities. For example, present media ownership and control mechanisms reflect pre-convergent circumstances in which the delivery of opinion was localised to defined geographical areas. Today, however, content delivery platforms are national and global, and mechanisms to gauge 'influence' may require updating to reflect this.

Convergence processes also present fresh issues in media and communications which, in many cases, are elevating the significance of concepts not explicitly

expressed in existing legislative frameworks. Digital citizenship is a significant example of this phenomenon.

The ACMA has identified 16 concepts, which have been organised into the following broad groupings.

Market standards

1. **Competition.** Media and communications markets should be competitive so as to encourage innovation, excellent customer service and diversity of choice. Regulatory settings should reflect the desirability of competitive neutrality across platforms and among market participants.
2. **Quality.** Regulation should support access by Australians to a broad range of quality media and communications services that are commensurate in kind and quality with the demands of consumers. It should promote a range of quality choices, including the best available communications and media services.
3. **Redress.** The public is entitled to have confidence in media and communications safeguards that should appropriately reflect community standards and norms for consumer transactions. These safeguards should also provide users with effective and accessible avenues of complaint and redress if standards are not met.
4. **Efficiency.** Media and communications markets should be supported by policy settings and interventions which are coherent, appropriately calibrated and predictable so that services are provided—and public resources are used—efficiently over time.

Social and economic participation

5. **Access.** Citizens should enjoy reasonable and equitable access to the media and communications infrastructure, services and content necessary to promote their effective participation in society and the economy. Rights-holders should enjoy **reasonable and equitable access** to media and communications infrastructure to deliver communications services and content, and should be able to secure appropriate return on their intellectual property.
6. **Confidence.** Media and communications policy settings should be coherent, appropriately calibrated and predictable so that all parties are empowered to understand and exercise their rights and responsibilities. Responsibility for media and communications outcomes should be shared between government, industry participants and users.
7. **Digital citizenship.** Citizens and businesses should have the necessary technical proficiency and digital literacy to enable them to engage meaningfully and successfully with and through available communications and media services.

Cultural values

8. **Diversity of voices.** There should be a diversity of perspectives expressed in the public sphere to promote pluralism and sustain a vibrant and healthy democracy.
9. **Australian identity.** Australians should be able to experience Australian voices and stories when using or consuming media and communications services.
10. **Community values.** Delivery of media and communications services and content should reflect community standards.
11. **Localism.** Citizens should have access to media and communications services that are relevant to them and enable them to participate in their local community.
12. **Ethical standards.** Information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.

Safeguards

13. **Protection of the public.** Australians should be appropriately protected from harm when using media and communications, and Australians should have access to emergency services to protect life, health and safety of individuals and communities.
14. **Protection of children.** Children in particular should be protected from content or communications that are age-inappropriate or harmful to them.
15. **Digital information management.** The treatment of data by media and communications network operators, service providers and other rights holders should respect user preferences, relevant privacy legislation and applicable community standards.
16. **National interest.** Media and communications settings should reflect the national interest. This includes protecting Australia's interests domestically and promoting Australia's interests internationally through multilateral processes.

Applying enduring concepts

The analysis of enduring concepts can assist with identifying the appropriate design features of any new communications and media regulatory framework—one that will be flexible and adaptable to ongoing and global change.

Any discussion about media and communications frameworks needs to acknowledge that a number of developments—including potential solutions to existing problems—are already underway. These developments include technological developments, market changes and policy processes, such as digital switchover, the National Broadband Network (NBN), the Viewer Access Satellite Service (VAST), spectrum-sharing technologies and a range of public review processes.

Although different methods of intervention may be appropriate for each enduring concept, the application of these concepts in any new or reframed regulatory framework in this paper has a number of commonalities.

Flexibility

The pace of technological innovation in the digital environment is fast and arguably still accelerating, with commensurate effects on user requirements, industry structure and the effectiveness of institutional arrangements. Future frameworks will be unlikely to successfully predict change in this digital environment; rather, the tools (or ways of responding) applied to the delivery of public interest outcomes in media and communications would best be adaptable and sufficiently flexible to enable a *suite of options* rather than single prescribed methods which may lose effectiveness over time.

Calibration

Policy settings should be calibrated to suit particular circumstances—that is, they should be coherent (but not necessarily uniform) across media and communications markets. For example, while there may be public policy benefits in classifying certain types of content (films, video games and broadcast content), there are practical limitations on the capacity to take enforcement action with respect to overseas or user-generated content. Accordingly, policy settings related to the classification of content may need to be calibrated to the particular attributes and sources of that content, although with coherent approaches adopted to like content.

Global engagement

A key element of convergence is the globalisation of media and communications markets, which has a dynamic influence on the way that Australians source and engage with digital communications and media. At many levels in the supply and use of services, applications and content—from standardisation and harmonisation activity for spectrum and device standards to international collaboration on enforcement

action—global engagement is an underpinning pragmatic strategy for a digital internet economy.

Shared responsibility

The open and participatory nature of the internet has empowered users in the digital economy. These developments challenge industry-specific regulatory models that rely principally on industry obligations and national regulatory remedies. A future media and communications framework will confront the likely reality that national governments, industry regulators and industry-specific bodies can no longer *do* everything; as a consequence, responsibility for outcomes in media and communications must be shared between government, economy-wide and industry-specific regulators, multilateral institutions, suppliers and—importantly—users.

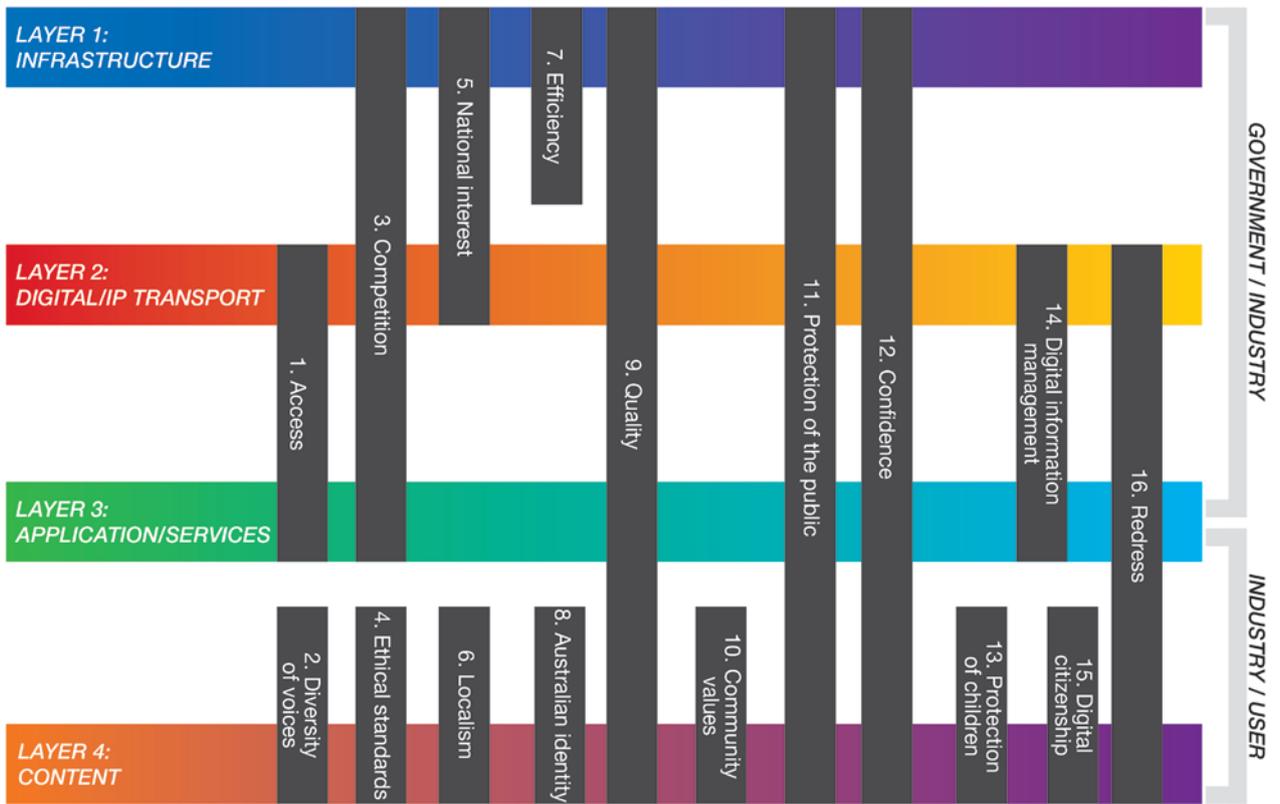
Convergence presents an opportunity to reframe and update existing concepts to better reflect the realities of a constantly evolving communications and media landscape, one that is growing in significance for and impact on our society.

A focus on these enduring concepts in considering the design of any future framework will assist an updated analysis of tools and interventions to ensure that converged communications and media regulation continues to work in Australia's public interest.

In applying those concepts, the layered nature of contemporary digital/IP approaches to service delivery should be considered. Legacy regulatory approaches befitted a communications and media environment in which infrastructure and services were mostly integrated and service delivery was generally tied to a single physical transmission platform. The layered approach allows for a targeted policy approach that applies legislative, regulatory or other controls at the appropriate point in the service and/or content delivery stack.

Figure 1 provides one example of how this might work. As a general observation, interventions targeted at layers 1–3 (infrastructure, transport and services/applications) are more likely to rely on government and industry involvement, while interventions at layer 4 (content) are more likely to feature user involvement (individually and collectively at the community level) to achieve particular outcomes.

Figure 1 Enduring concepts and the layered-technology approach



1 Introduction

1.1 Convergence in media and communications

Convergence—the merging of previously distinct platforms by which information is communicated—poses many challenges for the current media and communications legislative framework. The technology shifts to internet platforms, digital communications and faster broadband networks have blurred historical distinctions between radiocommunications, telecommunications, broadcasting and the internet. In particular, the regulation of content has been challenged by changing content delivery methods and business models, mobility and extended value chains.

For the ACMA, convergence is not a theoretical phenomenon—it has practical implications for the way the ACMA regulates changing dynamics in media and communications. The ACMA was created in 2005 as a converged regulator to bring together regulation of broadcasting, telecommunications, radiocommunications and the internet. This experience in media and communications regulation provides practical insights into the opportunities and challenges that arise from convergence processes, for industry, consumers and citizens.

1.2 About this paper

1.2.1 Context

Enduring concepts is a companion piece to *Broken concepts*, which sets out the problems convergence poses for the current legislative and regulatory framework for communications and media. The paper presents a bottom-up analysis of the legislative concepts which form the building blocks of current communications and media regulation. The analysis concludes that many individual regulatory instruments are either straining or broken, and the overall coherence of the regulatory scheme has fragmented as a result of technology-, market- or user-led changes that affect the way that content and communications services are created, distributed and used by Australians. The objectives of the existing communications and media policy framework are not necessarily applicable in a digital economy. Further, existing media and communications legislative concepts are not always able to respond to emerging areas of concern arising from technology, service and industry convergence.

Enduring concepts examines the grounds for regulatory responses by government in communications and media markets. It identifies those that are of continuing public and commercial significance in Australia and which persist independently of the technology, service or business model used to deliver content and services. These enduring concepts capture the benefits of convergence, as well as elucidating the protections that are considered important to retain and reframe in a convergent media and communications environment. They offer guidance about possible design features for a future media and communications framework.

1.2.2 Evidence

Enduring concepts draws on three main sources of the ACMA's evidence base:

- > **International comparative research.** The ACMA's research includes a review of international responses to convergence, which offers a way to test whether Australian concepts will be fit for purpose in the global market for content, services and applications. International experience also offers useful evidence of the approaches that show promise, and the pitfalls to avoid.
- > **User perspectives.** The ACMA has commissioned primary research to identify communications and media matters that are of real significance to Australian

citizens and brings these insights to bear on its understanding of community values.

- > **Regulatory experience.** As a converged communications and media regulator, the ACMA is at the forefront of convergence. The ACMA has a good understanding of the range of industry perspectives that pertain to communications legislation and regulation. The ACMA is also able to employ its direct practical regulatory experience to test whether outcomes can be given practical effect through regulatory or non-regulatory means.

1.2.3 Structure

- > **Chapter 2** identifies the enduring concepts in media and communications with reference to the policy objectives of the existing frameworks. It considers the impact of convergence (posed by convergence trends) to identify whether the enduring concepts contained in existing legislation are sufficient to deliver optimal outcomes for a future media and communications framework. It also identifies concepts which articulate existing aspects of the public interest that have not been defined or exist as a diffuse or undifferentiated part of the existing approach.
- > **Chapter 3** takes a preliminary look at how these concepts might be applied to the layered technology frameworks for digital and IP-enabled media and communications.
- > The **Appendix** provides a detailed analysis of each concept.

2 Enduring concepts

2.1 What is an enduring concept?

In the convergence context, concepts can be described as enduring when they retain lasting significance in the face of change. They embody or express the features of communications and media that government, society, markets and the community continue to consider valuable or necessary. Enduring concepts as described in this paper are not ways of responding—rather, they characterise, as simply as possible, the reasons why governments may intervene in media and communications markets if they believe there is a risk that these enduring concepts may not be realised by the market itself. For this reason, enduring concepts offer useful guidance for designing the shape of a new media and communications framework in Australia.

