

Senate Standing Committee on Environment and Communications
Answers to Senate Estimates Questions on Notice
Additional Estimates Hearings February 2016
Communications Portfolio
Department of Communications and the Arts

Question No: 204(a)

Program 1.1

Hansard Ref: Written, 19/02/2016

Topic: Statutory Review Provisions

Senator Ludwig, Joe asked:

Please list all current legislation, covered by the department's portfolio, which contain a statutory review provision/s. For each, please provide:

1. What work has been done towards preparing for the review? If none, why not?
2. Please provide a schedule or a work plan for the review
3. When did/will this work begin?
4. When is/was the review due to commence.
5. What is the expected report date.
6. Who is the minister responsible for the review
7. What department is responsible for the review
8. List the specific clauses or legislation under review caused by the statutory provision.
9. List the terms of reference.
10. What is the scope of the review.
11. Who is conducting the review. How were they selected? What are the legislated obligation for the selection of the person to conduct the review?
12. What is the budgeted, projected or expected costs of the review?
13. When was the Minister briefed on this matter?
14. What decision points are upcoming for the minister on this matter?
15. List the number of officers, and their classification level, involved in conducting the review
16. Will the report will be tabled in parliament or made public. If so, when?

Answer:

The following statutory review provisions have been identified in Communications and the Arts portfolio legislation, as at 19 February 2016:

1. *Broadcasting Services Act 1992* – section 61CT
2. *Broadcasting Services Act 1992* – section 130ZZE
3. *Broadcasting Services Act 1992* – section 215B
4. *Competition and Consumer Act 2010* – section 151CL

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5. *Competition and Consumer Act 2010* – section 152EOA
6. *Do Not Call Register Act 2006* – section 45
7. *Enhancing Online Safety for Children Act 2015* – section 107
8. *Radiocommunications Act 1992* – section 313B
9. *Spam Act 2003* – section 46
10. *Telecommunications Act 1997* – section 372
11. *Telecommunications (Consumer Protection and Service Standards) Act 1999* – section 158P
12. *Telecommunications (Consumer Protection and Service Standards) Act 1999* – section 133A

While it is expected that this list includes all statutory review provisions, a more exhaustive search would involve an unreasonable diversion of the Department's resources. Answers to the 16 questions above are presented below for each identified statutory review provision.

1. *Broadcasting Services Act 1992* – section 61CT

1. Section 61CT of the *Broadcasting Services Act 1992* (BSA) requires the Minister for Communications to cause a review of local content requirements for regional radio to be conducted at least once every three years. As the last review report was tabled in March 2015 the next review will not commence until the second half of 2017.
2. Please see the answer to Question 1.
3. Please see the answer to Question 1.
4. Please see the answer to Question 1.
5. Please see the answer to Question 1.
6. The Minister for Communications.
7. The Department of Communications and the Arts.
8. Section 61CT of the BSA requires regular reviews of local content requirements set out in:
 - a. Division 5C;
 - b. Sections 43B and 43C; and
 - c. Paragraph 8(2)(c) of Schedule 2.
9. Section 61CT of the BSA requires that:
 - (1) At least once every 3 years, the Minister must cause to be conducted a review of the following matters:
 - (a) the operation of sections 43B and 43C;
 - (b) the operation of that Division;
 - (c) the operation of paragraph 8(2)(c) of Schedule 2;
 - (d) whether sections 43B and 43C should be amended;

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- (e) whether that Division should be amended;
 - (f) whether paragraph 8(2)(c) of Schedule 2 should be amended.
 - (2) For the purposes of facilitating the conduct of a review under subsection (1), the Australian Communications and Media Authority (ACMA) must make available information about regional commercial radio broadcasting licensees' compliance with:
 - (a) licence conditions imposed as a result of section 43B or 43C;
 - (b) licence conditions imposed as a result of an investigation directed under section 61CR;
 - (c) licence conditions imposed as a result of a direction under section 61CS; and
 - (d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.
 - (3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
 - (4) The ACMA must comply with a direction under subsection (3).
 - (5) The Minister must cause to be prepared a report of a review under subsection (1).
 - (6) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.
10. Please see the answer to Question 1.
11. Please see the answer to Question 1.
12. Please see the answer to Question 1.
13. Please see the answer to Question 1.
14. Please see the answer to Question 1.
15. Please see the answer to Question 1.
16. Yes. The Minister is required to cause copies of the review report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

2. *Broadcasting Services Act 1992* – section 130ZZE

Section 130ZZE of the BSA relates to the ACMA review of Part 9D of the BSA. The ACMA has responded to these questions, in relation to section 130ZZE, in its response to Question on Notice No. 204.

