Proposed Annual Carrier Licence Charge 2022–23 and Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2023

Consultation paper

SEPTEMBER 2023

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Executive summary

The Australian Communications and Media Authority (ACMA) is Australia’s regulator for broadcasting, radiocommunications, telecommunications and some online content. As an Australian Government agency, the ACMA is required to define and implement, where feasible, charges for recovering the costs of its products and services, in accordance with the Australian Government Charging Policy (the Charging Policy).

The Charging Policy provides the overarching framework for government entities to plan, implement and review their charging activities. As part of the Charging Policy, agencies that undertake cost-recovery activities are required to periodically review the charges they impose.

The *Telecommunications (Carrier Licence Charges) Act 1997* (the Act) imposes an Annual Carrier Licence Charge (ACLC) on each carrier licence that is in force at the beginning of a financial year. In accordance with the Act, the ACLC is calculated annually, in accordance with a written determination made by the ACMA, to recover an amount determined by reference to certain telecommunications costs incurred by the ACMA, the Australian Competition and Consumer Commission (ACCC) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) from carriers.

The ACMA is required to prepare a Cost Recovery Implementation Statement (CRIS) in accordance with the [Australian Government Cost Recovery Policy (the Cost Recovery Policy)](https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302) for the implementation of the proposed ACLC each year. As required by the Cost Recovery Policy, the ACMA must consult with industry stakeholders on the CRIS before any potential changes are made.

Accordingly, a draft CRIS for the ACMA’s ACLC is available on the ACMA website, alongside this paper. The draft CRIS incorporates all the relevant details of the proposed charges, describes the methodology used for the calculation of the proposed ACLC and provides explanations for variances from the previous financial year.

The draft CRIS includes a separate document, *Cost Recovery Implementation Statement* (at Attachment B), which explains the approach the ACMA proposes to implement cost-recovery arrangements for the Measuring Broadband Australia (MBA) program on behalf of the ACCC. The MBA program monitors National Broadband Network (NBN) fixed-line services provided by carriers and carriage service providers with significant market presence. The ACCC is responsible for administering the program, which commenced on 1 July 2017.

The ACMA was required by the government to recover the costs associated with the ACMA’s Consumer Safeguards Part A program as part of the ACLC under paragraph 15(1)(a) of the Act from the 2019–20 financial year onwards, in arrears. Accordingly, the costs incurred for the Consumer Safeguards Part A program for the 2021–22 financial year have been incorporated in the draft CRIS (see Table 9).

The program essentially involves communicating systemic issues to carriage service providers and analysing and reporting complaints-handling data (includes managing the collection, validation, analysis and verification of telecommunications complaints handling data under the [Telecommunications (Consumer Complaints) Record-Keeping Rules 2018)](https://www.legislation.gov.au/Details/F2018L00721) on a regular basis. Further details about these activities are provided in the draft CRIS.

To give effect to the proposed ACLC, a number of written determinations have been or are proposed to be made by the ACMA, the ACCC and the Minister for Communications under sections 14 and 15 of the Act. These determinations are discussed in this consultation paper and in the draft CRIS.

The draft Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2023 (the 2023 Payment Determination), available on the ACMA website, will replace the existing Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2014, which is due to sunset on 1 October 2024.

# Issues for comment

This consultation paper does not pose specific questions. However, the ACMA welcomes comment from interested stakeholders on the proposed ACLC, the draft CRIS for the ACLC (which includes the Consumer Safeguards Part A program cost recovery arrangements), the CRIS for the MBA program or any other issues relevant to the proposed charges and the draft 2023 Payment Determination instrument.

This paper initiates the consultation process, which will be open for 4 weeks commencing 18 September and ending 16 October 2023.

Details on how to make a submission to the ACMA can be found in the [invitation to comment](#_Invitation_to_comment) section at the end of this paper.

# Annual Carrier Licence Charge

Subsection 14(1) of the Act requires the ACMA to make a written determination setting out how the ACLC imposed on a carrier licence for the 2022-23 financial year is to be ascertained.

