

# INDIREG

## FINAL REPORT – ANNEX

*Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive” (SMART 2009/0001)*

Annex II – Country Tables – Australia

## Table of contents

I.	GENERAL INFORMATION .....	2
	<b>Table 1 - Market data</b> .....	2
	<b>Table 2 - Audiovisual laws and regulatory bodies</b> .....	2
	<b>Table 3 - Regulatory bodies – general information</b> .....	5
	<b>Table 4 - Sectors covered</b> .....	5
	<b>Table 5 - Staff and overall budget</b> .....	5
II.	INSTITUTIONAL FRAMEWORK .....	6
	<b>Table 6 - Legislation establishing and governing the regulatory body</b> .....	6
	<b>Table 7 - Legal status</b> .....	6
	<b>Table 8 - Independence as a value</b> .....	7
III.	POWERS OF THE REGULATORY BODIES .....	9
	<b>Table 9 - Regulatory powers</b> .....	9
	<b>Table 10 - Supervision and monitoring power</b> .....	9
	<b>Table 11 - Powers of sanctions</b> .....	10
	<b>Table 12 - De facto use of formally granted competences and monitoring powers</b> .....	11
	<b>Table 13 - De facto use of formally granted sanction powers</b> .....	11
	<b>Table 14 - Complaints handling</b> .....	11
IV.	INTERNAL ORGANISATION AND STAFFING .....	12
	<b>Table 15 - Highest decision-making organ – composition</b> .....	12
	<b>Table 16 - Highest decision-making organ – competences and decision-making process and transparency</b> .....	12
	<b>Table 17 - Highest decision-making organ – appointment process</b> .....	13
	<b>Table 18 - Term of office and renewal</b> .....	14
	<b>Table 19 - Professional expertise/qualifications</b> .....	14
	<b>Table 20 - Rules to guard against conflicts of interest – Appointment process</b> ..	15
	<b>Table 21 - Rules to guard against conflicts of interest – during term of office</b> ....	16
	<b>Table 22 - Rules to guard against conflicts of interest – after term of office</b> .....	17
	<b>Table 23 - Rules to protect against dismissal</b> .....	17
	<b>Table 24 - Dismissal before term</b> .....	18
V.	FINANCIAL RESOURCES .....	19
	<b>Table 25 - Sources of income</b> .....	19
	<b>Table 26 - Annual budget</b> .....	20
	<b>Table 27 - Financial accountability – auditing</b> .....	20
VI.	CHECKS AND BALANCES .....	21
	<b>Table 28 - Formal accountability</b> .....	21
	<b>Table 29 - Reporting obligation</b> .....	22
	<b>Table 30 - Auditing of work undertaken</b> .....	22
	<b>Table 31 - Power to overturn/instruct</b> .....	23
	<b>Table 32 - Number of stages in appeal procedure</b> .....	23
	<b>Table 33 - Does the regulator’s decision stand pending appeal?</b> .....	24
	<b>Table 34 - Accepted grounds for appeal</b> .....	25
	<b>Table 35 - Does the appeal body have power to replace the original decision with its own?</b> .....	25
VII.	PROCEDURAL LEGITIMACY .....	26
	<b>Table 36 - External advice regarding regulatory matters</b> .....	26
	<b>Table 37 - Public consultations</b> .....	26
	<b>Table 38 - Public consultations – figures</b> .....	28
	<b>Table 39 - Publication of regulator’s decisions</b> .....	28
VIII.	COOPERATION .....	29
	<b>Table 40 - Cooperation with other regulatory authorities</b> .....	29
	<b>Table 41 - International cooperation</b> .....	29

## I. GENERAL INFORMATION

**Table 1 - Market data**

This table is aimed at gathering information on the number of audiovisual media services that are supervised in the country.

Country	Number of linear commercial services	Number of non-linear commercial services	Number of public service channels (PSBs)
Australia	54 commercial licences 81 community licences	2	2

**Table 2 - Audiovisual laws and regulatory bodies**

This table lists the regulatory bodies in charge of overseeing the areas covered by the Audiovisual Media Services (AVMS) Directive, in relation to commercial linear television, non-linear audiovisual media services and public service broadcasters (PSBs). It also lists the relevant laws.

