

**Senate Standing Committee on Environment and Communications**  
**Answers to Senate Estimates Questions on Notice**  
**Additional Estimates Hearings February 2011**  
**Broadband, Communications and the Digital Economy Portfolio**  
**Australian Communications and Media Authority**

**Question No: 73**

**Program No. ACMA**

**Hansard Ref: EC 93-94**

**Topic: Investigation into al-Manar (breaches)**

**Senator Birmingham asked:**

**Senator BIRMINGHAM**—Thank you, Mr Chapman. In relation to the breaches that were found for al-Manar in your review and the consequences of that in the immediate term, the practical outcome is that there are few if any consequences for al-Manar in their broadcasting to Australia despite those breaches, because practically you are unable to enforce the open narrowcast code on an overseas broadcaster?

**Ms Wright**—I think we would argue that the investigation was conducted without a specific complaint about the program to us. This was an area that we opened up of our own volition to diagnose whether there were problems, and we are now moving to a systemic remedy.

**Senator BIRMINGHAM**—I appreciate that but the question I asked was about the immediate consequences. You have undertaken a review of al-Manar. There may not have been a specific complaint about these specific programs that you identified but there were certainly complaints to the ACMA about al-Manar. They may have been more generic, although I think some of them over time highlighted some examples. There were certainly issues raised here about al-Manar as well. I appreciate that you have identified—and I want to go to those issues—the need to reform the antiterrorism standards. But before we get there—and it is certainly not your fault—I just want to clarify the impact of this review as to whether in fact there is any change to al-Manar's capacity to broadcast in Australia and whether there is any repercussion to them whatsoever from the negative findings that have been made.

**Mr Chapman**—I cannot speculate as to whether our breach has had any material impact on the service. The short and accepted point is that, given that the al-Manar service falls into the category of an open narrowcasting television service, and in accordance with section 12(2) of the Broadcasting Services Act, it does not require an individual licence but is provided under a class licence under that act. The consequence with respect to the ACMA's direct jurisdiction and ability to impact the service as a result of the breach of that code is that there is little direct impact we can have.

**Senator BIRMINGHAM**—I understand the reasons and the challenges you face in that regard but I wanted to be clear on that. You have identified that to be able to more effectively tackle issues such as these you require reform to the antiterrorism standards. Hypothetically, if breaches of those standards were to be identified and upheld, what action would the ACMA then be able to take against a broadcaster like al-Manar broadcasting from overseas?

**Ms Wright**—Senator, they were the three points that I outlined earlier, including two pathways through the Federal Court as well as the direct licensee direction. The standard opens up three pathways for us. As Mr Chapman said, we have just concluded public consultation on wording this standard to ensure—I guess we have nailed it. As I said, that will open up pathways for us that are not available under the code. I am happy to run through them again if you want.

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**Senator BIRMINGHAM**—Okay—practically, if you could, for those of us who do not understand all of the codes and all of the implications. Al-Manar is produced by Hezbollah. It is, I gather, broadcast into Australia by providers out of Indonesia, if my recollection is correct. So in terms of your opportunity through the antiterrorism standards to have recourse to the Federal Court, or those three points that you raised, what are the practical outcomes for al-Manar's capacity to broadcast—or, hypothetically, anybody else who breached the standards to broadcast—by following those things? Would you be able to get the signal broadcast into Australia blocked?

**Ms Wright**—As I understand it—perhaps we can provide a more precise answer to you on notice—we do have international arrangements in some of these circumstances with overseas countries in relation to these services, and the standard would enable us to leverage those. But, as I said, we are happy to take that on notice and provide you with more detail.

**Senator BIRMINGHAM**—So we would expect that another country would help us to enforce a Federal Court order barring the transmission of a signal of something into Australia—that is the type of agreement you are talking about?

**Mr Chapman**—I do not think it goes that far. I think it is fair to say that, with respect to the enforcement of any order we would seek from the Federal Court, the ability to serve that order and have an impact on a body that supplies outside the Australian jurisdiction is a practical and pragmatic shortcoming that any number of organisations face with respect to organisations outside their jurisdiction. In that sense we are no different.

