



# **TRANSCRIPT OF PROCEEDINGS**

## **REGULATING IN FAST MOVING TIMES**

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Deputy Commissioner, Australian Public Service Commissioner

**NERIDA O'LOUGHLIN**

Chair, Australian Communication and Media Authority

### **KEYNOTE SPEAKER**

**DAVID PARKER AM**

Chair, Clean Energy Regulator

**DAVE PEFFER**

Deputy-Director General, Access Canberra

### **DISSCUSSANTS**

**BROOK DIXON**

Director, Delos Delta and former Director from the ACT Government

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**NATIONAL PORTRAIT GALLERY**

**PARKES, CANBERRA**

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Ms Jenet Connell: It is my pleasure to introduce Ms Nerida O’Loughlin. She will chair today’s forum. Nerida commenced as the Chair of the Australian Communications and Media Authority in October 2017. Prior to joining ACMA Nerida was Deputy Secretary in the Department of Communications and the Arts, providing policy advice across telecommunications, broadcasting, online content and the arts. Nerida has been responsible for major projects in the communications portfolio, including leading the digital television switchover program. Nerida also served as interim CEO of the Digital Transformation Agency from 2016 to 2017.

Ms Nerida O’Loughlin: Good morning and welcome everybody. I acknowledge the traditional custodians of the land on which we meet today, the Ngunnawal people, and pay my respects to elders past, present and emerging.

Thank you, Jenet, and congratulations to IPAA and the APSC for putting together this important forum for regulators. Today we come together to share our experiences and insights, learning from each other about how we can regulate to deliver public policy outcomes in fast-changing regulatory environments.

For those of you who do not know the Australian Communications and Media Authority, we are an independent statutory authority in the commonwealth communications portfolio. Our regulatory responsibilities cover telecommunications, broadcasting, radio communications and some aspects of online content.

At the ACMA we have been looking at our changing regulatory context as part of the development of our 2018-22 corporate plan. While you might not know much about the regulation that we administer and the landscape that we are looking at, I expect you can relate to some of these changes given that you probably use the services that we regulate every day at work, at home and increasingly on the move.

We have been pondering about what 2022 will look like across the telecommunications and media field. Some of our thinking includes that communication services will never have been more important as a key enabler of economic and social activity across Australia. The national broadband network rollout will be complete, and the government will be looking at private sector ownership of the company. 5G services, particularly those which have an industrial application through the internet of things, will have commenced, and there will be continuing pressure for more radio communication spectrum to be released for more and more mobile broadband services delivered by satellite and through other technologies.

AM radio technology, which has always been the stalwart of radio in Australia, will be coming under real pressure as it is being phased out internationally. Traditional television’s technology path will be becoming clearer as they grapple with whether or not they move more online.

The FAANGs—Facebook, Amazon, Apple, Netflix and Google—and over the top businesses—WhatsApp, Skype et cetera—will continue to grow regardless of the pressure they add to the telecommunications network over which they provide their services but which they do not fund.

It is possible that there may be major security breaches of networks over the coming years, and it is also possible that there will be major privacy breaches by data-driven organisations who do not take as much care with personal data as they need to.

Pragmatically, there will have been two elections and four budgets, which is indeed a frightening thought. And all of that development depends on continued economic growth and continued global stability, which is not necessarily assured over the coming years.

The ACMA's working propositions against that background are that the pace of change in the communications and media sector will only accelerate. The expectations of consumers will only increase. Technology will continually move on, and the pressures on traditional business cases will only get tougher.

So what does that mean for regulation of these sectors into the future? Luckily for us, we have had some guidance from a recent review of the ACMA, and it recommended two key things: firstly, that the ACMA itself needed to be a fit-for-purpose regulator for today and for the future. So we are undergoing changes to the regulator itself to deliver greater agility, to speed up our decision-making, to increase our transparency, and to clarify and endorse our broader remit.

The review also recommended reform of the regulatory framework and moving towards much more outcomes-based, principle-based regulation. But I can tell you that changing regulatory arrangements in an area like telecommunications and broadcasting is tricky and very difficult and takes a lot of time.

Each of these things are a work in progress, but I am looking forward to hearing from regulators here today on approaches that you are taking to the challenging task ahead of regulating in these very fast moving times.

I would like now to introduce our joint keynote speakers. We will be hearing first a commonwealth government perspective and then an ACT government perspective.

First to speak is David Parker AM. David was appointed chair of the Clean Energy Regulator on 3 July 2017. David was previously a Deputy Secretary in the Department of Agriculture and Water Resources, the Department of the Environment and Energy and the commonwealth Treasury.

