



**Australian Government**  
**Attorney-General's Department**

**Deputy Secretary**  
**National Security and Criminal Justice**

Mr Jason McNamara  
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Dear Mr McNamara

**Regulatory Impact Statement – final assessment second pass**

I am writing to seek Final Assessment on the attached Regulatory Impact Statement (RIS) prepared for the telecommunications sector security reform (see **Attachment A**).

The estimated regulatory burden to business has, as far as possible, been quantified and offsets have been identified and quantified using the Regulatory Burden Measurement Framework. These have been agreed with your office.

I am satisfied that the RIS addresses the concerns raised in your letter of 1 August 2014, and further feedback provided by your office. The attached RIS has undergone significant revision to address your key concerns and now provides:

- a clearer explanation of why Government action is needed;
- a more thorough analysis of the net benefits of all options, and
- clearer justifications to support the conclusion that Option three is the preferred option.

**Attachment B** details the changes made to the RIS to address OBPR comments.

I am satisfied that the final RIS now achieves best practice consistent with the *Australian Government Guide to Regulation* and submit it to the Office of Best Practice Regulation for formal final assessment.

I acknowledge your intention to publish this letter, the attached RIS, and your final assessment of the RIS on your website. Due to the security classification of the RIS, it will be necessary to declassify the RIS before publication – we are happy to assist you with this.

Yours sincerely

Katherine Jones  
Deputy Secretary, National Security and Criminal Justice Group  
Attorney-General's Department

15 October 2014

*Response to OBPR's comments*

I am satisfied that the RIS addresses the seven concerns raised in your letter of 1 August 2014. Specifically, they were addressed as follows:

**Question 1:** What is the policy problem you are trying to solve?

- Part 1 has been redrafted to more clearly articulate the policy problem we are seeking to address, including providing additional contextual information about the significance and fluid nature of the telecommunications market. In particular, the RIS now provides:
  - a clearer description of the national security threat, including factors giving rise to the threat and implications of national security risks to telecommunications infrastructure;
  - additional examples illustrating the potential consequences of unmanaged national security risks and threats; and
  - more detail about the value of the telecommunications market to the Australian economy, including its importance to the economy as critical infrastructure and as a significant employer, the impacts of rapid growth and technological change, competition and cost pressures in the market.
- Part 1 now provides a more detailed context through which to examine the proposed reform options.

**Question 2:** Why is government action needed?

- The most significant change to the RIS has been to Part 2, which now provides a much clearer policy rationale for why government action is needed to address the policy problem. As recommended, the case for government action addresses the elements of the policy problem as outlined in Part 1, namely the national security threat and the inefficiency and inadequacy of the existing regulatory framework to manage national security risks in an efficient, proportionate, risk-based way. In particular it highlights risks and challenges of continuing to rely on the goodwill and cooperation of industry to manage national security risks and the broader positive flow on effects of more secure telecommunications infrastructure.
- The RIS now provides a clearer statement of the policy objectives which provide a framework for assessing the effectiveness of the four proposed reform options. In particular, the net benefit analysis section (Part 4) now highlights the risks and benefits of each option against how well they measure up against the policy objectives and outcomes. It is not possible to provide a set of measurable outcomes to assess the benefits of each option. Instead the RIS clarifies that there is no adequate proxy for this purpose – it is not possible to cost something that has not happened. In other words there is a lack of data on cyber intrusions and therefore the costs associated with those intrusions.

**Question 4:** What is the likely net benefit of each option?

- In line with best practice, the analysis clearly identifies impacts of each option, and where possible, provides evidence of the size of those impacts. The RIS makes clear that industry

has not been able to provide firm impact costs and therefore estimates are based on limited data. To address the heavy reliance on qualitative assessments of each option we provided more detailed justifications and qualifications. We have highlighted the significance of a risk and/or benefit to the overall effectiveness of the reform option, including how it measures up against policy objectives. We have clarified upfront that challenges associated with providing a qualitative analysis of benefits has necessitated focus on costs in relative terms, as well as risks and challenges posed by each option and the significance of those risks.