3. *Broadcasting Services Act 1992* – section 215B

Section 215B of the BSA and section 313B of the *Radiocommunications Act 1992* (Radcomms Act) both required reviews to be conducted of matters relating to digital radio and restricted datacasting services, including matters relating to the relevant provisions in their respective Acts.

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The Department notes that, while section 215B of the BSA and section 313B of the Radcomms Act were in force at the date of these questions, they have since been repealed by the *Broadcasting Legislation Amendment (Digital Radio) Act 2016*, which commenced on 1 March 2016.

The answers relating to both provisions as they stood at the time of the question are included below (noting section 313B of the Radcomms Act is listed as number 8 in the alphabetical list of provisions above).

1. The review has been completed. On 8 July 2015, a report of the review, the *Digital Radio Report* (the Report), was tabled in Parliament. The Report was also published on the website of the Department of Communications and the Arts. Visit www.communications.gov.au/publications/digital-radio-report to access the Report.
2. See the response to Question 1.
3. Work on the review commenced in the final quarter of 2013.
4. Section 215B of the BSA required that '[b]efore 1 January 2014, the Minister must cause to be conducted' a review of the matters listed in the section. Similarly, section 313B of the Radcomms Act required that '[b]efore 1 January 2014, the Minister must cause to be conducted' a review of the matters listed in the section.
5. See the response to Question 1.
6. The Minister for Communications.
7. The Department of Communications and the Arts.
8. The review addressed matters required to be reviewed under section 215B of the BSA and section 313B of the Radcomms Act.
9. The terms of reference for the review are set out in the relevant statutory provisions.
 - a. Section 215B of the BSA required the review to consider: the development of various terrestrial and satellite technologies capable of transmitting digital radio broadcasting services and restricted datacasting services in Australia; the implementation of those technologies in foreign countries; and the operation of the Act in so far as it deals with the licensing and regulation of digital radio broadcasting services and restricted datacasting services.
 - b. Section 313B of the Radcomms Act required the review to consider the matters specified in the section, including the use of spectrum for the transmission of digital radio broadcasting services and restricted datacasting services in Australia; the availability of additional frequency channels for the transmission of digital radio broadcasting services and restricted datacasting services in Australia; the operation of the Act in so far as it deals with licensing and regulation in relation to the transmission of digital radio broadcasting services and restricted datacasting services; and the operation of the noted provisions relating to digital radio multiplex transmitter licences.
10. The scope of the review reflected the terms of reference as outlined in the answer to Question 9.

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11. The review was conducted by the former Department of Communications (now the Department of Communications and the Arts) using existing resources and staff.
12. The review was undertaken within the existing Departmental budget and specific costs have not been separately identified.
13. The Minister was briefed at key milestones during the review process.
14. As noted in the answer to Question 1, the review has been completed.
15. No additional resources were engaged to conduct the review. The review work was undertaken as part of normal business for existing staff in the relevant policy areas of the Department.
16. Yes. See the response to Question 1.

4. *Competition and Consumer Act 2010* – section 151CL

1. Preparation for the annual statutory review required pursuant to section 151CL(2) of the *Competition and Consumer Act 2010* (CCA) usually begins prior to the end of the relevant financial year and has commenced for this year.
2. The workplan for the production of the report required under Division 11 of Part XIB of the CCA is as follows:
 - a. Preparation began in July 2015.
 - b. Research and requests for information sent out to relevant parties from July to September 2015.
 - c. Data analysis, key themes and drafting for the reports was undertaken between September 2015 and January 2016.
 - d. Final report approved by the Australian Competition and Consumer Commission (Commission) in February 2016, publication anticipated during March or April 2016.
3. July 2015.
4. There is no statutory commencement date for the review.
5. Pursuant to subsection 151CL(2) of the CCA the Commission must give the report to the Minister as soon as practicable after the end of the financial year. The Commission provided the report to the Minister on 8 March 2016.
6. The Minister for Communications.
7. The Department of Communications.
8. Parts XIB and XIC of the CCA.
9. N/A.
10. The Commission must report each financial year on competitive safeguards within the telecommunications industry, including matters relating to the operation of Parts XIB and XIC of the CCA.