Because these concepts are the basis for intervention in media and communications markets, many of them are expressed (in various ways) in the policy objectives of the core Acts. However, the identification of enduring concepts must also take into account new problems and opportunities (that is, developments not envisaged by the objects of the core Acts). For example, globalisation of Internet Protocol (IP) technologies has resulted in content supply chains that often extend beyond the reach of national regulators. An analysis of new developments in media and communications helps to identify whether convergence processes are altering existing concepts, removing the rationale for them altogether, or require the articulation of concepts not previously explicit in legislation or other regulation.

2.2 Identification of enduring concepts

2.2.1 Concepts from existing frameworks

The policy objectives of the core communications Acts provide a useful starting point for assessing and identifying relevant enduring concepts. These Acts are:

- > the *Broadcasting Services Act 1992* (the BSA)
- > the *Telecommunications Act 1997* (the Telecommunications Act)
- > the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act)¹
- > the *Radiocommunications Act 1992* (the Radiocommunications Act).

A number of concepts of enduring significance are contained in other, purpose-specific Acts, including the *Telecommunications (Interception and Access) Act 1979*, the *Spam Act 2003* (the Spam Act) and the *Do Not Call Register Act 2006* (the Do Not Call Act). The general and telecommunications-specific access and trade practices provisions of the *Competition and Consumer Act 2010* (and the Telecommunications Act) are also applicable.

The objects of these Acts set out the required policy goods to be promoted or the problems to be addressed by legislation, regulation or other forms of intervention. The identification of enduring concepts in this paper follows the following logic:

1. What is the public interest to be promoted?
2. What is the core reason for intervening to protect or promote the public interest? How best may this rationale be described?
3. What is the current method used to protect or promote the public interest?

¹ The TCPSS Act was originally part of the Telecommunications Act. The core consumer safeguards of the Telecommunications Act were incorporated into the TCPSS Act in 1999.

4. Does the public policy good still have currency; does the problem still need solving?
5. Is the enduring concept itself affected by convergence pressures, or just the method of delivering it?

An important consideration when identifying enduring concepts is an analysis of developments in media and communications that were not envisaged by the objects of the core Acts. This leads to a further question:

6. What are the new issues or opportunities in media and communications? Do these developments alter the enduring concepts that arise from the core Acts, or do other concepts not previously articulated come into focus?

Table 1 sets out an example of the application of this analysis with reference to media diversity.

Table 1 Example of identification of enduring concept (existing legislation)

Step	Question	Analysis
1	What is the public interest to be served or the problem to be solved by the particular object/intervention?	Diversity in control of the more influential broadcasting services
2	What is the core reason for intervening? How best may this outcome be characterised?	Ensure a diversity of voices in the public sphere
3	What is the current method employed to serve the public interest/solve the problem?	A test is applied to ownership, control and reach of media services to ensure that no operator may own or control an unacceptable combination of broadcasting and print media services in defined geographic areas
4	Does this public policy good still have currency/problem still need solving?	Yes. Pluralism is at the heart of Australian democracy. Left to their own devices, the dynamics of communications markets may lead to the dominance of a small number of voices
5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	The existing method for ensuring a diversity of voices may no longer be optimal. This may occur because media influence is no longer solely predicated on geographically localised broadcasting services and print media. Although these media are still influential (and may be national), a number of alternative media may have influence (e.g. online services that extend the reach of an existing voice or opinion to an online audience). This may require recalibrated tests of influence and diversity

In this example, the enduring concept is the desirability of a **diversity of voices** in the public sphere. The analysis suggests that this concept has not been invalidated by convergence trends and will be applicable to a new media and communications framework. However, the current method of intervention employed to achieve the outcome is predicated on an industry-specific model that existed when the BSA was introduced in 1992. Accordingly, ensuring a diversity of voices in future will require a revised method of intervention, predicated on a new model that recognises the convergence of communications sectors and the rise of content media other than the broadcasting and print media business models.

2.3 The concepts

The ACMA has conducted an analysis of existing media and communications frameworks and has identified some 16 enduring concepts. Analysis informing the identification of these concepts—and a description of how these concepts are delivered in existing frameworks—is set out in the Appendix. The enduring concepts are separately recognised, but at times will be interdependent. For example, the quality of service offered to consumers will have an important effect on their confidence.

Concepts share some commonalities and for ease of reference they have been grouped under four broad categories that generally describe where interventions are directed. For example:

- > ‘market standards’ links concepts directed at industry structure and market behaviours
- > ‘social and economic participation’ includes concepts that examine the basis for individual and community participation in communications and media
- > ‘cultural values’ explores community expectations of standards to be adhered to in media and communications
- > ‘safeguards’ describes individual, community and national interest protections.

2.3.1 Market standards

1. **Competition.** Media and communications markets should be competitive so as to encourage innovation, excellent customer service and diversity of choice. Regulatory settings should reflect the desirability of competitive neutrality across platforms and among market participants.
2. **Quality.** Regulation should support access by Australians to a broad range of quality media and communications services that are commensurate in kind and quality with the demands of consumers. It should promote a range of quality choices, including the best available communications and media services.
3. **Redress.** The public is entitled to have confidence in media and communications safeguards that should appropriately reflect community standards and norms for consumer transactions, and provide users with effective and accessible avenues of complaint and redress if these are not met.
4. **Efficiency.** Media and communications markets should be supported by policy settings and interventions which are coherent, appropriately calibrated and predictable so that services are provided—and public resources are used—efficiently over time.

2.3.2 Social and economic participation

5. **Access.** Citizens should enjoy reasonable and equitable access to the media and communications infrastructure, services and content necessary to promote their effective participation in society and the economy. Rights-holders should enjoy **reasonable and equitable access** to media and communications infrastructure to deliver communications services and content.
6. **Confidence.** Media and communications policy settings should be coherent, appropriately calibrated and predictable so that all parties are empowered to understand and exercise their rights and responsibilities. Responsibility for media and communications outcomes should be shared between government, industry participants and users.
7. **Digital citizenship.** Citizens and businesses should have the necessary technical proficiency and digital literacy to enable them to engage meaningfully and successfully with and through available communications and media services.

2.3.3 Cultural values

8. **Diversity of voices.** There should be a diversity of perspectives expressed in the public sphere to promote pluralism and sustain a vibrant and healthy democracy.
9. **Australian identity.** Australians should be able to experience Australian voices and stories when using or consuming media and communications services,
10. **Community values.** Delivery of media and communications services and content should reflect community standards.
11. **Localism.** Citizens should have access to media and communications services that are relevant to them and enable them to participate in their local community.
12. **Ethical standards.** Information reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.

2.3.4 Safeguards

13. **Protection of the public.** Australians should be appropriately protected from harm when using media and communications, and they should have access to emergency services to protect life, health and safety of individuals and communities.
14. **Protection of children.** Children in particular should be protected from content or communications that are age-inappropriate or harmful.
15. **Digital information management.** The treatment of data by media and communications network operators, service providers and other rights-holders should respect user preferences, relevant privacy legislation and applicable community standards.
16. **National interest.** Media and communications settings should reflect the national interest. This includes protecting Australia's interests domestically and promoting Australia's interests internationally through multilateral processes.

2.4 Effect of convergence processes on the concepts

Many of these concepts predate the fundamental changes currently being brought about by convergence and generally are manifest in existing frameworks. They continue to be relevant in a converged media and communications environment. However, almost all of them (and the methods used to achieve them) are affected by convergence processes.

In some cases, the effects are relatively minor and the enduring concept may be transplanted largely unchanged from old frameworks to new ones. For example, the concept that there should be a diversity of voices in the public sphere has as much application to contemporary civic engagement and democracy as it had 200 years ago. Here, convergence processes have only affected the method of intervention—geographically localised statutory control rules that target particular types of traditional media. In a converged environment, the maintenance of a diversity of voices in the public sphere will require a more sophisticated measure of influence, one that accounts for a multitude of platforms and national—and sometimes global—sources of influence.

Finally, each enduring concept identified above is given expression in the three main communications and media Acts (broadcasting, telecommunications or radiocommunications), but with different application in each context. The role of radiocommunications as an input to both broadcasting and telecommunications service supply is reflected in them.

Results of these arrangements include additional costs to industry in understanding and complying with different requirements, potential confusion for individuals in understanding their rights and obligations, and complexity for regulators in applying

different measures and tests under different legislative arrangements that nevertheless seek similar outcomes. Convergence offers an opportunity to simplify—and develop a consistent expression of—the important public interest outcomes that are desirable in media and communications markets. The opportunity should be taken to enable relevant frameworks to be broadly applicable to media and communications arrangements and—importantly—be capable of adaptation to new circumstances.

2.5 Convergence concepts

In *Broken concepts*, the ACMA identified five main sources of pressure that are challenging the application and effectiveness of existing methods of intervention in communications and media regulation. These developments are:

1. **Technological developments.** Digitalisation is separating services from transport layers. Previously discrete media, such as voice telephony, broadcasting and internet applications, are converging into common interfaces on single devices.
2. **Market developments and associated changes in industry structure.** Liberalisation of telecommunications markets has resulted in multiple competing networks offering electronic services and content. Broadcasting, media, information technology and telecommunications markets are merging into a broad communications market.
3. **Changing consumer and/or citizen engagement.** Data delivery is increasingly ubiquitous and consumers are substituting data-based communications (for example, email, SMS and social networking applications) for voice services. Content production is also diversifying as users generate their own content and share it via the internet. Private and public service delivery is also shifting online. These developments are changing the way citizens interact with each other, procure services and participate in the public sphere.
4. **Globalisation of markets and regulation.** Extended supply chains and the global reach of the internet is challenging regulation designed for local and national markets.
5. **National digital communications strategies.** Direct public sector investment in communications infrastructure (for example, the NBN) is reshaping competition dynamics and presenting other public policy challenges, such as the delivery of consumer safeguards via industry obligations and the migration of telecommunications to IP delivery.

These developments are fundamentally challenging the methods used to deliver the outcomes of enduring concepts and, in some cases, affecting existing concepts to the extent that they must be recast to have relevance in a digital age. However, in other cases these developments are presenting new issues of concern—and new opportunities—not contemplated by existing frameworks.

Through its international and user research programs, the ACMA has identified a number of developments, which include user empowerment, packet discrimination, global supply chains and complexities of engagement with the digital communications environment.

In some cases, convergence processes have affected the media and communications environment to the extent that regulatory fundamentals must be recast or reinterpreted to be applicable to contemporary social and market realities. Some concepts may have been implicit or diffused across multiple areas and may not have been the focus of specific regulatory attention in the past. They have been characterised in this paper as ‘convergence concepts’, which are enduring concepts that have been observed to be accentuated or highlighted by the changes brought by convergence. The concepts which are identifiable specifically as a result of the changes brought by convergence are ‘Confidence’, ‘Digital citizenship’ and ‘Digital information management’.

2.5.1 Confidence

Current frameworks often ascribe particular responsibilities to particular institutions and industry parties. In a converged environment, however, our analysis suggests that that **confidence** in policy settings and confidence in the proper articulation and exercise of the particular rights and responsibilities of various parties will be an overarching requirement. Digital environments often require shared responsibility, such that users understand that (in some cases) successful outcomes will result from their own technical proficiencies and critical skills rather than solely from (reliance on) prescribed obligations imposed on particular government bodies or industry parties.

For example, the delivery of content across multiple digital platforms, coupled with globalisation, is creating ambiguity for some consumers in regard to classification arrangements, whereby some forms of content (films, television programs and video games) are classified under different arrangements from others (online content). In a converged environment—where there are practical constraints on the capacity to classify every form of content—confidence in classification arrangements will come, in part, from user-led interventions (for example, parental locks on devices, tailored settings on internet filters). In this respect, traditional conceptions of clarity—clear legislative and regulatory mechanisms, industry consultation, suitable lead times—need to be recast as ideas of shared responsibility, whereby media and communications policy settings are coherent and predictable and all parties are empowered to understand their rights and responsibilities. This is not to say that this empowerment, particularly of individual citizens, should necessarily be self-generated and may not result from actions of the legislature or regulator.

Confidence in using and engaging with the opportunities arising from new communications and media services is becoming a critical issue. Digital communications and media have changed the current focus, with a new emphasis on the role of the user in confidently engaging with converged communications and media opportunities. Responsibility for media and communications outcomes is spread across multiple actors in government, industry participants and users. Traditional approaches lack the flexibility and range of tools needed to resolve user and industry concerns in the following ways:

- > In an increasingly global environment, national regulatory approaches are diminishing in effectiveness.
- > Technological advances are shifting intelligence from the core to the periphery of networks, providing citizens and consumers with increased choice in service/application delivery and opportunities for content creation.
- > The broad social goods associated with digital access are challenging the capacity of sector-specific frameworks to deliver economy-wide initiatives. For example, the various education initiatives required to advance digital citizenship in a converged environment require perspectives that share implementation responsibility between the federal government (communications legislation and regulation), state governments (primary and secondary school education) and users.

Shared responsibility for outcomes and confidence in media and communications settings is emerging as an enduring concept of the digital age. The globalised, participatory and converged nature of media and communications facilitated by IP-enabled services requires new approaches to thinking about the role of rights-holders and users.

2.5.2 Digital citizenship

The pronounced increase in technical proficiency and digital literacy required for users to navigate their way successfully and securely online is a developing issue in media and communications. An analysis of these developments has led to the identification

of an additional concept in media and communications which is not explicitly addressed in the existing legislative framework—digital citizenship.

