

# **‘Citizens’ and the ACMA— Exploring the concepts within Australian media and communications regulation**

Occasional paper

JUNE 2010

# Introduction

This paper discusses current public policy developments relating to ‘citizens’ and their relevance to the regulatory activities of the Australian Communications and Media Authority (ACMA). It provides a starting point for discussion and dialogue with stakeholders about how citizen issues are appropriately integrated into the ACMA’s service delivery and regulatory activities. In this paper, the ACMA considers the application of citizen concepts to its role as a regulator of media and communications and, in the course of doing so, explores general concepts relating to ‘the citizen’ in recent public policy discussions.

This paper is structured as follows:

- > Part 1, ‘Characterising the citizen and the citizen interest’, provides some definitions of ‘the citizen’ and the ‘citizen interest’, as a basis for exploring the application of the concepts to the ACMA’s regulatory role. This section of the paper is based on analysis of the legislation the ACMA administers, key government and academic literature, and is informed by the UK experience and recent Australian Public Service initiatives. It includes an outline of the relationship between citizen and consumer concepts, setting out several ways the relationship may be understood. It also explores the relationship between the citizen interest and the public interest, in the context of the ACMA’s activities and regulatory decision-making.
- > Part 2, ‘Citizens and public services – Recent history and basis’, sets out a background to the current public policy discussions about the citizen. This section of the paper surveys the academic and government literature in the field, setting out the recent re-emergence of, and debates about, the citizen in public sector governance. However, this section should not be considered an endorsement by the ACMA of any particular position outlined in the literature. Part 2 outlines the re-emergence of the citizen in the context of:
  1. Public services – first, as discussed in UK academic literature exploring the role of the public as citizens and consumers in relation to public services; and second, as stated in the recent Australian government commitment to a citizen-centric public service.
  2. Media and communications regulation – first, in relation to Ofcom’s approach to citizens and consumers; and second, as discussed in Australian academic literature.
- > Part 3, ‘Citizens and the ACMA’, builds on Part 1 of the paper to explore the application of citizen concepts to the ACMA’s service delivery and regulatory role and activities. It proposes a framework as a starting point for considering citizen interests within the ACMA’s regulatory activities, in a way that is consistent with, and amplifies, current public interest obligations.

This is an introductory paper which focuses on the ACMA's relationship to citizens within the sphere of the ACMA's regulatory responsibilities and it is not intended to represent any wider discussion of Australian government policy. This paper is an open document and feedback on the concepts and application by the ACMA is welcomed. Feedback should be provided:

By email: [regulatory.frameworks@acma.gov.au](mailto:regulatory.frameworks@acma.gov.au)

By mail: Project Manager

Regulatory Frameworks Section

Regulatory Futures Branch, Digital Economy Division

Australian Communications and Media Authority

PO Box 13112 Law Courts Melbourne 8010

# Part 1

## 1.1 Background

There are two main drivers informing this work.

### 1.1.1 Public administration

This driver relates to the broad public sector-wide initiatives to place the citizen at the centre of public services at the Commonwealth level in Australia. This public sector reform aims to ensure that the citizen voice is included in all parts of the policy-making cycle to increase efficiency and accessibility. It includes the intent of key Australian Public Service (APS) agencies, such as the Australian Public Service Commission (APSC) and the Department of Prime Minister and Cabinet (PM&C), to place the citizen at the centre. A milestone is the March 2010 report *Ahead of the Game: Blueprint for Reform of Australian Government Administration* by the Advisory Group on Reform of Australian Government Administration. Further discussion of the Australian government agenda for a citizen-centric public service is contained in Part 2.2 of this paper.

### 1.1.2 Communications and media regulation

This second driver relates to the first. As a media and communications regulator, the ACMA is seeking to develop its citizen-centric approach to its activities and functions, within the context of public sector-wide initiatives to place the citizen at the centre of public services. Accordingly, as reflected by this paper, the ACMA is examining how the concept of the 'citizen' has been applied in communications and media regulation in other jurisdictions, and considering the Australian approach to the concept. The ACMA is examining how citizen concepts relate and contrast to a consumer-focused, market-oriented approach to media and communications regulation. In addition, the ACMA (in line with a broader government focus on Gov 2.0) wishes to take advantage of the ways in which the development of media and communications technologies is opening up new opportunities for communication and collaboration between citizens and government. Further discussion of the emergence of the citizen in communications and media regulation is contained in Part 2.3 of this paper.

## 1.2 Characterising the citizen and the citizen interest

This section explores different aspects of the concept of the 'citizen' based on analysis of the legislation the ACMA administers, and key government and academic literature. It is also informed by consideration of the UK experience. It reviews how the citizen and citizen interest can be characterised, and the relationship between the concepts of 'citizen interests' and 'public interests'.

This discussion is designed to introduce the various, and sometimes conflicting, characterisations of the citizen to explore the range of issues and functions within the context of public administration developments and media and communications regulation. The various characterisations of 'the citizen' were used in developing a framework for the ACMA to consider citizen interests (outlined in Part 3); in particular, how the ACMA currently reflects these interests in its work and how it can further develop them.

## 1.2.1 Who and what is a citizen?

There is no one definition of 'citizen' that captures all aspects of how the term and concept is used in the relevant literature and in discussions that are occurring within government and academia. The term has different meanings depending on the particular context; however, within this paper the term 'citizen' does not denote nationality or the legal definition of citizenship. Outlined below is a series of key concepts that can help the reader characterise citizen interests and understand the importance and potential impact of shifting to a citizen-centric approach to regulation. This paper includes an analysis of the term within the Australian media and communications regulatory context, and discussion of the concepts of the citizen as individual, the vulnerable citizen and of various characterisations of the relationship between the terms 'citizen' and 'consumer'. Its focus is on the ACMA's relationship to citizens – both in terms of its role as an Australian public service agency and in its role as the communications and media regulator in Australia.

### ***'Citizen' in the Australian media and communications regulatory context***

The term 'citizen' is one of a number of terms used to refer to 'the public' for the purposes of regulation and policy. For example, in the media and communications sector, the public may be referred to in a number of ways specific to a particular activity, including community, society, participant, people, Australians, contributor, viewer, audience, family, household, parent, youth, user, end-user, consumer, customer or client.

An initial analysis<sup>1</sup> of the terms used to describe stakeholders in the ACMA's primary legislation reveals that the term 'citizen' appears only four times in the *Broadcasting Services Act 1992*; once in the *Radiocommunications Act 1992* (in both Acts, it refers to the legal status of an individual on all occasions; that is, 'Australian citizens'); and does not appear at all in the *Telecommunications Act 1997*, *Telecommunications (Consumer Protection and Service Standards) Act 1999* or *Australian Communications and Media Authority Act 2005*. A variety of other terms are used to define stakeholders.<sup>2</sup>

This initial examination suggests further analysis is warranted to consider how citizen interests might be considered, where they do not conflict with the objectives of legislation.

### ***The citizen as an individual***

A citizen can be thought of as an individual member of a community exercising a range of citizenship rights. According to UK sociologist T.H. Marshall, whose work has been highly influential in discussions of modern citizenship and social policy, citizenship rights can be seen as constituting three strands: civil, political and social.<sup>3</sup> The civil element includes rights that are viewed as necessary for the exercise of individual freedom such as freedom of speech or the right to justice. The political strand of citizenship establishes the right to exercise political power through voting, holding office and related activities. The third element is that of social citizenship. According to Marshall, this encompasses a range of rights, 'from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to the life of a civilized being according to the

---

<sup>1</sup> This analysis is based solely on the terminology used in legislation and has not extended at this stage to any case law that may have considered the terms or materials such as explanatory memorandum or second reading speeches that may explain the terms.

<sup>2</sup> The most commonly used terms to describe stakeholders in the *Broadcasting Services Act 1992* are 'person' (1457 references), 'licensee' (1486), 'broadcaster' (358), 'end-user' (77), 'community' (24) and 'the public' (55). In the *Telecommunications Act 1997*, the most frequently used terms are 'person' (1314 references), 'customer' (336), 'end-user' (119), 'consumer' (116), 'individual' (58) and 'community' (35). In the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, 'person' (288 references), 'customer' (204), 'the public' (19) and 'people' (16) are the most frequently used terms. 'Person' is also the most commonly used term to describe stakeholders in the *Radiocommunications Act 1992* (appearing 787 times), followed by 'licensee' (522), 'broadcaster' (49) and 'the public' (31).

<sup>3</sup> T H Marshall (1992) *Citizenship and Social Class*, as discussed in L. Buckmaster and M. Thomas (2009) 'Social inclusion and social citizenship – towards a truly inclusive society', Parliament of Australia Parliamentary Library, research paper no. 8, p. 11.

standards prevailing in society.<sup>4</sup> Commentators have also identified a fourth category of cultural citizenship or cultural rights.<sup>5</sup>

The term 'citizen' can be used to refer to an individual's interests in relation to the state, compared with a broader or undefined group of people. For example, 'citizen' can refer to an individual who participates in a broad relationship with the state, and whose interest includes, but also extends beyond, the market place.<sup>6</sup> Participation in this context relates to the broader public interest, involving a range of social, cultural and political activities that are not strictly the subject of commercial objectives.<sup>7</sup> This approach encourages people to be thought of as participative, engaged and empowered individuals—rather than as part of a mass public.

Further, the focus on the individual citizen encourages a shift from a purely rights- and entitlements-based approach towards an approach that places responsibility on individual citizens.<sup>8</sup> This approach can encourage policy-makers to consider what activities citizens should have responsibility for, rather than focusing only on their entitlements or rights.

However, the individual citizen can also be understood as a participant in or member of a community.<sup>9</sup> It has been observed that 'the citizen interest is about more than an individual or private interest or right', but relates to the public realm and 'requires a sense of commonality and plurality'.<sup>10</sup> It has been stated that 'our public interests as citizens ... are quite distinct from our private interests as individuals, and therefore the public interest cannot be automatically derived from the private interest. Indeed, it is not the sum of private interests nor their highest common denominator ...'.<sup>11</sup>

In the public administration context, government and related agencies conceiving of citizens in this way may seek to optimise citizen engagement by adopting approaches that reflect the citizen's ability to actively engage in, and contribute to, government decision-making and processes, whether in relation to individual or collective interests. This may include Gov 2.0 and the use of other tools.

### ***The vulnerable citizen***

A theme emerging from the Ofcom literature is the concept of the vulnerable citizen.<sup>12</sup> This refers to members of society who are disadvantaged and may be more dependent on government intervention to protect their interests or provide them with services or make available specific opportunities. These citizens may include regional and remote Australians; those with lower incomes; ethnic minorities; youth; the elderly; and those with a disability, such as hearing or visual impairment. These citizens may be particularly vulnerable to the quality, extent and availability of government service provision to ensure their social inclusion, meaning in turn that governments and government service providers

---

<sup>4</sup> T H Marshall (1992) *Citizenship and Social Class*, as discussed in L Buckmaster and M Thomas (2009) 'Social inclusion and social citizenship – towards a truly inclusive society', Parliament of Australia Parliamentary Library, research paper no. 8, p. 10.