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
Australia	Information requirements (art. 5 AVMS Directive)	Broadcasting Services Act	Australian Communications and Media Authority	Australian Communications and Media Authority	Australian Broadcasting Corporation (of its own programs, largely) Special Broadcasting Service (of its own programs, largely) Australian Communications and Media Authority (in relation to codes and complaints)
	Audiovisual commercial communication, sponsorship, product placement (Art. 9 – 11 AVMS Directive)	Broadcasting Services Act. However, that Act allows many of those issues to be decided by industry associations, who place them in codes which are registered with the ACMA	Australian Communications and Media Authority, but its powers are indirect in relation to matters covered in industry codes.	Australian Communications and Media Authority, but its powers are indirect in relation to matters covered in industry codes.	Australian Communications and Media Authority, except for Australian Broadcasting Corporation, the main national broadcaster, which is free of such content.
	Accessibility to people with	Captioning of TV programs: Broadcasting Services	Australian Communications and	Australian	Australian Communications and

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
	a disability (Art. 7 AVMS Directive)	Act. Otherwise, various Federal and State human rights and similar laws, none specific to communications.	Media Authority, but only in relation to TV captioning, or that other requirements might be in industry codes.	Communications and Media Authority, but only to the extent that TV broadcasting is concerned or that codes may contain such requirements.	Media Authority, but only to the extent that TV broadcasting is concerned or that codes may contain such requirements
	Broadcasting of major events (Art. 14 AVMS Directive)	Broadcasting Services Act	The Minister sets the rules and specifies which events are covered. The ACMA monitors and investigates compliance.	The Minister sets the rules and specifies which events are covered. The ACMA monitors and investigates compliance.	As the impact of these requirements is on subscription TV, in which the PSBs have minimal involvement, there is a theoretical role for the ACMA, but not significant.
	Access to short news reports (Article 15 AVMS Directive)	No requirement	N/A	N/A	N/A
	Promotion of European works (Art. 13, 16, 17 AVMS Directive)	Broadcasting Services Act (for Australian content)	Australian Communications and Media Authority	Australian Communications and Media Authority	The public broadcasters themselves, since that is their main raison d'être: ABC and SBS
	Hate speech (Art. 12 and 6 AVMS Directive)	Various Federal and State human rights and similar laws, none specific to communications. There are some codes of broadcasters which address these issues to some extent and are subject to last-resort supervision by the ACMA.	Australian Communications and Media Authority, as the last-resort regulator in relation to industry codes.	Australian Communications and Media Authority, as the last-resort regulator in relation to industry codes.	Australian Communications and Media Authority (in relation to codes and complaints)
	Television advertising and teleshopping, (Art. 19 – 26 AVMS Directive)	Broadcasting Services Act and industry codes Trade Practices Act 1974	Australian Communications and Media Authority, as the last-resort regulator in relation to industry codes. Australian Competition and Consumer Commission (ACCC)	Australian Communications and Media Authority, as the last-resort regulator in relation to	Australian Communications and Media Authority, as the last-resort regulator in relation to industry codes. Australian Competition and Consumer Commission (ACCC) for the SBS, but not for the ABC,

Country	Areas	Main laws	Regulatory body in charge of commercial television	Regulatory body in charge of non-linear commercial media services	Regulatory body in charge of PSB
				industry codes. Australian Competition and Consumer Commission (ACCC)	which does not carry advertising.
	Protection of minors (Art. 27 AVMS Directive)	No laws in the formal sense, but industry codes contain such requirements. BSA	Australian Communications and Media Authority, but mainly in performing its role in relation to industry codes.	Australian Communications and Media Authority, but mainly in performing its role in relation to industry codes.	Australian Communications and Media Authority, but mainly in performing its role in relation to industry codes..
	Right of reply (Art. 28 AVMS Directive)	Proposals for such a right have always been rejected. There are minor and largely unenforceable requirements for balance or fairness in some industry codes. A standard licence condition affecting many services requires 'reasonable opportunities' be provided for 'electoral matter' in limited circumstances.	The ACMA does not prescribe any requirements in this area. It is the 'regulatory body' but only to the extent that an issue arises under a code.	The ACMA does not prescribe any requirements in this area. It is the 'regulatory body' but only to the extent that an issue arises under a code.	The ACMA does not prescribe any requirements in this area. It is the 'regulatory body' but only to the extent that an issue arises under a code.
	Communication and cooperation with other European regulation bodies and the Commission (Art. 30 AVMS Directive)	No requirement	N/A	N/A	N/A

**Table 3 - Regulatory bodies – general information**

This table provides basic information on the regulatory authority (name, website address, date of establishment and location).