Digital citizenship is a concept previously embedded in the business models and technology of the day. Traditionally, very little proficiency was required to access communications services (dial a number or switch on a television set). Today, however, the expanding functionality of devices and product complexity requires a degree of technical proficiency—and, importantly, the critical skills to evaluate content and information—in order to engage confidently online with government, business and the wider community.

Historically, voice telephony and broadcasting services were the principal means for social interaction; and access to government, business and information services and news and current affairs. Now, however, data-based communications and online social networking are widely adopted and, in conjunction with the internet, provide alternative methods of social interaction and ways to access government, business and information services. Similarly, news and current affairs are available online as well as from traditional broadcast media and newspapers. With the rise of successful and widely accessible alternatives, the provision of access to voice telephony and broadcasting alone as mechanisms for socio-economic inclusion is being progressively challenged.

Skills and knowledge are particularly important in the privacy-related areas of location information and identity management—digital identity and reputation (often referred to as a person's digital footprint) is emerging as a key concern for users, with an expectation that there will be information and tools available to help them manage their digital identity. The requirement for a degree of literacy and an understanding of individual rights and obligations in a digital communications environment is becoming an important part of effective engagement in social, economic and civic life, but it is not recognised in existing frameworks or interventions.

One in five adult Australians reports not being very confident, or not at all confident, in their ability to manage security and personal information online. About a third of adult Australians (38 per cent) are interested in learning about managing their personal information online, using the internet safely (36 per cent) and asking a website to remove content that has breached their privacy (32 per cent).² For these reasons, online security and privacy concerns are identified barriers to confident use of digital communications and media services.

2.5.3 Digital information management

Traditional communications networks were largely vertically integrated, with one entity controlling the infrastructure, the passage of the communications signal and the service or content that was transmitted. Networks were built to provide a particular type of service. Digital/IP networks are less homogenous (many players now own the infrastructure) and the signals (IP packets) are typically undifferentiated. These developments have three key consequences for the treatment of digital information.

First, content provision can be separated from infrastructure ownership—anyone in the world with access to an internet connection can now provide content or services to anyone else with an internet connection, without having to make arrangements with network operators. In parallel with this development, technologies have emerged that are able to identify the particular applications or content contained in IP packets traversing networks. This has led to tensions over whether network operators should be able to prioritise (or de-prioritise) data traversing their networks on the basis of user

² ACMA, *Digital Australians—Expectations about media content in a converging media environment*, October 2011, p. 72, <http://engage.acma.gov.au/digital-australians/>.

or application type. This is because packet discrimination of this kind has implications for competition and innovation.

Second, the controls service providers and other organisations place on the uses of personal data is emerging as an important issue. Service providers can assemble personal data collected from users of their services. This data can be sold to advertisers, who are able to target advertising to particular users on the basis of their digital footprint. As a result, public interest concerns are emerging, particularly with privacy and online anonymity, safety and reputation management. In the online environment, privacy is emerging as a key issue for consumers' use of services.

Third, network standardisation has enabled data to be transferred seamlessly between different kinds of platforms and devices. As a consequence, there are increasing user expectations of data interoperability and portability. Also important, however, is the potential negative effect data homogenisation has on competition and consumer choice. Given the large amounts of personal data now stored on online applications (for example, Facebook) and user devices (for example, smartphones), there are trade-offs for consumers between walled-garden data scenarios—data security and consistent experience—and data portability—choice of service providers and devices.

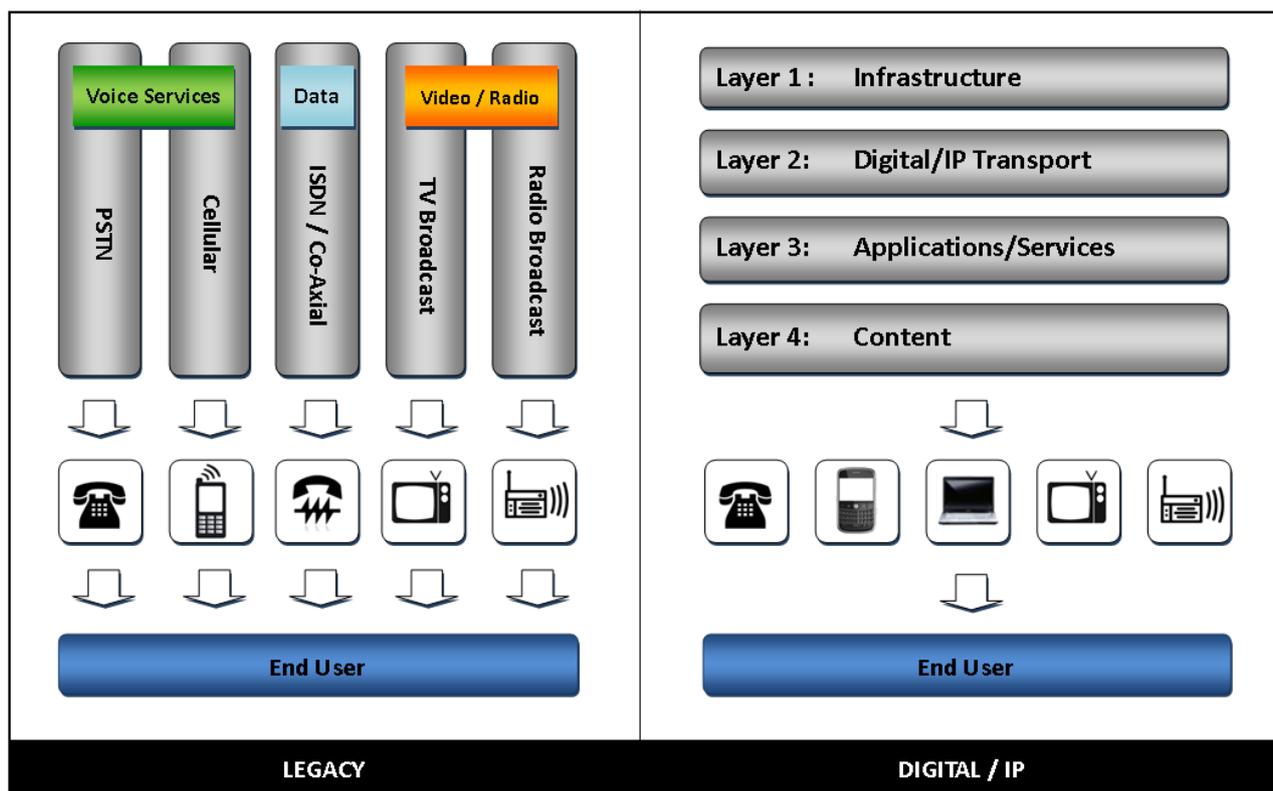
3 Applying enduring concepts

3.1 Existing arrangements

Legacy regulatory approaches have their origins in a time when infrastructure and services were mostly integrated and service delivery was generally tied to a single physical transmission platform. As set out in Figure 2, legacy regulatory arrangements are service-specific (radio, television, newspapers or voice telephony), location-centric (geographic licence areas, fixed-premises universal service obligation) and platform-specific (referring separately to radio, broadcasting and telecommunications networks). Until recently, in most jurisdictions different regulatory authorities provided oversight over each of these industries.

Convergence dynamics call for approaches that recognise ongoing innovation in communications technologies, the layered nature of contemporary digital IP approaches to service delivery (see Figure 1), the converged nature of the communications and media industries, the empowerment of the user, and the importance of facilitating access to, and participation in, the digital economy.

Figure 2 Convergence in networks and service layers



The purpose of this paper is to identify the enduring concepts arising in the converged media and communications environment. The following discussion is intended to point the way to the possible application of enduring concepts to a layered technology framework for digital and IP-enabled media and communications.

The layered approach allows for a targeted policy approach that applies legislative, regulatory or other controls at the appropriate point in the service and/or content delivery stack. Figure 3 provides one example of how this might work. As a general

observation, interventions targeted at layers 1–3 (infrastructure, transport and services/applications) are more likely to rely on government and industry involvement, while interventions at layer 4 (content) are more likely to feature user involvement (individually and collectively at the community level) to achieve particular outcomes.

Figure 3 Enduring concepts and the layered-technology approach



This approach is not unique. A range of layered regulatory models have been adopted in Malaysia, the EU and Korea, within the context of converged legislative frameworks and for a variety of regulatory purposes. For instance, a network layers model underpins the Malaysian licensing regime; and, in the EU, network layers concepts inform the approach to defining markets for communications competition regulation under the Electronic Communications Regulatory Framework (ECRF).³

For example, the delivery of the desired policy good of ‘quality’ in a converged environment will need to take into account the disaggregated nature of service delivery and the role of user choice. In a converged environment, different operators provide different infrastructure, applications and services at each layer of the technology stack, which will require interventions to be targeted at appropriate layers. For example, it is likely that citizen access to media and communications services through the NBN will mandate quality obligations on NBN Co at the infrastructure (layer 1) and transport (layer 2) levels for bandwidth access. Similarly, quality standards applicable to services and applications may need to be targeted at layer 3 service providers. Quality standards in content will need to target layer 4 participants and take account of the multitude of platforms for content delivery available in a converged environment.

³ More information on the international experience may be found in the ACMA paper *Converged legislative frameworks—International approaches*. *Broken concepts* also contains a number of case studies that apply the layered technology framework to existing legislative mechanisms.

This preliminary discussion is intended to illustrate the practical application of enduring concepts as a way to address many of the changed dynamics of converged communications and media. The delivery of enduring concepts in a future media and communications framework will necessarily involve further consideration of the impact of convergence processes on existing forms of intervention and the scope to develop new approaches that respond to new challenges.

The ACMA recognises that ongoing innovation in communications technologies and the layered nature of contemporary digital IP approaches to service delivery will have a profound impact on future regulatory structures. It welcomes the establishment of the Convergence Review, and offers this analysis as a contribution to the discussion and development of regulation in response to convergence dynamics.

Appendix

About the Appendix

The Appendix is intended to provide quick-reference summary information for each enduring concept identified in this paper. The entry for each enduring concept has two components:

1. **Identification.** This follows the analytical logic behind the identification of each enduring concept.
2. **Description.** This provides a short history of the enduring concept in existing frameworks, including some information about its current application.

4.1 Competition

4.1.1 Identification

COMPETITION	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets
	2	What is the core reason for intervening? How best may this outcome be characterised?	Competition in markets for services promotes innovation, diversity and affordability of service offerings and promotes the long term interests of end users
	3	What is the current method employed to provide the public policy good/solve the problem?	General access provisions under Part XIC of the <i>Competition and Consumer Act 2010</i>
	4	Does this public policy good still have currency/problem still need solving?	Yes. Australian fixed communications networks are typically provided by a single entity (e.g. copper customer access network, the NBN). Mobile networks are currently limited to three. Some infrastructure-based markets will tend toward monopoly if competitive access is not mandated
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	No new concept is required—fostering of competition is still desirable and appropriate. However, access regimes will need to take account of change in competitive dynamics under the NBN. The traffic management practices of network owners will also require consideration, particularly in the context of backhaul networks. Device interoperability and data portability will continue to be significant issues

4.1.2 Description

Competition enhances the welfare of Australians when it promotes innovation and service choice and places downward pressure on prices. In communications, giving rights-holders competitive access to the infrastructure through which media and communications services are supplied achieves the following outcomes:

- > promoting competition in markets for listed services
- > helping to achieve any-to-any connectivity for services that involve communication between end users
- > encouraging economically efficient use of, and investment in, communications and media infrastructure.

The application of this concept to Australian communications markets is relatively recent. The introduction of competitive access to telecommunications networks began in Australia in the early 1990s with the *Telecommunications Act 1991*. Full competition was introduced in 1997 with the passage of the Telecommunications Act and the

addition of the general access regime (Part XIC) to the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*). Part XIC established the competitive access regime for telecommunications by:

- > mandating access rights to new and existing carriers and service providers
- > facilitating commercially negotiated access arrangements.

The Radiocommunications Act introduced competitive, price-based allocation of the radiofrequency spectrum in 1992, but the majority of spectrum allocations are still managed through services-based allocation mechanisms (serving national interest requirements of defence, law enforcement and emergency service organisations). Similarly, in broadcasting, free-to-air broadcasters are provided access to valuable broadcasting services band spectrum for defined licence fees, recognising services supplied to the public.

The treatment of digital information by network operators, service providers and other rights-holders is emerging as a key issue in the digital economy. The two key competition-related issues are:

- > how much control network operators should have over the carriage of data over their networks (for example, packet discrimination)
- > the extent to which device interoperability and data portability facilitate choice.

The separation of content provision from infrastructure ownership

Anyone in the world with access to an internet connection can now provide content or services to anyone else with an internet connection, without having to make arrangements with network operators. In parallel with this development, technologies have emerged that are able to identify the particular applications or content contained in IP packets traversing networks. This has led to tensions over whether network operators should be able to prioritise (or de-prioritise) data traversing their networks on the basis of user or application type. This is because packet discrimination of this kind has implications for competition and innovation.

The standardisation of networks enables data to be transferred seamlessly across different kinds of platforms and devices, leading to increasing user expectations of data interoperability and portability. Also important, however, is the potential negative effect data homogenisation has on competition and consumer choice. Given the large amounts of personal data now stored on online applications (for example, Facebook) and user devices (for example, smartphones), there are trade-offs for consumers between walled-garden data scenarios—data security and consistent experience—and data portability—choice of service providers and devices.

