

Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2023

The Australian Communications and Media Authority makes the following determination under subsections 73(3) and (4) of the *Telecommunications Act 1997.*

Dated:

Member

Member/General Manager

Australian Communications and Media Authority

**DRAFT – NOT FOR SIGNATURE**

Part 1—Preliminary

1 Name

 This is the *Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2023*.

2 Commencement

 This instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

3 Authority

 This instrument is made under subsections 73(3) and (4) of the *Telecommunications Act 1997*.

4 Repeal of the *Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2014*.

 The *Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2014* (Registration No. F2014L01215) is repealed.

5 Definitions

 In this instrument:

***Act*** means the *Telecommunications Act 1997*.

***annual charge*** has the meaning given by subsection 73(1) of the Act.

***applicant***means a person who has applied for a remission of the whole or a part of an amount of late payment penalty calculated in accordance with Part 3.

***due date***: see section 7.

***GIC rate*** (short for general interest charge rate)means the rate determined under section 8AAD of the *Taxation Administration Act 1953,* and published by the Australian Taxation Office.

Note: The average of the GIC rates determined for each quarter is published by the Australian Taxation Office and accessible, free of charge on its website at www.ato.gov.au.

***late payment penalty*** has the meaning given by subsection 73(1) of the Act.

***previous financial year average GIC rate*** means the rate worked out in accordance with Schedule 1.

Note: The expression ‘ACMA’ is defined in the Act.

6 References to other instruments

 In this instrument, unless the contrary intention appears:

 (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and

 (b) a reference to any other kind of instrument is a reference to that other instrument as in force or existing from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: For paragraph (b), see section 589 of the Act.

Part 2—Due Date for annual charge

7 When annual charge is due and payable

For the purposes of subsection 73(3) of the Act, an annual charge is due and payable by a person 30 calendar days after the date specified on an invoice issued to the person by the ACMA (***due date***).

Part 3—Late payment penalties

8 Late payment penalty payable

 (1) If any annual charge payable by a person remains unpaid after the due date, the person is liable to pay to the Commonwealth, by way of penalty, an amount calculated in accordance with this section.

 (2) The amount is calculated, for each day the charge remains unpaid from the due date, by multiplying the daily rate worked out by reference to the rate of late payment penalty mentioned in section 9 for the day by the sum of so much of the following amounts as remains unpaid:

(a) annual charge; and

(b) late payment penalty payable from previous days.

9 Rate of late payment penalty

In order to work out the daily rate referred to in subsection 8(2), the rate of late payment penalty is:

(a) 20% per annum; or

(b) if, for any day, the previous financial year average GIC rate is less than 20% per annum – the previous financial year average GIC rate.

10 Remission of Penalty

For the purposes of subsection 73(6) of the Act, the ACMA may remit the whole or a part of an amount of late payment penalty payable by a person, whether or not the person has applied to the ACMA for the remission.

11 Application for remission of penalty

*Application*

 (1) A person may apply to the ACMA for remission of an amount of late payment penalty payable by the person (***the applicant***).

 (2) An application for remission made under subsection (1):

1. must be in writing;
2. must specify the reasons why the applicant failed to pay the annual charge by the due date; and
3. may include any other information that the applicant considers relevant.

*Request for additional information*

 (3) The ACMA may ask the applicant, in writing, to give it additional information to allow it to make a decision in relation to the application.

 (4) The applicant must comply with a request made under subsection (3).

 *Decision on application*

 (5) The ACMA must consider an application for a remission made under subsection (1), and decide whether to remit the whole or a part of the amount of late payment penalty:

 (a) if the ACMA asks for additional information under subsection (3) ⎯ within 90 days after receiving the information; or

 (b) in any other case ⎯ within 90 days after receiving the application.

 (6) The ACMA may remit the whole or a part of the amount only if it is satisfied that:

 (a) the failure to pay the annual charge is not because of an act or omission within the applicant’s control; or

 (b) recovering the whole or a part of the amount is impractical.

 (7) If the ACMA is not satisfied in accordance with subsection (6), the ACMA must refuse to remit the whole or a part of the amount.

*Notification of decision*

(8) If the ACMA makes a decision under subsection (7), it must give the applicant a written statement of:

 (a) the reasons for the decision; and

 (b) the arrangements under the Act for reviewing the decision.

Note: A person affected by a decision about the remission of the whole or a part of an amount of late payment penalty may apply to the ACMA for reconsideration of that decision (see sections 555 and 558 of the Act and paragraph 1(d) of Schedule 4 to the Act). If the ACMA affirms or varies the original decision under section 559 of the Act, an application may be made to the Administrative Appeals Tribunal for review of the decision (see section 562 of the Act).

Schedule 1 Calculation of previous financial year average GIC rate

(section 5)

The ***previous financial year average GIC rate*** is the rate worked out as follows:

 Step 1 Use the formula:



where:

***Q1*** means the average of the GIC rates that applied during the first quarter of the financial year that ended most recently before the day for which the rate is being worked out;

***Q2*** means the average of the GIC rates that applied during the second quarter of the financial year that ended most recently before the day for which the rate is being worked out;

***Q3*** means the average of the GIC rates that applied during the third quarter of the financial year that ended most recently before the day for which the rate is being worked out; and

***Q4*** means the average of the GIC rates that applied during the fourth quarter of the financial year that ended most recently before the day for which the rate is being worked out.

Step 2. Round the amount obtained using the formula in Step 1 to the second decimal place.

 Note: For example, ‘0.005’ should be rounded upwards.