Country	Name of regulatory body	Link to website	Date of establishment	Location
Australia	Australian Communications and Media Authority	<a href="http://www.acma.gov.au">www.acma.gov.au</a>	July 1, 2005, but this is only the current form of the Broadcasting Control Board established in 1949.	Sydney, Melbourne, Canberra (distributed)

**Table 4 - Sectors covered**

This table provides an overview of the areas that are covered by the regulatory authority.

Country	Body	Audiovisual content (radio/TV, on demand media services)	Transmission aspects of audiovisual content (e.g. spectrum)	Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	Spectrum	Electronic communications (networks and services in general)	Others (e.g. energy, post)
Australia	Australian Communications and Media Authority	Yes	Yes	Yes	Spectrum, for all services. It is the general spectrum regulator.	√ (to the extent there is any regulator in those areas)	no

**Table 5 - Staff and overall budget**

This table provides an overview of the staff and overall budget of the regulatory authority. The figures are given for the areas covered by the AVMS directive (where possible) for regulators with a broader area of responsibility.

Country	Body	Total number of staff foreseen in statutes/law	Current staff count	Annual budget (€m) foreseen in statutes/law	Current annual budget	Reference year +source
Australia	Australian Communications and Media Authority	Not foreseen	647 staff (614 Full Time Equivalents)	\$A102m (€72.7m)	\$A102m (€72.7m)	Australian Government Portfolio Budget Statements

## II. INSTITUTIONAL FRAMEWORK

**Table 6 - Legislation establishing and governing the regulatory body**

This table shows the legislation setting up and governing the regulatory authority.

Country	Body	Legislation setting-up the regulatory body	Governing legislation
Australia	Australian Communications and Media Authority	Australian Communications and Media Authority Act	Australian Communications and Media Authority Act; <i>Financial Management and Accountability Act 1997</i>

**Table 7 - Legal status**

This table provides information on the legal status taken by the regulatory authority.

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
Australia	Australian Communications and Media Authority	It is a statutory authority, a corporation which exists as a separate entity under the Act of the federal parliament which established it. It operates under a variety of controls by the executive government.	In formal terms, it is a separate entity, in the sense of being a legal person capable of suing, owning property etc. However, it is legally enmeshed with many organs of the executive government. For example, most of its operations are subject to the same control as if it were a department of the federal government, or a branch of a			The Australian Communications and Media Authority Act and particularly the Broadcasting Services Act set out various powers of the 'Minister' over the ACMA, or reserve major decisions for 'the Minister'. 'The Minister' is the standard term not only for the relevant minister in the executive government but it also embraces the relevant government department, and the general apparatus of executive government. Many other federal statutes subject the ACMA to the same control as departments and agencies of the executive government.

Country	Body	What form does it take?	It is a separate legal entity?	If it is not a separate legal entity, it is part of:	Specific organisational characteristics	Source
			federal department. This affects staffing, budget, and most areas, apart from decisions directly affecting the content of programs.			

**Table 8 - Independence as a value**

This table is intended to capture whether independence of the regulatory body is explicitly or implicitly recognised as a value in the legal framework.

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
Australia	Australian Communications and Media Authority	√ The main reference to independence in the legislative scheme is in s 15 of the ACMA act, which restricts the general power of the Minister (the elected government) in relation to 'broadcasting, content and datacasting functions'. However, that does not affect the large number of items on which the Minister may give directions, instructions or other forms of guidance, described by various names in the Act to the ACMA under the Broadcasting Services Act. The Australian Broadcasting Tribunal, as successor version of the ACMA, was established with an express purpose to ensure that		The ACMA Act and the Broadcasting Services Act.

Country	Body	Is independence implicitly or explicitly recognised as a value in the legal framework?		Source (highest formal legal level)
		No	Yes	
		<p>decisions about broadcasting were independent, but that policy has been mentioned infrequently in policy documents since that tribunal was replaced by a different kind of body, the Australian Broadcasting Authority (which then merged into the ACMA). It is often portrayed as an agency of the executive government, or even of the federal department of communications. Official references to the ACMA as an independent body are rare.</p>		

### III. POWERS OF THE REGULATORY BODIES

**Table 9 - Regulatory powers**

This table is aimed at understanding the types of decisions that can be taken by the regulatory body.