<sup>5</sup> B Turner (1992) 'Outline of a Theory of Citizenship' in C. Mouffe (ed.) *Dimensions of Radical Democracy* (London, Verso, 1992), as cited by L. Hitchens (2007) 'Citizen versus Consumer in the Digital World', in A. Kenyon (ed.) *TV Futures: Digital Television Policy in Australia*, p. 8.

<sup>6</sup> Adapted from Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, p. 6.

<sup>7</sup> Adapted from Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, p. 6.

<sup>8</sup> Derived from an analysis of Clarke et al. (2007) *Creating citizen-consumers – changing publics and changing public services*, London, Sage Publications.

<sup>9</sup> L. Buckmaster and M. Thomas (2009) 'Social inclusion and social citizenship – towards a truly inclusive society', Parliament of Australia Parliamentary Library, research paper no. 8, pp. 10–11.

<sup>10</sup> Born and Prosser (2001) 'Culture and Consumerism: Citizenship, Public Service Broadcasting and the BBC's Fair Trading Obligations', p. 671, quoted in L. Hitchens (2007) 'Citizen versus Consumer in the Digital World', in A. Kenyon (ed.) *TV Futures: Digital Television Policy in Australia*, pp. 8–9.

<sup>11</sup> S. Venturelli (1998) *Liberalising the European Media: Politics, Regulation, and the Public Sphere* (1998), p. 72, quoted in L. Hitchens (2007) 'Citizen versus Consumer in the Digital World', in A. Kenyon (ed.) *TV Futures: Digital Television Policy in Australia*, p. 9.

<sup>12</sup> This concept has been promoted by Ofcom and is discussed in S. Livingstone and P. Lunt (2007) 'Representing citizens and consumers in media and communications regulation', *Annals of the American Academy of Political and Social Science*, 611: 51–65.

may have an added responsibility to these groups if their rights are to be protected and interests promoted—including their ability to fully participate in a digital society.

In the media and communications context, these citizens may have limited digital literacy and therefore experience, or will increasingly experience difficulties engaging with the digital economy or e-facing government strategies and initiatives.

### ***The citizen and the consumer—Three characterisations of the relationship***

The relationship between the terms ‘citizen’ and ‘consumer’ is one that can be characterised in a number of ways. In the Australian context, the interrelationship between the two terms is partly historical, as the rights and interests of Australians have often been referred to as ‘consumer interests’ and Australians themselves as ‘consumers’.<sup>13</sup> Accordingly, the change to a ‘citizen’ focus is often contrasted to a ‘consumer’ focus. This change in focus reflects an important shift in seeking to increase citizen engagement with government and improve government responsiveness to citizens.

However, there are various ways in which the shift can be characterised, which in turn shape how both terms will continue to be used. Three key variations are:

- > the citizen versus the consumer (where the terms represent different, contrasting interests)
- > the citizen-consumer (where the two terms are merged, as are the interests)
- > the ‘citizen as encompassing all interests of Australians’ (where all the broad and varied interests of the public in Australia, including those relating to consumption, are captured by the holistic term of ‘citizen’).

A simplified outline of the three key conceptual approaches is outlined below.

#### Citizen versus consumer

As is detailed below in section 2.1.2, there has been a conceptual and theoretical distinction drawn between ‘citizens’ and ‘consumers’. This distinction has been enshrined in the UK in its communications legislation conferring powers and duties on the regulator, Ofcom. There is no equivalent in Australian legislation.

In this characterisation, the citizen and the consumer represent a series of binary distinctions (as described in Table 2, in section 2.1.2). These polarisations have highlighted the differences between market-based, commodified and individualistic depiction of ‘consumer interests’ compared with the public, de-commodified and collective rights of what is referred to as ‘citizen interests’. Arguably, the emergence of the citizen as a recent focal point in communications and media regulation may be viewed as a shift away from an emphasis on market-based approaches and consumer interests, which had been the focus in many Western democratic societies during the 1980s and 1990s.<sup>14</sup>

Despite the binary distinctions, this characterisation does allow for conceptual nuances. For example, both citizen and consumer interests can be considered equally important and recognition of citizen interests does not preclude recognition of consumer interests.<sup>15</sup> Even though this construction

---

<sup>13</sup> See discussion below regarding use of terms ‘consumer’ and ‘consumer interests’ in ACMA-administered legislation.

<sup>14</sup> For a discussion of the emphasis on market-based approaches in media policy during the 1980s and 1990s, see N. Herd, ‘Australia: Concentration, Competition and Revaluing the Public Interest’ in Ward (ed.) *Television and Public Policy: Change and Continuity in an era of global liberalization*, pp. 84–85. Also see T. Prosser (2006) ‘Regulation and Social Solidarity’ 33(3), *Journal of Law and Society*, pp. 364–87, for an analysis of market failure as a common rationale for regulation and why rationales for regulation should be conceived of more widely to include social rationales as legitimate grounds for regulation in their own right. Prosser considers that regulation should not be seen as second best to market allocations.

<sup>15</sup> For example, see L. Hitchens (2007) ‘Citizen versus Consumer in the Digital World’, in A. Kenyon (ed.) *TV Futures: Digital Television Policy in Australia*. Hitchens criticises discussions about digital content regulation in Australia as being considered solely through the lens of consumer rather than citizen interests, with the argument that citizen interests need to be adequately recognised. However, Hitchens acknowledges (at p. 7) that ‘there is a legitimate consumer perspective to be considered in relation to digital content ... [the] argument is that it is not the only perspective requiring attention.’

maintains that 'consumer' and 'citizen' represent different interests, it does not necessarily preclude an individual from adopting different citizen and consumer interests simultaneously or interchangeably.

#### Citizen-consumer hybrid

A related approach is that of the 'citizen-consumer' hybrid as developed, for example, in the work of Professor Frank Trentmann.<sup>16</sup> In this construct, 'while not conflict free, citizenship and consumption have moved closer. The focus of attention is now as much on overlap and interaction, even contingent symbiosis, as well as on rivalry.'<sup>17</sup> In this characterisation, there is no clear-cut distinction between citizens and consumers; rather, the reality of an individual as a consumer is part of a broader reality of the individual as a citizen.

This hybridisation has also been criticised for creating a risk that 'citizen interests' may appear to be 'taken account of', but that the focus within the hybrid is still on the 'citizen-as-consumer'.<sup>18</sup>

#### Citizen interests as encompassing all interests of Australians

An alternative to the two conceptual characterisations above is an acknowledgement that 'consumer' and 'consumer interests' as currently reflected in Australian media and communications legislation,<sup>19</sup> leaves the term 'consumer' open to representing more than individual, market or commodified interests.

This approach allows for the 'citizen-centric' nature of any regulatory activities to be enhanced by identifying the specific interest, objective or focus of that particular activity in relation to citizens (whether as individuals, members of groups or as part of the larger community), rather than being concerned with labelling these activities as either consumer- or citizen-related. Even where the legislation administered by the ACMA refers to 'consumers' or 'consumer interests', these terms do not in practice exclusively relate to matters of consumption of services and goods. For example, the term 'consumer' is used in the *Broadcasting Services Act 1992* (BSA) to describe the extended functions of the ACMA to 'conduct and/or coordinate community education programs about content services, in consultation with relevant industry and consumer groups and government agencies',<sup>20</sup> and in relation to the codes of practice, including classification 'advice to consumers.' Further, the term 'consumer' is used in the *Telecommunications (Consumer Protection and Services Standards) Act 1999*, but it is not defined within the Act.

Considering all interests under the broad heading of 'citizen interest' recognises that the Australian public and their interests are referred to in various ways in the ACMA-administered acts (such as community, society, viewer, participant, customer etc., as outlined above) and that no one type of interest should necessarily be characterised as being more 'citizen-centric' than another. This approach is analogous to the rights discourse that exists in legal jurisprudence, where a person may be seen to have a series of rights (as an individual and group member), which may variously conflict with or complement each other. However, using the same term—citizen—to encapsulate all the interests ensures that no one right or interest is elevated over another.

---

<sup>16</sup> For example, F. Trentmann (2001) 'Citizenship and Consumption', *Journal of Consumer Culture* and F. Trentmann and K. Soper (eds) (2007) 'Citizenship and Consumption'.

<sup>17</sup> F. Trentmann (2001) 'Citizenship and Consumption', *Journal of Consumer Culture*, p. 148.

<sup>18</sup> Clarke et al. (2007) *Creating citizen-consumers – changing publics and changing public services*, London, Sage Publications, p. 46.

<sup>19</sup> For example, *Telecommunications (Consumer Protection and Services Standards) Act 1999*, *Broadcasting Services Act 1992*.

<sup>20</sup> Section 114, *Broadcasting Services Act 1992*. Similar phrases appear in section 42 of the *Spam Act 2003* and section 41 of the *Do Not Call Register Act 2006*.

This paper proposes that, under this third characterisation of the ‘citizen’, the ‘citizen interest’ can be used to refer to a diverse range of interests in media and communications regulation. As a starting point, these broad and varied interests may include:

- > participation in the marketplace
- > choice and quality of goods and services
- > access to diverse services and content
- > ease of use of government services and engagement with processes such as consultations
- > accountability and transparency, including access to public sector information
- > protection from harmful content and market practices
- > access to educative tools.

### 1.2.2 The citizen and the public interest

The ACMA, like all public sector agencies, has a mandate to conduct its business in a manner that serves the public interest—prescribed through legislation and in organisational policy. In the ACMA Corporate Plan 2010–2012, the organisation’s key purpose as interpreted is ‘to make communications and media work in the public interest’.

The relationship between the citizen interest and the public interest can be viewed from various perspectives. This paper suggests that the citizen interest provides a means of amplifying the public interest objectives of the ACMA. That is, by viewing existing public interest objectives through the lens of citizen concepts, it can be seen that the citizen interest may either correspond with, or elaborate upon existing public interest concepts. For instance, a citizen perspective may correspond with, and indeed strengthen consideration of, existing social and cultural public policy objectives contained in the ACMA’s legislative framework. This may best be illustrated in the way in which the ACMA makes regulatory decisions in the public interest, also discussed below.

#### ***ACMA activities that are in the public interest***

There is a broad spectrum of regulatory activity that falls into the category of ‘public interest’ or citizen-related issues. Table 1 provides examples of ACMA activities and responsibilities that are considered to be in the public interest or citizen-related.

**Table 1:** Examples of ACMA activities where the citizen interest is inherently considered.

Activity/regulatory responsibility	Citizen interest
Emergency Call Service (ECS)	The ACMA is responsible for regulating and monitoring the provision of the ECS. The ACMA places obligations on carriers, CSPs and Telstra to ensure the accessibility of the ECS. The ACMA convenes the ECS Advisory Committee, progresses issues through public awareness campaigns and develops initiatives designed to improve the efficiency of the ECS. When an individual makes an emergency call, he or she is behaving as a citizen dependent on assistance for their own, or another community member’s, wellbeing and not as a consumer of a service (from which they may gain economic benefits). The ACMA’s ECS responsibilities are directly citizen-focused as they place obligations on industry and service providers beyond what a competitive market would deliver, to ensure reliable and efficient access to emergency services for the benefit of society.