The NBN is expected to be a key component of competition in the digital economy. The separation of retail interests from the wholesale access network will enable retail service providers to compete on an even playing field for the first time. The application of other existing network-specific competition interventions (for example, mobile terminating access) may continue to be required.

4.2 Quality

4.2.1 Identification

QUALITY	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To ensure that media and communications services are supplied at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community
	2	What is the core reason for intervening? How best may this outcome be characterised?	To ensure that the quality of service of Australian media and communications services meets acceptable community and commercial expectations
	3	What is the current method employed to provide the public policy good/solve the problem?	Network Reliability Framework, Customer Service Guarantee, technical regulation (device standards, cabling provider rules), licence conditions and Standard Marketing Plan, information standards
	4	Does this public policy good still have currency/problem still need solving?	Yes. Australians will continue to expect that services procured from commercial service providers meet reasonable quality standards
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Methods may require reconsideration to adapt to technological realities. Quality of service (QoS) in a digital world is concerned with jitter, latency and packet loss, but it may not be reasonable to expect managed QoS over the public internet. Similarly, vertically integrated end-to-end control of networks is increasingly rare today, which suggests that direct regulation of service QoS may not be appropriate. Packet discrimination considerations are also applicable

4.2.2 Description

Quality has a number of dimensions in media and communications. First, it refers to the market conditions that promote quality and innovation in media and communications content and services, which deliver users a diverse range of quality media services offering entertainment, education and information. This aspect of quality is promoted through general competition legislation and other economy-wide trade and competition provisions.

Second, quality refers specifically to prescribed levels of technical and product performance in service delivery, and in content production and information, to ensure that media and communications services and content are supplied at standards that reasonably meet the social, industrial and commercial needs of the Australian community.⁴ This manifestation of quality is provided for by a number of legislative and regulatory mechanisms across the telecommunications, broadcasting and radiocommunications sectors, often underpinned by the use of standards.

⁴ This concept is related to a number of other enduring concepts (notably fairness and accuracy).

Quality in telecommunications is prescribed through a range of mechanisms, including:

- > legislated obligations (for example, the Customer Service Guarantee)
- > legislated obligations on the universal service provider (the policy statement and standard marketing plan)
- > licence conditions on key telecommunications carriers (the Network Reliability Framework)
- > technical standards made by the ACMA relating to the quality of customer equipment and specified customer cabling.

In addition, Part 5 of the Telecommunications Act requires the ACMA to monitor and report to the minister on the performance of carriers and CSPs, with particular reference to consumer satisfaction, consumer benefits and quality of service. Self-regulatory arrangements under Part 6 of the Telecommunications Act are also applicable to the quality of telecommunications services including information standards such as standard forms of agreement.

Quality in radiocommunications services is managed by specific licence conditions made under section 107 of the Radiocommunications Act that pertain to distinct service types. The ACMA is also empowered to make device standards under Part 4.1 of the Radiocommunications Act.

In the broadcasting sector, quality conditions apply at the service level—for example, the Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998, which specifies operating standards for broadcast television licensees) and the content level.

The quality and shape of content in Australia is principally managed by licence area plans made under the BSA, program standards for Australian and children's content (the Australian Content Standard and the Children's Television Standards), and the various co-regulatory codes of practice made by applicable industry bodies under section 123 of the BSA. The ACMA is also empowered to make technical standards for the transmission or reception (for example, device standards) of digital television and radio.

The delivery of quality in a converged environment will need to recognise the disaggregated nature of service delivery and the role of user choice in service quality. Particular operators provide different infrastructure, applications and services at each layer of the technology stack, which requires interventions to be targeted at appropriate layers. For example, quality standards applicable to devices will need to be targeted at layer 4 manufacturers, while quality standards in content will need to target layer 4 participants (and take account of the multitude of platforms for content delivery in a converged environment). Quality standards in radiocommunications may require new licensing arrangements (for example, parameter-based rather than specific service-based licensing) to allow for flexibility.

However, quality standards aimed at layer 3 and 4 participants (such as retail service providers) will need to account for consumer choice in bandwidth and the need for transparency in network operator packet discrimination practices.

With choice between multiple products and pricing plans now the norm, information standards that enable consumers to compare products and plans are an issue of growing importance for communications consumers. For example, the *Reconnecting the Customer* report identified a public interest in carriage service providers (CSPs) giving consumers comparable information about key features of products and aspects of a service before entering into a contract.

4.3 Redress

4.3.1 Identification

REDRESS	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To provide appropriate consumer safeguards in relation to communications services
	2	What is the core reason for intervening? How best may this outcome be characterised?	To provide appropriate avenues of dispute resolution such that users have meaningful rights of complaint and redress
	3	What is the current method employed to provide the public policy good/solve the problem?	The consumer protection provisions in the <i>Competition and Consumer Act 2010</i> , Telecommunications Industry Ombudsman (TIO), ACMA broadcasting complaints/investigations regime, protection for residential customers against failure by CSPs to provide standard telephone services
	4	Does this public policy good still have currency/problem still need solving?	Yes. Mechanisms should exist so that disputes between suppliers and consumers may be dealt with fairly by an independent umpire
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Industry sectors are merging into a single ICT/communications sector—the rationale for sector-specific oversight mechanisms is losing force. Further, current arrangements lead to institutional ambiguity (e.g. broadcasting/radiocommunications complaints lie with the ACMA, telecommunications with the TIO and print with the Australian Press Council, but oversight for subscription TV services lies with state-based consumer affairs agencies)

4.3.2 Description

The provision of oversight and accountability mechanisms—the right of appeal to an impartial third party—is central to Australian legal and regulatory systems. Every industry sector in Australia (including government) has a regulator or independent umpire that is empowered to review and make directions in regard to industry decisions or behaviour. These regulators or ombudsmen may be industry-specific (for example, the Telecommunications Industry Ombudsman and Financial Services Ombudsman) or general (state-based consumer affairs agencies).

In communications, independent review of industry decisions is provided across all sectors, including the internet. Further mechanisms for redress are provided for by the judicial system. There are also producer avenues for redress (for example, ACCC arbitration of telecommunications access disputes for declared services), but these will be examined elsewhere in the context of competition.

In telecommunications (including internet access), the principal mechanism for redress is the service providers, followed by the Telecommunications Industry Ombudsman (TIO). The TIO scheme is set out in Part 6 of the TCPSS Act. All carriers and CSPs

who provide a standard telephone, mobile or internet service must register with the TIO, which investigates user complaints about carriage services and gives directions on these matters. Carriers and CSPs must comply with the scheme. As shown through the *Reconnecting the Customer* public inquiry, the Australian public expects certain standards for complaints-handling and redress from their telecommunications service providers, with a significant proportion of customers dissatisfied with current processes.⁵

Under Part 11 of the BSA, users or service providers may complain to the ACMA about program content or potential offences or breaches of licence conditions. In the case of complaints about program content or compliance with a code of practice, the complaint must be made first to the provider of the service. If it is not resolved within specified time frames or to the satisfaction of the complainant, the complaint may be directed to the ACMA. The ACMA must investigate these complaints and determine whether an offence or breach of licence condition or civil penalty provision has occurred. The BSA endows the ACMA with various enforcement powers to resolve these issues.

In radiocommunications, the ACMA will investigate interference problems when an authorised person has investigated the problem and found that it is the result of external interference. If the ACMA receives a complaint that a person has engaged, or is engaging in, acts that are causing interference or disruption to radiocommunications services, it may also refer the matter for conciliation.

Most decisions made by the ACMA are reviewable by the Administrative Appeals Tribunal (AAT).

In print media, the applicable mechanisms are self-regulatory. Complaints about the content of newspapers, periodicals and related websites must first go to the editor (or other representative) of the publication concerned. If the complaint is not resolved, it may be referred, in writing, to the applicable self-regulatory (non-statutory) industry body, the Australian Press Council.

In a converged environment, the rationale for separate avenues of redress is beginning to fray. The majority (two-thirds) of Australians believes they should be able to complain about online news content as they can about news on television, but this would require changes to the current industry-specific complaints schemes.⁶

Accordingly, future avenues of redress will need to be targeted at the appropriate technology layer or reflect, where appropriate, economy-wide mechanisms of redress (for example, broad-based consumer affairs and competition legislation). They will also need to be flexible enough to accommodate the increased expectations of user involvement in media and communications.

⁵ ACMA, *Community research into telecommunications customer service experiences and associated behaviours*, June 2011, at <http://engage.acma.gov.au/reconnecting>.

⁶ ACMA, *Digital Australians*.

4.4 Efficiency

4.4.1 Identification

	Step	Description	Rationale
EFFICIENCY	1	What is the public interest to be promoted/problem to be solved?	To promote the efficient allocation and use of public resources, and the efficient use, operation and investment in infrastructure by which media and communications services are supplied
	2	What is the core reason for intervening? How best may this outcome be characterised?	To ensure efficiency in the use of communications networks such that interference and spectrum scarcity are minimised, networks are competitive, media and communications settings are predictable (so that industry can make investment decisions with confidence) and the public receives an appropriate rent for exclusive private use of the radiofrequency spectrum
	3	What is the current method employed to provide the public policy good/solve the problem?	Radiocommunications licensing, carrier licensing, general access provisions
	4	Does this public policy good still have currency/problem still need solving?	Yes. Spectrum is a scarce public and private resource. Efficiency in network access and operation will continue to promote optimal outcomes for end users
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Post-convergence efficiency requires consideration of technological solutions to spectrum scarcity and interference, the role of wholesale provision of communications infrastructure (e.g. NBN) and the effect of retail competition in fixed communications. The continued role of licensing remains—both as a method to manage common resources and to collect public rents for private use of a national public resource

4.4.2 Description

Efficiency is a cornerstone of public policy in media and communications. As with the enduring concept of competition, its application to the communications sector is relatively recent and is particularly relevant to telecommunications and radiocommunications. There are two main facets to the application of this concept in communications:

- > ensuring the efficient allocation and use of resources
- > ensuring the efficient operation of, and investment in, telecommunications networks.

The key object of the Radiocommunications Act is to provide for the management of the radiofrequency spectrum in order to maximise, by ensuring the efficient allocation

and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum. This object is to be realised principally through:

- > the radiocommunications licensing regime, which enables price-based allocation of spectrum licences, to channel spectrum to its highest value use
- > class licences, which enable efficient spectrum use for 'public park' purposes, such as the use of low interference personal devices
- > the apparatus licence regime, which allocates spectrum to particular uses based on service type.

The Radiocommunications Act also contains a number of provisions that prohibit interference so that licensees may use spectrum without disruption.

In telecommunications, efficiency is to be realised principally through the 'long term interests of end users' legislative construct set out in section 152AB of the Competition and Consumer Act and the objects of the Telecommunications Act. The ACMA and the ACCC are charged with providing a regulatory framework that promotes the long term interests of end users, and the efficiency and international competitiveness of the telecommunications industry. A thing is considered to promote the long-term interests of end users when it:

- > promotes competition in markets for listed carriage services
- > achieves any-to-any connectivity in relation to carriage services that involve communication between end users⁷
- > encourages the economically efficient use of, and investment in, infrastructure by which listed services are supplied.

The Telecommunications Act also requires that policy settings be specific and predictable so that communications companies can invest in infrastructure with confidence.

A key element of efficiency in existing policy settings is the imposition of resource charges on participants in the communications industry to ensure that certain resources are used efficiently, the public receives a rent for private use of public goods and industry contributes to the cost of delivering public interest programs that improve the value of communications networks through externalities (for example, the Universal Service Obligation and the National Relay Service).⁸ Taxes imposed on resources include the annual numbering charge, which raises \$60 million a year from holders of numbers in Australia (except geographic numbers), and the apparatus licence tax regime, which is generally intended to reflect the value of the scarcity of spectrum. The ACMA also taxes telecommunications carriers to recover the cost of delivering the Universal Service Obligation and the National Relay Service, in accordance with the provisions set out in the TCPSS Act and the *Telecommunications (Universal Service Levy) Act 1997*.

Existing policy settings also assume it is efficient for communications markets to contribute to the cost of industry regulation through the application of a range of charges, including the annual carrier licence charge and various cost-recovery mechanisms applied to transactions or administrative decisions (for example, apparatus licence fees). The annual spectrum licence tax also aims to recover the

⁷ With any-to-any connectivity, each end user supplied with a carriage service is able to communicate, by means of that service, with each other end user supplied with the service, whether or not they are connected to the same telecommunications network. It is an important concept in ensuring the efficiency of telecommunications networks (see note 2).

⁸ See the ACMA's submission to the Henry Review for an analysis of the efficiency of these policy settings (available at <http://taxreview.treasury.gov.au/content/submission.aspx?round=1>).

amount of indirect costs of regulating the radiocommunications industry caused by spectrum licences.

The broadcasting licence fee is charged annually to free-to-air commercial broadcasters:

to provide a method of recompensing the nation for access by broadcasters to the broadcasting service bands and for the benefits granted to licensees who operate in a closed market created by legislative restrictions on the number of licences made available.⁹

Convergence processes offer considerable scope to improve the efficiency of media and communications markets, and the administrative efficiency of applicable legislative and regulatory provisions.