We have distinguished from a theoretical point of view, between:

- general policy setting powers, i.e. the power to decide on the general orientation of the rules to be followed (for instance the power to decide on the amount of quotas)
- general policy implementing powers, i.e. once the general policy has been adopted, to specify by means of general or abstract rules how this general policy will be implemented (for example to decide in general terms (not connected to a specific case) how the quotas should be applied and monitored)
- third party binding policy application powers, i.e. the power to take in a specific case a decision binding on specific operators

Country	Body		General policy setting	General policy implementing powers	Third party decision making powers
Australia	Australian Communications and Media Authority	Tick boxes	No	No	√ In interpreting program codes and standards, and enforcing: 1) many provisions of the Broadcasting Services Act; and directions and 2) directions, declarations etc. of the Minister for Communications.
		Areas	Except for a few conferred by the Broadcasting Services Act, for example over local TV content quotas and children's TV)		
		Source	Broadcasting Services Act		Broadcasting Services Act

**Table 10 - Supervision and monitoring power**

This table is aimed at understanding the supervision/monitoring/information gathering powers of the regulatory body.

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
Australia	ACMA	Quotas	√	√	√			Broadcasting Services Act Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007 Children's Television Standard 2009 Australian Content Standard 2005 Television Program Standard for Australian Content in Advertising

Country	Body	Areas	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring only after complaints	Others	Source (legislation, or practice)
		Advertising	√		√	√		Broadcasting Services Act Television Program Standard for Australian Content in Advertising Commercial Television Industry Code of Practice 2010
		Protection of minors	√	√	√			Broadcasting Services Act Children's Television Standards 2009 Commercial Television Industry Code of Practice 2010

**Table 11 - Powers of sanctions**

This table provides an overview of the sanctions that can be adopted by the regulatory body in case of breach of the rules implementing the AVMS Directive on quotas, advertising and protection of minors.

Country	Body	Areas	Warnings/formal objections	Fine (lump sum) If so, list maximum and minimum amounts	Publication of decisions in the media	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)	Others
Australia	ACMA	Quotas	√ (but informal rather than under a statutory provision)	√ Up to \$220,000 (€151,759) discretionary, by a court	√	√ discretionary	√ ACMA can apply to a court for a penalty, but only after a series of formal preliminary steps.	Criminal prosecutions, Remedial directions, and Enforceable undertakings, All discretionary
		Advertising	√			√ discretionary	√ ACMA can apply to a court for a penalty, but only after a series of formal preliminary steps.	
		Protection of minors	√ (but informal rather than under a statutory provision)	√ Up to \$220,000 (€151,759) discretionary, by a court	√	√ discretionary	√ ACMA can apply to a court for a penalty, but only after a series of formal preliminary steps.	Criminal prosecutions, Remedial directions, and Enforceable undertakings. All discretionary

**Table 12 - De facto use of formally granted competences and monitoring powers**

This table shows whether the regulatory body has made use of its formally granted powers in the areas covered by the AVMS Directive within the past 5 years.

Country	Body	Policy setting	General policy implementing powers	Specific rule making	Systematic monitoring	Ad-hoc monitoring	Information collection powers	Monitoring after complaints
Australia	Australian Communications and Media Authority	N/A	√	√	√	√	√	√

**Table 13 - De facto use of formally granted sanction powers**

This table shows whether the regulatory body has made use of its formally granted sanction powers within the past 5 years.

Country	Body	Warnings	Fine (lump sum)	Publication of decisions in television programmes/on demand services	Suspension/Revocation of licence	Penalty payments (in case of non compliance with decision)
Australia	ACMA	√ (informally)	√	√ Decisions are published via Media Release and on the ACMA's web-site	√	One (1) case of a penalty for a content-related failing

**Table 14 - Complaints handling**

This table shows whether there are procedures for dealing with complaints coming from viewers against conduct of audiovisual media service providers. Briefly explain them.

Country	Body	Do complaints handling procedures exist?	Link to website
Australia	Australian Communications and Media Authority	Yes. The ACMA's approach to content of communications is largely complaints-driven. Prominence on the ACMA website and in publications features complaints as a high priority, and there are many well-documented forms and procedures. This relates partly to the system of content regulation. It requires in most cases that the public should complain first to the licensee, and can only approach the ACMA if no satisfactory response has been received after 60 days.	<a href="http://www.acma.gov.au/WEB/STANDARD/pc=PC_90137">www.acma.gov.au/WEB/STANDARD/pc=PC_90137</a> This web page deals with TV complaints. The position for Internet-related complaints is broadly similar, except that nearly all rules are in industry codes rather than standards of the ACMA.

#### IV. INTERNAL ORGANISATION AND STAFFING

**Table 15 - Highest decision-making organ – composition**

This table shows whether the highest decision-making organ of the regulatory body/bodies (i.e. the organ responsible for regulatory tasks, namely supervision and enforcement) is an individual or a board/commission and if it is a board/commission, who are its relevant representative components

Representation does not necessarily mean formal representation of that group. It can mean that the board member is expected to emanate from that group, but does not have to formally represent it during the mandate.