Cybersmart program	The ACMA administers a national cybersafety education program that aims to inform, educate and empower children, parents, carers, teachers and library staff to manage online risks. It directly furthers the public interest as all resources are provided free of charge and the program takes a multifaceted approach involving a number of public-facing institutions, including schools and libraries, to protect vulnerable citizens from harmful online activity.
National Relay Service (NRS)	The NRS allows people who are deaf or have a hearing or speech impairment (or 'vulnerable citizens') to use the telephone. The NRS is a national telephone service available to all consumers at no additional cost. The NRS legislative obligations are outlined under Part 3 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> . The NRS goes beyond what the market would deliver to ensure vulnerable members of the community are able to participate fully in society.
Diversity of services	<p>The ACMA's responsibilities to citizens in this area include:</p> <ul style="list-style-type: none"> <li>&gt; ensuring the availability of a diverse range of television and radio services while meeting minimum ownership and maximum control requirements</li> <li>&gt; ensuring certain commercial radio and television services meet minimum local content and presence requirements</li> <li>&gt; making information on media ownership and control publicly available through a user-friendly media control database on the ACMA website</li> <li>&gt; licensing community radio and television services that represent and involve their communities.</li> </ul> <p>The ACMA's responsibility for diversity of services, ownership and control aims to meet the public interest by providing a range of services that promote a diversity and plurality of influences on issues. This area of regulation also intends to ensure that a sense of Australian identity, character and cultural diversity principles are developed and reflected through minimum local content standards.</p>
Program standards, codes of practice and content classification restrictions	<p>The ACMA's responsibilities in this area include providing adequate standards of protection from harmful or offensive content.</p> <p>The ACMA's investigation of broadcasting content complaints by any citizen, regardless of whether he or she has viewed or listened to the program, ensures wider citizen interests are taken into account. There is also a wider public interest in eliminating online distribution of child sexual abuse material, and this is achieved through the ACMA's referral of such content to law enforcement agencies.</p> <p>Research indicates widespread community support for rules about classification and consumer advice, accuracy and fairness of news and current affairs reporting, and privacy.</p> <p>Further, administration of Australian content and children's television program standards ensures that citizens have access to a diverse range of culturally relevant programs on commercial free-to-air television.</p>
Digital media literacy	Digital media literacy is defined by the ACMA as the skills and capabilities needed for effective participation in the digital economy and as a way to encourage social inclusion in a networked society. This includes encouraging digital confidence through cyber-safety, e-security and online privacy provisions. Digital media literacy promotion is a critical citizen-related regulatory responsibility because it aims to create empowered and educated citizens in an increasingly digital society.

Broadcast planning and allocation	The ACMA's public planning process for broadcasting services bands spectrum is based on principles of wide public consultation, publication of all advice received and assumptions made, and consistency with legislative objectives that include promoting the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information. Ancillary ACMA policies permit aspirant community broadcasters to build competence and support for additional community broadcasting services in areas through the conduct of trials. Allocation of additional long-term licences is via auction in the case of new commercial and open narrowcasting services, and via merit-based assessment of applicants for community broadcasting licences.
Digital dividend	As part of its spectrum management responsibilities, the ACMA is working with the government in assigning the digital dividend ( or the spectrum left over in the switchover from analog to digital television) to ensure the most efficient allocation of the spectrum and thereby maximise the public benefit derived from use of the spectrum. These allocation procedures are usually carried out in close liaison with the Commonwealth Government, which is generally the final decision-maker on who spectrum is assigned to. Furthermore, careful consideration is given to whether the expected outcome from price-based allocation ( such as an auction), is likely to differ from the allocation that maximises public benefits. An auction is likely to be the best method of ensuring an efficient allocation of the spectrum when the relative value to society of the services parties propose to deliver is reflected in the relative value they place on the spectrum.
Unsolicited communications	This area of the ACMA's duties includes anti-spam responsibilities, the Do Not Call Register and e-Security initiatives. Work includes addressing citizen and consumer complaints, and carrying out investigations and enforcement action where necessary. It also involves educating industry and the community of their rights and responsibilities in this area. Although there is a consumer aspect to the regulation, a large part of the work is concerned with furthering the citizen interest through ensuring protection from online material that is harmful, aimed at perpetrating fraud and/or which breaches privacy.

### ***Making regulatory decisions in the public interest***

As an industry regulator, the ACMA is required to make decisions in accordance with public interest objectives set out in legislation. The legislation is often not prescriptive of the test by which the public interest is to be measured.<sup>21</sup> In many circumstances, the ACMA must use its regulatory discretion to determine how it will further the public interest.

In relation to the citizen interest in regulatory decision-making, it is suggested that both the public interest and the citizen interest act as a yardstick to hold the decision-maker accountable to act in the interest of the people affected by its decision-making. Incorporating the citizen interest in regulatory decision-making aims to ensure that, when regulatory intervention has been justified, the path taken delivers outcomes to the public that extend beyond commercial priorities. The inclusion of the citizen view aims to ensure that regulatory decisions are not only informed by the views of industry stakeholders, consumer advocacy groups or other well-resourced stakeholders.

<sup>21</sup> There is no standardised definition of 'public interest' in the legislation analysed for this paper (BSA, Radcomms Act, Telco Act, TCPSS and ACMA Act). However, it should be noted that this observation is made solely on the wording of the legislation, and has not considered any case law or extrinsic materials that may have considered the term.

Broadly, there are four key measures of the public interest that apply in the Australian context to the ACMA's regulatory decision-making:

1. *Legislation and secondary instruments*: Intrinsic to each of the major pieces of legislation governing the ACMA's remit is some form of broad public interest accountability. In the objects of the *Telecommunications Act 1997*, the 'long-term interests of end-users' is mentioned;<sup>22</sup> while the BSA objects and regulatory policy refer to the 'public interest'<sup>23</sup> and the 'community interest';<sup>24</sup> and the objects of the *Radiocommunications Act 1992* include 'maximising the overall public benefit'<sup>25</sup> of spectrum allocation and use.

Furthermore, there are instances where the matters to consider in making a decision in the public interest are specified—such as the provisions in Part 6 of the BSA, which outline the factors to take into account when allocating a community broadcasting license. Apart from specific cases like Part 6 of the BSA, the ACMA has discretion to use its own means to measure the public interest, provided it does not clash with legislative provisions.

One such public interest test adopted by the ACMA is the Total Welfare Standard (TWS), discussed further below. The ACMA's public interest objectives are also stated in a range of subordinate instruments, regulations, standards and codes. An example is the Children's Television Standards, the objective of which is to provide for children to be specifically catered for in programming, including Australian programming; and to protect children from possible harmful effects of television. These objectives relate to public interest concerns and must be considered by the ACMA when making regulatory decisions.

2. *Total Welfare Standard*: The ACMA adopted the TWS as a public interest test in 2007 as part of its regulatory impact analysis. For the ACMA, the TWS is a tool to measure the impact of a regulatory proposal as 'the sum of the effects on consumers, producers, government and the broader social impacts on others in the community.'

The TWS finds its roots in welfare economic principles and intends to provide a framework for analysis that considers 'the value parties place on certain outcomes as citizens as well as consumers'—or to consider the broader social impacts, which may not always be easily quantified. This is important because it differentiates the TWS from consumer welfare standards that only take into account the impact on consumers, which is more readily quantified. Using the TWS to assess the impact on the public interest relies on regulatory discretion and the sound judgment of the decision-maker, particularly when analysing and weighting qualitative data. Furthermore, the TWS requires that, to the extent possible, all significant costs and benefits are given the same weight regardless of the identity of the participant.

The TWS is an important tool for assessing public interest considerations in the ACMA's decision-making processes, but it intends to serve as just one tool among many to assist the organisation in coming to informed decisions—usually on issues likely to have a significant economic impact. Other limitations include that it is frequently time- and resource-intensive, and significant analysis using the TWS is only undertaken when the regulatory intervention is expected to have a 'significant impact on consumers, producers or other stakeholders'.

Furthermore, the resources committed are commensurate with the extent to which the ACMA

---

<sup>22</sup> *Telecommunications Act 1997* sub-section 3(1)(a).

<sup>23</sup> *Broadcasting Services Act 1992* sub-sections 3(1)(g), 4(2)(a), 4(3)(a), 4(3AA).

<sup>24</sup> *Broadcasting Services Act 1992* sub-section 84(1).

<sup>25</sup> *Radiocommunications Act 1992* sub-section 3(a).

considers the analysis is likely to assist the Authority in coming to an informed decision on a particularly complex or contested matter.

In designing regulatory interventions to maximise the public interest, the ACMA should consider whether market-based mechanisms are likely to promote an outcome that maximises total welfare; that is, the welfare of society's members in their roles as citizens and consumers.

3. *Research*: The ACMA also undertakes research to build an evidence base to inform its regulatory decision-making and regulatory review processes. Quantitative and qualitative research about community attitudes and concerns is used to gather and test information about citizen views.
4. *Public consultation*: The ACMA undertakes consultation with members of the public to inform its significant regulatory decisions. It is often a legislative obligation to undertake consultation on issues of community concern or where amendments to regulation are proposed. The information gathered through formal consultations is an important avenue for understanding the citizen's concerns and attitudes. The citizen framework aims to ensure that the citizen interest is explicitly and clearly identified among many competing voices in public consultation processes, by guiding staff to extend consultation to include questions relating specifically to citizen concerns.

## Part 2

### 2.1 Citizens and public services—Recent history and basis

This section provides a survey of the recent academic and philosophical literature exploring the changing face of the citizen and consumer, and their relationship to public services.<sup>26</sup> This survey of recent literature sets out the origins of, and underlying basis for, the recent emphasis on the citizen, including the figure of the ‘active citizen’, which it seems to the ACMA is similar to that being promoted today in Australian public sector reform. Although much of the literature discussed in this section originates from the UK, it has been noted that UK trends relating to the ‘re-emergence in academic and policy discourses of the ideas and values of civil society, citizen participation and localism as the foundations of contemporary social governance ... have resonance in the Australian context.’<sup>27</sup> However, the survey of literature in this section is set out here as background to current discussions, and should not be considered an endorsement by the ACMA of any particular position outlined in the literature. It provides a general background to the current APS reform agenda focusing on citizen-centric public services, and on the concepts of citizens and consumers in communications and media regulation.

#### 2.1.1 The recent re-emergence of the citizen—Academic and philosophical literature

There is extensive literature examining the concept of the citizen and assessing the changing role of the citizen. It includes exploration of the extent to which consumers and citizens are distinct from one another, and indeed intertwined with one another. Key academic literature on the concept of the role of the public as citizens and as consumers comes from Clarke et al. of the Centre for Citizenship, Identities and Governance—a subset of the UK Open University.<sup>28</sup> Professor Clarke and his group have kept abreast of the changing face of the public and its relationship with the public service since the 1990s.