For example, the current telecommunications-specific efficiency construct—the long term interests of end users—may have utility in a broad media and communications context if it was expanded beyond economic efficiency measures to include public interest considerations. In a converged environment, the application of this concept to media and communications could consider the following:

- > the communications market as a whole
- > the benefits of seamless connectivity of IP networks in the application of any-to-any connectivity
- > the public interest benefits that arise from media and communications interventions outside a purely economic context; for example, the civic benefits that arise from a diversity of opinions in the public sphere.

In effect, the long-term interests of end users concept could benefit from the inclusion of the public-interest considerations that currently inform spectrum allocation and use—for example, a key object of the Radiocommunications Act makes it clear that the public benefit is served by the provision of spectrum for defence and related purposes. Equally, the public benefit measures that apply to the radiofrequency spectrum could benefit from certain efficiency mechanisms present in the long-term interests of end users construct—for example, the increased use of market mechanisms could improve efficiency measures in government use of the radiofrequency spectrum, with auction prices offset by public interest considerations).¹⁰ Harmonisation processes should also consider economy-wide efficiency measures that apply generally to Australian markets—for example, standardised reporting arrangements.

Second, a more flexible licensing regime will enable more efficient measures to achieve the maximum public benefit from the radiofrequency spectrum. Presently, spectrum is specified by the ACMA for specific uses—or service types—and licensing options—spectrum, apparatus and class licences—and then allocated on that basis. This means that frequencies are tied to certain licence and service types. Conversely, a single licence type that the ACMA is able to plan and allocate on the basis of particular circumstances (including technology developments) would enable it to allocate spectrum more flexibly, considerably improving the efficiency of existing use.

For example, current spectrum licensing arrangements specify large rural licensing areas which contain a number of different locales and allocate use of that spectrum to a single licensee. The licensees are generally interested only in populated areas—but there are areas within the defined licence area that are of interest to other parties (for example, remote mining companies). Present administrative arrangements provide a

⁹ Senator Ian Campbell, Second Reading Speech, *Television Licence Fees Amendment Bill 1997* (15 May 1997).

¹⁰ See 'National interest' at 4.15 for a discussion of harmonisation of government spectrum bands.

disincentive for the applicable licensees to allow third parties to use spectrum within their licence area (mainly because licence conditions make the licensee responsible for the conduct of third parties). Flexible licensing arrangements would enable, for instance, the ACMA to issue a separate licence to the third party with the permission of the spectrum licensee. More flexible secondary trading mechanisms would also assist.

Third, there is considerable scope to simplify and improve administrative efficiency in the current media and communications taxes and charges regime. Although existing sector-specific taxes have the potential to promote economic efficiency if they allow industry regulators like the ACMA to create price signals that enable the efficient allocation and use of the resources, there is a case for considering whether such sectoral taxes are the most economically efficient way to fund relevant policy objectives.

4.5 Access

4.5.1 Identification

ACCESS	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	Citizens should have reasonable access to media and communications infrastructure, services and content
	2	What is the core reason for intervening? How best may this outcome be characterised?	Citizens should have access to services of civic, social and economic importance
	3	What is the current method employed to provide the public policy good/solve the problem?	Broadcasting services regime, Universal Service Obligation, National Relay Service (NRS)
	4	Does this public policy good still have currency/problem still need solving?	Yes. Citizens require access to media and communications services to promote their effective participation in democracy, society and the economy. Individual and national prosperity comes in part from universal access to, and engagement with, media and communications services
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Both. Broadcasting and voice services no longer facilitate comprehensive socio-economic participation—access to digital networks is the new standard (the NRS is also under pressure to continue to ensure access for the disabled). However, the complexity of the digital economy means that access can no longer be facilitated solely with a service; user proficiency is required. The enduring concept of access is now linked to the new concept of digital citizenship

4.5.2 Description

The concept of citizen access to basic communications services—and its related concept, any-to-any connectivity—has shaped communications and media regulation for over a century.¹¹ In Australia, protected public access to communications services first surfaced in 1901 as a debate between those who saw the new Postmaster-General’s Department (PMG) as a commercial enterprise, and those who thought the PMG had a ‘duty to render to those who do not crowd themselves into cities’.¹² More

¹¹ The concept of any-to-any connectivity appears to have originated in the US in about 1907 (after the Bell telephone patents expired in 1894). At this time, phone companies refused to interconnect with each other and were not required to do so—customers required different sets of equipment to communicate with people on other networks). Theodore Vail, president of AT&T, developed the doctrine of ‘One Policy, One System, Universal Service’ as a means of unifying the system and securing legal protection for the dominant operator (AT&T). See Jean Paul Simon, ‘Universal Service: Between Socio-Political Mythology and Economic Reality – An International Cross Comparison EU-USA of the Regulatory-Economic Framework’, *Info*, Vol. 10, No. 5/6, 2008, pp. 138–151.

¹² Ann Moyal, *Clear Across Australia: A History of Telecommunications* (Thomas Nelson, 1984), pp. 90-91).

recently, the concept of access was reframed as part of telecommunications sector liberalisation, in part to address the potential for market failure and ensure loss-making communications services were provided to the public (such as emergency services, or rural and regional services).

Access to broadcasting services follows a similar history. The Australian Broadcasting Corporation (ABC) was first established in 1932 as part of the PMG to provide free public access to radio broadcasting services as part of the Australian broadcasting system. The ABC was later supplemented with commercial broadcasting stations and television broadcasting stations (commercial and public). The basis of the access provisions for broadcasting services was that national and commercial broadcasters would provide free, public access to broadcasting services of a defined quality in return for producer access to scarce spectrum on a free, or highly subsidised, basis.

The primary delivery mechanisms for access in the current legislative framework are:

- > 'universal service'—which is concerned with universal public access to a basic telephone service that has any-to-any connectivity with like telephone services
- > the free-to-air-broadcasting framework—which is concerned with public access to broadcasting services of a defined quality.

The access provisions of universal service are supported by a range of other mechanisms, including access for people with a disability (the National Relay Service) and access to services that facilitate contact to government, social networks and business (for example, operator and directory assistance services). Similarly, the provision of public access to broadcasting services is supported by closed captioning and mechanisms which facilitate community access to broadcasting spectrum for community radio and television.

Another key element of access to media and communications services is affordability. This is currently delivered by a range of mechanisms, including:

- > free-to-air commercial television (subsidised by advertising and low-cost spectrum access)
- > price control arrangements for calls (for example, the untimed local call and the Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005)
- > the universal service regime, which cross-subsidises high rural and remote area service delivery costs by imposing a uniform national access price to the copper customer access network.

From the ACMA's research, changing communications service preferences and uptake of new technologies reflect an increasing user expectation about the availability of a range of communications services. The implementation of the NBN is expected to have a profound effect on access to the digital economy. Connection to the NBN will facilitate virtually every facet of access—voice and broadcasting services will be applications delivered alongside a range of other services, including education and health services.

It is expected that the continued application of vertically integrated mechanisms will be required in certain areas for the medium term. For example, Telstra has contracted with the Telecommunications Universal Service Management Agency (TUSMA) to deliver copper-based universal service access in non-fibre areas for 10 years. Similarly, broadcasters use a vertically integrated delivery model for content produced and delivered on their networks, (although increasingly broadcasters are diversifying into online content delivery such as iView and time-shifted content).

Affordability mechanisms are expected to reflect existing arrangements for some time to come (for example, NBN pricing will be cross-subsidised in the same fashion as copper voice access), although new approaches may be needed once the NBN is fully operational.

4.6 Confidence

4.6.1 Identification

CONFIDENCE	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	Policy settings in media and communications should be precise and predictable so that all parties understand their obligations and entitlements
	2	What is the core reason for intervening? How best may this outcome be characterised?	To provide confidence for all participants in media and communications policy settings
	3	What is the current method employed to provide the public policy good/solve the problem?	Various mechanisms, including legislative and regulatory prescribed arrangements, clear obligations on industry
	4	Does this public policy good still have currency/problem still need solving?	Yes
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Convergence processes have substantially weakened confidence in existing approaches and mechanisms. Two processes in particular—the globalisation of markets and the empowerment of user—are challenging mechanisms that provide confidence through clearly defined, industry-specific legislative and regulatory prescriptions. In a digital age, responsibility for outcomes in media and communications will come from shared responsibility, whereby government, broad-based and industry-specific regulators, multilateral institutions, suppliers and—importantly—users have rights and responsibilities that are adequate, appropriate, deliverable and clearly understood

4.6.2 Description

Traditional media and communications frameworks mostly rely on legislatively prescribed, industry-specific regulation. A number of developments are placing pressure on these approaches. First, in an increasingly global environment, national regulatory approaches are diminishing in effectiveness. Second, technological advances are shifting intelligence from the core to the periphery of networks and devices, increasing consumer increased choice in service/application delivery and opportunities for content creation, along with obligations for managing communications and media. Third, the broad social goods associated with digital access are challenging the capacity of sector-specific frameworks to deliver economy-wide initiatives.

These developments challenge industry-specific regulatory models that rely principally on industry obligations and national regulatory remedies. A future media and

communications framework should recognise that national governments, industry regulators and particular industry bodies can no longer *do everything*—responsibility for outcomes in media and communications must be shared between government, broad-based and industry-specific regulators, multilateral institutions, suppliers and—most importantly—users.

Shared responsibility for outcomes is emerging as a new approach for creating and delivering a communications and media environment where industry and users have confidence to invest and engage. The globalised, participatory and converged nature of media and communications facilitated by IP-enabled services requires new approaches to thinking about the rights and responsibilities of users in the digital economy, the rights and responsibilities of rights-holders at each technology layer in communications service delivery, and the opportunities raised by economy-wide measures that can deliver positive market outcomes (for example, innovation) while limiting regulatory compliance costs. Global sources of content will also demand increased international cooperation and offer multilateral avenues for problem solving.

4.7 Digital citizenship

4.7.1 Identification

DIGITAL CITIZENSHIP	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	Citizens and businesses should have the necessary technical proficiency and digital literacy to engage with communications and media
	2	What is the core reason for intervening? How best may this outcome be characterised?	To ensure that Australians have the technical skills and digital literacy needed for effective engagement in social, economic and civil life
	3	What is the current method employed to provide the public policy good/solve the problem?	The concept of digital citizenship is not explicitly addressed in the existing legislative framework
	4	Does this public policy good still have currency/problem still need solving?	Yes. Digital citizenship is integral to full participation in Australian social, civil and economic life
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Meaningful access to—and civic, social and economic participation in—the digital economy is no longer primarily concerned with the infrastructure. The new concept of digital citizenship is linked to the concept of access . Users now require a range of skills to engage, including technical proficiency, critical literacy and a broad understanding of rights of responsibilities in relation to media and communications choices, security, identity management, digital footprint and others

4.7.2 Description

The process of technological convergence, along with the ongoing development of the information society, has changed the way citizens procure services, interact with each other, and participate in the public sphere. In Australia, the ABS estimates that e-commerce generated sales of \$123 billion in 2009, a 52 per cent increase since June 2008.¹³ Vital services such as education continue to shift online; in the US, for example, online enrolments are increasing at a rate of 21 per cent (compared to two per cent overall).¹⁴ Nearly 30 per cent of higher education students in the US now take at least one course online.¹⁵ Similar trends are evident in social and professional communications and networking, which is shifting online as patronage of sites such as

¹³ Cited in ACMA, *Australia in the Digital Economy*, pp. 29–30.

¹⁴ I. Elaine Allen & Jeff Seaman, *Class Differences: Online Education in the United States, 2010*, November 2010, p. 2.

¹⁵ *ibid.*

Facebook and LinkedIn continues to grow. Nielsen Online data shows that approximately 8.7 million Australians accessed at least one social networking site from home during June 2010, compared to 8.3 million during July 2009. These statistics are reflected in the US and UK.¹⁶

When the current telecommunications access framework was developed, voice telephony and broadcasting services were the principal means for social interaction; and for access to government, business and information services; and news and current affairs. Now, however, data-based communications and online social networking are offering alternatives to voice telephony for social interaction. Similarly, the internet is an alternative way to access government, business and information services, while news and current affairs are available online as well as from traditional broadcast media and newspapers. For these reasons, provision of access to voice telephony and broadcasting alone as mechanisms for socio-economic inclusion is being progressively challenged.

The complexities associated with enabling citizens to successfully engage with the information society suggest that the provision of a service—or the provision of access to a range of services—is not enough. Meaningful digital participation requires a degree of familiarity and competence with digital applications, an understanding of individual rights and obligations, and an ability to exercise them in a digital environment. That is:

... promoting the communications sector is about more than just the plumbing. The subject of digital literacy and the practical use to which broadband connections are put are also important considerations. Making broadband available to every household is one thing: ensuring uptake is quite another.¹⁷

Traditionally, very little proficiency was required to access services of social and economic importance—telecommunications proficiency required dialling a combination of numbers, and broadcasting proficiency required turning on a television or radio set and tuning it to the desired frequencies (which was often an automatic function performed by devices). Due in part to the lack of proficiency required, the obligation to provide the service could be passed almost entirely onto certain producers—for example, universal service provider(s) and broadcasters. Today, the level of technical prowess, user knowledge and competence needed to navigate and engage with digital communications and media—along with the decentralisation of communications networks and smart devices—make user skills and competence, and understanding of rights and obligations, critical requirements for future communications frameworks.

Concerns about online security and privacy are barriers to confident use of digital communications and media services. One in five adult Australians reports not being very confident, or not at all confident, in their ability to manage security and personal information online. About a third of online adult Australians (38 per cent) are interested in learning about managing their personal information online, using the internet safely (36 per cent) and asking a website to remove content that has breached their privacy (32 per cent).¹⁸ Digital identity management is seen as an area for further consideration when developing any new framework for digital communications and media.