Country	Body	Individual or Board	Legal requirements regarding composition of highest decision-making organ							Implicit representation structures?	Source
			Number of Board members	Representatives of civil society	Representatives of government	Representatives of parliament	Representatives of industry	Experts	Others (e.g. regions)		
Australia	ACMA	Board	8 (current)	No	No	No	No	No	Members are appointed on individual merit (relevant experience / expertise)	No	No information available

**Table 16 - Highest decision-making organ – competences and decision-making process and transparency**

This table shows the main fields of responsibility of the highest decision-making organ of the regulatory body as well as its decision-making process (in particular its transparency and whether minutes and agendas are published).

Country	Body	Competences	Decision-making process	Is the decision making process transparent?	Minutes and agendas published?
Australia	ACMA	Broadcasting, Radiocommunications, Telecommunications, internet	By consensus in operation; formal voting possible Quorum minimum 4	Yes	No

**Table 17 - Highest decision-making organ – appointment process**

This table shows whether there are several stages in the appointment process of the chairman and members of the highest decision-making organ of the regulatory body, for the nomination and appointment phases respectively. It also shows who is involved in each of these two stages (government, minister, parliament, civil society, religious groups, political parties, board members, board chairman, others) and whether the appointer(s) can override the proposals made at the nomination stage.

Country	Body		Nomination stage Yes – No	Nomination stage Specify who is involved in that stage and who has the decisive say	Appointment stage Specify who is involved in that stage and who has the decisive say	If there are two stages, can the appointer ignore the nominations?	Source
Australia	ACMA	Chairman	NA	By application in response to national advertisement, selection panel appointed by the Government Minister with responsibility for the ACMA	The members of the ACMA are holders of a statutory office, appointed to their roles by the Governor-General who is Australia's head of state.	NA	the ACMA Act
		Board members	NA	By application in response to national advertisement, selection panel appointed by the Government Minister with responsibility for the ACMA	The members of the ACMA are holders of a statutory office, appointed to their roles by the Governor-General who is Australia's head of state.	NA	the ACMA Act

**Table 18 - Term of office and renewal**

This table shows the term of office of the chairman and members of the highest decision-making organ of the regulatory body and whether the term is staggered not to coincide with election cycles. It also indicates if appointment is renewable and for how many times.

Country	Body		Term of office	Is the term staggered not to coincide with election cycle?	Renewal possible? If so, state how many times	Source
Australia	ACMA	Chairman of the board	None specifically prescribed	None specifically prescribed	n/a	ACMA
		Board members	None specifically prescribed	None specifically prescribed	n/a	Board members

**Table 19 - Professional expertise/qualifications**

This table illustrates the qualifications and professional expertise required to become a chairman or member of the highest decision making organ of the regulatory body.

Country	Body		Qualifications	Professional expertise	Source
Australia	ACMA	Chairman of the board	None specifically prescribed		n/a
		Board members			

**Table 20 - Rules to guard against conflicts of interest – Appointment process**

This table shows whether there are clear rules, in the appointment process of the chairman and members of the highest decision-making organ of the regulatory body, to avoid possible conflicts of interest.

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
Australia	ACMA	Chairman	The Commonwealth Government has formal policies designed to promote transparency and equity in the appointment of statutory office holders. Typically, for example, such positions are advertised and selection is on a merit basis.		No special rules beyond general rules promoting fair recruitment and general rules against conflict	No special rules beyond general rules promoting fair recruitment and general rules against conflict	No special rules beyond general rules promoting fair recruitment and general rules against conflict	As to the Chairman, no unless special Ministerial approval is obtained.	No information available	ACMA Act and General Commonwealth Government rules and procedures
		Board members	As for Chairman		As for Chairman	As for Chairman	As for Chairman	As to part time members Yes.  As to the Deputy Chairman and any other full time members, No unless the	As for the Chairman	As for the Chairman

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Can other offices be held at the same time?	Others (e.g. obligation to disclose participations in companies)	Source
			Yes	No						
								Chairman gives special approval.		
		Senior staff	Senior staff are selected by the Authority following public, merit-based recruitment exercises.		As for Chairman	As for Chairman	As for Chairman	Not without special approval under ACMA internal rules	Details about other external interests are obtained at the point of recruitment and must be updated under on-going conflict of interest rules	The Public Service Act and internal ACMA policies

**Table 21 - Rules to guard against conflicts of interest – during term of office**

This table shows whether there are rules to avoid conflicts of interest during the term of office.