The total of the charges that are imposed on carrier licences in force at the beginning of a financial year must not exceed the sum of the following 5 cost components determined under paragraphs 15(1)(a) to (d) of the Act. The ACMA proposes to make a determination under paragraphs 15(1)(a), (c) and (ca) of the Act, to determine the cost components under those paragraphs. The ACCC intends to make a determination under paragraph 15(1)(b) of the Act setting out the costs attributable to its telecommunications functions and powers, and the minister has made a written [determination](https://www.legislation.gov.au/Details/F2023L00413) under paragraph 15(1)(d) of the Act setting out the estimated total amount of grants likely to be made during the 2022–23 financial year under section 593 of the *Telecommunications Act 1997*.

1. **ACMA’s component for 2022–23 ACLC**

This amount will be determined by a written instrument proposed to be made by the ACMA under paragraph 15(1)(a) of the Act. It is the amount attributable to the ACMA’s telecommunications functions and powers for the preceding financial year (the 2021–22 financial year). For the purposes of the Act, the ACMA’s telecommunications functions and powers are as defined by section 7 of the Telecommunications Act and in section 8 of the *Australian Communications and Media Authority Act 2005,* but do not include the matters excluded by subsection 15(4) of the Act. The proposed amount is set out in Table 1 below. Table 1 contains 2 figures – the first amount represents the ACMA’s costs attributable to telecommunications functions and powers, excluding the cost incurred for the Consumer Safeguards Part A program. The other amount represents the Consumer Safeguards Part A cost.

1. **ACCC’s component for 2022–23 ACLC**

The ACCC proposes to make a written determination under paragraph 15(1)(b) of the Act setting out the amount determined to be the proportion of its costs attributable to the telecommunications functions and powers of the ACCC in the preceding financial year (the 2021–22 financial year). The ACCC’s telecommunications functions and powers are defined by subsection 15(4) of the Act and section 7 of the Telecommunications Act as the functions and powers conferred on the ACCC under the Telecommunications Act and other legislation. Costs associated with the MBA program are included under paragraph 15(1)(b) of the Act. The MBA program is part of the ACCC’s functions of monitoring the telecommunications industry and promoting competition and consumer benefits. Accordingly, the ACCC’s costs determined under paragraph 15(1)(b) of the Act that are attributable to the MBA program costs are recovered in arrears (that is, costs for the 2021–22 financial year) from monitored carriers via the ACLC. The proposed amount is set out in Table 1 below.

1. **The Commonwealth’s contribution to the International Telecommunication Union (ITU) component for 2022–23 ACLC**

Paragraph 15(1)(c) of the Act requires the ACMA to determine the proportion of the Commonwealth’s contribution to the budget of the ITU associated with telecommunications in the 2022 calendar year. This amount is proposed to be determined by the ACMA, based on advice provided by DITRDCA, in a determination to be made under paragraph 15(1)(c) of the Act. The proposed amount is set out in Table 1 below.

1. **ACMA’s payment for the development or variation of industry codes by a telecommunications industry body for 2022–23 ACLC**

Section 136C of the Telecommunications Act requires the ACMA to make payments on behalf of the Commonwealth to reimburse industry bodies that develop or vary industry codes that are subsequently registered by the ACMA under Part 6 of the Telecommunications Act in certain circumstances. Paragraph 15(1) (ca) of the Act requires the ACMA to determine the sum of the amounts paid under section 136C of the Telecommunications Actfor the immediately preceding financial year to the one in which the ACLC is imposed (in this case, the 2021–22 financial year). The ACMA proposes to determine this cost component in a determination to be made under paragraph 15(1)(ca) of the Act. The proposed amount is set out in Table 1 below.

