

**Parliament of Australia
Senate**

**Inquiry into the powers of Australia's
communications regulators**

**Evidence from the UK Office of
Communications**

OFCOM

February 2005

1. INTRODUCTION

1.1 Ofcom has been asked to help the Senate ECITA Committee in its inquiry into the Australian Communications and Media Authority, the proposed new telecommunications and media regulator.

1.2 Ofcom, the converged UK regulator, was established by the Ofcom Act 2002 and the subsequent Communications Act 2003, and vested with full powers on 29 December 2003. It replaced five sectoral regulators – the Broadcasting Standards Commission, the Independent Television Commission (responsible for commercial television), Ofcom (the Office of Telecommunications), the Radio Authority (independent and commercial radio) and the Radiocommunications Agency (spectrum).

1.3 In the following pages of evidence, we outline the governance and principal activities of Ofcom and the principles and structure of Ofcom including:

- Powers and duties
- Financial framework
- Board structures

1.4 We then outline our current core areas of activity:

1.5 We will be happy to provide more detailed information to the Committee on any aspects of our policies and practice.

2. ESTABLISHMENT AND FINANCE

2.1 Powers and duties

Ofcom's duties and powers are derived principally from the Communications Act 2003, which received Royal Assent on 17 July 2003. One of the consequences of the legislation was the transfer to Ofcom of the functions, property, rights and liabilities of the bodies and office holders which had previously regulated the communications sector. This transfer took place on 29 December 2003 when Ofcom assumed its full statutory powers under the Act.

Other statutes also form part of Ofcom's rulebook. They are the unamended parts of:

- The Wireless Telegraphy Act 1949
- The Marine Etc Broadcasting Offences Act 1967

- The Broadcasting Act 1990
- The Broadcasting Act 1996
- The Wireless Telegraphy Act 1998
- The Competition Act 1998
- The Enterprise Act 2002

Ofcom is an independent statutory corporation accountable to Parliament. Its specific duties under the Communications Act 2003 fall into six areas:

- (a) Ensuring the optimal use of the electro-magnetic spectrum;
- (b) Ensuring that a wide range of electronic communications services – including high-speed data services – are available throughout the UK;
- (c) Ensuring a wide range of TV and radio services of high quality and wide appeal;
- (d) Maintaining plurality in the provision of broadcasting;
- (e) Applying adequate protection for audiences against offensive or harmful material; and
- (f) Applying adequate protection for audiences against unfairness or the infringement of privacy.

2.2 Financial framework

Under Paragraph 8(1) of the Schedule to the Office of Communications Act 2002, Ofcom is required to balance its expenditure with its income in each financial year. Sections 38 and 347 of the Communications Act 2003 also require Ofcom to raise income from each of the sectors it regulates such that it covers the costs to be incurred by Ofcom in regulating that sector. Ofcom must also apportion its common operating costs – those which do not relate directly to any one sector – in a proportionate manner across each of those sectors.

Ofcom raises its funds from a number of sources including:

- Television broadcast licence fees.
- Radio broadcast licence fees.
- Administrative charges for electronic networks and services and associated facilities.
- Funding to cover Ofcom's operating costs for spectrum management in the form of grant-in-aid from the DTI.

Grant-in-aid covers the costs of regulating and managing the wireless spectrum. It also covers those statutory functions and duties which Ofcom must discharge under the Communications Act but for which the Act provided no matching revenue stream. Examples include the statutory public interest test for media mergers and ex-post Competition Act investigations in relation to networks and services.

Ofcom sets its licence fees and administrative charges at a level which is sufficient to cover its cash funding requirements for the financial year.

2.3 Board structures

2.3.1 Ofcom Board

The Ofcom Board comprises both Executive and Non-Executive Members. The Chairman and Non-Executive Members of the Ofcom Board are appointed jointly by the Secretaries of State for Trade and Industry and Culture, Media and Sport for a period of between three and five years. In this capacity the Departments have effectively carried out the role of a Nominations Committee.

The Chief Executive of Ofcom is appointed by the Chairman and the independent Non-Executive Members; the other Executive Members are appointed by the Board of Ofcom on the recommendation of the Chief Executive.

Ofcom has adopted a unitary Board model. The Board consists of six Non-Executive Members including the Chairman, who is responsible for running the Board, and three Executive Members including the Chief Executive. The Board is responsible and accountable for the discharge of Ofcom's statutory functions and provides strategic leadership and manages overall control of Ofcom's activities. Members' duties and responsibilities are set out in a Members' Code of Conduct. A register of Members' interests is available on the Ofcom website.