Country	Body		Do such rules exist?		Rules to prevent conflicts of interest with government	Rules to prevent conflicts of interest with political parties	Rules to prevent conflicts of interest with industry	Source
			Yes	No				
Australia	ACMA	Chairman	Yes		There are under the ACMA Act rules to disclose conflicts of interest to the Minister and the other members of the Authority			Sections 29 and 30 of the ACMA Act
		Board members	Yes		Same as for Chairman			Sections 29 and 30 of the ACMA Act
		Senior staff	Yes		All staff have obligations under the Public Service Act to disclose and avoid conflicts of interest			Public Service Act 1999

**Table 22 - Rules to guard against conflicts of interest – after term of office**

This table shows whether there are clear rules to avoid conflicts of interest after the term of office.

Country	Body		Do such rules exist?		Is a cooling-off period foreseen?	Source
			Yes	No		
Australia	ACMA	Chairman		No	Yes There are various rules about post employment lobbying activities, and a suitable cooling off period is typically undertaken	
		Board members		No	Yes	
		Senior Staff		No		

**Table 23 - Rules to protect against dismissal**

This table shows the rules to protect against dismissal of the whole decision making organ, the chairman and individual members of the highest decision-making organ of the regulatory body. Please add any other comments in the row below.

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
Australia	ACMA	Chairman	Yes		The Government Minister with responsibility for the ACMA	The members of the ACMA cannot be dismissed from office except on the grounds set out in the ACMA Act (e.g. physical or mental incapacity, bankruptcy or unsatisfactory performance for a significant period of time).	The whole body can be dismissed if the Minister is of the opinion that the ACMA's performance has been unsatisfactory for a significant period of time, or if the Minister is of the opinion that the members of the Authority have failed to meet their statutory	the ACMA Act

Country	Body		Do such rules exist?		Who can dismiss? Specify who is involved in that stage and who has the decisive say	Grounds for dismissal listed in legal instrument?	Can the whole body be dismissed or only individual members?	Source
			Yes	No				
							obligations to compile a corporate plan or file an annual report	
		Individual board members	Yes		The Government Minister with responsibility for the ACMA	Same as above	Same as above	the ACMA Act

**Table 24 - Dismissal before term**

This table shows available statistics on dismissal before term in the last 5 years as well as the reasons for this dismissal.

Country	Body	Year		Dismissal before term		Reasons	Comment
				Yes	No		
Australia	ACMA	2005-2009	Chairman		No		
			Individual board members		No		

## V. FINANCIAL RESOURCES

**Table 25 - Sources of income**

This table shows the sources of income of the regulatory authority.

Country	Body	End-user broadcasting licence fees (max level)	State budget	Spectrum fees	Authorisation/licence fees paid by broadcasters	Fines	Other fees, e.g., 'market surveillance fee' based on % of revenues of broadcasters (or other operators – e.g. in case of converged regulators)	Source
Australia	Australian Communications and Media Authority		Commonwealth funding- \$A102m (€71,573,400)	No	Not related to budget	Not related to budget	Other fees cost recovered based on services provided	Combination of: Broadcasting Services Act, Australian Communications and Media Authority Act, and the annual budget and appropriation cycle of the Australian Parliament and executive government

**Table 26 - Annual budget**

This table shows who decides on the annual budget of the regulatory body and decides on adjustments to it as well as the extent to which the regulatory body is involved in these processes.

Country	Body	Who decides the annual budget?	Is the regulator involved in the process?	Rules on budget adjustment – who is involved in the process (e.g. parliament, government and/or industry) ?	De facto influence of third parties on budget amounts	Source
Australia	Australian Communications and Media Authority	Government	Yes	Government Regulator		ACMA

**Table 27 - Financial accountability – auditing**

This table shows if the regulatory authority is subject to periodic financial auditing.

Country	Body	Is the regulatory body subject to periodic external auditing?					
		Yes/no	Periodicity	By national (state) audit office, etc.	Private audit firm	Other	Legal basis
Australia	Australian Communications and Media Authority	Yes	Annual and periodic specific	Yes The Australian National Audit Office	Yes Under an Internal Audit Program	No	Legislative

## VI. CHECKS AND BALANCES

**Table 28 - Formal accountability**

This table shows to whom the regulatory body is accountable to and through which means (e.g. reports, parliamentary questions).