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11. Commission staff conduct the review. There are no legislated obligations for the selection of staff undertaking the review.
12. The review is funded from within existing resources and costs are not disaggregated from the ACCC's overall operating budget.
13. March 2016.
14. N/A.
15. Executive Level 2 – one staff, Executive Level 1 – two staff, APS 6 – two, APS 5 – two.
16. The Commission expects the report will be tabled in April 2016.

5. *Competition and Consumer Act 2010* – section 152EOA

The Department responded to the same questions in relation to this provision in its response to Question on Notice No. 20 of the Supplementary Budget Estimates Hearings November 2014. At that time, the review required by section 152EOA had been completed and tabled in both Houses of Parliament on 16 July 2014. Please refer to the Department's previous response for details of the review.

6. *Do Not Call Register Act 2006* – section 45

The Department responded to the same questions in relation to this provision in its response to Question on Notice No. 20 of the Supplementary Budget Estimates Hearings November 2014. At that time, the review required by section 45 had been completed and tabled in both houses of Parliament on 29 September 2010. Please refer to the Department's previous response for details of the review.

Although section 45 remained in force at the date of this question, it has subsequently been repealed by the *Statute Law Revision Act (No. 1) 2016*, which commenced on 10 March 2016.

7. *Enhancing Online Safety for Children Act 2015* – section 107

1. The Enhancing Online Safety for Children Act 2015 commenced on 1 July 2015. Section 107 requires the Minister to cause to be conducted a review of the following matters:
 - a. the operation of the Act and any legislative rules created under the Act;
 - b. whether the Act or any legislative rules should be amended; and
 - c. whether a delegation should be made under subsection 64(1) of the Act.

The review must be conducted within 3 years of the commencement of section 107. As section 107 commenced on 1 July 2015, the review is not expected to commence before the second half of 2017.

2. N/A.
3. See answer to question 1.
4. See answer to question 1.
5. The review is expected to report before 30 June 2018.
6. The Minister for Communications.

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7. The Department of Communications and the Arts is the department responsible for the Enhancing Online Safety for Children Act.
8. See answer to question 1.
9. Not applicable.
10. See answer to question 1.
11. Please see answer to question 1.
12. Please see answer to question 1.
13. Please see answer to question 1.
14. Please see answer to question 1.
15. Please see answer to question 1.
16. After the report has been completed, section 107 of the Enhancing Online Safety for Children Act requires the Minister to cause copies of the report to be tabled in each House of Parliament within 15 sitting days of that House after the completion of the report.

8. *Radiocommunications Act 1992* – section 313B

Answers in relation to this provision are provided at item 3 above, concurrently with answers in relation to section 215B of the BSA.

9. *Spam Act 2003* – section 46

The Department responded to the same questions in relation to this provision in its response to Question on Notice No. 20 of the Supplementary Budget Estimates Hearings November 2014. At that time, the review required by section 46 had been completed and tabled in the House of Representatives on 22 June 2006 and in the Senate on 8 August 2006. Please refer to the Department's previous response for details of the review.

Although section 46 remained in force at the date of this question, it has subsequently been repealed by the *Statute Law Revision Act (No. 1) 2016*, which commenced on 10 March 2016.

10. *Telecommunications Act 1997* – section 372

1. Preparation for the annual statutory review required pursuant to section 372 of the *Telecommunications Act 1997* (Tel Act) commenced in March 2016.
2. The Commission commenced the review in March 2016 and anticipates completing it during the same month.
3. March 2016.
4. There is no statutory commencement date for the review.
5. Pursuant to subsection 372(2) of the Tel Act the Commission must give the report to the Minister as soon as practicable after the end of the financial year.
6. The Minister for Communications.
7. The Department of Communications and the Arts.
8. Division 3 of Part 20 of the Tel Act.