For this reason, digital citizenship is emerging as a critical issue in the digital economy. Like traditional concepts of citizenship, digital citizenship comprises *rights* and

¹⁶ ACMA, *Australia in the Digital Economy*, p. 25.

¹⁷ Matthew Howett et al., *A Comparison of Digital Strategies for Economic Recovery*, p. 3.

¹⁸ ACMA, *Digital Australians*, p. 72.

responsibilities. The rights of digital citizenship may be characterised as having civil, social and political dimensions:¹⁹

- > **Digital civil citizenship** relates to ‘rights that are necessary for individual freedom’. Concerns about security and privacy are an expression of digital civil rights. Online identity management—the ‘digital footprint’—is an important aspect of civil digital citizenship.
- > **Digital social citizenship** refers to the right to economic welfare and security—the right to ‘share in the social heritage and to live the life of a civilised being according to the standards prevailing in the society’. The ability to access and use internet and communications technologies can be seen as a foundation right for Australian citizens—social rights claims appear to be the more developed and recognised in existing media and communications frameworks, demonstrated by strong international concerns with the ‘digital divide’.
- > **Digital political citizenship** concerns the right to participate in the political process; for example, electronic voting and participation. This category of rights also covers rights to freedom of expression; freedom of political association; free exchange of information; and government transparency, responsiveness and accountability.²⁰

The responsibilities associated with digital citizenship may be characterised as follows:

- > **Digital literacy**. Users, along with government education initiatives, have a responsibility to build the necessary technical proficiency and digital literacy to access, and participate successfully in, digital environments.
- > **Digital security**. Users, in concert with appropriate government interventions, have a responsibility for securing personal information online.²¹
- > **Digital etiquette**. Users, in concert with government education initiatives, have a responsibility to behave appropriately and ethically in online environments.

In combination, these skills and responsibilities enable digital citizens to participate safely and securely in the digital economy.

Interventions should aim to build resilience among users in the digital environment, encouraging users to take responsibility for their own online behaviour and that of others. One successful intervention of this kind is the *Cybersafety* program developed by the Department of Broadband, Communications and the Digital Economy and the ACMA, which provides information, resources and activities to help build critical skills and encourage engagement with behavioural issues such as cyberbullying. Other interventions to promote greater confidence in online environments could be to improve user awareness of unethical or illegal behaviours (for example, plagiarism, hacking information, downloading content illegally) and provide clarity on who is responsible for wrongful behaviour. This could include sanctions and enforcement strategies to ensure citizens take responsibility for their actions in the digital environment.

¹⁹ This typology is based on Marshall’s typology of citizenship and transposed to digital environment. See Marshall, T.H. and Bottomore, *Citizenship and social class*, 1991.

²⁰ These digital citizen rights emerged from a case study developed by the European Union as part of its program ‘Breaking barriers to eGovernment’, at www.egovbarriers.org/?view=project_outputs.

²¹ ACMA, *Developments in internet filtering technologies and other measures for promoting online safety*, April 2009, www.acma.gov.au/WEB/STANDARD/pc=PC_311304.

4.8 Diversity of voices

4.8.1 Identification

DIVERSITY OF VOICES	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To encourage diversity in control of the more influential broadcasting services
	2	What is the core reason for intervening? How best may this outcome be characterised?	Ensure a diversity of voices in the public sphere
	3	What is the current method employed to provide the public policy good/solve the problem?	A test is applied to ownership, control and reach of media and communications services such that no operator may own or control an unacceptable combination of broadcasting and print media services in defined geographic areas
	4	Does this public policy good still have currency/problem still need solving?	Yes. Pluralism is at the heart of Australian democracy. In the absence of intervention, communications markets (or other interests) may consolidate perspectives or favour certain opinions to the exclusion of others
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	No new concept is required—provision of a diversity of voices is still applicable. However, the existing method for providing diversity may no longer reflect market realities. This is because media influence is no longer solely predicated on broadcasting services and print media. Although these media are still highly influential, a number of alternative media have growing influence (particularly user-generated content and online services)

4.8.2 Description

At the core of liberal democracy is the idea of ‘pluralism’—that is, more than one perspective has validity, and there is social and political value in people expressing, and engaging with, these perspectives. The rationale for intervention is that in the absence of intervention, media and communications markets (or other interests) may consolidate perspectives or favour certain opinions at the expense of others, and that a diversity of voices has social value.

Diversity of voices in media and communications is currently facilitated by legislative controls on what forms of prescribed media may be owned and in what combination, and the geographic range in which content may be broadcast. This is augmented by national broadcasting policy (ABC and SBS) and the competitive provision of content over alternative networks (satellite and subscription television). A key element of the existing regime is its *selection* of particular media types that are considered influential—free-to-air television and radio broadcasting, and print media (including newspapers and magazines). The BSA defines a ‘media operation’ as a commercial television broadcasting licence, a commercial radio broadcasting licence, or a

newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

Using a points system, these rules proscribe situations whereby media operations control combinations of broadcasting and print media that result in unacceptable influence or control situations. An unacceptable media diversity situation will exist in a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the radio licence area is fewer than five, and in a regional licence area if the number of points is fewer than four. An unacceptable three-way control (cross-media) situation exists in relation to the licence area of a commercial radio broadcasting licence (the first radio licence area) if a person is in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence and a newspaper (associated with the first radio licence area).²²

While Australians have embraced an increasing range of media and content sources, participants in recent ACMA research were of the view that the internet allows for a greater diversity of views and provides citizens with a voice—something that broadcast media is not so easily able to do.²³

It is important that the effects of convergence on influential media not be overstated—traditional media and communications delivery platforms (and their content) remain highly influential. For example, recent research (based on audience data) demonstrates that the proportion of the population that uses commercial media—particularly radio and television broadcasting—for the consumption of political news, current affairs and editorial content is up to 80 per cent.²⁴ ACMA-commissioned research has yielded similar results, with 68 per cent of respondents indicating that traditional media (television, radio and print) is their main source of news.²⁵

This suggests that controls promoting diversity, which target prescribed media types to prevent undue influence over public debate, are still required. In the short term, the existing controls may require review to determine whether they can readily accommodate the growth in influence of online media—particularly online news and editorial content, which, due to its national audience, often circumvents the geographically localised nature of current media and communications controls. The compliance regime could be supplemented with a civil regime to provide more flexible enforcement options.

While diversity remains an important consideration in the medium term, it requires calibration in the context of the choices of communication and media that are now available in Australia. It may also require a more sophisticated measure of influence—one that considers all forms of content (including user-generated content) over communications networks.²⁶

²² In circumstances where more than 50 per cent of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence, and the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area.

²³ ACMA, *Digital Australians*.

²⁴ Sally Young, *How Australia Decides: Election Reporting and the Media*, 2010, pp. 31–33.

²⁵ See *Digital Australians*. The research involved an online survey of 1,250 respondents and 13 focus groups held in Sydney, Melbourne, Adelaide, Murray Bridge, Wagga Wagga and Coffs Harbour.

²⁶ In circumstances where more than 50 per cent of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence, and the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area.

4.9 Australian identity

4.9.1 Identification

AUSTRALIAN IDENTITY	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity
	2	What is the core reason for intervening? How best may this outcome be characterised?	Content should reflect and enhance Australian identity
	3	What is the current method employed to provide the public policy good/solve the problem?	Content quotas—Broadcasting Services (Australian Content) Standard 2005—and direct funding of, and tax offsets for, content production
	4	Does this public policy good still have currency/problem still need solving?	Yes. In an era of globalisation, with ease of access to content from all over the world, production of media that tells Australian stories is as important as ever. Many Australians will continue to expect that content reflects Australian values
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Promotion of Australian identity is still applicable. The role of national broadcasting is important in this context (as with other enduring concepts). However, the effectiveness of quotas or subsidy-driven policy settings in the commercial production of content to deliver access for Australians to content that reflects Australian identity and values warrants examination. In particular, the often inflexible nature of some of the mechanisms designed to achieve this enduring concept require examination in a converged media and communications environment

4.9.2 Description

A key historical objective of Australian broadcasting legislation is to promote the role of broadcasting in developing and reflecting a sense of Australian identity and character. It is considered important that citizens are able to experience Australian stories and hear Australian voices when viewing media and communications services.

The rationale for production quota and industry support mechanisms in Australian content is based principally on two arguments:

- > that the public interest is served by citizen access to content that reflects and contributes to the development of national and cultural identity
- > that such content is expensive to produce (relative to licences to broadcast foreign content) and—given the size of the Australian market—risks and disincentives exist for broadcasters and content producers to invest in Australian content production as a result.

For these reasons, Australian content in film and broadcasting is facilitated through a dual process of quotas and subsidies which support Australian content production industries.

Quotas for Australian content (including children's content) on commercial free-to-air channels are set out in the Broadcasting Services (Australian Content) Standard 2005 (the Australian Content Standard). The Australian Content Standard requires all commercial free-to-air television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6 am and midnight.²⁷ Similar arrangements are mandated for the ABC in the ABC charter made in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*. Under the BSA, subscription broadcasting licensees are required to maintain a minimum 10 per cent expenditure on eligible drama that includes an Australian program, an Australian/New Zealand program, an Australian co-production or a New Zealand program.

The production subsidies regime is managed by Screen Australia, a Commonwealth agency formed under the *Screen Australia Act 2008*. Screen Australia allocates funds for the development, production and marketing of Australian screen content, as well as for the development of Australian talent and screen production businesses. Screen Australia committed \$64.5 million in production finance in 2009–10. A further \$100 million was provided through the producer tax offset.²⁸

Australians continue to value having access to local content. In recent ACMA research, nearly all participants considered that Australian content should be shown on television, not only for cultural reasons but also to sustain a viable Australian television production industry.²⁹ There was continued support for government intervention in this area—67 per cent of online Australians considered it quite or very important for the government to put in place rules to ensure that high-quality content is available on the television; 58 per cent also regarded this as important for internet content.

Convergence processes are shifting user dynamics in the viewing of Australian content, although television continues to remain an important source of such content for audiences. Converged media environments give users more choice and a greater ability to select the device or platform over which they view content. The traditional market structure—whereby users passively consume content mandated by government and produced by defined industry players—is giving way to a more participatory environment, where Australians select and, in some instances, generate, content for themselves.

Although free-to-air broadcasters and film producers are facing pressures from the fragmentation of audiences and revenue—which may reduce the profitability of high-cost Australian content for the commercial media—demand for locally produced content is high and the commercial production of Australian content continues to be profitable. As the Department of the Treasury pointed out in its submission to the Convergence Review Framing Paper, the 40 highest rating programs in 2010, including sports broadcasts, were all produced in Australia.³⁰ For this reason, free-to-

²⁷ In addition, the *Television Program Standard for Australian Content in Advertising (TPS 23)* requires at least 80 per cent of advertising time broadcast each year by commercial television licensees, between the hours of 6 am and midnight, to be used for Australian-produced advertisements.

²⁸ Screen Australia, *Annual Report 2009–10*, p. 11.

²⁹ ACMA, *Digital Australians*.

³⁰ *Free TVs Top Programs 2010*, cited by The Treasury, *Treasury Submission to the Convergence Review: Comments on the Review Committee's Framing Paper*, 10 June 2011, p. 7.

air television stations are currently exceeding many of the quotas imposed for Australian content.³¹

Where in the past production quotas and industry support mechanisms were often directed at particular media, mainly television and theatrical features, as well as certain formats like television drama and feature films, the fact that content is now available through many different platforms and/or devices, and that different content formats are emerging, means that the appropriateness of particular market interventions may need to be re-examined. Perhaps an approach that is more flexible to audience demand, is less prescriptive and recognises that intervention should focus more on a layered than a platform model may be appropriate. Other enduring concepts such as quality, diversity and access also require consideration in this context.

The benefits of using a layered approach in promoting the production of Australian content include focusing incentives on the origination and availability of Australian content—that is, a more platform-neutral approach.

³¹ *ibid.*

4.10 Community values

4.10.1 Identification

COMMUNITY VALUES	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To ensure that media and communications providers respect community values in relation to content
	2	What is the core reason for intervening? How best may this outcome be characterised?	Content should reflect community values
	3	What is the current method employed to provide the public policy good/solve the problem?	The classification regime
	4	Does this public policy good still have currency/problem still need solving?	Yes. Many Australians will continue to expect that content reflects community values
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	In classification, new approaches will require shared responsibility, particularly user participation (e.g. voluntary internet filtering, parental locks). The increasing availability of user-generated content is a significant development in designing appropriate controls

4.10.2 Description

Australian community standards are reflected in the National Classification Scheme (although telephone sex services are separately regulated under Part 9A of the TCPSS Act). The classifications are set out in the *Classification (Publications, Films and Computer Games) Act 1995* and the National Classification Code. The National Classification Scheme requires the Classification Board to assess material—including traditional media platforms such as cinema, DVDs, computer games and publications—based on the impact of the classifiable elements of themes, violence, sex, language, drug use and nudity. Ratings are applied on the basis of this assessment, including G, PG, M, MA 15+, R 18+, X 18+, Refused Classification (RC), Unrestricted, Category 1—Restricted or Category 2—Restricted.