More recently, the group carried out a research project examining the shift towards a consumerist orientation in public service policy.<sup>29</sup> According to this research, the concept of ‘choice’ began to dominate political discourse in the realm of public services in the postwar era, which Clarke et al. consider had dominated the political landscape in the 1990s in the UK and also transnationally.<sup>30</sup> According to the literature, this choice can be linked to a shift towards marketisation across the public sector. Clarke et al. considered that the view of the government of the day was that the modern world was defined in part by the rise of a consumer culture or consumer society, and thus the consumer was placed at the heart of public service reform, particularly in the New Labour era of the Blair Administration from 1997 onwards. According to Clarke et al., this preference for markets over states,

---

<sup>26</sup> The scope of this paper is limited to this relatively recent discussion of citizenship.

<sup>27</sup> T. Reddel (2004) ‘Third Way Social Governance: Where is the State’, *Australian Journal of Social Issues* Vol. 39 No. 2 May, p. 130.

<sup>28</sup> For access to a range of research by Clarke et al., see <<http://www.open.ac.uk/socialsciences/creating-citizen-consumers/downloadable-papers.php>>.

<sup>29</sup> J. Clarke et al. (2005) *Creating citizen-consumers: changing relationships and identifications*, Open University, UK. Available online at <<http://www.open.ac.uk/socialsciences/citizenconsumers>>.

<sup>30</sup> J. Clarke and J. Newman (2006) *The People’s Choice? Citizens, consumers and public services*, Open University, UK.

private over public and individualism over collectivism can be interpreted as a preference for the economic interest of the consumer over the collective public interest of the citizen.

### **2.1.2 The basis for the citizen and consumer distinction**

In attempting to delineate the role of the public as citizen and as distinct from the role as consumer, Clarke et al. consider that each role is associated with attributes that differ from one another in almost every respect. In the book *Creating citizen-consumers – changing publics and changing public services*,<sup>31</sup> the citizen is described as an egalitarian figure, lodged in an ideal imagery of liberty, equality and solidarity. The practice of citizenship stresses egalitarian principles such as one person, one vote; everyone being equal before the law and so on. Furthermore, citizenship is produced and practised between citizens and the state, evoking bonds of mutual obligation—each owing the other in a mutually productive manner, with the consent of the citizen empowering the state and the state providing and securing conditions that enable citizens to lead their lives in a civil society. This notion of mutual obligations in citizenship relates to T.H. Marshall's concept of 'social citizenship', and citizen rights and responsibilities.

In contrast, the consumer is described in the literature as being concerned with economic relationships, engaged in economic transactions in the marketplace, and as exchanging money for commodified goods and services. These, too, can express liberty and equality but in a different manner—stemming from Macpherson's idea of 'possessive individualism'<sup>32</sup> or the capacity to dispose of one's own property as one wishes. The individual is self-directing and capable of choosing how his or her wellbeing may be best served. Furthermore, the relative anonymity of the market underpins a different kind of equality—all money is equal.

According to the literature, the citizen takes part in public identifications and practices whereas the consumer can be thought of as a private figure. Importantly, in the public realm, people as citizens fulfil their obligations to one another, and exercise thought and choice in the definition and pursuit of the 'public interest'. In contrast, the consumer is described in the literature as motivated by personal desires, pursuing self-interest through anonymous transactions characterised by a relationship between buyer and seller that is based on mutual indifference.

In general terms, the literature outlines the theory that, in the context of recent approaches to public services in the UK, citizen and consumer had begun to embody a series of simplified binary distinctions. Clarke et al. summarise this distinction as follows:

---

<sup>31</sup> J. Clarke et al. (2007) *Creating citizen-consumers – changing publics and changing public services*, London, Sage Publications.

<sup>32</sup> C. Macpherson (1962) *The political theory of possessive individualism*, Oxford, Oxford University Press.

**Table 2:** Simplified binary distinctions between citizen and consumer as discussed by Clarke et al.

<b>Citizen</b>	<b>Consumer</b>
State	Market
Public	Private
Political	Economic
Collective	Individual
De-commodified	Commodified
Rights	Exchange

Clarke et al. note that, while these general distinctions between the citizen and consumer can be made in terms of what motivates the behaviour, they are also co-constitutive of one another: the public figure of the citizen forms the other face of the private consumer. This theme emerges throughout their publications—the tensions between the citizen and the consumer, and their simultaneous interconnectedness. This inherent co-constitutiveness is a factor that creates many complexities when attempting to create clear, mutually exclusive definitions of citizens and consumers and indeed seems to make such a distinction unrealistic and implausible. This connectedness between citizens and consumers has been noted in much of the relevant academic literature in the field.

Research conducted by Clarke et al. examines the history of the complex role of the public as citizens and as consumers, which is beyond the scope of this information paper, but the main points stemming from this research are:

- > Clarke et al. consider the creation of ‘choice’ in public services is connected to the concept of modernising governments which has dominated Western society’s political–economic practices since the 1970s and has created a consumer culture—elevating the market over the public realm
- > the broad notion of the citizen embodying the public realm and the state, while the consumer embodies the individual and the market
- > the nuanced and interconnected nature of citizens and consumers.

Clarke et al. believe there are shortcomings in giving the consumer precedence in the realm of public services, finding that ‘people have many relationships with public services. They are citizens, experts, taxpayers and voters, as well as users, and they see themselves as part of wider bodies—as members of the public or local communities’.<sup>33</sup> Furthermore, Clarke considers that the consumerist orientation dominating the public service sphere to date overlooks the complexity of relationships between the public and public services.

### **2.1.3 The changing face of the citizen**

Clarke et al. consider that the figure of the consumer does not adequately capture public interest, and the suggested alternative is the citizen figure. The question is then what exactly does this figure represent? The concept of the citizen and what constitutes citizenship is a complex manifestation of a mix of factors. Commentators consider that the concept of citizenship ‘condenses a variety of political, governmental and cultural projects—those that seek to restore national identity and belonging as well as those that attempt to reinvent relationships between people and the state’.<sup>34</sup> Thus, as national identity and formations inevitably change, the concept of citizenship is revised and reworked into new configurations. According to Clarke, above all the figure of the citizen *embodies* changing conceptions of the public. Diagram 1 intends to provide a high-level summary of the Clarke literature which looks at how these changing environments have influenced the relationship of citizens with public services. It depicts this varied face of the citizen from a postwar era to the present as it relates to the political, social and economic climate at a given time.

---

<sup>33</sup> J. Clarke et al. (2006) *Citizen consumers? Using public services is not like shopping*, press release, Economic & Social Research Council website at [http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/PO/releases/2006/february/public\\_services.aspx](http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/PO/releases/2006/february/public_services.aspx).

<sup>34</sup> J. Newman and J. Clarke (2009) *Publics, politics, and power*, London, Sage Publications.

**Diagram 1:** Summary of Clarke et al. literature on models for the changing face of the citizen in relation to public services.

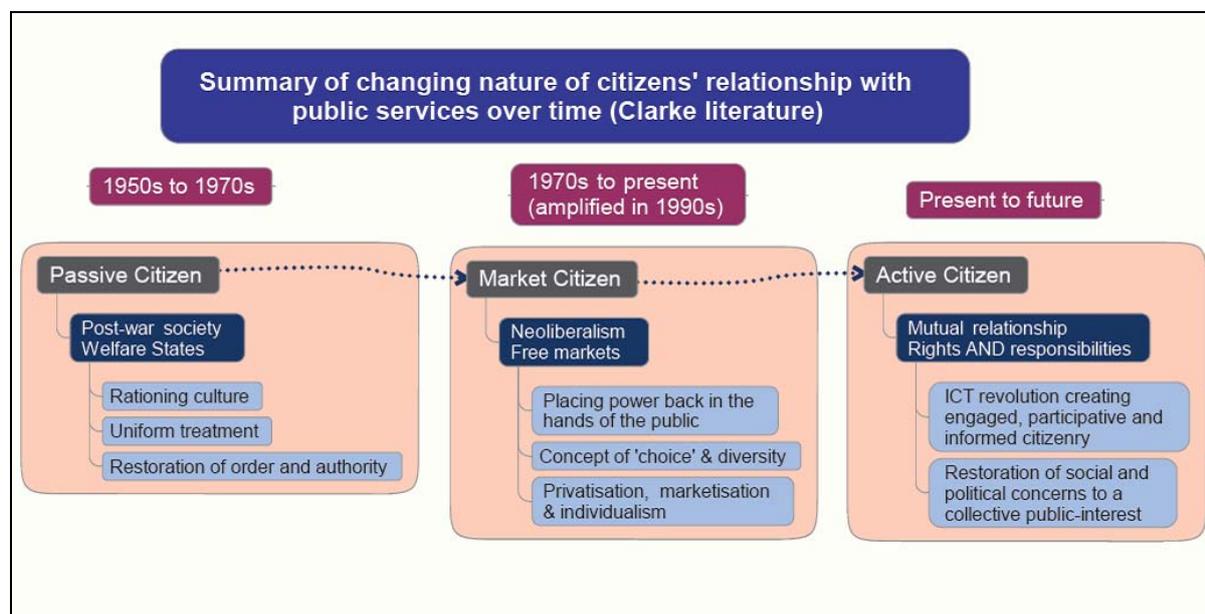


Diagram 1 consolidates key UK literature describing the changing role of the citizen as experienced beyond the UK in the rest of the developed Western world. It traces the transition of the passive citizen of a postwar era, through the consuming citizen of the past two to three decades, to the increasingly participative and engaged citizen figure that is emerging in the latest wave of public sector reform.

As discussed in the literature, the first phase of public sector engagement with the public relates to the 'passive citizen'. It describes the 'one size fits all' model of public service provision shaped by the experience of war and postwar rationing. Following the Second World War, many public services were newly established and were built on values of fairness and prosperity. This gave rise to a public service culture that created a passive citizenry who were subject to rationing, being treated uniformly and having their individual needs and aspirations overlooked.<sup>35</sup>

As living standards began to improve, a more diverse society came into being with a steadily rising consumer culture, giving rise to the 'market citizen'. Public services were undergoing reform and modernisation, revolving around principles of privatisation, decentralisation, and marketisation. This social change towards a consumer culture gave rise to expectations of choice among citizens and the potential for contestability in services, which flowed into the view of citizens as consumers of public services. Choice represented a means of pulling away from the state-based public services of old, exercising choice and allowing the markets to deliver personalised public services, increased equity and social justice.<sup>36</sup> This market-based citizenship implies a different kind of public sphere, where choices and preferences are expressed through the marketplace rather than through public deliberation. In a service context, this included choice of service provider, choice of appointment or service contact time, or choice of differentiated service standards. The market citizen, which is considered to have dominated public policy discourse over the past two to three decades, has been seen to de-collectivise the public and the public's relationship to public services, preferring to treat

<sup>35</sup> Office for Public Services Reform (2002) *Reforming our services: principles into practice*, London.

<sup>36</sup> J. Newman and J. Clarke (2009) *Publics, politics, and power: Remaking the Public in Public Services*, London, Sage Publications.