With a career spanning more than 25 years with Treasury, David has worked on financial sector liberalisation, tax reform, macroeconomic forecasting and policy, competition policy, energy policy and international economic issues. More recently, he also oversaw water, Antarctica, national parks, elements of climate change policy, trade negotiations and export market regulation. From 1997 to 2002 David worked at the Organisation for Economic Cooperation and Development in Paris.

Then we will hear from Dave Peffer. Dave is a recognised leader in the ACT public service with experience in transformational change, strategic policy development and delivery, regulatory operations and financial policy. He is also known to do things just a little bit differently. Dave was appointed to head the creation of Access Canberra, an agency developed to deliver smart and connected regulation and to make doing business with government easier. Prior to this role, Dave headed the Chief Minister's policy division and before that the ACT's Cabinet Office.

Mr David Parker: Thanks, Nerida, and thanks to IPAA for having me along today. It is a real pleasure to be here.

Regulating in fast-changing times—it is a really challenging topic. We have seen a bunch of regulatory failures over time, and when I came to be the chair of the Clean Energy Regulator after spending some time in water world, a very complex and fraught area, getting dirt on my boots talking to real people—irrigators and so forth—one thing I was determined about was that we needed to be a very practical, commercially oriented-organisation. I will touch on a couple of those themes.

Just to fill you in for those who do not know, the Clean Energy Regulator is an entity which is involved in the entry of new renewable generation into electricity markets. We run a number of schemes in that space, and we are also a key player in carbon markets and all of the stuff under the so-called emissions reduction fund.

When I thought about this forum I reflected on what Nobel Laureate Bob Dylan told us many years ago when he sang, *The Times They Are a-Changin'*. Of course, that is always true and there are many drivers of it. But the thing everybody is talking about now—the pet shop galah so to speak—is technological change. In our particular field of the Clean Energy Regulator we are seeing the electricity system evolve and transform before our eyes, and we are involved in that transformation. That is driven by falling costs, new technology and we are also seeing the scope for big data solutions to problems grow ever more sophisticated. The times they are a-changin'.

Equally, about 170 years ago a French saying was coined which translates as “The more things change, the more they stay the same.” This is a personal view, but I think one of the anchors through time is that human nature changes very slowly. That means we are not all at sea. We can in some respects predict how things will pan out over the future because we understand human nature reasonably well. As regulators, we really need to understand human nature. After all, we are regulating humans; we are regulating the transactions that they undertake. Having behavioural intelligence is a key cultural element of being a good regulator.

What I will talk about quickly are some profiles of some of the innovations that we have done in response to change and trying to get ahead of change that is happening. The key lessons out of it, though, of course are in the capability space—the culture issues, specific skills, agility, accountability, transparency and collaboration, just to name a few. I will not labour them too much, but I will touch on them here and there.

As an economist I always ask the question: what are the constraints. Obviously, we all face resource constraints. Many of us are facing increased transaction volumes. We have to meet those with greater efficiency; so there is a continuous drive for efficiency. Getting the law changed is difficult and dangerous in some respects. And imagining the future is difficult. You can imagine the future, but getting it right is extraordinarily difficult.

What I am going to talk about is not imagining a far-future and charting a course towards that; I think another part of the story about regulating and changing times is picking a path as you go and setting a vibe to the way you want to approach that. So I am going to profile a couple of innovations that we have done in recent times. Later today you are going to look in detail at one of them, so I am not going to touch on that in great detail, although I will make one or two observations.

In terms of the things that you can do in real time every day, I have listed four things:

- improve your regulatory tools;
- strive to be an economic regulator rather than a Black's law regulator;
- how do you respond to Uber moments; and the final one, and this goes to the innovation that we are extraordinary proud of, and Michelle will tell you the story later today
- how to reimagine the regulatory framework.

#### Improve your regulatory tools

Technology is changing the world out there, if you like, but it is also changing the world inside regulators. There are lots of opportunities to use big data and artificial intelligence. We are doing that right now. We are building systems where we exchange data with collaborators. We do a three times daily exchange of data with AEMO—that is the people who manage electricity markets. We put that into artificial intelligence systems and we can now see from the data coming from the smart metre that is installed on your house when your solar panels come online.

In the old days when we wanted to check whether a solar panel had been installed, you had to look at satellite data; it was not too good. You might have to send someone around to check that it was there, and then we could provide the incentive for it. Now we just see it in the data. It is right there. So that makes us much more efficient and more real time. It can close off fraud opportunities for fake installations and it allows us to be a risk-based regulator.