Classification rules also apply to online content. Prohibited content is defined by law as internet content hosted in Australia or hosted outside Australia that has been classified RC or R 18+. Content is 'potential prohibited content' if it has not been classified by the Classification Board, but the ACMA assesses it as substantially likely to be prohibited content. Under such circumstances, the ACMA may issue take-down notices to remove the applicable material from being hosted on the internet.

The ongoing importance of content classification and advice was confirmed in recent ACMA research where four in five online Australians with children under 18 said that classification, ratings and other information was quite or very important for finding suitable content for their children when watching free-to-air television. However,

Australians are looking for similar information to be available in an online context—65 per cent thought the same when watching television programs and movies on the internet and 64 per cent when watching user-generated content available on the internet.³²

The implementation of community values in content is undergoing similar pressures. For example, imposing national classification systems on global user-generated content uploaded on YouTube is problematic. These practical realities may be at odds with community expectations that online content classification and advice be available, not only for traditional content delivery platforms, but also for online content where that content is professionally produced.³³

Converged approaches may need to acknowledge shared responsibility for the reflection of community values and standards in content. This may involve multilateral processes, a greater degree of industry self-regulation (for example, the Apple App store classification system), national classification regimes and user-focused education programmes that encourage self-management of content classification requirements (for example, voluntary internet filters, parental locks on devices). In concert with classification processes for traditional media, these mechanisms allow Australians to tailor content to their, and their children's (if applicable), particular values and needs.

³² ACMA, *Digital Australians*, p. 58.

³³ ACMA, *Digital Australians*, p. 54.

4.11 Localism

4.11.1 Identification

	Step	Description	Rationale
LOCALISM	1	What is the public interest to be promoted/problem to be solved?	Citizens should have access to media and communications services that enable them to participate meaningfully in their local community
	2	What is the core reason for intervening? How best may this outcome be characterised?	Localism is a core component of social, economic and democratic interaction, and this should be reflected in media and communications
	3	What is the current method employed to provide the public policy good/solve the problem?	Requirements to broadcast matters of local significance, untimed local calls
	4	Does this public policy good still have currency/problem still need solving?	Yes. Localism still has currency—citizen engagement with local communities continues to be important socially, democratically and economically
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	The untimed local call is predicated heavily on legacy telecommunications infrastructure and may no longer be required—IP communications often mean that people can communicate nationally (and globally) for less than the cost of an untimed local call. Dissemination of matters of local significance may not require broadcasting controls—there are a number of alternative media that now contribute to meeting this need (e.g. social networking, local newspapers)

4.11.2 Description

The importance of local social and economic participation has long been recognised in Australia. Accordingly, communications that enable citizen access to local social networks, services and information of importance are protected under communications and media legislation. Localism is also an integral part of emergency warning systems (see below).

Two key mechanisms are applicable. First, Part 4 of the TCPSS Act mandates provision of the eligible local call, which requires CSPs delivering standard telephone services to provide untimed calls between specified local exchange service areas.

Second, the BSA sets out that specified commercial television broadcasting licensees are to broadcast minimum amounts of material of local significance. Licensees must broadcast at least a specified weekly and six-weekly quota of material of local significance to each of their nominated local areas within eligible time periods.

Local content obligations have been in effect for commercial television broadcasters in regional Queensland, New South Wales and Victoria since the Australian Broadcasting Authority imposed them in its Broadcasting Services (Additional Television Licence Condition) Notice 7 April 2003. The *Broadcasting Services*

(Additional Television Licence Condition) Notice 8 November 2007 (made on the basis of changes to media ownership laws) extended the local content requirements to licensees in Tasmania. Commercial radio licensees are also subject to local content obligations. Community broadcasting licensees are also major contributors of material of significance to local communities.

Convergence processes have had a substantial effect on existing methods to support localism. The untimed local call—predicated partly on communications infrastructure built around local exchange service areas—is becoming anachronistic in a communications environment characterised by flat-rate national calls, free global calls via peer-to-peer software (for example, Skype) and unlimited service offerings on fixed and mobile plans. Similarly, the ready availability of alternative technologies for disseminating material of local significance (for example, social networking) puts pressure on the existing arrangements for broadcast licensees.

While localism remains an important social objective, how it can be achieved requires careful consideration in light of developments in communications and media.

4.12 Ethical standards

4.12.1 Identification

ETHICAL STANDARDS	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To encourage providers of media and content services to be responsive to the need for fair and accurate coverage of matters of public interest
	2	What is the core reason for intervening? How best may this outcome be characterised?	To ensure that citizens are provided with fair and accurate information about current affairs so that they may participate constructively in Australian democracy
	3	What is the current method employed to provide the public policy good/solve the problem?	Self- and co-regulatory arrangements, general defamation legislation
	4	Does this public policy good still have currency/problem still need solving?	Yes. In an information economy, fair and accurate reporting of news and current affairs continues to be important
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	The method. Media consolidation is occurring, and a blurring of the boundary between news and editorial content raises important questions about the impartiality of news reporting. Some media outlets overtly run political campaigns. Self- and co-regulatory arrangements may no longer be adequate intervention mechanisms

4.12.2 Description

In a media context, this concept has its genesis in the notion that the function of the communications media is to act as a guardian of the public interest and a check on the activities of executive government and business. Accuracy and fairness in media is critical to ensuring that citizens are provided with fair and accurate information so they may participate constructively in Australian democracy.

Currently, the concepts of accuracy, truthfulness and fairness are applied to news and current affairs reporting on the basis that these forms of content could influence opinion. Industry-based standards such as codes of ethics for print media are subject to non-statutory industry self-regulatory arrangements (under the Australian Press Council).³⁴ Under section 123 of the BSA, broadcast media industry groups must develop codes of practice in consultation with the ACMA.³⁵ Once implemented, the ACMA monitors these codes and deals with unresolved complaints made under them. Some general legislation is also applicable (for example, defamation legislation).

In telecommunications, a similar concept of accuracy and truthfulness has currency in product prices, terms and conditions, and standard forms of agreement, which are

³⁴ The Australian Press Council is the self-regulatory body of the Australian print media. See www.presscouncil.org.au/.

³⁵ Applicable television and radio codes are available at www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=IND_REG_CODES_BCAST.

subject to industry self-regulatory arrangements. The general competition provisions of the Competition and Consumer Act are also applicable.

ACMA research has confirmed the ongoing importance of accuracy and honesty in news in an online environment. Four in five online Australians agree that it is important for Australian news organisations to take the time to check facts before publishing a news story online, and 77 per cent think it is important for websites of Australian television broadcasters to have the same rules about accuracy and fairness as do the news items shown on television.³⁶

At an individual level, ethical behaviour online ('digital etiquette') has been identified as a requirement for effective individual and community participation in a digital communications environment. This points to a broader understanding of ethical standards beyond traditional industry-based approaches.

Current means of promoting ethical standards in media and communications focus principally on defined industry players. However, the concept of ethics in communications has a wider expression in a convergent media environment. This is because convergence processes have led to increased user-level participation in the creation and dissemination of content. Much of the current popular discussion about social media use is concerned with identifying and defining appropriate standards of online behaviour and ethics, which are not yet settled as defined community norms and expectations.

The application of standards for fairness and accuracy—particularly in influential media—may require recalibration to reflect factors such as the demands that 24-hour news cycles and online publication place on journalists and media outlets to produce and post content quickly. In the user space, existing program-based interventions (such as cybersafety programs that provide tools and information on safe and appropriate online and mobile phone use) are expected to have continued relevance. General competition and consumer protection measures may usefully apply to fairness and accuracy in telecommunications service product disclosure.

In the longer term, a wider expression of ethical standards in media and communications may be useful. This could recognise the layered technology nature of content delivery and apply ethical standards consistently across all content delivered over communications networks (including user-generated content), as well as acknowledging user involvement in shaping digital etiquette. Economy-wide measures, such as privacy legislation and state-based defamation legislation, will continue to be applicable.

³⁶ ACMA, *Digital Australians*.

4.13 Protection of the public

4.13.1 Identification

PROTECTION OF THE PUBLIC	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To ensure that the life, health and safety of Australians are not at risk
	2	What is the core reason for intervening? How best may this outcome be characterised?	To provide access to emergency and other services that allow individuals and the community to be protected from harm (both in the community and when using communications services)
	3	What is the current method employed to provide the public policy good/solve the problem?	Provision of emergency call services, technical standards relating to electromagnetic radiation, <i>Do Not Call Register Act 2006, Spam Act 2003</i>
	4	Does this public policy good still have currency/problem still need solving?	Yes. Communications services must continue to provide access to emergency services for the safety of users. Regulation of emissions will continue to be required in an era where innovation in device manufacture often outpaces appreciation of harms. Citizens will continue to demand protection from unsolicited communications
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	No new concept is required—provision of public protection is still applicable. However, in an era of IP communications, mobility is becoming more widespread, which is putting pressure on settings that assume fixed-location service provision. Similarly, global supply chains suggest that technical standards for devices—e.g. Electromagnetic Radiation (EMR) standards may need to be internationally harmonised

4.13.2 Description

There is a community expectation that government plays a role in protecting citizens from risks to life, health and safety. A range of public interest objectives are specifically expressed in communications and media regulation:

- > access to emergency services (including emergency alerts) to protect life, health and safety of individuals and communities
- > protection from harmful communications (including from unsolicited communications)
- > prohibition of radio emissions likely to endanger safety (particularly interference and qualified operator provisions).

Mandated access to emergency services has been a feature of the Australian telecommunications landscape for decades. In 1961, the PMG introduced a single

national number to provide access to emergency services (000).³⁷ With the advent of the emergency call service, the PMG (and later Telecom Australia), operators were required to intercept all calls to 000 in order to determine to which state or territory emergency service organisation (police, fire or ambulance) the call needed to be switched to. This move saw the operators return to a role they had provided in the days of manual exchanges—the delivery of emergency response calls. Initially, the emergency call service was only introduced in the major population centres. In the mid 1980s, the service was extended throughout the Australian network.

Access to emergency services is provided for by Part 8 of the TCPSS Act, which requires the ACMA to make a determination placing requirements on carriers, CSPs and emergency call persons for the emergency call service. The Telecommunications (Emergency Call Persons) Determination 1999 specifies both Telstra Corporation Limited and the Australian Communication Exchange (the National Relay Service provider) as emergency call persons who operate the emergency call service. Telstra is responsible for providing the service, which answers calls to the emergency service numbers Triple Zero (000) and 112 and transfers them, with relevant associated information, to the requested emergency service organisation. The Australian Communication Exchange has the same responsibility as Telstra with regard to the emergency service number 106. The Telecommunications Act also makes arrangements for prioritised connections for people with a life-threatening illness (priority assistance). The Integrated Public Number Database (IPND) is the principal mechanism through which location information is obtained from citizens calling 000.

The Emergency Alert is a telephone warning system that emergency services can use to send alerts to communities via landline and mobile phones. Emergency Alert is operated and activated by authorised personnel from emergency services organisations. It allows for localised community-based warnings to be issued by area or geographic region to landlines and mobile phones based on the service address of the phone. Similar obligations exist in the BSA for national emergency warning broadcasts.

Protection from communications-related harms—particularly radiofrequency electromagnetic energy (EME)—is regulated by the ACMA under the Radiocommunications Act and the technical standards provisions of the Telecommunications Act. The Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2003 ensures the Australian public is protected from the thermal effects of radiofrequency EME (particularly in light of the increasing use of mobile technologies). Technical standards under Part 21 of the Telecommunications Act aim to protect the health and safety of people who operate, work on or use services supplied by telecommunications networks or facilities.

Protection from unsolicited communications is managed by two key pieces of legislation—the *Do Not Call Register Act 2006*, which prohibits telemarketing communications to people who opt in to the Do Not Call Register, and the *Spam Act 2003*, which prohibits unsolicited commercial electronic messages (including email, instant messaging, and text and image-based mobile phone messaging of a commercial nature).

For broadcast content, Protection from harmful content is provided by the National Classification Scheme—with support from co-regulatory arrangements). For internet content, protection is provided by content provider rules (including take-down notices).

³⁷ Triple Zero was chosen for three reasons—numbering plan issues (at that time, zero (0) prefixes were typically assigned to provide access to operator services such as fault reporting), technical issues (pulse dialling of 111 could be falsely generated on early exchanges by 'jiggling' the handset) and user issues (zero was the number nearest the finger stall on a rotary dial telephone, making it easier to locate at night or in smoke).

The latter rules are established under schedules 5 and 7 to the BSA and aim to address community concerns about illegal and offensive online content (including internet and mobile phone content). The ACMA's cybersafety program, which provides activities, resources and practical advice to help Australians safely enjoy the online world, is also applicable (see 'Protection of children' at 4.14).

The Radiocommunications Act explicitly prohibits radio communications that are likely to endanger health and safety. This includes communications that are likely to prejudice the safe operation of marine vessels, aircraft or space objects, and cause interference to the operations of critical emergency service and law enforcement organisations. The qualified operator provisions of Part 3.3 of the Radiocommunications Act also provide that amateur and marine radio operators must be appropriately qualified before they may use applicable radiocommunications devices, to ensure the safety of maritime vessels and prevent radio interference.³⁸ Amateur radio operators are also key personnel in emergency response efforts.

