

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications (Carrier Licence Charges) Act 1997

Telecommunications Carrier Licence Charges (Annual Charges) Determination (No. 1) 2022

Authority

The *Telecommunications Carrier Licence Charges (Annual Charges) Determination (No. 1) 2022* (the **Determination**) is made by the Australian Communications and Media Authority (the **ACMA**) under subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the **Act**).

Legislative provisions

Under section 12 of the Act, an annual charge is imposed on a carrier licence that is in force at the beginning of a financial year (an annual carrier licence charge).

Subsection 14(1) of the Act provides that the amount of an annual carrier licence charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA.

Section 15 of the Act limits the total of charges that may be imposed. Subsection 15(1) of the Act provides that the total of the annual carrier licence charges that are imposed on carrier licences in force at the beginning of a financial year must not exceed the sum of the amounts determined under paragraphs 15(1)(a) to (d).

Under subsection 14(1) of the *Australian Communications and Media Authority Act 2005*, the Minister may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers. On 21 April 2017, the then Minister for Communications made the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2017* (the **2017 Ministerial Direction**) which directed the ACMA to make such determinations as are necessary under subsection 14(1) of the Act to have the effect of imposing an annual carrier licence charge of \$0 on each carrier licence that is:

- in force at the beginning of a “relevant financial year”; and
- held by a carrier that was a “non-participating person” for the eligible revenue period immediately preceding that financial year.

The 2017 Ministerial Direction defines “relevant financial year” as the financial year that begins on 1 July 2017 and each later financial year, and the term “non-participating person” as having the same meaning as in the *Telecommunications (Participating Persons) Determination 2015* (the **Participating Persons Determination**).

A provision-by-provision description of the Determination is set out in the notes at **Attachment A**.

The Determination is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**).

Purpose and operation of the instrument

The purpose of the Determination is to set out the method for ascertaining the amount of annual carrier licence charge imposed on each carrier licence that was in force at the beginning of the 2020-2021 financial year, in accordance with subsection 14(1) of the Act. (Further information about that method is set out below in the notes on section 9 of the Determination at Attachment A).

Consistent with the 2017 Ministerial Direction, the Determination imposes an annual carrier licence charge of \$0 on a carrier licence that was in force at the beginning of the 2020-2021 financial year and held by a carrier that was a non-participating person for the eligible revenue period that began on 1 July 2019 and ended on 30 June 2020.

Documents incorporated by reference

The Determination incorporates the following Acts and legislative instruments (including by the adoption of definitions), or otherwise refers to them:

- the *Acts Interpretation Act 1901*;
- the LA;
- the Act;
- the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- the Participating Persons Determination;
- the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*;
- the *Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022*;
- the *Telecommunications (Carrier Licence Charges) (Paragraph 15(1)(d)) Determination 2021 (No. 1)*;
- the *2022 Determination under paragraph 15(1)(b)*.

The Acts and legislative instruments listed above may be accessed, free of charge, from the Federal Register of Legislation (<http://www.legislation.gov.au>). The Acts listed above are incorporated as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and subsection 13(1) of the LA. The legislative instruments listed above are incorporated as in force from time to time, in accordance with section 7 of the Determination and subsection 14(1) of the LA.

Consultation

Before the Determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA consulted with the public and industry stakeholders on the making of the Determination and the instrument made by the ACMA determining amounts under paragraphs 15(1)(a), (c) and (ca) of the Act, for a four-week period from 5 April to 2 May 2022. The consultation was facilitated through the public release of a consultation paper and a draft cost recovery implementation statement (**CRIS**) on the ACMA's

website. The CRIS and consultation paper outlined the method to be used by the ACMA to determine the carrier licence charge for the financial year commencing on 1 July 2020.

The ACMA did not receive any submissions in relation to this consultation.

Regulation Impact Statement

On 19 February 2014, the Office of Best Practice Regulation provided a standing exemption and advised that a Regulation Impact Statement was not required for an instrument in the nature of the Determination (reference number ID 2014/16581).

Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out in **Attachment B** has been prepared to meet that requirement.

Notes on sections of the *Telecommunications Carrier Licence Charges (Annual Charges) Determination (No. 1) 2022*

Section 1 - Name

This section provides for the Determination to be cited as the *Telecommunications Carrier Licence Charges (Annual Charges) Determination (No. 1) 2022* (the **Determination**).

Section 2 - Commencement

This section provides for the Determination to commence on the later of the start of the day after the day it is registered on the Federal Register of Legislation and the commencement of the *Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022*. Both events must occur before the Determination commences.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 - Authority

This section identifies the provision of the Act that authorises the making of the Determination, namely subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the **Act**).

Section 4 - Repeal of this instrument

This section provides that the Determination is repealed at the start of 1 July 2023.

Section 5 - Application

This section provides that the Determination applies to carrier licences that were in force at the beginning of the 2020-2021 financial year.

Section 6 - Definitions

Subsection 6(1) sets out definitions for various terms used in the Determination.

The terms *eligible revenue* and *eligible revenue period* has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**) and the term *non-participating person* is defined as having the same meaning as in the Participating Persons Determination.

