

16 September 2024

**Cost Recovery Team,
Australian Communications and Media Authority**

Online submission

Dear Sir/Madam,

RE: Proposed Annual Carrier Licence Charge (ACLC) 2023-2024 and proposed cost recovery of the government's new *Fighting Scams* measure

Thank you for the opportunity to comment on the proposed ACLC and associated cost recovery proposals for 2023-2024.

With numerous issues and regulatory/legislative proposals currently demanding our attention, this submission is necessarily high-level and brief. This is not a reflection of its importance to our members; rather, it reflects the ever-increasing regulatory and technological demands on the sector.

Cost attribution

As the paper explains, the ACLC is a mechanism allowing recovery of "*certain telecommunications costs*" incurred by the government in regulating the industry. The licence charges are calculated annually, and the ACMA must prepare and consult with industry stakeholders on a Cost Recovery Implementation Statement (CRIS) prior to implementation.

The telecommunications sector has evolved dramatically since the introduction of the ACLC in 1997. Telecommunications permeate and/or facilitate almost every aspect of modern life and society. Against the background of this reality, we make two observations:

1. Because almost all aspects of our social and economic lives are facilitated by telecommunications services, it follows that many problems and deficiencies (as well as pleasant aspects) of our lives also involve telecommunications services. Unfortunately, we observe an increasing tendency to default to the regulation of telecommunications services, including in instances where regulation of other services and sectors would, in our view, be more appropriate and effective. It is, consequently, also inappropriate to additionally burden our sector with the costs of administering and enforcing the regulation so applied.
2. Where the telecommunications sector is regulated because regulatory intervention of telecommunications services is indeed the most effective and efficient means of achieving a desired policy aim (e.g. where enforcement of other regulatory options would prove impossible or is unlikely to succeed at scale), an analysis must be undertaken whether such regulation is caused by a deficiency in the structure or actions of the telecommunications sector, or whether such regulation has been applied to the sector due to other reasons and, consequently, costs for its administration and enforcement ought to be borne by other sectors or be funded from consolidated revenue.

We believe it is unreasonable to continue requiring a small group within the broader industry - telecommunications carriers - to bear the costs of such regulatory activities. These activities

often benefit the entire sector, the Australian public, or even other industries. This is especially true when the need for regulation did not arise from the actions or structure of these carriers, yet they are still asked to fund it through the ACLC.

Our comments on the proposed cost recovery for the [scams code framework](#) further below provides a more detailed illustration of some of these issues.

Transparency and efficiency

The Charging Framework promotes consistent, transparent and accountable charging for government activities. This draft CRIS published as part of this consultation goes some way to meeting the government's obligations in relation to transparency. However, we seek further information on and justification of the proposed cost components for the ACCC, noting these costs have increased substantially over time, and are now almost on par with the cost components indicated for the ACMA's activities.

It is not clear the CRIS is attempting to "*minimise cost recovery charges through the efficient implementation of cost recovered activities*", as required by the Government's Cost Recovery Policy. We are not aware of any evidence that would demonstrate efforts by the ACCC to check its methodology, identify cost efficiencies or audit its costs.

For example, we wish to understand whether carriers are being charged for the ACCC's legal costs (which we suggest would be inappropriate). One example was charges passed on for external advice and support provided by Grex Consulting, who appear to have been briefed by law firm DLA Piper.

Scams Code Framework

Communications Alliance and its members have significant concerns with the proposed cost recovery for fighting scams.

The Consultation Paper notes the ACMA will administer and enforce rules to the telecommunications sector under a new government-developed Scams Code Framework. The framework represents the government's commitment to introduce mandatory industry rules for regulated sectors – banking, telecommunications and digital services platforms – to minimise harms resulting from scams.

As the government is aware the telecommunications sector has proactively developed enforceable anti-scam rules (contained in the registered [Industry Code C661:2022 Reducing Scam Calls and Scam SMS](#) (Scams Code)) and invested considerable resources to protect the Australian public from scams. The sector proactively invested in these measures despite not being the cause of the illegal practices. In many instances these issues have arisen due to actions and/or deficiencies in other sectors. As highlighted above, telecommunications networks are not negligently or otherwise contributing to the criminal activity undertaken by bad actors.

Previous ACLC CRISs have, correctly, explicitly recognised that "*Costs associated with anti-spam activities carried out in accordance with the Spam Act 2003 and e-security activities are considered not appropriate to recover from telecommunications carriers, as the direct beneficiaries are the members of the public.*"¹

Moreover, the Scams Code appears to be operating effectively to address issues that are in the carriage service providers' control. Any costs incurred for the development and enforcement of additional regulatory instruments that (also) apply to the banking and digital platforms sector, therefore, appear to be primarily necessitated by the desire to develop measures for those sectors, rather than the telecommunications sector. Consequently, we

¹ p.38, Australian Communications and Media Authority, *Cost Recovery Implementation Statement Annual Carrier Licence Charge for the charging period 1 July 2021 to 30 June 2022*, May 2023

believe that these costs ought to be recovered from those sectors. They should not be recovered through the ACLC.

We highlight that it is in Australia's best interests to ensure the operation of enabling infrastructure – and continued investments into the maintenance and enhancement of such infrastructure – remain economically sustainable. Therefore, and following from our specific comments in response to the Consultation Paper (and noting the limited scope of this consultation), we urge the ACMA and other relevant stakeholders to undertake a comprehensive review of the ACLC, including its underlying principles, to ensure the ACLC appropriately reflects the role of the operators of telecommunications networks and the telecommunications sector in our society.

We finally request clarification over the division of responsibilities for the Scams Code Framework. The ACCC recently stated "...the ACCC has also been tasked with the administration and enforcement of a mandatory Scams Code Framework..." including for telecommunications providers.² Conversely, the Consultation Paper states the ACMA "administer and enforce rules for the telecommunications sector under the new Scams Code Framework".

We look forward to continuing our engagement with all relevant stakeholders on these matters. If you have any questions, please do not hesitate to contact Peppi Wilson, Senior Manager, Policy and Regulation [REDACTED], Christiane Gillespie-Jones, Director Program Management ([REDACTED]), or me.

Yours sincerely,



Luke Coleman
Chief Executive Officer

About Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs promoting sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

² Australian Competition and Consumer Commission, Law Council Annual Competition and Consumer Law Workshop speech 2024, August 2024