Country	Body	Body accountable to		Accountability means	Legal basis
Australia	Australian Communications and Media Authority	Parliament	Yes	Financial Statements, Annual report, Communication Report, Portfolio Budget Statements, Industry information, e.g. statistical and information journals	Legislative <i>No further information available</i>
		Government as a whole	Yes	Financial Statements, Annual report, Communication Report, Portfolio Budget Statements, Industry information, e.g. statistical and information journals	
		Specific ministers (e.g. Media, finance, etc.)	Yes	Minister for Broadband, Communications and the Digital Economy	
		Public at large	Yes	Annual Report, Communications Report, Industry Publications	
		Other	No	N/A	

**Table 29 - Reporting obligation**

This table is aimed at understanding the scope of the reporting obligation.

Country	Body	Report submitted to	Periodicity	Scope	Does statistical data need to be provided about own performance? Explain	Approval necessary?	Has a report been disapproved?	Link
Australia	Australian Communications and Media Authority	Parliament Ministers Other specific hearings	Annual and targeted	Compliance and performance	Yes	No	No	Specific requirement in Australian Communications and Media Authority Act. However, the main requirements are those which apply to all statutory authorities under federal law, not specific to communications.

**Table 30 - Auditing of work undertaken**

This table shows if the regulatory body is subject to periodic external auditing, either by a private or a national audit office.

Country	Body	Is body subject to periodic external auditing					
		Yes/no	Periodicity	By public authority	By private authority	Other	Legal basis
Australia	Australian Communications and Media Authority	Yes	Annual	Yes The Australian National Audit Office	No	No	The ACMA is subjected to the same audit requirements as apply to all bodies seen as forming part of the federal government. These are contained in a number of financial, budget and audit Acts and delegated legislation.

**Table 31 - Power to overturn/instruct**

This table shows if (regardless of an appeal lodged against a decision) any other body can overturn the decisions of the regulator or give it instructions.

Country	Body			Ministry/Minister	Government	Parliament	Other	Source
Australia	Australian Communications and Media Authority	No information available	No information available	No information available	No information available	No information available	No information available	No information available

**Table 32 - Number of stages in appeal procedure**

The following tables are concerned with the appeal procedure relating to decisions taken in relation to the enforcement of the rules listed in the AVMS directive (eg. non-compliance with quota requirements if binding, advertising, protection of minors, etc.). The stages include the internal stages.

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage	Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
Australia	ACMA	External	1 Administrative Appeals Tribunal (AAT), but for most AVMS matters appeals relate only to licence conditions, which are not a major focus of program rules.	No	Generally, only the station licensee.	Section 204 of the Broadcasting Services Act

Country	Body	Stage	Number of stages in appeal procedure and appeal body at each stage	Do internal procedures need to be followed before external recourse?	Who has the right to lodge an appeal?	Legal basis
			2 Courts can conduct judicial review of ACMA decisions, rather than appeals. The review does not relate to the merits of decision, but only to whether procedural or legal mistakes have been made		Any person whom the court considers to be affected	The power of the courts to review decisions of the regulator is based on general administrative law, not based on any specific laws relating to the communications area. The main source of authority is the federal Administrative Decisions (Judicial Review) Act, but there are a number of other Acts.

**Table 33 - Does the regulator's decision stand pending appeal?**

Country	Body	Does regulator decision stand pending appeal body decision?			
		Yes	No	Yes, unless appeal body suspends it	Other
Australia	ACMA			√	N/A

**Table 34 - Accepted grounds for appeal**

Country	Body	Errors of fact	Errors of law (including failure to follow the due process)	Full re-examination	Other
Australia	ACMA	√ At the AAT stage the appeal is a full merits review in which the decision is made entirely afresh including as to consideration of the facts.	√ At the AAT stage the appeal is a full merits review in which the decision is made entirely afresh, including as to the application of the law.	√ At the AAT stage.	NA
		√ In a Court appeal the facts may be reconsidered where they affect the legal matters in issue. For example, the Court may need to form a view about facts in order to determine whether there has been jurisdictional error.	√ In a Court appeal all legal aspects may be liable to be tested if pleaded by the parties (including, for example, jurisdictional error, alleged breach of the Constitution, alleged failure to provide procedural fairness, unreasonableness in a legal sense, etc)	No The Court will usually confine itself to particular aspects involving alleged errors of law.	NA

**Table 35 - Does the appeal body have power to replace the original decision with its own?**

Country	Body	Appeal stage	Yes	No	Comments
Australia	ACMA	1 Administrative Appeals Tribunal (AAT)	√		N/A
		2 Courts	√		But not usual at the Court stage. The Court will usually quash the decision and remit it to the ACMA for a new decision. The review does not relate to the merits of decision, but only to whether procedural or legal mistakes have been made.