Subsection 6(1) also defines the following terms which relate to the Consumer Safeguards Part A (CSPA) program, the costs of which are included as part of ACMA's costs that are attributable to its telecommunications powers and functions and are determined by the ACMA for the purposes of paragraph 15(1)(a) of the Act:

- **CSPA** (or Consumer Safeguards Part A) is defined to mean the program of work undertaken by the ACMA to enhance analysis, transparency and reporting of telecommunications complaints data.
- **qualifying retail carriage service provider** or **QRCSP** is defined as having the same meaning as in the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*.

Subsection 6(1) also defines terms relating to the Measuring Broadband Australia (MBA)¹ program.

MBA is the Measuring Broadband Australia program that was introduced in April 2017² to monitor and report on the performance of fixed line broadband services delivered over the National Broadband Network (**NBN**). The MBA commenced on 1 July 2017 and is administered by the ACCC. The costs incurred in administering this program in the 2019-2020 financial year were included in the ACCC's determination of its costs that are attributable to its telecommunications functions and powers under paragraph 15(1)(b) of the Act (as set out in the *2022 Determination under paragraph 15(1)(b)* (the **ACCC Determination**)) and are to be recovered as part of the annual carrier licence charge for 2020-2021.

NBN fixed line connection is defined as a fixed line broadband service delivered over the NBN fixed line network. The NBN fixed line network is part of the NBN but does not include a fixed wireless network or satellite access network.

test segment is defined as a class of a broadband service that is tested in accordance with specified conditions under the MBA. For example, the relevant class of broadband service may be tested using specified access technology or at specified speed tiers.

Section 7 - References to other instruments

Paragraph 7(a) provides that a reference to a legislative instrument in the Determination is a reference to that instrument as in force from time to time. Paragraph 7(b) provides that a reference to any other kind of instrument is a reference to that instrument as in force at the commencement of the Determination.

Section 8 - Carrier licence charge – exempt carrier licence

This section provides that the amount of carrier licence charge imposed on an exempt carrier licence is \$0, in accordance with the 2017 Ministerial Direction.

Section 9 - Method of ascertaining carrier licence charge – other carrier licences

This section sets out the method for ascertaining the amount of carrier licence charge imposed on a carrier licence that is not an exempt carrier licence (a **relevant carrier licence**).

¹ More information about the MBA program can be obtained from: <https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/measuring-broadband-australia-program>

² Australian Competition and Consumer Commission (2017), *ACCC to monitor Australia's broadband performance*, <https://www.accc.gov.au/media-release/accc-to-monitor-australias-broadband-performance>; Senator the Hon Mitch Fifield (2017).

Subsection 9(2) explains that the carrier licence charge imposed on a carrier licence in relation to each carrier named in an item in Schedule 1 (which lists the participating persons for the relevant year) is equal to the sum of the amount ascertained using the three formulas set out in subsections 9(3), (4) and (5), as applicable to each carrier.

Subsection 9(3) sets out how the first amount included in the carrier licence charge is ascertained. This represents the component of the carrier licence charge relating to the costs determined under paragraph 15(1)(a) of the Act, excluding the costs attributable to the MBA program and the CSPA program. This formula applies to all carriers who are named in Schedule 1 to the Determination (all carriers who were participating persons in the 2019-2020 financial year).

This amount is ascertained, for a relevant carrier licence, using the following formula:

$$(MCA - OTC) \times \frac{ER}{TER}$$

Where:

- **MCA** (maximum charge amount excluding the CSPA program and the MBA program amounts) is the total sum of the amounts determined under subsection 15(1) of the Act, excluding the relevant amount ascertained in relation to the CSPA program and the portion of the amount determined by the ACCC under paragraph 15(1)(b) of the Act that relates to the MBA.
- **OTC** (other telecommunications costs) is an amount relating to costs that:
 - (a) are part of the proportion of the ACMA's costs for the 2019-2020 financial year that is attributable to the ACMA's telecommunications functions and powers; and
 - (b) have been recovered from telecommunications charges (other than annual carrier licence charges);
- **ER** (eligible revenue), for the holder of the relevant carrier licence, is the eligible revenue of the holder for the 2019-2020 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act; and
- **TER** (total eligible revenue) is the total sum of the eligible revenue of all holders of a relevant carrier licence for the 2019-2020 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act.

The total amount ascertained for the purpose of subsection 9(3) is calculated by subtracting the other telecommunications costs from the maximum charge amount. The net amount is then allocated to each holder of a relevant carrier licence in the same proportion as that holder's eligible revenue bears to the total eligible revenue.

Subsection 9(4) sets out how the second amount included in the carrier licence charge is ascertained. This represents the component of the carrier licence charge relating to the costs determined under paragraph 15(1)(a) of the Act that relate to the CSPA program. This subsection only applies to a carrier who was also a qualifying retail carriage service provider (**QRCS**P) for the 2019-2020 financial year and named in Schedule 2 to the Determination.