**Answer:**

1. Is there any change to Al-Manar's capacity to broadcast in Australia?

No, Al-Manar is still capable of being received in Australia as a fortuitous signal from the Indosat satellite.

2. Is there any repercussion to Al-Manar whatsoever from the negative findings that have been made in the investigation?

The repercussions from the breach findings in the Al-Manar investigation have been twofold. Firstly, the Australian Communications and Media Authority (ACMA) made formal representations to Al-Manar outlining the findings of the investigation, their breaches of the Open Narrowcast Television Code of Practice ('the Code') and the legal obligations that arise for them as the provider of a service that can be received in Australia. Secondly, there will be increased regulation of open and subscription narrowcasting television services, such as Al-Manar, as a result of an ACMA decision to reform the Anti-terrorism Standards<sup>1</sup>.

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<sup>1</sup> The Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2008 and the Broadcasting Services (Anti-terrorism Requirements for Subscription Narrowcasting Television Services) Standard 2008 (together the 'Anti-terrorism Standards').

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3. If breaches of the Anti-terrorism Standards were to be identified and upheld, what action would the ACMA then be able to take against a broadcaster like Al-Manar broadcasting from overseas?

Once the Anti-terrorism Standards are reformed, breach findings may result in the issue of a compliance notice to the narrowcaster providing the service. Such a notice would direct the person providing the narrowcasting service to take action to ensure that it does not breach the Anti-terrorism Standards. The ACMA can also apply to the Federal Court for an order to direct the person providing the narrowcasting service to cease providing the service.

There would be practical difficulties in enforcing such an order if the provider of the service is based overseas and has no Australian presence. Options for enforcement might include direct approaches to the service or satellite provider.

4. Would the ACMA be able to get the signal broadcast into Australia blocked?

No. As the Al-Manar service is received fortuitously from the Indosat satellite, blocking/jamming the signal is neither technically possible from Australia nor a regulatory option. Any such action would contravene the International Telecommunications Union Radio Regulations (a treaty level agreement) as well as the *Radiocommunications Act 1992*.

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**Question No: 74**

**Program No. ACMA**

**Hansard Ref: EC 95**

**Topic: Converging World**

**Senator Fisher asked:**

**Senator FISHER**—Mr Chapman, you have spoken of the relevance of a converging world in communications. Can you answer on notice whether you think regulation—at the moment by ACMA—is somehow compromised by having to focus sector by sector, as it were, rather than on a converged world, and whether there is a better way to do it.

**Mr Chapman**—I am happy to take that on notice.

**Answer:**

Within the Australian Communications and Media Authority (ACMA), convergence is primarily framed to refer to the merging of the previously distinct platforms by which information is communicated. The historical distinctions between radiocommunications, telecommunications, broadcasting and the internet are blurring.

The ACMA has consistently documented and indicated its preparedness to grapple with the regulatory implications of convergence, first coining the term ‘broken concepts’ in a speech by the ACMA Chairman Chris Chapman—*The flexibility benefits of Australia’s co-regulatory approach*—to the 14<sup>th</sup> European Conference of Postal and Telecommunications Administrations (CEPT), Strasbourg, France, on 17 April 2008.<sup>1</sup> The ACMA’s Chairman, Mr Chris Chapman, has also observed that:

- “The evolution of media and communication services to digital platforms is relentless and many of the concepts which supported earlier industry, sector and consumer needs are rapidly becoming redundant; certainly they are in need of rethinking.”<sup>2</sup>
- “The market and the myriad impact of technology and social changes are too large, diverse and changing too rapidly for the more traditional, fiat-style regulation to carry all before it.”<sup>3</sup>
- “... much of the current work of the ACMA is already being driven through a converged framework. The development of new approaches to numbering, digital services, spectrum allocation and premium telecommunications services are live examples. New delivery infrastructure such as optical fibre and the emergence of all IP networks and devices are already seeing rapid change in consumer usage and industry structure.”<sup>4</sup>

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<sup>1</sup> [http://www.acma.gov.au/webwr/assets/main/lib310654/cept\\_second%20day\\_speech.doc](http://www.acma.gov.au/webwr/assets/main/lib310654/cept_second%20day_speech.doc)