Many of these interventions are expected to have continued currency in a converged environment, given the primary focus on life, health and safety protections. However, convergence processes are challenging vertically integrated delivery models that have relied on telecommunications carriers and broadcasters having end-to-end control of their networks. In this respect, measures will need to accommodate the layered technology nature of service delivery and target the applicable parties in the service delivery chain. For example, protection of the public may require interventions that proscribe inappropriate and unsolicited communications. Measures acknowledging that no substantive difference exists between electronic and voice-based communications or content also may be needed. Similarly, interventions to manage the health-related effects of communications devices (for example, electromagnetic radiation) will continue to be required, but there is no reason why these interventions cannot be standardised. International standards on device manufacture will help to remove regulatory compliance costs for rights-holders with global supply chains.

Converged frameworks will also need to consider the role of the user. As intelligence moves from networks to devices, users have a greater responsibility for managing their devices and the information embedded in them. For example, the location-based architecture built on the copper Customer Access Network is being increasingly replaced with IP-enabled services that can be location-independent, meaning location information may not always be available from the network but will be conveyed through devices. Further, smartphones allow users to alter their privacy settings to either broadcast their location or keep it hidden. The involvement of users will be a critical element for locating individuals during an emergency.

³⁸ Marine safety is regulated principally by the Australian Maritime Safety Agency (AMSA).

4.14 Protection of children

4.14.1 Identification

Step	Description	Rationale	
PROTECTION OF CHILDREN	1	What is the public interest to be promoted/problem to be solved?	To ensure that children are protected from exposure to communications or content that may be harmful
	2	What is the core reason for intervening? How best may this outcome be characterised?	Protection of children from inappropriate content, contact and communications
	3	What is the current method employed to provide the public policy good/solve the problem?	Children’s Television Standards, safe timeslot for child-friendly programming, children’s digital channel, voluntary internet filters
	4	Does this public policy good still have currency/problem still need solving?	Yes. Protection of children is a timeless concept
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Protection of children will always be applicable. However, as content becomes increasingly globalised (i.e. outside the reach of national regulators), some responsibility for protecting children may transfer to parents and communities. In this context, voluntary filtering and education measures will become more important. Regulatory coherence across content delivery networks is also applicable, as are economy-wide measures (e.g. AFP child-protection taskforce)

4.14.2 Description

The protection of children is a societal norm. Australians believe that responsibility for children’s online safety falls predominantly to their parents—89 per cent of online Australians thought that parents were responsible for preventing children from seeing content with too much sex or violence on the internet. Half believe that industry/content providers/broadcasters have a responsibility in this area.³⁹

In media and communications, children are protected by a combination of measures that ensure they have access to a variety of quality television programs made specifically for them, and are protected from age-inappropriate or potentially harmful content, contact or communications.

The Children’s Television Standards 2009, made under section 122 of the BSA, is the principal instrument for the regulation of broadcast content for children in Australia. Compliance with these standards is a licence condition for commercial television broadcasting licensees. In concert with the Australian Content Standard and the various industry codes developed under section 123 of the BSA, the Children’s Television Standards mandate licensees to:

³⁹ ACMA, *Digital Australians*.

- > broadcast specified quotas of children's (C) and pre-school (P) programs during defined child-friendly timeslots, according to applicable classification legislation and regulation
- > protect children from unsuitable and potentially harmful programs and advertising material on television. These provisions regulate areas such as the use of premium offers and popular characters in advertising, program promotions, prizes, competitions and advertising of alcoholic drinks.

Although demand for children's content remains high (the ABS estimates that at June 2010, there were 4.23 million children under 15 years of age), advertising restrictions during children's programming timeslots constrain the capacity of commercial broadcasters to fund this content.⁴⁰ However, film and commercial broadcasting are no longer the only platforms available to transmit children's content, and the role of national broadcasters in providing quality children's content—particularly through a dedicated children's digital channel (such as ABC3)—has broadened the range of potential support mechanisms for the production and dissemination of children's content.

In the online environment, children are protected by a range of legislation (including general criminal legislation) and by communications-specific programs and tools, including the government's cybersafety program and the use of voluntary software-based internet filters. The program protects children by:

- > expanding the Australian Federal Police (AFP) Child Protection Operations Team to detect and investigate online child sex exploitation, and funding the Commonwealth Director of Public Prosecutions to manage increased activity resulting from the AFP work
- > funding the ACMA's education programs (including *Cybersmart*) to implement a comprehensive range of cybersafety education activities which improve government website resources, make them easier for parents to use and provide up-to-date information
- > providing an online helpline so that children can report online incidents that cause them concern
- > encouraging the use of internet filtering software
- > expanding the Consultative Working Group that considers the broad range of cybersafety issues and forming a Youth Advisory Group to advise them from a youth perspective
- > commissioning ongoing cybersafety research into the changing digital environment to identify issues and target future policy and funding.

Existing approaches to the protection of children are expected to have continued currency in a converged environment. User-focused education programs that provide parents with resources and advice on managing their children's online participation will continue to be useful. Similarly, opt-in technological solutions to classification requirements—including parental device locks and software-based internet filters—provide useful avenues to protect children from harmful content while respecting the choices of adult Australians in the converged content environment. There may, however, be a role for industry-specific mechanisms to define the performance and characteristics of technological solutions (for example, technical standards). An appreciation of the layered-technology nature of service delivery will also help to target applicable controls at content provided over all platforms. Economy-wide criminal provisions with multilateral avenues for enforcement will also continue to be important in dealing with prohibited content.

⁴⁰ ABS, 3235.0 - Population by Age and Sex, Regions of Australia, 2010, www.abs.gov.au/.

4.15 Digital information management

4.15.1 Identification

DIGITAL INFORMATION MANAGEMENT	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	To reflect the desirability of integrity of personal information and communications, interoperability of devices and data portability
	2	What is the core reason for intervening? How best may this outcome be characterised?	To regulate the collection, holding, use and disclosure of personal information and communications. In order to meet community expectations of privacy of communications while maintaining the information needs of law enforcement and emergency response agencies are met
	3	What is the current method employed to provide the public policy good/solve the problem?	Part 13 of the Telecommunications Act provides for the protection of communications, with limited exceptions for the use or disclosure of information by carriers, carriage service providers, emergency call persons and their respective associates. Industry codes under Part 6 of the Telecommunications Act provide rules concerning personal information directed at telecommunications industry participants. The <i>Privacy Act 1988</i> outlines principles and regulations for the protection of personal information
	4	Does this public policy good still have currency/problem still need solving?	The protection of personal information and communications continues to be a community expectation. Convergence of technology and services has broadened the types and nature of entities with access to personal information and communications. Current regulatory settings do not reflect the nature of information sharing and access requirements of end users in a layered convergent environment
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	The treatment of data by media and communications network operators, service providers and other rights holders should respect user preferences, relevant privacy legislation and applicable community standards

4.15.2 Description

The treatment of digital information by network operators, service providers and other rights-holders is emerging as a key issue in the digital economy. The three key issues are:

- > how much control network operators should have over the carriage of data over their networks (packet discrimination)

- > how service providers and other rights-holders store, retrieve and use personal data provided to them by users (either intentionally or unintentionally)
- > public policy considerations about device interoperability and data portability.

Converged media and communications frameworks will need to incorporate approaches to dealing with these issues (for example, apply general competition legislation or define communications-specific principles or standards).

The use of personal information by rights-holders—provided by users intentionally (for example, through registration for services) or unintentionally (for example, through web analytics that enable rights-holders to collect information about the user’s IP address and browser history)—is emerging as a critical issue in the digital economy. General privacy legislation may need review to evaluate whether existing measures adequately address personal data management and rights-holder liberties in the collection of data without the permission or awareness of users. Communications-specific avenues will also be applicable (for example, consumer awareness programs).

An important consequence of the proliferation of packetized communications relates to the controls service providers and other organisations place on the uses of personal data, whether related to the content or the carriage of communications. Service providers are able to aggregate data collected from users of their services and sell this information to advertisers, who can target advertising to particular users based upon their digital footprint. This is raising a number of public interest concerns, particularly privacy and online anonymity, safety and reputation management. Privacy is emerging as a key issue for consumers’ use of online services.⁴¹

The standardisation of networks enables data to be transferred seamlessly across different kinds of platforms and devices, leading to increasing user expectations of data interoperability and portability. Given the large amounts of personal data now stored on online applications and user devices like smartphones, walled-garden data scenarios may create disincentives for consumers to churn between different service providers and device manufacturers. Although this is an issue that may well be best resolved by market dynamics, intervention may be required in circumstances where clear exit disincentives exist in online marketplaces.

⁴¹ According to the Australian Interactive Media Industry Association’s Digital Policy Group, members of the Digital Policy Group, including Facebook, Yahoo!7, Google and eBay, do not provide Australian’s personal data to third party organisations on commercial terms. The information handling practices of each of these organisations is available through publicly displayed privacy policies.

4.16 National interest

4.16.1 Identification

NATIONAL INTEREST	Step	Description	Rationale
	1	What is the public interest to be promoted/problem to be solved?	Media and communications policy settings should serve the national interest
	2	What is the core reason for intervening? How best may this outcome be characterised?	To ensure that media and communications services reflect the national interest
	3	What is the current method employed to provide the public policy good/solve the problem?	<i>Telecommunications (Interception and Access) Act 1979</i> , privileged defence access to spectrum, international treaties
	4	Does this public policy good still have currency/problem still need solving?	Yes. Defence, security and law enforcement agencies will continue to have communications requirements to protect the security of Australia
	5	Is the enduring concept affected by convergence pressures, or just the method of delivering it?	Spectrum scarcities may require alternative arrangements of defence acquisition of spectrum to ensure that spectrum is used efficiently. Further, IP communications may require new technological solutions to interception and access requirements of law enforcement/security agencies

4.16.2 Description

Media and communications are a key element in advancing Australian interests and protecting Australia's security.

The framework for serving the national interest in media and communications is set out in the core communications Acts and the Telecommunications (Interception and Access) Act. A key object of the Radiocommunications Act is to make adequate provision of the spectrum for use by agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services. Section 30 of the Radiocommunications Act requires the ACMA to prepare a spectrum plan (the *Australian Radiofrequency Spectrum Plan*), which designates one or more bands to be used primarily for the general purposes of defence. Defence, which is comprised of the Australian Defence Forces, Commonwealth defence and intelligence agencies, and other organisations undertaking authorised activities for the general purpose of defence, is a major user of the Australian radiofrequency spectrum.

The Telecommunications Act prescribes a number of obligations on carriers to assist the national interest. Under Part 14, carriers and CSPs must do their best to prevent telecommunications networks and facilities from being used to commit offences. They must also provide relevant authorities such help as is reasonably necessary to enforce criminal laws, protect public revenue and safeguard national security. The Telecommunications Act also has provisions allowing defence to make arrangements with carriers and/or CSPs to plan for network survivability and operational requirements during times of crisis. The Telecommunications Act defines crisis (section 336) as a war (or war-like conflict or operations), civil disturbance, terrorism or

disaster (whether natural or resulting from the acts or omissions of humans). State-based authorities also have arrangements with certain broadcasters to broadcast relevant information during emergencies.

The Telecommunications (Interception and Access) Act allows ASIO to intercept communications in certain circumstances relevant to national security. This Act also allows for law enforcement agencies (including Commonwealth departments, state police services and certain bodies such as the Queensland Crime and Misconduct Commission) to intercept communications under certain circumstances (although these organisations are subject to a different warrant process than is ASIO). Under Chapter 5 of the Telecommunications (Interception and Access) Act, carriers and CSPs must cooperate with relevant agencies and comply with obligations concerning interception capability.

The Radiocommunications Act and the Telecommunications Act have provisions relating to the advancement of Australia's interests internationally. An object of the Radiocommunications Act is to promote Australia's interests concerning international agreements, treaties and conventions on radiocommunications or the radiofrequency spectrum—for example, at forums such as the World Radiocommunication Conference. This conference is organised by the International Telecommunications Union (ITU) to review and revise the *Radio Regulations*, the international treaty governing the use of the radiofrequency spectrum. Similarly, the BSA also has provisions prohibiting the ACMA from allocating an international broadcast licence if the Minister for Foreign Affairs deems it contrary to Australia's national interest. Global engagement is an underpinning strategy to advance Australia's interests internationally.

One of the key convergence pressures on current legislative settings is the change in consumer preferences from fixed to wireless services, and the increased location-independent nature of service delivery that results. For this reason, demand for spectrum—particularly for mobile broadband access—has increased significantly. More broadly, spectrum is emerging as a key enabler of access to the digital economy. These developments are challenging existing methods of spectrum allocation and use, particularly those applicable to government holdings (the government is the largest user of spectrum in Australia).

Future approaches to allocating spectrum in the national interest may need to include:

- > increased transparency in the use of spectrum by government bodies
- > the need for increased sharing of government spectrum (for example, harmonising government bands)
- > increased use of market approaches to improve the management of spectrum (for example, introducing an incentives model in spectrum bands whereby the auction price is offset against public benefits).

Acknowledging the technology layers that deliver media and communications will be critical to ensuring that policy settings can deliver national interest objectives in a converged environment. For example, present telecommunications-specific network survivability and crisis operations mechanisms will need to acknowledge the disaggregated nature of infrastructure ownership and include all applicable layer 1 players (for example, NBN, backhaul, satellite and wireless infrastructure providers). Similarly, interception and access arrangements need flexibility to accommodate the growing lack of vertical integration in present communications networks to target the appropriate parties. International arrangements will need to be harmonised across previously distinct radiocommunications and telecommunications sectors.