- The supporting analysis is largely qualitative (rather than quantitative) therefore we have included more detail about the assumptions underpinning our analysis and any limitations up-front in Chapter 4, specifically:
  - the size of national security impacts are difficult to estimate as costs will be highly variable based on the risk profile of industry and the risk of a proposed procurement.
  - data provided to support the net benefit analysis is primarily qualitative and an estimate only – particularly with respect to the potential administrative and compliance costs to industry associated with the four options.
  - the competition impact is likely to be similar across all four options, including the restriction on suppliers and flow on impacts to customers. We have clarified that there is already an impact under the status quo and that because the existing power in section 581(3) will still be available, it is impossible to quantify the effect of supporting measures under that powers. To avoid repetition in the costing analysis of each option, we have provided this information in the summary upfront and removed the analysis under each option.
- Based on greater research, the analysis of Options 2 and 3 are now complete. In particular, we have included further information on the processes for developing an Industry Code, how it might operate to address the policy objectives and the risks, benefits and costs associated with using a Code to regulate national security risks in the telecommunications sector. This information has regard to the underpinning legislation, consultation with the Australian Communications and Media Authority (ACMA) and ACMA’s Guide to Developing Telecommunications Codes for Registration.
- The RIS now provides more clarity around the costs associated with each option, including costs to government in administering and implementing each option that would be cost recovered. The text on cost recovery clarifies what costs would or would not be recovered under each option, including highlighting where costs would be absorbed as part of existing functions. For this reason, costs associated with developing and maintaining legislation under option 3 have not been included as they would not be recovered from Industry.
- The higher regulatory burden costs associated with a Code reflect the significant direct upfront costs to Industry in developing the Code which takes into account legislative process for developing and registering a Code. These are direct upfront costs that would be borne by Industry. Government resources provided to assist the development of the Code

have not been included as again these are considered to be business as usual costs for ACMA.

- In providing a more balanced assessment of Option 2, we have removed text suggesting Option 2 was problematic because ACMA was ill-equipped and objecting to regulating national security issues through a Code. The discussion on the challenges arising with the regulator model under the Option 2 more appropriately focuses on the effectiveness of compliance and enforcement mechanisms. To ensure a balanced analysis of the risks of Option 2, we have acknowledged that the identified risk of code provisions not being enforceable due to the operation of section 115 of the Telecommunications Act (which specifies matters which are not to be covered by a Code) could be addressed by amending existing provisions. However, we note that such an amendment might have policy implications for the scope of Codes.
- We consider that the net benefit analysis of Options 2 and 3 in Part 4, when read within the context of the analysis in Parts 1 and 2, now properly supports the conclusion in Part 6 that Option 3 is the preferred option.
- We have strengthened the net benefit analysis by removing repetition, detailing assumptions and unresolved issues, providing a summary of the costs, benefits and risks at the end of each option to clarify the net benefit of each option. We have also clarified that on a net benefit analysis, Option 3 is preferred on the basis of the benefits it provides to national security objectives and the broader community rather than Industry.
- All costing have been revised to reflect OBPR's recent guidance on staff cost multipliers.

**Question 5: Who will you consult and how?**

- A more detailed analysis of the consultation processes undertaken at various stages of policy development has been included. There is more detailed information on feedback received, how consultation processes were conducted and an additional Attachment D listing stakeholder consultations.

**Question 6: What is the best option from those considered?**

- The RIS now provides a more comprehensive analysis of costs, risks and benefits for each option, and in particular considers how each option addresses policy objectives. The economy wide benefits are recognised in both options in terms of clarifying government expectations and developing cooperative relationships. The RIS clarifies that while Option 2 provides a number of benefits and addresses some policy objectives, Option 3 provides additional benefits, and is more likely to succeed in meeting the objective of providing a more efficient and effective framework for managing national security risks. We have revised the text in Part 6 so that Option 3 arrives at a more balanced conclusion; recognising benefits as well as costs and risks.

- The RIS now clarifies that Option 3 is preferred; however, Option 2 would be an improvement on Option 1 (status quo). A net benefit analysis does not support Option 4. As noted above, key assumptions including unresolved issues and any weighting of evidence/arguments are summarised in the introduction to the net benefit analysis in Chapter 4 and within the analysis of each option as appropriate.

**Question 7:** How will you implement and evaluate your chosen option?

- The option with the highest net benefit is presented as our recommended option in Chapter 7. Option 2, while a viable option should Government choose not to proceed with the recommended option, is not the preferred option, so is therefore not considered in this section.