1. **Government’s consumer representation and research grant (estimate) for 2022**–**23 ACLC**

Under paragraph 15(1)(d) of the Act, the minister has made the Telecommunications (Carrier Licence Charges) (Paragraph 15(1)(d)) Determination 2023 (No. 1), an instrument setting out the estimated total amount of grants likely to be made under section 593 of the Telecommunications Actduring the 2022–23 financial year. Section 593 of the Telecommunications Actprovides for the minister to make grants of financial assistance:

* to consumer bodies for purposes in connection with representations of the interests of consumers in relation to telecommunications issues; or
* to persons or bodies for purposes in connection with research into the social, economic, environmental or technological implications of developments relating to telecommunications.

For the purpose of ascertaining the ACLC payable by a liable licensed carrier, their ‘[eligible revenue](https://www.acma.gov.au/publications/2021-10/report/eligible-revenue-assessment-2019-20)’ for the 2021–22 financial year, as assessed by the ACMA, is proposed to be used as a basis for determining the carrier’s ACLC. As adopted since the 2018–19 financial year, the methodology proposed for the allocation of the total charge of the MBA program to individual carriers is based on the number of NBN fixed-line connections operated by all monitored service providers that are also carriers and liable to pay the ACLC.

The methodology proposed for the allocation of the Consumer Safeguards Part A program costs to the liable carriers that are also qualifying carriage service providers subject to the [Telecommunications (Consumer Complaints) Record-Keeping Rules 2018](https://www.legislation.gov.au/Details/F2018L00721) (the RKRs), is based on each qualifying retail carriage service provider’s eligible revenue.

The proposed methodology for calculating a carrier’s ACLC is set out in section 3.6 of the draft CRIS and 3.2 of Attachment B of the draft CRIS (available alongside this paper on the ACMA website). The total ACLC for all carriers for 2022–23 and the methodology used to determine the individual charge payable by each carrier (including the names of the carriers that are qualifying retail carriage service providers) will be specified in the determination made by the ACMA under subsection 14(1) of the Act.

# Proposed ACLC

The cost components proposed to be recovered through the ACLC are set out in Part 3 of the draft CRIS and Attachment B of the draft CRIS for the MBA program (available alongside this paper on the ACMA website). A summary of the cost components is provided in Table 1 below. As shown in the table, and as required by the Act, the ACMA, ACCC and industry code development cost components are based on the 2021–22 financial year, ITU costs are based on the 2022 calendar year, and the component for consumer representation and research grants is for the 2022–23 financial year.

1. Summary of proposed charges

| **Ref** | **Cost component descriptions** | **Proposed cost component for 2022–23 ACLC** | **Cost component for 2021–22 ACLC** | **Variance inc/(dec)** | **Change % inc/(dec)** |
| --- | --- | --- | --- | --- | --- |
| 15(1)(a) | ACMA’s recoverable costs attributable to its telecommunications functions and powers for the previous financial year (excluding Consumer Safeguard Part A costs) | $12,104,546 | $13,486,456 | ($1,381,910) | (10.2%) |
| 15(1)(a) | ACMA’s costs attributable to its telecommunications functions and powers for the previous financial year in relation to the Consumer Safeguard Part A | $813,888 | $1,456,349 | ($642,461) | (44.1%) |
| 15(1)(b) | ACCC’s costs attributable to its telecommunications functions and powers for the previous financial year (excluding the MBA program) | $10,210,861 | $9,560,635 | $650,226 | 6.8% |
| 15(1)(b) | ACCC’s costs attributable to the telecommunications functions and powers in relation to the MBA program for the previous financial year | $1,837,902 | $1,640,116 | $197,786 | 12.1% |
| 15(1)(c) | The proportion of the Commonwealths (i.e. DITRDCA) contribution to the budget of the International Telecommunication Union (ITU) for the calendar year in which the beginning of the charging period occurs | $2,198,407 | $2,209,549 | ($11,142) | (0.5%) |
| 15(1)(ca) | The sum of amounts paid to under section 136C of the Telecommunications Act (for reimbursement of industry costs for industry code development or variation) for the previous financial year | $0 | $0 | $0 | 0.0%  |
| 15(1)(d) | The estimated amount, determined by the minster, of total grants likely to be made under section 593 of the Telecommunications Act in the current financial year | $2,435,000 | $2,381,000 | $54,000 | 2.3% |
|  | **Total ACLC amount** | **$29,600,605** | **$30,734,105** | **($1,133,499)** | **(3.7%)** |

Note: More details for each component are provided in section 3 of the attached draft CRIS and section 3 of Attachment B of the draft CRIS. The amounts disclosed for paragraphs 15(1)(a) and 15(1)(b) above are to be the same amounts as the amounts to be disclosed in ACMA’s and ACCC’s determinations respectively when these are made.