The CSPA cost is ascertained, for a relevant carrier licence, using the following formula:

$$\text{CSPA} \times \frac{\text{ERQRCSP}}{\text{TERQRCSP}}$$

Where:

- CSPA is the cost of the Consumer Safeguards program for the 2019–20 financial year - \$886,266;
- ERQRCSP is the individual carrier and QRCSP's eligible revenue for the 2019–20 financial year (as specified in Schedule 2); and
- TERQRCSP is the total assessed eligible revenue of all QRCSPs who were also carriers for the 2019–20 financial year - \$19,474,987,193.

The amount applicable to the CSPA program forms part of the ACMA's cost component determined under paragraph 15(1)(a) of the Act. This relates to, essentially, providing improvements to dispute resolution for Australian telecommunications consumers. The costs will be recovered from those carriage service providers who are required to report under the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* (the **RKRs**) (that is, carriage service providers who were 'QRCSPs' during the relevant period) and are also carriers and participating persons. The carriers who were also QRCSPs in the 2019-2020 financial year and therefore liable to pay the CSPA costs component of the ACLC are Telstra Corporation Limited, Optus Mobile Pty Ltd, Aussie Broadband Limited, Primus Telecommunications Pty Limited and Vodafone Australia Pty Limited. Given that information obtained under the RKRs by the ACMA falls within the definition of 'authorised disclosure information' in section 3 of the *Australian Communications and Media Authority Act 2005*, the ACMA obtained the consent of each of the relevant QRCSPs to name the QRCSP in the Determination.

The formula allocates the cost in the same proportion as the QRCSP's assessed eligible revenue relates to the total assessed eligible revenue of all QRCSPs for the 2019-2020 financial year.

Subsection 9(5) sets out how the third amount included in the carrier licence charge is ascertained. This represents the component of the carrier licence charge relating to the costs determined under paragraph 15(1)(b) of the Act that are attributable to the MBA program.

This amount is ascertained, for a relevant carrier licence, using the following formula:

$$\text{APC} \times \frac{\text{FLC}}{\text{TFLC}}$$

where:

- **APC** (annual program costs) is equal to \$1,599,297. This is the amount of the costs incurred by the ACCC, during the 2019-2020 financial year, as determined

by the ACCC under the ACCC Determination that it advises is attributable to the MBA program (see the explanatory statement to the ACCC Determination).

- **FLC** (fixed line connections) for each carrier is the number listed for that carrier in an item in Schedule 3. This number is derived from information provided by the ACCC about the total number of NBN fixed line connections operated in a test segment which are attributable to carriers during the 2019-2020 financial year. The ACCC provided the number of NBN fixed-line connections for the 2019-2020 financial year to the ACMA based on NBN's quarterly reports.
- **TFLC** (total fixed line connections) is equal to 6,899,851. This represents the total number of NBN fixed-line connections operated that are attributable to participating persons during the 2019-2020 financial year.

The charge amount attributable to the MBA program is allocated to each carrier licence by first identifying the broadest test segment that applied during the relevant period, and then identifying the volume of services the participating person was responsible for in the relevant period that met the description of that test segment, expressed as a proportion of the total number of such services for which all monitored service providers who are also participating persons were responsible in the relevant period.

In the period relevant to this Determination, the broadest test segment comprised of NBN fixed line services and hence the charge amount is allocated based upon the relevant proportion of the participating person's NBN fixed line access services to the total number of NBN fixed line access services of all monitored service providers who are also participating persons.

Schedule 1

Schedule 1 sets out, for each holder of a relevant carrier licence named in the Schedule:

- the holder's name;
- their ACN or ABN;
- their eligible revenue for the 2019-2020 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act; and
- the total eligible revenue of all the carriers named in the Schedule.

Schedule 2

Schedule 2 sets out, for each holder of a relevant carrier licence named in the Schedule, who was also a QRCSP in the 2019-2020 financial year:

- the holder's name;
- their ACN or ABN;
- their eligible revenue for the 2019-2020 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act; and
- the total eligible revenue of all the carriers named in the Schedule.

Schedule 3

Schedule 3 sets out, for each holder of a relevant carrier licence named in the Schedule:

- the holder's name;
- their ACN or ABN; and
- the number of fixed line connections operated by the monitored service provider in a test segment during the 2019-2020 financial year, as reported by the ACCC, that are attributed to the relevant carrier licence.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority (ACMA) under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Telecommunications Carrier Licence Charges (Annual Charges) Determination (No. 1) 2022 (the Determination)

Overview of the Determination

Under section 12 of the *Telecommunications (Carrier Licence Charges) Act 1997* (the Act), an annual carrier licence charge is imposed.

Subsection 14(1) of the Act provides that the amount of an annual carrier licence charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA.

The Determination is made by the ACMA under subsection 14(1) of the Act. It sets out the method for ascertaining the amount of annual carrier licence charge imposed on the holder of each carrier licence that was in force at the beginning of the 2020-2021 financial year, with the exception of ***exempt carrier licences*** (as that term is defined in the Determination).

Human rights implications

The ACMA has assessed whether the Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Determination does not engage any of those rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.