

Evidence-informed regulation

The ACMA approach

In a constantly changing and converging environment, the ACMA is working to develop appropriate, forward-looking regulatory responses which take into account technology, service and market developments and associated changes in consumer behaviour and preferences.

The ACMA considers an evidence-informed approach to regulation will help achieve its overall strategic goal: namely, making media and communications work in Australia's public interest.

Introduction

This document outlines the way in which the Australian Communications and Media Authority (the ACMA) uses evidence in its role as Australia's regulator for broadcasting, telecommunications, radiocommunications and online content. It provides an overview of how the ACMA uses evidence to inform and fulfill its regulatory responsibilities, and to shape regulatory policy where it has discretion to do so. It aims to:

- > improve the transparency of the ACMA's decision-making process
- > assist stakeholder involvement in regulatory issues and decisions
- > contribute to effective and appropriate regulatory outcomes.

The accompanying document *Effective consultation: The ACMA's guide to making a submission* provides more detailed information about how stakeholders and citizens can most effectively present their views for consideration by the ACMA.

While an evidence-informed approach has historically played an integral role in the ACMA's regulatory processes, the ACMA considers it timely to elaborate its approach to evidence-informed regulation, given the growing national and international emphasis on evidence-informed policy-making.

What is evidence-informed regulation?

'Evidence-informed regulation' refers to regulatory processes that are informed by high quality evidence from a wide range of sources. It is based on the idea that by improving the policy-making process with enhanced use of evidence, governments can achieve better outcomes for the public.

The increasing complexity of policy issues facing governments, public demands for greater government transparency and accountability, and the rise of a knowledge-based society all underscore the importance of continually improving the use of evidence in policy-making.

There is increased recognition in Australia that an evidence-informed approach—as international best practice in policy-making—is a key enabler of policy innovation and good regulatory practices. For example, one of the OECD indicators of 'regulatory quality' is the adoption of evidence-based Regulatory Impact Analysis (RIA) programs. Similarly, the Australian Government's Office of Best Practice Regulation (OBPR) requirements for RIA are underpinned by an evidence-based approach.

ACMA data, research and analysis: Evidence for media and communications regulation

Key types of information the ACMA uses to support its decision-making and regulatory policy development activities include:

- > **Industry data.** The ACMA collects data from media and communications industry participants, through the formal exercise of statutory information-gathering powers as well as through voluntary arrangements. Where appropriate, the ACMA uses statutory data-sharing arrangements to use the industry data collected by other government agencies, thus reducing the reporting burden on industry. Industry data may relate to matters such as regulatory compliance, finance and business operations.
- > **Technical information and technology research.** Through field testing, inspections, trials and technical compliance activity, the ACMA gathers technical information on media and communications deployments, radiocommunications interference and radiofrequency spectrum demand and use. The ACMA also conducts research on trends in emerging technologies, applications and services.
- > **Social and market research.** The ACMA undertakes research into consumer and audience use of and attitudes towards media and communications and into industry developments, market trends and contemporary business models. Quantitative and qualitative research methodologies are used, including dedicated surveys, focus groups, interviews, literature reviews and secondary analysis of data provided by reputable third-party sources.

> **Economic modelling and analysis.**

The ACMA's decision-making and advisory functions are informed by assessments of the economic impact of existing and proposed regulatory initiatives.

> **Consumer complaints data.**

This data may inform compliance actions or comprise the evidence required for enforcement actions. Important sources of consumer complaints data include direct reporting from complainants using specially designed electronic reporting tools and complaints statistics from the Telecommunications Industry Ombudsman.

> **International approaches to regulation.**

The ACMA analyses regulatory approaches to media and communications in other jurisdictions, actively participates in international forums and strategically engages with international regulators.

> **Consultation.**

Consultation mechanisms include convening advisory or consultative committees, releasing papers calling for submissions on proposed changes to regulation, and organising regular events such as conferences and 'tune-ups'.

> **Expert knowledge and practice know-how.**

The knowledge and experience of subject matter experts—including the ACMA's Authority members, staff, external consultants and members of advisory committees—strongly supports the ACMA's regulatory activities.

Use of evidence by the ACMA to inform its regulatory functions

In making regulatory decisions or exercising other key functions, the ACMA will analyse and consider all of the available information and material in developing a balanced and appropriate response to regulatory issues.

