

CONVERGENCE REVIEW

RESPONSE FROM THE ATTORNEY-GENERAL'S DEPARTMENT

Introduction

The Attorney-General's Department welcomes the opportunity to provide a submission on the issues raised by the *Convergence Review Issues Paper*. The Department is responsible for key components of the Government's Strategic Framework for the Information Economy. The areas of the Department's responsibility are the legal framework for electronic commerce, privacy protection, the Digital Agenda copyright reforms, and (part of) security and authentication.

2. It is acknowledged that the convergence agenda is not the same as the information economy agenda, and that structural convergence is the focus of the review. However, the Department believes that the information it has gathered, and the observations it has made, whilst working on matters related to the information economy, enable it to comment on a number of issues raised in the paper.

3. The Department agrees with the premise upon which the review is based; that Governments all over the world are grappling with the issues raised by convergence between previously separate industries, and that traditional barriers between industry sectors are being eroded or restructured, and new industry boundaries emerging. The Department also agrees that Government must develop a clear understanding of the relationships between national outcomes, Government interventions, and structural change. However, it notes that such an understanding will be difficult in an environment of constant structural and technological change.

Impact of technology on industry structure and policy framework

4. The Department believes that the ‘second service sector business system’ (as described at page 2 of the issues paper) is likely to become the dominant business model. The system is characterised by new communication technology such as the Internet, and the networked applications which are deployed across it. This view is supported by current trends in the revolutionary growth and profitability of services provided via the Internet.

5. The Department believes that the progressive digitisation of service industries and the convergence of the platforms by which services are delivered, will have a dramatic impact on current business models. Such changes will result in service and delivery activities becoming increasingly fragmented, dispersed and internationalised. As a result, the Government will have to radically revise its regulatory intervention.

6. The current policy framework will also become less relevant given that it is based upon traditional boundaries that exist between industry sectors (such as telecommunications, broadcasting, etc) which are becoming increasingly blurred.

Areas for Government Intervention

7. The Department notes that the Australian Government currently plays an active role in the development of technology, standards and international regulatory frameworks. The Department notes the following areas where the Government’s policy objectives and intervention strategies have a role in the new convergence industry environment:

- *economic outcomes and objectives* - we are becoming more dependent on new technology to deliver economic benefit. This makes us increasingly vulnerable in the event of a failure or disruption of the technology.

Governments may need to intervene to ensure the maintenance of the technological systems and consequent economic advantages;

- *social outcomes and objectives* - whether individually or through international organisations, governments may need to intervene to develop trust and confidence in new technologies. This is already occurring in electronic commerce where organisations such as the Organisation for Economic Cooperation and Development (OECD) are looking at issues such as security, privacy and consumer protection to generate trust in the use of electronic commerce at both business and user levels;
- *industry development outcomes and objectives* - industry has been looking to government to provide legal certainty in respect of new technologies and their use. An example of this is the proposed clarification of liability for carriers and carriage service providers (such as Internet Service Providers) for illegal activities which occur using their facilities. Certainty may also become a greater issue as technologies converge and users are not sure of the legal implications of particular actions or uses;
- *development of standards and policy frameworks* - governments can and already do play a role in the development of standards, both as a user of technology and in ensuring that standards are not developed that are inconsistent with government policy or international obligations. It is important that Australia continues to play an influential role in the development of international standards.

For example, Standards Australia is an active participant in the International Organisation for Standardisation (ISO). A number of the individual members of Standards Australia Committees are involved in ISO drafting groups. In

addition Australians are involved in the International Telecommunications Union (ITU) and Internet Engineering Task Force (IETF) work.

Australia plays a similar influential role in the development of international policy frameworks. In particular this Department is involved in activities in the OECD, APEC and various groups under the umbrella of the United Nations which are developing international legal and policy frameworks for the new technologies;

- *interoperability between applications* - governments can and should facilitate interoperability between applications to enhance competition. A recent example of this is the Government's legislative initiative (*Copyright Amendment (Computer Programs) Act 1999*). One of the purposes of the legislation is to increase interoperability in the computing industry sector;
- *protection against crime* - the early and ongoing involvement of law enforcement and regulatory agencies, and related policy development areas, is necessary to facilitate early consideration of the potential for criminal abuse of the new and converging technologies, and an effective risk management and response strategy. The work currently being done by the Heads of Commonwealth Operational Law Enforcement Agencies in respect of the implications of the information economy is also applicable to issues related to structural convergence.

Internationalisation of electronic service markets

8. The internationalisation of electronic service markets resulting from electronic networks has impacted upon the ability to provide domestic policy solutions to market structure and conduct. The advent of the Internet has demonstrated that jurisdictional boundaries and national laws, while inescapable as long as the world is divided into

sovereign countries, are becoming increasingly impracticable. The development of international standards and the harmonisation of domestic laws therefore becomes increasingly important. This can be achieved through greater international cooperation. A strong role for Australia in the development of such standards is vital to ensure that our domestic interests are represented and that the standards reflect solutions that Australia has determined to be appropriate.

9. An example of where Australia played such a role was in the development of the World Intellectual Property Organisation 'Internet treaties' which were adopted in Geneva in 1996. These treaties, although yet to enter into force, provide new rules in response to the impact of technological developments on copyright protection.

Further information for the Working Group

10. The Department would be happy to provide further information relating to any of the matters raised in this submission, or matters addressed in the issues paper.