<sup>2</sup> ACMA media release 3 March 2011

<sup>3</sup> *Speech by ACMA Chairman Chris Chapman to the RadComms2010 Conference* (Melbourne, 5 May 2010)

<sup>4</sup> ACMA media release 3 March 2011

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The ACMA considers that it is timely to review aspects of regulation which are under pressure. These include:

- the generally analogue specific nature of service and licence definitions within the *Broadcasting Services Act 1992*;
- new sharing technologies such as cognitive radio, and the demand for wireless access services—including broadband—mean that the future may well be qualitatively different from the past and influence the access and licensing regimes which support spectrum allocation and use;
- in the light of the changing needs of industry and consumers, the ACMA is consulting on how telephone numbers are currently used and how communications services might use numbers in the future; and
- the impact of convergence on technical standards and labelling requirements, where for example e-labelling of communications and IT devices has developed, reflecting developments in a global technological and commercial environment, and a need to improve consistency in requirements across various labelling regimes.

Newer social concerns, such as those relating to internet content, also demonstrate that the ACMA is operating in a very different stakeholder environment than it has in the past, with heightened and emerging public expectations. The ACMA is actively engaged with emerging regulatory issues affecting the citizen and participation in the digital economy, such as:

- content which is available across a wide number of platforms, including mobile phones and online, as well as through traditional radio and broadcasting services - it can be available anytime and anywhere. Regulatory consistency is a challenge the ACMA faces in this area, particularly in applying legacy legislative definitions to new technologies across numerous platforms;
- the ACMA's digital media literacy activities are an example of its work to empower citizens in the emerging digital economy; and
- the consistency of regulatory responses for consumers across platforms about e-security, cyber-safety, and other consumer protections; and the control and use of personal data and intellectual property given the rise of social networking and user-generated content.

A common theme across these aspects of regulation under strain is an evident need for greater consistency in approach to regulatory policy, compliance and enforcement across the legislation that the ACMA administers.

Consistent with its aims to be a thought-leader in the decision-making about what might replace the legacy, non-convergent legislative framework, the ACMA actively works to envisage a sustainable regulatory framework and to develop flexible approaches that are responsive to change, particularly refining and developing tools such as co-regulation. The ACMA maintains a review program to effectively and efficiently manage co-regulatory arrangements for communications and media services.

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The Government has announced a Convergence Review which will deliver its final report in the first quarter of 2012. The ACMA supports this initiative, and will make its regulatory experience and technical expertise in communications legislation and regulation available to assist the Convergence Review Committee. As Mr Chapman has noted, “we are genuinely excited about these opportunities and look forward to working with the committee to assist and advise on the development of the framework, its settings and principles so as to ensure Australia has the best chance possible of seizing the immense opportunities that the transition to the digital economy promises”<sup>5</sup>.

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<sup>5</sup> ACMA media release 3 March 2011

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**Question No: 75**

**Program No. ACMA**

**Hansard Ref: EC 98**

**Topic: ISPs**

**Senator Ludlam asked:**

**Senator LUDLAM**—As the minister mentioned before. How frequently would the list be updated and transmitted to the ISPs?

**Mr Rizvi**—My understanding is that at present ACMA updates that list on a weekly basis. As to precisely how often it will be transmitting it, I would need to take that on notice. ACMA would be better placed to advise.

**Answer:**

- Under existing legislative provisions, the Australian Communications and Media Authority (ACMA) distributes an encrypted fortnightly list of updates of prohibited and potential prohibited URLs to accredited providers of Family Friendly Filter products. All URLs on the list are reviewed quarterly to check whether they are still pointing to prohibited or potential prohibited content.
- The frequency with which the ACMA will notify participating ISPs of URLs under a voluntary scheme for the filtering of child sexual abuse material has not been finalised.