'citizens as individuated agents pursuing selfish interests'.<sup>37</sup> Root et al.<sup>38</sup> summarised this form of citizenship as unfavourable for privileging rights over responsibilities, being passive rather than active, promoting dependence rather than interdependence, being legal rather than moral, and offering freedom through choice rather than through the exercise of civic virtue. The idea of market states and consuming citizens has suggested a reduced role for nations in relation to their citizens, and perhaps explains the third and current wave of reform shown in Diagram 1—the move to the 'active citizen'. Furthermore, as Clarke et al. point out, as the established orientations of a liberal public sphere become contested, it is not surprising to see the concept of the citizen reworked into a new, more appropriate configuration.<sup>39</sup>

The 'active citizen' describes the participative, engaged and responsible citizen. It describes a citizenry that is becoming increasingly empowered, where citizens are becoming less burdened by bureaucratic administration, and are better able to define their own needs and engage actively in decisions about their own welfare. This relates to an increased recognition by governments that challenges to public policy and decision-making are becoming increasingly complex and cut across sectors, requiring input from the citizenry to develop solutions that work. This will often mean engaging the citizenry through efficient consultation processes to better incorporate the citizen interest into decision-making. Arguably, a large part of this manner of active citizen engagement can be explained by the ICT revolution of the past decade, which has better equipped citizens to provide input into government policy and decision-making and promoted the development of a 'world citizen' view that transcends national boundaries.

This higher level of engagement from the 'active citizen' also gives rise to an image of citizenship that shifts from a predominantly rights- and entitlements-based foundation towards responsibility and productivity. This places the onus on citizens to look after their own and their families' wellbeing, including, for example, their health and security—instead of being wards of the state, as may have been the case for the 'passive citizen'. Furthermore, it encourages citizens to actively consider the broader social interest, participate in civic decision-making, engage in voluntary service activity, and work in partnership with the public service to further the long-term community interest, instead of exercising choice to predominantly further self-interest—as a 'market citizen' may be inclined to do.

## 2.2 Renewed Australian Government commitment to a citizen-centric public service

During 2009 the Australian Government expressed a commitment to a new citizen-centred paradigm of policy development and service delivery, as part of its agenda of public service reform. According to the literature, the citizen in this context refers to participants of society who will be affected by the policy or service in question.

This new paradigm was advocated strongly in 2009 by the Department of Prime Minister and Cabinet (PM&C) and the Australian Public Service Commission (APSC)—both encouraging reform across the public service. The public sector reform agenda sets out an approach to policy development and service delivery to meet citizen needs, rather than administering programs from a supplier-driven perspective.

The drivers for this change are described as an evolving environment where the public is becoming more aware, educated and affluent, and desires more input into government processes, while, simultaneously, governments are facing problems that cut across sectors—no longer fitting neatly into

---

<sup>37</sup> C. Needham (2003) *Citizen-consumers: New Labour's Marketplace Democracy*, London, The Catalyst Forum.

<sup>38</sup> As discussed in J. Newman and J. Clarke (2009) *Publics, politics, and power: Remaking the Public in Public Services*, London, Sage Publications, p. 160.

<sup>39</sup> J. Newman and J. Clarke (2009) *Publics, politics, and power*, London, Sage Publications.

one ministerial portfolio or single agency's set of responsibilities—and that cannot be managed alone.<sup>40</sup> The key message from PM&C and the APSC is that the APS should expect to make a shift from the traditional approach to policy development and service delivery to this new paradigm of public service delivery.

## 2.2.2 Australian Government agenda for public service reform

During his time in office, the then Prime Minister (PM) Rudd stated his desire for public service reform. In delivering the John Patterson Oration at the ANZSOG annual conference, Rudd stated that, given the complexity and breadth of modern-day policy problems, 'a new generation of public service leadership, a new standard of public service excellence and therefore a new era of public service reform'<sup>41</sup> is required. In the same address, Rudd stated that this will require, in part, the delivery of 'high quality programs that put the citizen first'.

In order to realise this public sector reform, in October 2009 the Advisory Group on Reform of Australian Government Administration (the Advisory Group) was established, chaired by the PM&C Secretary, Terry Moran. When announcing the formation of the Advisory Group, the then PM set out his aspiration for the APS to become the best public service in the world. The Advisory Group has developed a strategy for the reform of the APS, reported in *Ahead of the Game: Blueprint for Reform of Australian Government Administration* (the blueprint), which was released in March 2010. The government accepted all of the recommendations in full on 8 May 2010.<sup>42</sup>

There are nine key areas of public sector reform outlined in the blueprint, of which two are directly related to citizen considerations: a high-performing public service that meets the needs of citizens firstly by delivering better services for citizens; and secondly by creating more open government.<sup>43</sup> The blueprint outlines a number of recommendations for service delivery and open government.

In relation to service delivery, the blueprint recommends that the APS:

- > simplifies Australian Government services for citizens (recommendation 1.1)
- > develops better ways to deliver services through the community and private sectors (1.2)
- > delivers services in closer partnership with state, territory and local governments (1.3)
- > reduces unnecessary business regulatory burden (1.4).

The blueprint proposes a number of actions to make these happen. For recommendations 1.1, 1.2 and 1.3, the blueprint proposes that a unified APS-wide leadership group (a Secretaries Board proposed under recommendation 4.4) commission project work to develop a whole-of-government service delivery strategy, and options for service delivery through the community and private sectors and in closer partnership with all levels of government. It also recommends that the Department of Treasury and the Department of Finance and Deregulation (Finance) act as lead agencies to fulfil recommendation 1.4.

---

<sup>40</sup> Drivers as identified by the APSC (L. Briggs (2009) 'All those who stand and wait—putting the citizen at the centre', speech to John Curtin Institute of Public Policy, 21 May, available at <<http://www.apsc.gov.au/media/briggs210509.htm>>), and the PM&C (PM&C Advisory Group (2009) *Reform of Australian Government Administration—building the world's best public service*, October, available at <[http://www.pmc.gov.au/consultation/aga\\_reform/docs/reform\\_aust-govt\\_admin.pdf](http://www.pmc.gov.au/consultation/aga_reform/docs/reform_aust-govt_admin.pdf)>).

<sup>41</sup> Prime Minister K. Rudd (2009) John Paterson Oration, Australia New Zealand School of Government, Annual conference, Canberra, 3 September.

<sup>42</sup> T. Moran (2010) Reform of Australian Government Administration presentation to APSC, Melbourne, 19 May.

<sup>43</sup> PM&C Advisory Group (2009) *Reform of Australian Government Administration—building the world's best public service*, October, available at <[http://www.pmc.gov.au/consultation/aga\\_reform/docs/reform\\_aust-govt\\_admin.pdf](http://www.pmc.gov.au/consultation/aga_reform/docs/reform_aust-govt_admin.pdf)>, p. xii.

To create more open government, the blueprint recommends that the APS:

- > enables citizens to collaborate with government in policy and service design (recommendation 2.1)
- > conducts a citizen survey (2.2).

The blueprint proposes a number of actions to make these happen. For recommendation 2.1, PM&C and Finance are to develop advice on new approaches to citizen collaboration and public sector data availability. For recommendation 2.2, it is proposed that the APSC develops a survey of citizens' views on their satisfaction with government programs, services and regulation to inform government business, as per the Canadian Government's 'Citizen First Survey'. The APSC would consult and collaborate with other government agencies to develop and conduct the survey, including analysing existing agency surveys. Survey results could be reported in individual agency annual reports, together with measures taken to improve citizen satisfaction with government services.

The blueprint includes the feedback from the discussion paper *Reform of Australian Government Administration: Building the world's best public service*. In this discussion paper, the Advisory Group concluded that being truly citizen-centred will require a meaningful commitment to 'actively engaging and empowering people at all points along the service delivery chain'. It summarises possible reform directions as requiring a whole-of-government commitment to citizen-centred service delivery, supported by a strong APS culture focused on improving services for the citizen. This would include clustering services in such a way that will enable efficient access to a wide range of transactions and services in a far more convenient way than what is available today, such as through one-stop public service shops. Such an initiative could form part of a collaborative cross-government, cross-sector strategy to coordinate and promote deeper citizen engagement, become much more customer- and client-oriented, and establish world's-best service delivery practices.

The discussion paper identified five characteristics of high performance to frame the discussion about reform of Australian government administration:

1. having a values-driven culture that retains public trust
2. providing high-quality, forward-looking and creative policy advice
3. delivering high-quality programs and services *that put the citizen first* (emphasis added)
4. providing flexible and agile responses to changing realities and government priorities
5. being effective and efficient in all operations.

At a recent conference, *Government—it's all about citizens*,<sup>44</sup> the chair of the Advisory Group suggested that government products and services should be designed from the citizen's perspective, instead of from the perspective of the public service organisation that will oversee or deliver the product or service. The conference provided an opportunity for public service bodies and government representatives, both national and international, to discuss how the citizen has been, and can continue to be, placed at the centre of decision-making.

---

<sup>44</sup> Hosted by the Commonwealth Association for Public Administration and Management (CAPAM) and the APSC in Canberra over 26–28 October 2009.

The chair of the Advisory Group stated that the barriers to citizen-centred government included:

- > difficulties in developing a complete and accurate picture of the public's needs and expectations
- > diffuse and varied expectations that change over time and with location
- > growing citizen expectations
- > non-linear public interaction with government—governments are multi-layered and multifaceted, which can create confusion
- > the need for transparency, equity and accountability leads governments and the APS to rely on set processes and institutions, which may obscure the citizen as the objective
- > government's ability to take risks is constrained, limiting the ability to innovate.

With these challenges in mind, it was proposed at the conference that community sector engagement was central to the successful implementation of a citizen-centred approach to government. An emphasis was placed on working with the community sector to harness opportunities and strengthen government performance in each of the five characteristics of high performance. This is because the community sector, due to its inherent institutional and funding design, has the capacity to be more flexible, innovative and agile than government. Thus, by working in conjunction with the community sector, governments can improve citizens' experiences and learn new ways of doing business that can be incorporated into existing government models.

### 2.2.3 The Australian Public Service Commission

The APSC is advocating a number of initiatives to ensure that the recommendations made by PM&C are carried through to the public service. Echoing the sentiments of PM&C, in a May 2009 speech<sup>45</sup> to the John Curtin Institute of Public Policy, then APS Commissioner Lynelle Briggs stated that 'we need to look at programme effectiveness, not in terms of how easy is it for us to manage and deliver, but how well it addresses the needs of those to whom it is being delivered. We need to ... tailor them more to the needs of people and less to the structures of government'. Commissioner Briggs highlighted the need to capture the citizen experience and then take that recognition one step further by strategically implementing it into everyday public service business processes, to drive service improvements and to ensure that the focus of public policy remains on the citizen.

In her speech, practical steps were outlined that public service bodies can take to strategically implement these principles into their day-to-day functions. These included renewing a commitment to excellence in service delivery, increasing collaboration across governments and with private and community sectors, and obtaining a detailed understanding of citizen needs and expectations.