There are lots of simple things that can be done in that space. There is lots of data out there—go and get it and employ some really smart people who can work with data. There are actually lots of them about. There are lots of PhD searching for a job, and they have learned how to manipulate data.

#### Strive to be an economic regulator rather than a Black's law regulator

The law cannot keep up; we all know that. We see the emergence of new business models. The legislation that we apply is decades old. It had a business model embedded in it that does not really work anymore; so we actually have to make it up.

You can throw a bunch of lawyers at this—and you have to, of course—but, equally, you need to throw a bunch of economists at it and ask: what is the purpose? If you can get to the right outcome within the interpretive space in the law, then you should do that. We did that early this year. We changed the posture of the regulator to make it easier for batteries to come into the electricity system. We know we are going to need a lot of them.

How do you respond to Uber moments?

Markets will find a way. You are going to talk about Uber later today. The point that I want to flag is that there are Uber moments happening all over the place. We are seeing, for example, people do things in carbon markets and internationalising carbon markets which are not even in the contemplation of regulators. There are a range of issues about how to respond to that.

How to reimagine the regulatory framework?

This is what you will talk about today—the so-called solar panel co-design exercise. This is a spectacular innovation that has been done. I was so excited when I learned about this when I came into the regulator and heard the stories they were telling.

Basically, the idea is that we came to the table along with the industry, along with manufacturers and so forth and came up with a solution to the so-called fake panel problem. This is where someone comes along and installs solar panels on the roof of your house and they are not actually real, or they are not actually Panasonic panels. People are not getting what they paid for.

The traditional regulatory response to that would have been to stand up an army of public servants or inspectors or spend a lot of money getting inspectors out to have a look. We have done that in a way which I think completely re-imagines the future.

Basically, different people came to the table with different bits of the puzzle. We are now just going through the pilot phase. The installer takes a picture of the barcode on the panel with an app on their telephone. Bits of data then fly all over the place—that just shows you need good IT people to innovate—and that goes off to the manufacturer, it goes off to their agent and it comes to us. We know exactly what has been installed where and when. Guarantees get validated by manufacturers and so forth. It is commercially aligned.

If you are thinking commercially, you can find ways of solving a problem without needing to stand up a huge army of people, without needing to grow your organisation markedly, and you can be much more efficient.

They are four innovations which I wanted to flag. Now I will make a couple of observations: I do not think regulators can actually prosecute their way out of problems in the regulatory space. Sure, you need to be able to prosecute people if they do bad things or bad enough things, and by all means use prosecution if you can get past the barriers to it and the long lead times involved.

But I make the observation that Al Capone was brought down not for racketeering or murder or any of the dreadful things that he did but for tax avoidance. You can get people like that. There are a certain proportion of people

who are just spivs; so get them out of your industries, stop the harm, disrupt the business model and so forth. We are doing that. We are joining up our compliance process.

Lastly, I make the observation that times they are changing— quickly. We actually do not have a lot of time to admire the problem; we have to get on with it. As Jenet Connell said the other day when we talked about it, we are great in this town at polishing a problem. We spend way too long admiring problems. What we actually need to do in these times is just get on with it and fix issues. Even if it is an 80 per cent solution, do that, because if you cannot imagine the exact future, at least you can get on and fix stuff.

I think there is a small amount of arrogance in this town which is to think, “Look, that’s just a little problem. I won’t worry about that. That’s not a problem. This is a problem that I’m working on.” Just fix the small stuff, because the small stuff is the thing which the ordinary Australians worry about a lot. If you listen to the radio and hear stories about great things that are happening, they are small stories, but they are actually big things for the people involved.

I would make some observations about the blind spots we have in this town, but my time has run out; so I will not make them, other than to make the observation that we think we are the good guys—and we are. That is why I get out of bed in the morning.

But that ain’t necessarily the way that people see us from outside, and we should really be aware of that. You can make a really big mistake if you are not aware of that particular blind spot. I really hope that when the public service review comes along and looks at these things they really get into some of those cultural stories. I think some simple changes could make a big difference.

At that point, I will stop. Thank you very much. Next, we have Dave Peffer from Access Canberra.

Mr Dave Peffer:

Thank you, David. They were some very interesting insights into some changes we are all experiencing.

Good morning, everyone. It is not every day that we get to work on one of the great disruptions of our time. My team has had the privilege of doing that, so it is great to be here this morning to share some of our observations on that reform.