The ACMA's evidence base of reliable data, quality research and rigorous analysis supports its regulatory functions, which include:

- > **regulatory development and rule-making:** by supporting the assessment of the social and economic impact of potential regulatory interventions
- > **compliance and enforcement activity:** by informing the ACMA's investigation activities and compliance actions and by meeting the standards of evidence that may be required to take necessary enforcement action
- > **educating and informing the community:** by informing the ACMA's community education work, enabling the ACMA to more effectively target its activities and provide relevant and up-to-date advice to the Australian public on media and communications issues
- > **providing advice to government:** by enabling the ACMA to provide authoritative and independent advice on regulatory matters and to meet mandatory reporting obligations
- > **licensing policy, allocation and planning, and taxes and charges:** by informing management and allocation of public resources by the ACMA, such as radiofrequency spectrum and telephone numbering, as well as informing the ACMA's licensing activities and setting of taxes and charges.

More generally, the ACMA's research and analysis contributes important independent evidence to assist and enhance informed debate about media and communications issues.

Measures the ACMA employs to promote best practice

The ACMA complies with the best practice regulation requirements prescribed by the OBPR, which require all new regulatory proposals that give rise to a regulatory obligation to undergo a RIA process.

The ACMA strives continually to make better use of its evidence base by:

> **Putting processes in place to promote the quality, integrity and rigour of research and analysis**

The ACMA employs multiple quality control measures in its compilation and assessment of evidence. These include using a competitive tendering process to select external consultants who employ best practice market research standards, which include reliable sampling techniques, rigorous questionnaire design and testing, and the capacity for advanced data analysis.

Expert advisers and rigorous peer review are used where appropriate for additional evaluation of evidence.

Consistency in analysis is promoted by analytical tools such as the Total Welfare Standard¹ public interest test, which is used by the ACMA where the statutory framework supports it, as a conceptual framework for evaluating the expected economic impact of regulatory proposals on the public interest.

Most importantly, the ACMA actively publicises and disseminates its research findings to assist informed debate of current and emerging communications issues. The ACMA considers that submitting its research for public and industry scrutiny—and positively responding to external assessment of this research—is essential in achieving ongoing research and analytical excellence.

> **Publication of reasons for regulatory decisions**

Consistent with its approach to evidence-informed regulation, the ACMA's developing general practice is to publish a response to submissions to external consultation processes. This response not only sets out the rationale for the ACMA's regulatory decisions, but provides information on how the ACMA has analysed specific issues and assists submitters to understand how their views informed the ACMA's decisions.

As with publication of ACMA's research findings, the ACMA considers that the public dissemination of this information usefully supports transparent regulatory decision-making. It also provides the opportunity for submitters to future ACMA consultation processes to focus their submissions on the most critical issues, based on a review of the ACMA's regulatory approach as expressed in these public documents.

> **Fostering staff capacity and expertise and cultivating an organisational research culture**

Staff capacity and expertise in research and analysis is promoted through maintaining dedicated resources for enhanced research and reporting, which comprise ACMA staff with expertise in social research, market analysis, economics and communications engineering. Research work covers consumer and audience attitudes and service use, market trends and supply models, technology developments and economic and regulatory reviews.

An organisational research culture is encouraged by initiatives such as staff seminars, web-based discussion tools, debates and presentations by industry and academic subject matter experts. Linkages and exchange with external researchers are also promoted by the ACMA's participation in research forums, research centres and student secondments.

¹ Information about the ACMA's application of the Total Welfare Standard can be accessed on the ACMA website.

> **Ensuring transparency in decision-making processes and inclusion of evidence from a wide range of sources**

The ACMA is committed to appropriate consultation on regulatory issues and to ensuring transparency in regulatory development and decision-making.

This is effected through means such as publishing and disseminating decisions and supporting research and analysis evidence, organising conferences and ‘tune-ups’ to facilitate dialogue with industry stakeholders, and providing responses to stakeholder submissions.

The ACMA is interested not only in whether stakeholders agree or disagree with its proposals, but also in the reasons why stakeholders hold the views they do.

The most effective submissions to the ACMA’s consultation processes will therefore:

- > focus on relevant issues;
- > fully explain the basis for the submitter’s position on each issue;
- > provide reasoned argument in support of the submitter’s views;
- > where possible, provide supporting material such as industry information, statistical data, expert opinion and literature reviews; and
- > explain who the submitters represent and how the submission was developed—for instance, whether the views of a representative body were sought in drafting the submission.

More information

For further information, please email the ACMA at:

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