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9. N/A.
10. The Commission must report each financial year on the operation of Division 3 of Part 20 of the Tel Act.
11. Commission staff conduct the review. There are no legislated obligations for the selection of staff undertaking the review.
12. Not a separate budgeted item.
13. N/A.
14. N/A.
15. Part of the duties of one Executive Level 2 officer.
16. The Commission expects the report will be tabled in April 2016.

11. *Telecommunications (Consumer Protection and Service Standards) Act 1999 – section 158P*

1. The Regional Telecommunications Review was completed on schedule in August 2015.
2. Not applicable - The review has been completed.
3. The review commenced on 5 May 2015.
4. There was no date by which the review was required to commence.
5. The Regional Telecommunications Independent Review Committee provided their report to the Minister for Communications as required on 23 August 2015.
6. The Minister for Communications.
7. The Department of Communications and the Arts.
8. Section 158P of the *Telecommunications (Consumer Protections and Services Standards) Act 1999* (Consumer Protection Act) states that a Regional Telecommunications Independent Review Committee (RTIRC) must conduct a review of the adequacy of telecommunications services in regional, rural and remote parts of Australia. In determining the adequacy of those services, the RTIRC must have regard to whether people in regional, rural and remote areas of Australia have equitable access to telecommunications services that are: significant to people in those parts of Australia; and currently available in one or more urban parts of Australia.
9. Section 158P outlines the terms of reference for the review (see question 8 above). The Minister for Communications also asked the Regional Telecommunications Independent Review Committee to consider:
 - a) the impact of infrastructure and service improvements, including what will be delivered by the rollout of the national broadband network and the Mobile Black Spot Programme; and
 - b) the relevance going forward of the current universal service obligations, and the associated consumer safeguards and protections that relate to service connection, repair and maintenance.
10. See answer to question 9.

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11. The review was conducted by the RTIRC established by section 158R of the Consumer Protection Act. Committee members were selected based on membership criteria outlined in section 158T of the Consumer Protection Act. The RTIRC was chaired by Ms Deena Shiff.
12. The cost of the 2015 review was just under \$500,000.00 as budgeted.
13. The Minister for Communications was briefed on the requirements of the review in December 2014.
14. The review has been completed. The Government's response was tabled in Parliament on 23 February 2016.
15. The review was conducted by an Independent Committee chaired by Ms Deena Shiff and three other Committee members in compliance with requirements set out in section 158T. The Department of Communications and the Arts provided secretariat support to the Committee for the review period as follows:
 - 1 EL2 officer
 - 1 EL1 officer
 - 2 APS6 officer equivalent
 - 1 APS5 officer part time.
16. The Regional Telecommunications Independent Review Committee's report was tabled in 22 October 2015.

12. *Telecommunications (Consumer Protection and Service Standards) Act 1999 – section 133A*

1. On 28 August 2014 the *Telecommunications Legislation Amendment (Consumer Protection) Act 2014* inserted new section 133A into the Consumer Protection Act. This section requires the Telecommunications Industry Ombudsman (TIO) to cause to be conducted an independent review into the TIO scheme under section 128 of the Consumer Protection Act. The first review must be conducted within 3 years of the commencement of section 133A, with further reviews to be conducted every five years. The first review is due on 28 August 2017. No further work plan has been established at this time.
2. Please see answer to question 1.
3. Please see answer to question 1.
4. Please see answer to question 1.
5. By 27 August 2017.
6. The Minister for Communications.
7. The TIO must cause the review to be conducted by an independent person or body. The Department of Communications and the Arts is the department responsible for Consumer Protection Act.
8. Subsection 133A(1) of the Consumer Protection Act provides that the review must be conducted of the operation of the TIO scheme as contained in section 128 of that Act.

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9. Not yet known – see answer to question 1.
10. The operation of the TIO scheme.
11. Subsection 133A(4) requires the review to be conducted by a person or body who is independent of the TIO and the telecommunications industry. The selection process has not yet commenced – see answer to question 1.
12. Not yet known – see answer to question 1.
13. N/A– see answer to question 1.
14. N/A– see answer to question 1.
15. Not yet known – see answer to question 1.
16. After the review has been completed, subsection 133A(7) of the Consumer Protection Act requires the TIO to give a copy of the report to the Minister, as well as publishing it on the TIO website.