There are three things I would like to share: the first is an important turning point that we had as regulators within the ACT government. The second point I would like to cover off is how Canberra became the first capital city in the world to usher in ride share under a legal framework. The third is just to cover off what happened next after we did that.

First, our turning point as regulators. This starts with a story about a bar, and it is a bar in Braddon. Some of you may be familiar with it; it is on Lonsdale Street. I will not use its name, but it has a large beer garden out the front. Back in 2014 the owner of this bar came to the ACT government and said,

“I’ve got this brilliant idea. I want to put a spit, a big barbecue, in my beer garden so that I can cook up some lamb on the weekend. It’s a good idea, right?”

Our food inspectors sat down with the owner and said, “Look, terrific idea. Here’s our list of requirements. If you can tick these off you’ll be away. You’ll have your spit.” And so he did—he went away and they built their spit. Our food inspectors came back to have a look at it and they got a bit of surprise when they got back there. This spit—if you know the spit I am talking about—is actually quite large. When they arrived and saw this spit they were expecting something a similar size to an average barbecue. It was actually very large and bricked in, a permanent structure.

They said, “Oh, okay. We weren’t expecting that. You actually might have needed planning approval or building approval before you put that in. But that’s not a problem. You go and talk to the planning authority about that, and while you’re having that conversation, there’s two more things we need you to do. The first is we need you to put in some handwashing facilities, and the second is we need you to put a marquee over the top of your barbecue.”

These are national requirements. If you have been to Bunnings on the weekend in any state or territory in Australia and got your sausage sandwich, you will notice there is white marquee or tent over the top; right? It is a national requirement. So the guy said, “Okay, look, no problem. We’ll go and do that.” And so they did. They built this marquee and they put in handwashing facilities.

Our food guys came back a third time and they said, “Look, you’re nearly there. It looks pretty good. What we’d like you to do, though, is take the handwashing basin and move it inside the marquee. At the moment it’s outside, which might encourage people to have to walk outside the marquee to wash their hands. That might act as a discouragement and that’s not particularly good for food hygiene. So what we need you to do is move that inside.”

The business owner said, “Look, the advice from my plumber was not to do that, but you’re the government; so we’ll do it.” And so they did; they moved their handwashing basin inside.

What happened next is our plumbing inspector came to inspect the work. So he had a look at the plumbing and drainage and said, “I’m not quite sure why you would have put that inside the marquee above your power outlets. That’s a real safety issue. Of course, I can’t sign this work off. You can’t use your handwashing basin.” He took a step back and he had a look at the marquee and said, “This is a very large barbecue. It’s actually an open fire pit, and you’ve erected a plastic tent over the top of it. I’m going to have to refer you to WorkSafe.”

So WorkSafe did their thing, and we ended up with an area in a beer garden that couldn’t be accessed because it was too dangerous when the guy started out wanting to build a barbecue spit.

This happened at the back end of 2014, and shortly after all of this the ACT parliament elected a new Chief Minister, Chief Minister Barr. He was aware



of this particular issue with the barbecue, and one of his first decisions coming into government was to take all of the regulators with the exception of planners—so everything from dam engineers through to parking inspectors—group them together and set up this new organisation called Access Canberra.

As part of that he gave us a very clear instruction of what we were to do: find a hundred ways to make things happen, not a hundred ways to say no. That was our operating mandate right from the get-go. I remember at the time he spoke to me. He said, “I don’t want to have to attend another barbecue and have people whinge about regulators.” I did think, “What sort of barbecues are you going to that people are talking about that?” I did also think, “Well, we haven’t had great luck with barbecues ourselves, but anyway.”

It was an important turning point for us as regulators within the territory. It set a direction for where we had to head in the future. We actually fixed the barbecue issue; so if you’ve had lamb there on the weekend, you’re welcome!

The second thing I wanted to talk about is how we actually landed in the position that we were the first capital city across the globe to legalise ride share before it actually commenced. A few months after Access Canberra came into being, we started these conversations with Uber. Uber’s the sort of organisation where conversations happen quite quickly; they do not have a 10-year road map of somewhere they want to get to. They move quite quickly.

We had observed Uber scaling across the globe, and at that stage they were already operating in a number of Australian cities in a way that was slightly outside the legislative frameworks that existed. We did not want that to be us.

We wanted to make this happen and we were given a pretty short time to get there. So we had to start thinking how we were going to do this. As David just said, and Jenet as well, it takes time to introduce legislation. The challenge ahead of us was that we had months, not years, and we knew we would not get there in terms of a new legislative package.

