Creating a more dynamic and resilient economy inquiry

Questionnaire response 25

Name: Communications Alliance

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1. Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

The participant did not respond to this question.

2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

The participant did not respond to this question.

3. Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the business/company tax system be reduced?

The participant did not respond to this question.

2. Reduce the impact of regulation on business dynamism

1. What areas of regulation do you see as enhancing business dynamism and resilience? What are the reasons for your answer?

Regulations which enhance business dynamism and resilience tend to clarify and simplify the way businesses engage with Government agencies and regulators.

A recent example of this was the streamlining of processes related to reporting requirements following a data breach for a telecommunications operator. The data breach, and resulting efforts to inform a wide range of Government agencies about the breach, revealed inconsistencies in obligations under various laws and regulatory frameworks, which made it challenging for the affected company to provide required information in a timely manner (and with sufficient legal certainty that data being shared would not put them in breach of other laws).

Subsequent reforms to resolve these inconsistencies have enhanced businesses dynamism and resilience by simplifying and clarifying the obligations on businesses without necessarily reducing the information required to be provided to Government agencies.

The establishment of a ‘Regulatory Initiatives Grid’ is a positive approach to assisting the private sector and regulators alike by coordinating and publishing the pipeline of all regulatory processes planned by regulators over the coming two years. This would enable industry (and other stakeholders) to more efficiently plan for initiatives that are likely have a significant operational impact on their business. It will also enable regulators to better coordinate on planned regulatory initiatives, reduce overlap, and avoid inundating stakeholders with simultaneous activities through more transparent planning.

In the telecoms sector, participants could include the ACMA, ACCC, the Office of the eSafety Commissioner, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, the Department of Home Affairs; the Office of the Australian Information Commissioner, and potentially other relevant regulators.

The telecoms sector has seen a significant increase in regulatory and compliance burdens in recent years, and these new regulations have often been duplicative to existing requirements. A Regulatory Initiatives Grid would not only enable better transparency of upcoming activities, but could also allow for the early identification of potential duplication and overlap.

There is clear precedent for this proposal: in May 2024, the Commonwealth Government announced the establishment of a financial sector regulatory initiatives grid. This grid would be based on the UK Financial Services Regulatory Initiatives Forum, which includes nine regulators and publishes an updated grid every six months with a 24-month outlook. The financial industry grid was supported by the opposition, which called for the concept to be extended to the energy and telecommunications sectors.

2. How has your regulatory burden changed over time?

The regulatory burden on the telecommunications sector has grown dramatically in recent years.

The telecoms sector is subject to the general Australian Consumer Law and also a range of sector-specific regulations in the form of Codes (developed by industry and enforced by the regulator, the ACMA) and Standards (directly developed and enforced by the ACMA). This results in the telecoms sector having a substantially greater regulatory burden than many other industries, and the imposition of new regulations consistently outpaces the removal of old (and arguably redundant) regulations.

In the last term of Parliament alone, the telecoms sector saw the introduction of new or updated legislation and regulations including the:

1. Financial Hardship Standard,
2. Updated Customer Complaints Handling Standard,
3. Updated Emergency Call Service Determination,
4. Customer Communications for Outages Standard,
5. Domestic, Family and Sexual Violence Standard,
6. New online safety Standards,
7. New Security of Critical Infrastructure rules,
8. Cyber Security Act,
9. Scams Prevention Framework Act,
10. SMS Sender ID Act, and
11. A wide range of updated or new industry Codes, often introduced at the behest of Government and/or regulators.

While the sector recognises the importance of regulation to ensure that safeguards are in place for consumers and critical infrastructure is appropriately protected, the overall impact of this slew of new regulatory burdens has been to require telcos to devote more staff and resources to compliance and monitoring. In a market environment where margins are already constrained (many carriers do not generate returns above their cost of capital), companies are increasingly required to commit resources to compliance, which comes at the expense of investing in new and innovative products and services for customers.

To provide an international perspective on the Australian regulatory environment, global satellite operator Starlink provided this feedback to a consultation process on the Telecommunications Consumer Protections (TCP) Code, an industry Code which has recently been revised and is currently being considered by the regulator:

“Starlink’s global footprint gives us a unique perspective on legal and regulatory requirements across the countries where we operate, including consumer protection rules like the TCP Code. Among the 135 markets where Starlink is currently licensed, it is universal that governments want to protect the interests of consumers and preserve competition. Laws in most countries generally prohibit market actors from deceiving customers or behaving in ways that are unduly harmful, but they do not micromanage operators by mandating how operators do things like train customer support personnel, run credit checks and notify customers about the timing of direct debits. The current TCP Code is alone in the extent to which it regulates the minutiae of running a telecommunications business."