1. The ACMA’s costs (excluding Consumer Safeguards Part A) has reduced from the previous financial year, decreasing by 10.2% ($1.38 million). The ACMA continues to base its resourcing decisions around its priorities, which will see fluctuations in spend over time between its important regulatory activities. The Consumer Safeguards Part A program costs have decreased by 44.1% ($0.64 million), from the prior year with the program work moving into business-as-usual activities.

The ACCC’s cost to be determined for the purpose of the 2022–23 ACLC (excluding the MBA costs) has increased by 6.8% from the previous year. The increase is largely driven by:

support costs associated with investment in the ACCC’s ICT to stabilise its infrastructure and build analytical capabilities

ACCC agency growth also increased need in the human resources function to support a larger workforce.

The cost component for the MBA program is recovered via the ACLC as part of the ACCC’s costs of performing statutory telecommunications functions relating to monitoring industry and providing information to consumers. This has increased by 12.1 %from the previous year but is lower than the 2021–22 budget and predominantly relates to contracted services to manage the open tender procurement process to engage a third-party testing provider for the MBA Program extension. The third-party testing provider, SamKnows, also provided additional reports. Overall, the MBA program is expected to finish budget neutral. More information is provided in section 3 of Attachment B of the draft CRIS.

The component under paragraph 15(1)(c) of the Act relates to the Commonwealth’s annual contribution to the budget of the ITU associated with telecommunications for the 2022 calendar year. The contribution is made in Swiss Francs each year by DITRDCA. The expenditure in Australian dollars has decreased by 0.5 % from the previous year. This is largely attributed to the difference in the exchange rate at the time of payment.

For the cost component under paragraph 15(1) (ca) of the Act, no reimbursements were made for the development or variation of industry codes in the 2021–22 financial year by the ACMA under section 136C of the Telecommunications Act.

The component under paragraph 15(1) (d) of the Act relates to the minister’s estimated allocation of grants under section 593 of the Telecommunications Act. The [determination](https://www.legislation.gov.au/Details/F2023L00413) for the 2022–23 grants was made by the minister on 30 March 2023. The amount was based on grants made or expected to be made to the Australian Communications Consumer Action Network and was subject to indexation, which has resulted in an increase of 2 percent from the previous year.

# The proposed 2023 Payment Determination

The existing Telecommunications (Payment of Annual Carrier Licence Charge) Determination 2014 was made under subsections 73(3) and (4) of the *Telecommunications Act 1997* and determines the due date for the ACLC, specifies the ACLC late payment penalty rate and authorises the ACMA to make decisions about remission of a late payment penalty.

This determination is automatically due to be repealed under the sunsetting provisions on 1 October 2024. There is an ongoing requirement for this determination to continue and a new determination needs to be made before the sunsetting date.

The new 2023 Payment Determination, available on the ACMA website, will replace and largely replicate this determination, with only minor stylistic and drafting changes that are administrative in nature, including the removal of any redundant provisions.

# Invitation to comment

## Making a submission

We invite comments on the issues set out in this consultation paper.

[Online submissions](https://www.acma.gov.au/have-your-say) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.

Submissions by post can be sent to:

The Manager

Revenue, Cost Recovery, Budgets and Operations
Australian Communications and Media Authority
PO Box 78

Belconnen ACT 2616

The closing date for submissions is COB, **Monday 16 October 2023.**

Consultation enquiries can be emailed to costrecoveryteam@acma.gov.au.

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