Our existing legislation did not cover ride share at all well. Piecing together all the necessary regulations underneath that would have taken time, potentially years, and we did not have that time.

I was in Sydney two weeks ago for a forum and I saw a very interesting YouTube clip for one of the presentations. Google this later because it is really good. Google “Dutch peanut puzzle”—maybe not on a work computer; I don’t know what that will turn up. You will see a clip where participants walk into a room and in the middle of that room is a desk bolted to the ground. There is a chair at the desk and on top of the desk there is a tube which has been fastened to the desk. The tube is about so high. It is fastened to the desk, desk fastened to the ground. In that tube—it is only about so round—is a peanut at the bottom.

The puzzle is: how do you get the peanut out of the tube? And on this clip you will see different participants having a crack at it—all ages. People come

in and have a good go at it. Who do you think solves this puzzle? A monkey. A monkey solves the puzzle. The monkey walks into the room. It does not sit at the desk like humans do to try and figure it out because it is what is in front of us and what we are looking at with the tools we have available.

The monkey comes into the room and observes that there is actually another table at the back of the room. On this other table there is a bowl of fruit and a few cups and there is a jug of water. And the monkey figures out: "If I drink the water and spit it into this tube, eventually this peanut will rise and I can get the peanut out."

It is interesting, isn't it? What struck me about that clip and reflecting on what happened with Uber is we had to come up with a different way of solving the puzzle. To sit at the table and shake it about—our old approach to legislation that takes some time—simply was not going to position us in a way that would have a legal framework in place for Uber to start operating.

What the team did—I think this is absolutely brilliant from the policy guys led by Brook, who you will hear from in a minute and the delivery guys led by Craig—was come up with this idea that, first of all, we would exempt ride share completely from all our regulations and rules. So we would remove all the protections. We would put in place this exemption to shift them outside the laws that currently were in place covering taxis and instead we used a commercial contract or an interim agreement to actually outline the protections we wanted in place for Uber to start operating.

We recognised that we could not catch them with a law at the pace that Uber moved. So instead we used a contractual arrangement which we could get done in a couple of months. As part of that contract, we had arrangements in place for vehicle inspections, for criminal history checks for drivers, and for insurance.

We knew the contract would not last forever. It was not a perfect solution and it would have to eventually be replaced by legislation, which it was, but it bought us time. It meant that we actually had a framework in place to respond to this disruptive pressure. That gave us time to subsequently introduce laws and figure out all the regulations that needed to sit beneath them. We had quite a different way of solving the puzzle when it came to Uber, and the guys will no doubt add a bit of colour and light to that on the panel discussion.

The final thing I wanted to talk about is what happened next after we introduced ride share. I read a definition recently. For something to be considered disruptive, it has to be technology driven; it has to be able to scale rapidly, potentially globally; and it sometimes can lead to new markets or new market behaviour. So was Uber actually a disruptive force in Canberra?

Within two years of entering the market the size of the on-demand transport market in Canberra had doubled—millions of additional trips every year. The entirety of that growth and some of the pre-existing market was captured by ride share operators. We now have more Uber drivers than taxi drivers in this city. Within 12 months of being legalised in the ACT, every other Australian jurisdiction had either legalised ride share or was in the process of doing so.

So, in a sense, Canberra provided a beach head to scale across a nation legitimately very rapidly.

My assessment of that is, yes, they were pretty disruptive. And it all happened pretty quickly. We did have to feel our way through. We were not sure what might happen as they came in. But the teams did an amazing job at reflecting on performance and factoring that into the legislation that is now in place.

I will leave you with one thought: during the consultations in the lead-up to ride share being legalised in the territory, there were a number of consultations, but one in particular stuck in my mind. This was with a number of taxi drivers. Brook came back from that discussion and we were having a bit of a chat. He relayed to me one of the comments from the drivers. This driver said to Brook, "Why is the government doing this to us?" The response to that was, "This isn't the government; this is the future."

It struck home to me that disruption is terrific and it is generating some interesting challenges across the globe, but not everyone wins from disruption. A challenge for us as regulators will be to consider that on the way through.

I leave you with a quote from a guy called William Gibson, a Canadian writer. Twenty-five years ago he said this, and I think this is quite important for us as regulators and policymakers:

The future is already here—it's just not evenly distributed.

Interesting—25 years ago. I will end there and thank you very much for the opportunity.

EVENT CONCLUDED