Starlink's feedback can be contrasted with the views presented by Australian regulators and consumer lobby groups which stated that measures in the Code did not go far enough.

Separately, the Productivity Commission has also raised the Consumer Data Right (CDR) under its "pillar 3' goals. The telecommunications sector 's view is that the CDR has not had sufficient take-up in other sectors to justify its expansion (in particular given the significant regulatory and cost burden it would impose) and that the application of CDR to the telco sector would not significantly benefit consumers. The regulatory costs of imposing the CDR on the telecoms sector would far outweigh any perceived consumer benefits, and ultimately is likely to result in higher prices for consumers as the costs of implementing a CDR would be reflected in service prices.

3. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?

Regulations impacting infrastructure deployment

Artificial Intelligence is widely anticipated to deliver significant productivity improvements across all sectors of the Australian economy. AI technology is ultimately dependent on two key elements of digital infrastructure: telecommunications networks (fibre-optic and mobile connections) and data centres. Yet investors in this infrastructure are consistently hamstrung by prohibitive planning laws that actively disincentivise network deployment – which could ultimately provide to be a handbrake on Australia's capacity to utilise AI.

For example, one mobile network site funded under the Commonwealth Government's Mobile Black Spot Program has been stuck in planning since 2015, seven further sites have been in planning since 2019, and the application process just to connect power to some sites routinely takes more than two and a half years.

Similarly, national long-haul fibre-optic network deployments such as those planned by Telstra InfraCo, Vocus, and HyperOne have faced significant delays and cost increases due to unpredictable roadblocks in planning processes, exacerbated by unclear and duplicative responsibilities between Commonwealth, State, and local Government departments and agencies.

Digital infrastructure operators should have clear, legislated land access rights to build and maintain the assets Australia needs. But the 'Carrier Powers and Immunities' framework established under Schedule 3 of the Telecommunications Act 1997 has consistently seen its legal powers diminished under the weight of State-based land access rules, environmental approvals, and heritage laws which are duplicative and inconsistent. Additionally, the legitimate legal rights of Traditional Owners groups over land access arrangements are complicated by unclear and inconsistent legislation, often resulting in open-ended consultation processes which lack established timeframes to conclude agreements.

Digital infrastructure is now established in law as 'critical infrastructure', yet deploying and upgrading this infrastructure is increasingly difficult. Telecoms infrastructure deployments are not granted the same exemptions from planning rules as other utilities that are typically subject to State legislation, rather than Commonwealth. As a result, telcos are subject to many of the same regulatory burdens as other 'essential services' – but are not afforded any of the same benefits when it comes to deployment.

Telecoms networks are only treated as 'critical' when they are impacted by outages – but not when they need to be built.

The telecommunications sector would support an inquiry or review of the existing Carrier Powers and Immunities framework, with a broad scope to investigate how this framework interacts with State, Territory, and local Government laws related to land access, environmental, planning, heritage, and Traditional Owners' land rights.

These processes should result in a reform roadmap to address the myriad inconsistent planning requirements for digital infrastructure deployments, including Commonwealth and State/Territory environmental approvals, heritage approvals, applications for power connections (and requirements for backup power), native title and traditional owner consultation issues, and any other required approval processes which prevent the timely deployment of critical telecommunications infrastructure.

Ultimately, these processes should result in the harmonisation of laws across Australia to enable the more efficient rollout of telecommunications infrastructure.

Clear and harmonised rules allowing for the efficient rollout of digital infrastructure would ultimately benefit Australia's productivity, by unleashing greater data capacity on more competitive network infrastructure. This would result in Australia's data networks being more resilient, again benefitting Australia's productivity by reducing outages and increasing network uptime.

4. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?

Regulators alone should not be held responsible for managing the regulatory burden on industry when they are, in many cases, acting in response to a direction from Government. Policymakers must lead the way be resisting the impulse to impose new regulations when reform of existing regulations would often provide a better outcome. Reactive 'quick-fix' solutions are no substitute for well-considered reforms.