In terms of the last point, a significant focus of suggested government reform is based on developing better models of consultation to ensure that the citizen voice is included in APS decision-making. This became particularly evident through the information-sharing that took place at the conference, *Government—it's all about citizens*, mentioned above. At the conference there was a general recognition that a cultural shift was required in the approach to consultation to ensure that citizens are properly heard. It was proposed that a new approach was required to ensure that governments no longer just consult, but *engage* their citizenry.<sup>46</sup> As sectors increasingly converge, issues are no longer confined to certain areas of government or public service bodies, but will require a converged response that includes the public from problem identification to solution development. This kind of

---

<sup>45</sup> L. Briggs (2009) 'All those who stand and wait—putting the citizen at the centre', speech to John Curtin Institute of Public Policy, 21 May, available at <<http://www.apsc.gov.au/media/briggs210509.htm>>.

<sup>46</sup> A detailed paper by the Canadian Government, which has used this kind of engagement framework, is available at <<http://www.ppforum.ca/sites/default/files/Framework%20Paper%20.pdf>>.

engagement will require a cyclic and ongoing relationship between governments and public servants and their citizens. It will mean:

1. Involving the citizen (or balanced representative bodies) in the identification and development of the issues for discussion, as opposed to presenting questions for consultation. The problem with the latter is said to be that any questions formulated for consultation are likely to have inherent assumptions and biases, and thus run the risk of precluding the clear identification of issues.
2. Facilitating the ongoing discussion of issues and incorporating citizen proposals into solutions.
3. Seeking feedback on the success and failures of the new initiative.

The key message from the APSC reform agenda is that there is scope to review the effectiveness of current processes and procedures to ensure that policy development and service delivery across the APS meets the needs of citizens rather than the structures of government. The APSC recognises that this departure from the standard model of public service delivery is not without its challenges and, in addition to efforts from public servants, will require an integrated response involving legislators, to create a legal framework enabling change, as well as agency heads and Ministers, to create the structures and funding arrangements within the public service to suit a changed environment.

## 2.3 The emergence of the citizen in communications and media regulation

### 2.3.1 Case study—Ofcom’s approach to citizens and consumers

#### **Background**

The UK approach to citizens in a communications and media policy context is described in this section as a useful case study to inform the development of an Australian regulatory approach. This case study is based largely on an analysis of Ofcom documents and academic commentary. Ofcom’s experience is particularly relevant as it has publicly grappled with the meaning and significance of the term ‘citizen’ in the context of its foundational legal framework. So far, based on the research undertaken for this paper, Ofcom has been identified as one of the only international regulators to have extensively explored the concept of citizens—particularly exploring the differences and similarities to the concept of consumers—in its approach to regulation of the communications and media sector.

#### **UK debates surrounding Ofcom’s recognition of citizens and consumers**

The legal framework setting out Ofcom’s statutory duties is the converged *Communications Act 2003* (the Act). The Act introduced separate duties for citizens and consumers. To date, Ofcom is the only communications and media regulator known to be legislatively bound to serve the interest of the citizen and the consumer separately. Clause 3 of the Act stipulates:

- 3(1) It shall be the principal duty of Ofcom, in carrying out their functions;
  - (a) to further the interests of citizens in relation to communications matters;
  - and
  - (b) to further the interests of consumers in relevant markets where appropriate by promoting competition.

The legitimacy and usefulness of the inclusion of these separate obligations to the citizen and to the consumer was hotly contested. In the development of the Act, the language used to refer to the public changed forms several times. In 2000, the Communications White Paper outlined Ofcom’s purpose as

safeguarding the interests of 'consumers', the 'public' and 'citizens'. In response to industry pressure, particularly telecommunications, this was replaced throughout with a reference to the public as 'customer' in the draft Communications Bill 2002. This received extensive criticism from civil society groups. In response to this change, the Chair of major broadcasting representative body the Voice of the Listener & Viewer (VLV), Jocelyn Hay, stated that the 'continuing lack of recognition of citizens and the public interest in broadcasting is, sadly, symbolic of a piece of legislation almost wholly concerned with the interest of commerce, for which members of the public are customers and consumers, not citizens'.<sup>47</sup> Furthermore, she stated that the lack of the mention of the public interest and of the interests of citizens reiterated the 'now largely discredited faith that the market and competition will provide choice and quality, which as experience shows, it does not'.<sup>48</sup> In the final *Communications Act 2003*, the Parliamentary decision was to use the twin terms 'consumer' and 'citizen'.

In a communication to the Incorporated Society of British Advertisers, then Ofcom Chief Executive Lord Stephen Carter publicly expressed his concern over the late change, stating that a new amendment that would require Ofcom to give priority to the public interest over the interest of the commercial world marked a considerable departure from the role of the existing media regulators and could lead to unexpected consequences and trouble for the newly founded regulator. Lord Carter's public views added a dimension to the debate which held that Ofcom was already acting to meet the needs of citizens, and that the legislative amendments 'failed to understand the passionate interest of the people who have been appointed to key positions in Ofcom, particularly members of the content board'.<sup>49</sup> His added concern was that providing Ofcom with a mandate to give primacy to the citizen interest at all times may undermine its ability to be a light-touch regulator, particularly in broadcasting, where the regulator would be forced to intervene considerably more frequently than with the existing arrangements. Any impediments created to acting as a light-touch regulator would perhaps be undermining the public interest.

Ofcom's mission statement reflected such concerns by referencing the term 'citizen-consumer':

Ofcom exists to further the interests of citizen-consumers through a regulatory regime, which, where appropriate, encourages competition.

At a 2004 conference hosted by the VLV, Lord Carter explained that the framing of the mission statement in this way was intended to reflect Ofcom's belief that 'the promotion of civic values must infuse all our actions; economics should be the basic tool which underpins all our actions'. The use of the 'citizen-consumer' phrase in Ofcom's first year of operation was a result of extensive internal debate and, from the regulator's perspective, was a measure to ensure that neither the citizen nor consumer perspective was lost. It was framed by Ofcom as a means to ensure that it could carry out its principal duties in practice and to reflect the interconnectedness of the citizen and consumer interest.<sup>50</sup>

However, Ofcom's decision to hyphenate the citizen and consumer, and to foreground competition as the primary means of furthering this hyphenated entity's interests, attracted significant public criticism. Commentators argued that it acted to subsume the citizen into the consumer,<sup>51</sup> reinforcing their

---

<sup>47</sup> J. Hay (2002) 'The Communications Bill and the citizen' speech at the Westminster Media Forum, Voice of the Listener and Viewer.

<sup>48</sup> J. Hay (2002) 'The Communications Bill and the citizen' speech at the Westminster Media Forum, Voice of the Listener and Viewer.

<sup>49</sup> C. Cozens (2003) *Carter attacks Lords over Ofcom change*, MediaGuardian, 1 July.

<sup>50</sup> Ofcom (2008) *Citizens, communications and convergence*, discussion paper, October.

<sup>51</sup> See, for example S. Livingstone and P. Lunt (2007) 'Representing Citizens and Consumers in Media and Communications Regulation', *Annals of the American Academy of Political and Social Science*, 611, pp. 51–55; S. Livingstone, P. Lunt and L. Miller (2007) 'Citizens and Consumers: discursive debates during and after the *Communications Act 2003*', 29(4) *Media, Culture & Society* pp. 613–638.

perception that Ofcom was a regulator operating with a bias towards furthering the economic interest rather than meeting its public interest responsibilities. A key commentator on these issues was academic Sonia Livingstone, from the Department of Media and Communications at the London School of Economics and Political Science. Livingstone argued that ‘although communications is crucial to the democratic process, nonetheless citizen (or public) interests risk being marginalised as the power elites (industry, state and regulator) reproduce and naturalise a consumerist discourse of communications regulation.’<sup>52</sup>

Ofcom conceded that these high levels of criticism ceased to make the phrase useful, and there was a subsequent shift from referring to citizen-consumers to distinguishing between citizens and consumers more clearly.<sup>53</sup> This was articulated in the July 2008 discussion paper, as discussed further below.

### ***Ofcom’s approach to furthering citizen and consumer interests***

In a July 2008 discussion paper, titled *Citizens, Communications and Convergence*, Ofcom stated that it has ‘recognised ... that citizens’ and consumers’ interests are different’<sup>54</sup> and proposed measures to make more explicit how it addresses citizen interests in its policy process.<sup>55</sup> Prior to releasing this paper, Ofcom had published a paper identifying consumer interests and methods for furthering these interests,<sup>56</sup> and part of its rationale for releasing the discussion paper on citizens’ interests was to allay criticism that the regulator had been paying more attention to its responsibility to consumers.

To help distinguish between the interests of citizens and consumers, the discussion paper describes consumers as ‘participants in the marketplace, buying or using goods and services’. The focus is on promoting self-interest as a private individual or business. Consumers ‘want lower prices, increased choice and improved quality. They also want the information and tools necessary to exercise choice and to be protected against scams and other unfair practices’.<sup>57</sup>

The paper defines citizens as ‘participat[ing] in society, which includes the marketplace, but also extends far beyond it’. As citizens, people ‘are free to exchange goods and services, but are also free to participate in a range of social, cultural and political activities that are not the subject of commercial contracts’. Acting as a citizen means ‘exercis[ing] the rights that a society has decided that [its citizens] should have, such as the right to vote or to seek access to [free health services]’. In return, responsibilities, such as serving on a jury or maintaining the speed limit, are fulfilled. An important principle identified is that ‘all citizens are equal and have the same rights and responsibilities. In relation to media and communications services, this will include the right to have access to services and content necessary to participate in society’.<sup>58</sup>

Ofcom also acknowledges the intertwined nature of the citizen and consumer roles. Ofcom notes that using media and communications services to participate in society as a citizen usually involves having access to those services as a consumer. Conversely, consumer goods can be important tools for citizens. An example provided is mobile phones—a consumer good that can be used to further the citizen interest, by enhancing personal safety, promoting social networking and enabling participation in a society.

---

<sup>52</sup> S. Livingstone et al. (2007) *Citizens, consumers and the citizen-consumer: articulating the interest at stake in media and communications regulation*, London, Sage Publications.

<sup>53</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 5–6.

<sup>54</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 6.

<sup>55</sup> Ofcom (2010) *Citizens, Communications and Convergence – A summary of stakeholder responses, and our next steps*, statement, April 2010, pp. 1–2, 10.

<sup>56</sup> Consumer interests were defined in Ofcom (2006) *Ofcom’s Consumer Policy*, consultation, December 2006.

<sup>57</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 6.

<sup>58</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 6.

Further, the interconnectedness of citizen and consumer interests has implications for regulation—it may mean that the regulator is responsible for closing the gap between the benefits that the market will deliver unaided and the long-term social benefits that are not always delivered by markets alone. Ofcom states that careful consideration is required to balance intervention and the associated risk of stifling innovation and investment, with non-intervention and the associated risk of excluding citizens and losing services that may be of value to the public.

In its citizen consultation paper, Ofcom lists the duties it needs to carry out to further the interests of citizens. These are framed within its legislative duties as set out in the *Communications Act 2003* and place a strong emphasis on securing the availability of a wide range of electronic communications services, television and radio services.<sup>59</sup> They also bind Ofcom to ensure the plurality of TV and radio providers, maintain broadcasting standards and secure optimal use of the electromagnetic spectrum, which involves thinking of ways it can be used to further the interests of citizens, not just consumers.<sup>60</sup> Furthermore, Ofcom is bound by its legislation to promote media literacy and to maintain certain levels of local broadcasting content.<sup>61</sup> Ofcom also defines its role in promoting the fulfilment of the purposes of public service television broadcasting, and encouraging the availability and use of high-speed broadband, as two citizen-specific regulatory duties.<sup>62</sup> Ofcom also sees its obligation to promote inclusion of vulnerable groups in society, such as people with disabilities or those in remote areas, as part of its role in furthering citizens' interests.<sup>63</sup> These are duties that go beyond what the market would deliver to ensure that the wider public interest is not overlooked.