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**Question No: 76**

**Program No. ACMA**

**Hansard Ref: In Writing**

**Topic: ABC Tasmania and relocation**

**Senator Colbeck asked:**

1. Has the ABC in Tasmania been formally advised of ACMA's response to the request to improve FM Radio Services in North West Tasmania (ABC Tasmania, letter of 7 Oct. 10)?
  - a. If so, when?
2. ACMA has previously advised that they had investigated and believed it possible to relocate the existing low power local service to a more prominent site and increase its power. Where is the proposed site that the existing low power service will be relocated to?
3. What is the cost for relocation?
4. When is the relocation to proceed?
5. What is the current power of the existing local service? And by how much will the power be increased?

**Answer:**

1. Yes, the Australian Communications and Media Authority (ACMA) has formally responded to the ABC's request.
  - a. The date of the ACMA response was 10 November 2010.
2. The proposed new site is Table Cape, Tasmania.
3. The cost of relocation is a matter for the ABC.
4. The timing of the relocation is a matter for the ABC.
5. The current power of existing local service is 1 kilowatt (kW). The proposed new power is 20 kW.



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**Question No: 77**

**Program No. ACMA**

**Hansard Ref: In Writing**

**Topic: Spectrum**

**Senator Humphries asked:**

The *Radiocommunications Act 1992*, introduced by the Keating Government, specified that the system must make adequate provision of spectrum for law enforcement and emergency services, that charging for spectrum must also take into account the value of non-commercial use of spectrum, (in other words, the public safety agencies should not be expected to pay the commercial rate for their spectrum) and finally, the Act provided for spectrum to be reserved for these essential public purposes so that they would not have to compete at auction for spectrum. What is the government doing to provide the necessary spectrum in the 700MHz band for police and emergency services?

**Answer:**

The Australian Communication and Media Authority (ACMA) manages radiofrequency spectrum in accordance with the *Radiocommunications Act 1992*. The Object of the Act is stated in section 3:

*3 The object of this Act*

*The object of this Act is to provide for management of the radiofrequency spectrum in order to:*

- (a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum;*
- (b) make adequate provision of the spectrum;*
  - (i) for use of agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services; and*
  - (ii) for use by other public or community services;*
- (c) provide a responsive and flexible approach to meeting the needs of users of the spectrum;*
- (d) encourage the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided;*
- (e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum;*
- (f) support the communications policy objectives of the Commonwealth Government;*
- (g) provide a regulatory environment that maximises opportunities for the Australian communications industry in domestic and international markets;*
- (h) promote Australia's interests concerning international agreements, treaties and conventions relating to radiocommunications or the radiofrequency spectrum.*

The ACMA is aware of and works closely with public safety agencies in relation to their spectrum requirements. A significant recent initiative that directly addressed the needs of these agencies involved the review of the 400 MHz band (403-520 MHz). This band is heavily used by police, fire and emergency services to deliver essential services and is also heavily used by commercial entities.

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The band, over time has become congested in the major capital cities of Sydney, Melbourne and Brisbane, meaning that existing users are unable to expand their networks, and new users are unable to gain access to the band. Additionally, government use of the band is fragmented making interoperability between agencies and across jurisdictions difficult.

The ACMA's two major objectives for this review were to improve technical arrangements in the band to address the issue of congestion and to identify harmonised government spectrum in the band to promote interoperability across different users and jurisdictions and encourage more efficient use of the spectrum by these agencies.

In parallel, the National Coordinating Committee for Government Radiocommunications (NCCGR), with the assistance of the ACMA and the Department of Broadband, Communications and the Digital Economy, has developed a National Framework to Improve Government Radiocommunications Interoperability. This framework was endorsed by the Council of Australian Government (COAG) in December 2009.

Key outcomes of the review were released on 30 April 2010 in the ACMA's *The Way Ahead – Decisions and Implementation Options for the 400 MHz Band* paper. Decisions on timeframes and implementation plans were released on 23 December 2010 in the ACMA paper *The Way Ahead – Timeframes and Implementation Plans for the 400MHz Band*.

Throughout this process the ACMA consulted actively with all emergency service and public safety agencies to ensure that the end results would enable enhanced interoperability across different jurisdictions and state services.

The ACMA continues to work with these organisations in relation to their future spectrum and needs so as to support the mobile broadband needs of emergency service and public safety organisations.