## VII. PROCEDURAL LEGITIMACY

**Table 36 - External advice regarding regulatory matters**

This table shows if the regulatory body is able to take outside advice regarding regulatory questions.

Country	Body	Is a budget foreseen for outside advice?	If so, what is the budget/year?	Must the body respect public tender procedures?	Other requirements	Does the regulatory body de facto take external advice on a regular basis?
Australia	ACMA	Yes, in so far as the ACMA has a wide discretion as to how to expend its budget and will customarily spend some of it on expert external advice	No specific budget is allocated for this purpose. Such sums come from the ACMA's general appropriation.	Yes	Rules about conflict of interest must be observed.	Yes, frequently.

**Table 37 - Public consultations**

This table shows if the regulatory authority is required to publish public consultations.

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
Australia	Australian Communications and Media Authority	Imposition/variation of a program standard	'The public'. Stakeholders generally include broadcasters, consumer organisations, academics, and the general public.	Not mandated – generally at least 4 weeks	Yes	No – not generally, although summaries of key submissions may be published as part of a broader report on the issue being consulted (if such a report is published).	Broadcasting Services Act 1992, section 126.

Country	Body	Which decisions require prior public consultation?	Requirements on who must be consulted? (e.g. broadcasters, consumer organisations, academics etc.)	Consultation period	Consultation responses published		Legal basis
					Full responses (if authorised by contributor)	Summaries prepared by regulator	
		Imposition/variation/revocation of a licence condition	The affected licensee	Under the legislation, the ACMA must give the affected licensee a "reasonable opportunity to make representations to the ACMA in relation to the proposed action."	No – not generally	No – not generally	Broadcasting Services Act 1992, section 43.
		Registration of a code of practice	'The public'.	Under the legislation, before registering a code of practice developed by industry, the ACMA must be satisfied that "members of the public have been given an adequate opportunity to comment on the code".	No – not generally	No – not generally, consultation is conducted by the industry body that developed the code. The industry provides a summary of the consultation responses to the ACMA.	Broadcasting Services Act 1992, section 123(4).

**Table 38 - Public consultations – figures**

This table shows the number of public consultations that were organised by the regulatory body in the past five years, in the areas covered by the AVMS Directive.

Country	Body	Year	Number of public consultations
Australia	Australian Communications and Media Authority	2005-2009	No information available These happen occasionally, but nobody other than the Australian Communications and Media Authority would be able to supply numbers of consultations.

**Table 39 - Publication of regulator’s decisions**

This table shows if the regulatory authority is required to publish its decisions, if its decisions need to be motivated and if impact assessments are required.

Country	Body	Which decisions required by law to be published?	Obligation to motivate decisions? Legal basis?	Obligation to include/publish impact assessment? Legal basis?	
				Ex ante	Ex post
Australia	ACMA	There are many such. For example, decisions of many types must be formally registered or published in the Australian Government Gazette or tabled in the Australian Parliament for potential disallowance.	Broadcasting Services Act	When the ACMA proposes to make a decision affecting in a particular sense an individual person or body, then it is required by the Australian common law to afford that person procedural fairness. That includes giving that person an opportunity to explain their views about how the decision will impact them. Submissions of that kind are not usually published.  When the ACMA makes a legislative instrument, it is required by binding Government policy to prepare a formal Regulatory Impact Statement (RIS) before making the instrument. The RIS is a published document.	n/a

## VIII. COOPERATION

**Table 40 - Cooperation with other regulatory authorities**

Country	Body	Describe the mechanism of cooperation with other bodies	Source and form of cooperation	Can body receive instructions from other bodies? If so, state which and explain	Comments
Australia	ACMA	Reciprocal associate membership between the Chairs of the ACMA and the Australian Competition and Consumer Commission (ACCC)	Legislation	No	

**Table 41 - International cooperation**

Country	Body	Does it cooperate with other national regulatory bodies in EU and international fora?	Source and form of cooperation (legal basis)	Comments
Australia	ACMA	International Telecommunication Union (ITU)	Treaty Level in relation to Radiocommunications Matters	ACMA as the regulator <ul style="list-style-type: none"> <li>takes a lead role in ITU Radiocommunications matters on behalf of the national administration</li> <li>in ITU D and T matters the ACMA actively supports the national administration</li> </ul>
		Asia Pacific Telecommunity	Member	
		International Association of Internet Hotlines (INHOPE)	Broadcasting Services Act 1992, schedule 5.	