Additionally, Ofcom's duty to promote competition and encourage investment and innovation in markets is designed to lead to increased economic growth and productivity, which, ultimately, is of benefit to society as a whole or an indirect means of furthering the citizen interest. This is another example of how the citizen and consumer interest are interconnected.

### ***Practical steps Ofcom has taken to further the citizen interest***

To date, Ofcom has taken a number of practical steps to recognise and further the citizen interest in regulatory decision-making. These focus on internal improvements and changing organisational thinking to ensure that citizen and consumer interests are properly identified and incorporated into regulatory approaches. These activities, which are ongoing, are summarised below:

> *Use of a framework for assessing Ofcom's role in furthering the interests of citizens and consumers*

Ofcom has created a framework as a way to capture the citizen and consumer interest in practice, and for the resolution of any conflicts between these interests that may arise.<sup>64</sup> The framework seeks to ensure that, in the project scoping and planning phase, the citizen and consumer interest can be clearly articulated. It serves as a measure to ensure that citizen interests are considered in decision-making. The framework aims to recognise that there may be tensions between the interests of consumers and those of citizens; for example, making services more widely available for the benefit of society as a whole at the cost of some consumers paying more for particular services than would otherwise have been the case.<sup>65</sup> It suggests that resolving these tensions is likely to involve regulatory discretion—requiring a judgment call on the

---

<sup>59</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 9.

<sup>60</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 9.

<sup>61</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 10.

<sup>62</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 16.

<sup>63</sup> Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 14.

<sup>64</sup> See Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 12.

<sup>65</sup> See Ofcom (2008) *Citizens, Communications and Convergence*, discussion paper, October 2008, p. 13 for a discussion on how it addresses these tensions.

pros and cons of intervening. When tensions do arise, the *Communications Act 2003* stipulates that Ofcom must publish a statement that sets out:

- a. the nature of the conflict
- b. the manner in which Ofcom decides to resolve it
- c. the reasons for the decision to resolve it in that manner.

The framework suggests that, when a regulatory decision is being made that is predominantly consumer-related, a simple way to ensure that the citizen interest is not overlooked is to question: 'how will this particular decision affect the interest of citizens?' The inverse is to be applied to a decision that focuses on citizen interests.

> *Stakeholder engagement and consultation*

A key practical step taken by Ofcom is to consider the concerns of civil society groups and public interest stakeholders. This is an important mechanism for ensuring that the voice of the citizen is incorporated into regulatory decision-making. Ofcom engages with academics such as Livingstone, as well as with broadcasting advocacy group VLV. Ofcom holds bilaterals, regularly meeting with relevant stakeholders, and maintains an issues log as an internal record of issues raised by stakeholders, which are then cycled back into work plans.<sup>66</sup>

When releasing consultation papers, Ofcom has been explicit in seeking the citizen perspective. An example is its August 2008 consultation paper, *Mobile citizens, mobile consumers—adapting regulation for a wireless world*. It includes a specific chapter titled 'Citizens', which analyses the issue of mobility from a citizen perspective. It explains why mobile has a citizen dimension and the arising opportunities. It seeks feedback from stakeholders on specific citizen-centric questions, such as how mobiles relate to participation in society, factors that need to be taken into account when thinking about access and inclusion, how new services may affect protection of children, privacy and security, and how mobile coverage issues have affected the citizenry to date.

> *The role of the Content Board*

Ofcom has a Content Board, which sits beneath the executive board and is responsible for issues of broadcasting content. Citizen interests are considered as core to the function of the Content Board, which 'is charged with understanding, analysing and championing the voices and interest of the viewer, the listener and citizen'.<sup>67</sup> Citizen interests in this regard include public service broadcasting; the quality of news and current affairs; protection of children's programming; and representation for ethnic, religious and regional broadcasting. This board is specifically dedicated to ensuring that the public interest agenda is prioritised and met in Ofcom's regulatory decision-making, by 'examin[ing] issues where the citizen interest extends beyond the consumer interest, with focus on those aspects of the public interest which competition and market forces do not reach'.<sup>68</sup>

> *Ensuring a coherent and consistent approach*

Ofcom flagged in its 2007 paper the importance of consistent internal messaging in the approach taken to furthering citizen interests. This means ensuring processes are in place to take citizen

---

<sup>66</sup> Ofcom (2007) *Taking account of consumer and citizen interests: Progress and evaluation—12 months on*, progress report, February, p. 8.

<sup>67</sup> Ofcom website at <[http://www.ofcom.org.uk/about/csg/ocb/functions\\_role/](http://www.ofcom.org.uk/about/csg/ocb/functions_role/)>.

<sup>68</sup> Ofcom website at <[http://www.ofcom.org.uk/about/csg/ocb/functions\\_role/](http://www.ofcom.org.uk/about/csg/ocb/functions_role/)>.

and consumer interests into account at a high level. In its April 2010 statement—*Citizens, Communications and Convergence: a summary of stakeholder responses, and our next step*—Ofcom’s main proposal is to develop a single guide to policy appraisal for Ofcom managers that guides organisational approaches to issues such as ‘diversity and equality, as well as citizen and consumer interests’.<sup>69</sup>

### 2.3.2 The Australian approach to citizens in communications and media regulation

Unlike in the UK, in Australia there is no explicit legislative mandate requiring the communications and media regulator to further citizen interests. However, as discussed earlier, consideration of citizen interests may be consistent with, or indeed strengthen, existing public interest objectives set out in the communications and media regulatory framework. Further, the Australian Government’s emphasis on citizen-centric public service delivery and design suggests that the *processes* for communications and media regulation provide scope for a more explicit recognition of citizen considerations.

Debates about citizen concepts in Australian media and communications regulation have occurred over several decades. During the early days of broadcasting in Australia, the influence of citizen concepts was apparent in debates about media plurality and diversity. In Australia in the 1990s, telecommunications deregulation reforms illustrated the application of market concepts in shaping the role of regulation, with notions of end-user and consumer being explicit concepts in legislation. Recent developments, such as the rise of social networking and the availability of Web 2.0 tools have reinvigorated the idea of citizen participation in public services.

In comparison with the UK, in Australia there has been less academic discussion of the significance of the citizen interest in the context of communications and media regulation. One of the few commentators is Professor Lesley Hitchens of University of Technology Sydney, who has discussed the issues of citizens and consumers from the perspective of digital content and broadcasting policy, calling for greater discussion and debate of citizen issues. Using the example of the 2006 media reform legislation, Hitchens points out that in Australia, unlike in the UK, debates on media and communications regulation contained little discussion of citizen interests.<sup>70</sup> Hitchens considers that, in such debates, new media content is much less likely to be imbued with a public-regarding character than traditional platforms; digital content is perceived as much more of an individual matter, a private consumer issue subject only to consumer protection measures such as content safety.

Professor Terry Flew of Queensland University of Technology has applied citizenship concepts in analysing the relationship between media regulation and the public interest in Australia.<sup>71</sup> In relation to further thinking on citizenship concepts and media regulation, particularly in an environment of convergent media, Flew concludes that it is

impossible to present the citizenship model as something ‘other’ to consumption, as was common in debates about media policy in the 1990s. What requires consideration instead is the diversity of ways in which one can be a citizen, and the conditions under which equitable access to both public and commercial resources can be secured. It also entails thinking about regulation as something that keeps a check on the operation of markets in the ‘public

---

<sup>69</sup> Ofcom, *Citizens, Communications and Convergence: a summary of stakeholder responses, and our next steps*, April 2010 p.1

<sup>70</sup> L. Hitchens (2007) ‘Citizen versus Consumer in the Digital World’ in A. Kenyon (ed.) *TV Futures: Digital Television Policy in Australia*.

<sup>71</sup> T. Flew (2003) ‘Television, regulation and citizenship in Australia’ in P. Kitley (ed.) *Television, Regulation and Civil Society in Asia*.

interest', but is also increasingly about 'making markets work' and realising the benefits of technological change'.<sup>72</sup>

Dr Nick Herd, director of research at the Australia Council and an associate researcher at UTS, has touched upon the citizen role in an analysis of the public interest in relation to Australian media policy and regulation. Herd considers that during the 1980s and 1990s, and with the introduction of the BSA in 1992, came a shift in the notion of the public interest, 'fostered in part by the centring of the market in policy deliberations and the resulting tendency to recast citizens as consumers'.<sup>73</sup> According to Herd, 'the public interest in broadcasting now encompasses economic values in a way that was not the case two decades ago and has led to a lessening in the idea of public interest in broadcasting being primarily about social and cultural values'.<sup>74</sup>

This paper aims to provide a basis for building on the discussions above, by exploring 'the citizen' as an enduring regulatory concept and its potential implications for the ACMA's regulatory role. It aims to provide a starting point for the ACMA to contribute to discussions and, using a proposed framework, to start developing and implementing ways to incorporate citizen considerations in its service delivery, consultations, decision-making and educative functions. Further discussion, debate and research on the citizen in the Australian media and communications policy and regulatory context are welcome.

---

<sup>72</sup> T. Flew (2003) 'Television, regulation and citizenship in Australia' in P. Kitley (ed.) *Television, Regulation and Civil Society in Asia*, p. 163.

<sup>73</sup> N. Herd (2008) 'Australia: Concentration, Competition and Revaluing the Public Interest' in Ward (ed.) *Television and Public Policy: Change and Continuity in an era of global liberalization*, p. 85.

<sup>74</sup> N Herd, (2008) 'Australia: Concentration, Competition and Revaluing the Public Interest' in Ward (ed) *Television and Public Policy: Change and Continuity in an era of global liberalization*, p. 85.