2.3.2 Content Board

The Ofcom Content Board was set up in accordance with Section 13 of the Communications Act 2003. A committee of the Board of Ofcom, it has two key functions – broadcast content regulation and media literacy.

The Content Board's primary task within Ofcom is to champion the interests of viewers, listeners and citizens across the United Kingdom relating to:

- the provision of broadcast services of high quality and appealing to a variety of tastes and interests;
- adequate protection from the inclusion of offensive and harmful material in broadcast services; and,
- adequate protection from unfair treatment at the hands of broadcasters and from unwarranted infringements of privacy.

The Ofcom Board delegates to the Content Board all matters that are purely content-related. Where issues have both content and economic dimensions, for example the Public Service Television Broadcasting Review, final decisions are taken at the Ofcom Board following full scrutiny by the Content Board.

The Content Board spends the majority of its time on content regulation of broadcasting over terrestrial, satellite and cable platforms. Whilst Ofcom has no statutory remit over the content of non-broadcast electronic communications networks such as the internet and 3G, the Ofcom Content Board also has a role in encouraging the appropriate self-regulation of content made available on those networks.

2.3.3 Consumer Panel

Section 16 of the Communications Act 2003 requires Ofcom to establish the Ofcom Consumer Panel. Independent of Ofcom and operating at arm's length from it, the Panel exists to advise Ofcom on consumer interests in the markets it regulates. While Ofcom provides the Consumer Panel with operational support, the Panel holds its own budget and sets its own priorities on the basis of its statutory remit. In March 2004, towards the end of the period under review, Ofcom and the Consumer Panel jointly agreed a Memorandum of Understanding. This memorandum established the principles that both bodies agreed to adopt in their relations and dealings with each other and affirmed the independence of the Panel from Ofcom.

3. CORE AREAS OF ACTIVITY

3.1 Ofcom organises its executive work – in addition to the central and support functions – around four key areas of activity:

- Strategy and Market Developments – providing the evidential base to understanding the markets within which we regulate and planning for the future
- Competition and Markets – activities to promote competition and to investigate complaints
- Content and Standards – promoting quality in broadcasting and protecting audiences
- Operations – managing the use of the spectrum

3.2 We are currently working through three major projects. These are central to the markets we regulate, and illustrate the detailed duties with which Ofcom is entrusted and the evidential approach taken to them:

3.2.1 Public Service Television Broadcasting Review

Ofcom is conducting a statutory review of Public Service Broadcasting (PSB) aimed at maintaining and strengthening PSB in the digital age. The year long review, which concludes in February this year, provides detailed analysis of all the UK public service broadcasters: BBC,

ITV1, Channel 4, Five, S4C and all related television services taken together.

The review, which is in three phases, will inform the future shape of British television and will feed into Government's review of the BBC's Charter. The final report will be published on 8 February 2005.

3.2.2 Telecommunications Strategic Review

Ofcom's Strategic Review of Telecommunications is the first wide-ranging analysis of the sector for 13 years and will establish Ofcom's principles and approach for the future regulation of the UK telecommunications industry.

The Review is assessing the options for enhancing value and choice in the UK telecommunications sector. It will have a particular focus on assessing the prospects for maintaining and developing effective competition in UK telecommunications markets, while having regard for investment and innovation.

In the Review's Phase 2 consultation Ofcom sought views on three options for future regulatory strategy, including proposals to require genuinely equal access for competitors at wholesale level, to BT's network and facilities.

3.2.3 Spectrum Liberalisation and Trading

The efficient use of the radio spectrum, as a vital resource which underpins the broadcast and telecommunications industries, as well as essential public services such as the emergency services and air traffic control, is the subject of a joined series of studies.

As a light-touch regulator our preference is to move away from central management of spectrum, allowing users to decide on the best use for spectrum. This will make it much simpler, cheaper and quicker for new applications and technologies to emerge. There are two underlying principles to the new regulatory environment:

- Trading of spectrum between users so that they can buy, sell, aggregate and disaggregate spectrum holdings; and
- Liberalisation of spectrum use, so that increasingly users can change the technology or type of use that they make of the spectrum they hold.

3.3 During its first year, Ofcom has also issued well in excess of 200 documents, covering all areas of its remit, of which some 30 have been substantial consultations. These consultations are all listed at

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<http://www.ofcom.org.uk/consult/condocs/> We do not feel it is appropriate for us to seek to pre-judge which areas will be of particular interest to the Committee, but we will be happy to provide the Committee with further detail on any of these where that will be useful, or to help in any other way. We wish the Committee well with its Inquiry.

February 2004