# Part 3

## Citizens and the ACMA

### 3.1 General use of the framework

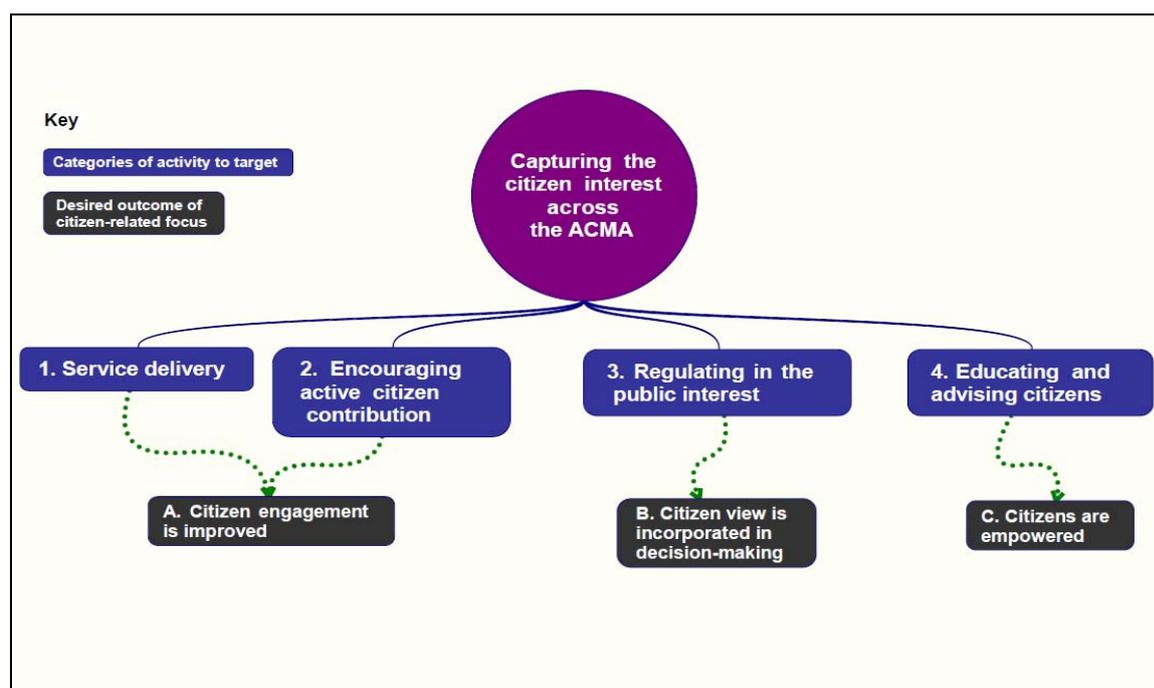
This paper presents a framework for use by the ACMA in considering citizen-related issues in the Australian regulatory context (see diagram 2). The framework could be an evolutionary approach that would reframe the ACMA's activities from a citizen perspective. It is intended as a tool to assist the ACMA to ensure that, in line with its current public interest accountability measures, it adequately considers the interests of the citizen in its decision-making, service delivery, regulatory processes and other activities—thereby strengthening the ACMA's public interest considerations.

It is proposed that this framework can be used by applying it to:

- > current ACMA functions, to recognise existing activities that further citizen interests and to identify areas where organisational processes can be strengthened to further the citizen interest
- > new regulatory proposals, to ensure that citizen interests are considered where necessary before regulatory proposals are introduced internally or externally
- > regulatory review activities, such as the provision of recommendations to government about future regulatory frameworks, to ensure that the ACMA's advice to government is informed by citizen concepts where appropriate.

The ACMA citizen framework is based on four general categories of activity (purple boxes) across the organisation, which can be targeted in an effort to meet the three desired overarching outcomes (grey boxes) of adopting a citizen-related focus.

**Diagram 2:** The proposed framework for considering the citizen interest.



It should be noted that categories of activity under the framework are not necessarily mutually exclusive. A particular ACMA function may fit into more than one category and contribute to multiple outcomes. For example, when assessing improvements to be made to the ACMA's public consultation process, the key outcome would be to improve citizen engagement *and* to incorporate the citizen interest into decision-making—relating to category 2, where the ACMA can target its internal processes for consultation; and category 3, where the ACMA can ensure that the consultation processes are designed to capture the citizen interest. Within each of these categories, the framework provides initial questions and guidance on how to ensure that citizen issues are appropriately included in analysis. Furthermore, staff are encouraged to consider the varying role of citizens in their analysis (as outlined in Part 1). Where it applies, have the needs of the citizen been considered as individual citizens, as vulnerable citizens, as members of particular groups and in terms of various interests?

This guidance is not definitive and each issue will need to be considered on a case-by-case basis. However, it is hoped that the guidance and questions provide a useful catalyst for the consideration of citizen issues in the development of new activities or reviewing existing activities within the ACMA.

## 3.2 The citizen framework in detail

This section explains the overall framework, presented in Diagram 2. Annex 1 provides the citizen framework in a schema.

### ***Desired outcome A: Improving citizen engagement***

The key objective of this outcome is to ensure that the right processes and mechanisms are in place across the organisation, both externally and internally, to encourage efficient and simplified citizen input into the ACMA's work. It also relates to improved internal procedures to ensure that the information collected through engagement is utilised efficiently. This outcome can be achieved by explicitly considering the citizen interest in the ACMA's service delivery mechanisms, and in its broader role in facilitating active citizen contribution in its work. Both are described below.

1. **Service delivery**—this includes the delivery of goods and services by the ACMA to citizens and stakeholders. The ACMA's service delivery role is mainly through program delivery, such as the Do Not Call Register and Cybersmart programs; and complaint-handling, such as anti-spam measures, telemarketing investigations, broadcasting investigations and content assessment.

#### *Key considerations*

- > Improving the level of citizen engagement by considering how goods and services are being delivered from the perspective of the citizen. Ensuring that service delivery meets their needs and expectations.
- > Examples of relevant activities across the ACMA: Cybersmart programs, investigations processes, unsolicited communications (including anti-spam responsibilities and Do Not Call Register).

#### *Ways forward*

Design processes should be developed from a user-perspective and need to consider:

- > Are they simple, easy to use and intuitive? Do they reflect the way that people want to receive goods/services?
- > Do they reflect the needs of all users (including, for example, those with a disability or first-time users) or only those with existing expertise?
- > What interagency links would be useful to ensure better overall external service delivery?

- > Can service delivery be simplified and streamlined, as recommended in *Ahead of the Game*? How are we making use of online communication tools, as recommended by the Government 2.0 Taskforce, otherwise referred to as Gov 2.0?

**2. Active contribution by citizens in the ACMA's work**—this includes seeking the views of citizens in consultation processes and enabling ease of citizen interaction with the agency. It also includes acknowledging, understanding and fully considering the views of citizens in issue analysis and decision-making.

*Key considerations*

- > Developing ways to engage citizens in the ACMA's regulatory processes. Finding ways to uncover how citizens think, understand their concerns and incorporate citizen views into analysis and decision-making.
- > Examples of relevant activities across the ACMA: consultation processes, engagement mechanisms (including the awareness and use of Gov 2.0 tools) and framing of consultations to ensure messages are tailored for different citizen groups.

*Ways forward*

Develop a specific strategy for accessing the views of citizens (or representative bodies) for each project—for example, are these views best sought through qualitative and/or quantitative research, or can views be accessed directly? What forms of communication will be suitable for this purpose? Can online tools be used? How much time is appropriate to allow for real engagement?

In all consultation processes, specifically include discussion of the expected impact of the issue on citizens, including various market-focused and non-market-related advantages and disadvantages.

Consider accessing other organisations/people that may be well-placed to represent citizens; for example, specialists in academia and civil liberty groups.

Furthermore, consider how citizen views will best be used once they are obtained. Are there feedback loops in place to ensure ongoing communication and transparency throughout consultation processes? What are the resourcing implications arising from greater citizen engagement? How will the organisation develop the capacity and methods to deal with and respond to citizen input?

***Desired outcome B: Incorporating the citizen interest into decision-making and other activities***

**3. Regulating in the public interest**—this includes considering whether the legislation under which decisions are to be made expresses clearly the government's view of the public interest and, if not, then what measures should be used to assess public interest appropriately in making regulatory decisions. It also includes other functions that further citizen interests, such as protecting citizens' interests.

*Key considerations*

- > Finding out the most appropriate measure of considering the public interest relevant to the decision being made or the activity being undertaken. Assessing impacts and options, and making decisions that best reflect that measure. Exploring how the citizen view can be best utilised to strengthen the ACMA's public interest considerations.
- > Examples of relevant activities across the ACMA: community broadcasting (including broadcasting allocation and planning), diversity of services principles, National Relay Service, consumer protection measures.

### *Ways forward*

In decision-making frameworks, clearly identify from the legislation the objectives that represent the broad public interest. Test analysis against these as well as any other objectives that may focus on individual, group and/or industry interests. Consider where a citizen focus may be added or extended to reinforce public interest concepts.

For example, what are the specific objects of each Act and is there discretion for these to include the citizen view? The objects of the BSA include specific provisions relating to the public interest such as fairness and accuracy of content, availability of a diverse range of services to audiences, protection of minors, and reflecting Australian identity and cultural diversity. The objects of the *Telecommunications Act 1997* consider the long-term interest of end-users of carriage services. The objects of the *Radiocommunications Act 1992* require consideration of the overall public benefit derived from using the radiofrequency spectrum.

Where no clear expression of the public interest appears, consider what other measures should be used. As discussed earlier, the ACMA decided that, subject to the statutory framework, it will adopt a TWS as its overarching framework for assessing the impact of regulatory proposals on the public interest. In considering how to design regulatory interventions that maximise total welfare, the ACMA should consider whether market-based mechanisms are likely to promote the outcome that maximises the total welfare or the welfare of society's members in their role as citizens and consumers. Analysis should explore whether the citizen voice has been clearly expressed and considered in the weighting of the quantitative and qualitative analysis collected as part of the TWS. It should also consider if any other processes should inform the ACMA's decision and how these might ensure the public or citizen interest is expressed.

### ***Desired outcome C: Empowered citizens***

4. **Educating, informing and advising citizens**—this includes activities aimed at raising awareness and educating citizens of their rights and responsibilities across the areas that the ACMA regulates. It involves education designed to empower citizens so that they can protect themselves from harmful online activities, such as raising awareness of any potential risks or scams and cybersafety. Furthermore, it relates to principles of open and transparent government and making ACMA information and raw data open and accessible to citizens, wherever possible.

#### *Key considerations*

- > Making available the information and advice that citizens need to understand their rights and responsibilities in each area of the ACMA's work. Ensuring that these messages are understandable to different groups of citizens. Considering when this information is needed most and how it will be delivered. Utilising any digital media literacy strategies that may help to create empowered citizens. Assessing what information is suitable for public release to inform citizens.
- > Examples of relevant activities across the ACMA: Cybersafety programs, digital media literacy, Do Not Call Register campaigns.

### *Ways forward*

Consider delivering education and awareness-raising activities through existing mechanisms that have proven effectiveness in meeting citizen needs (for example, through state-based organisations or NGOs as used by the ACMA's cybersmart programs).

Consider the different ways in which people may learn and absorb information, and develop plans accordingly. In particular, consider how hard-to-reach communities or people with specific needs can also benefit from education and awareness programs.

In keeping with the principles of transparency, accessibility, availability, searchability and useability of public sector information, think about how to make available any of this information held or created by the ACMA. This can be in the form of raw data and statistics, or as a finalised report. It also refers to the information the ACMA makes available about its functions, powers, decisions and processes—both as a matter of course and on request by citizens. Citizens are empowered through ready access to ACMA information and data, to use in activities such as mash-ups or crowd-sourcing.

# Conclusion

The ACMA considers that it is timely to embed citizen considerations into its work in a structured and considered manner. This paper has outlined the background to current public policy discussions and provides a starting point for exploring the ACMA's role in relation to citizens. It is a work in progress that is open to evolution as issues arise, and the ACMA welcomes feedback.

# Annex 1

ACMA 'citizen interest' framework within the broader scheme of considerations.

