

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Eligible Revenue) Determination 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Eligible Revenue) Determination 2025* (the **instrument**) under subsections 43(5) and 45(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 45(1) of the Act provides that the eligible revenue of a participating person for an eligible revenue period is the amount ascertained in accordance with a written determination made by the ACMA.

Subsection 43(1) of the Act provides that a participating person for an eligible revenue period must give the ACMA a written return of the person's eligible revenue for that period and must do so within the period specified in an instrument in force under subsection 43(5) of the Act. Subsection 43(5) of the Act provides that the ACMA may, by legislative instrument, specify a period, that must begin at or after the end of the eligible revenue period, for the purposes of paragraph 43(1)(b) of the Act.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The instrument:

- sets out how the eligible revenue of a participating person (defined in section 44 of the Act) for an eligible revenue period is to be determined; and
- specifies the period within which each participating person is required to provide a written return of the person's eligible revenue for an eligible revenue period.

Purpose and operation of the instrument

Part 2 of the Act establishes a universal services regime which has the main object of ensuring that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to standard telephone services, payphones, emergency call services and the National Relay Service. Provision of public interest telecommunications services is funded by a levy (the **TIL**), which is formally imposed by the *Telecommunications (Industry Levy) Act 2012* and is administered by the ACMA through the provisions of Division 6 of Part 2 of the Act. The eligible revenue of participating persons, determined in accordance with the instrument, is used to calculate the amount of levy payable by each participating person.

Contributions are, in general, proportional to each participating person's share of total eligible revenue for a relevant eligible revenue period. Annual carrier licence charges which are imposed by the *Telecommunications (Carrier Licence Charges) Act 1997* and payable by carriers (who are not otherwise exempt from paying the charge) are also, in part, based on a participating person's eligible revenue.

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

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

Consultation

Before the instrument 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. A consultation paper and a draft Determination were provided for public comment through the ACMA website and via direct email notification to all telecommunications carriers.

Copies of the consultation paper and draft Determination were made available on the ACMA website: www.acma.gov.au. Consultation was open for six weeks, with comments closing on 10 July 2025.

The draft Determination proposed the following:

- i. the removal of provisions which empowered the ACMA to:
 - a. decide that a particular period is an appropriate period for a participating person, a consolidated related party or a declared related party of a participating person to work out a person's revenue; and
 - b. make a declaration that a specified amount is (or is not) a particular type of revenue, payment, deduction; and
- ii. the insertion of a new definition for 'specified participating person', to reflect the insertion of paragraph 44(1)(c) of the Act.

Based on the submissions received from the public consultation, and further internal consultation, the ACMA has decided to only proceed with item ii above in remaking the instrument, noting that the proposed term 'specified participating person' has been amended to 'prescribed participating person'. This is to avoid confusion within the instrument, as the retention of the declaration provisions means the term 'specified participating person' is now used in relation to any participating person referred to in a declaration made by the ACMA under the instrument.

Documents incorporated by reference

The instrument incorporates the following Acts and legislative instruments by reference, or otherwise refers them:

- the Act;
- Accounting Standard AASB 1057;
- accounting standards made under section 334 of the *Corporations Act 2001*;
- the *Administrative Review Tribunal Act 2024*;
- the AIA;
- the *Broadcasting Services Act 1992*;
- the *Corporations Act 2001*;
- the LA; and
- the *Telecommunications Act 1997*.

The documents are incorporated as in force from time to time (in accordance with section 14 of the LA and section 10 of the AIA) and can be found on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

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 to be prepared in respect of that legislative instrument.

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The instrument, made under subsections 43(5) and 45(1) of the Act:

- sets out how the eligible revenue of a participating person for an eligible revenue period is to be determined; and
- specifies the period within which each participating person is required to provide a written return of the person's eligible revenue for an eligible revenue period.

Human rights implications

The ACMA has assessed whether the instrument 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 instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Telecommunications (Eligible Revenue) Determination 2025*

Part 1 – Preliminary

Section 1 – Name

Section 1 of the instrument provides that the name of the instrument is the *Telecommunications (Eligible Revenue) Determination 2025*.

Section 2 – Commencement

Section 2 of the instrument provides that the instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation.

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

Section 3 – Authority

Section 3 of the instrument provides that the instrument is made under subsections 43(5) and 45(1) of the Act.

Section 4 – Application of determination

Section 4 of the instrument provides that the instrument applies to the 2025-26 eligible revenue period, being the 2025-26 financial year, and each later eligible revenue period.

Section 5 – Repeal of the *Telecommunications (Eligible Revenue) Determination 2015* and transitional in relation to the 2024-25 eligible revenue period

Section 5 of the instrument repeals the *Telecommunications (Eligible Revenue) Determination 2015*. Subsection 5(2) of the instrument provides that the *Telecommunications (Eligible Revenue) Determination 2015* as in force immediately before its repeal continues to apply in relation to the 2024-25 eligible revenue period as if it had not been repealed.

Section 6 – Definitions

Section 6 of the instrument defines the terms used throughout the instrument. Several other expressions used in the instrument are defined in the Act, the *Broadcasting Services Act 1992* and the *Telecommunications Act 1997*.

Section 7 – References to other instruments

Section 7 of the instrument provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as existing from time to time.

Section 8 – Meaning of *declared related party*—participating person

The instrument includes provision for a proportion of the revenue of 'declared related parties' to be included in the calculation of a participating person's eligible revenue. Section 8 of the instrument defines 'declared related party' in relation to a participating person. The ability to capture the revenue of entities other than the participating person is designed to discourage, and ultimately deal with,

persons trying to minimise their revenue, and thus levy payments, by diverting revenue to associates that are not participating persons. An entity can be a declared related party for either part or the whole of an eligible revenue period.

Under subsection 8(1) of the instrument, an entity is a 'declared related party' of a participating person for the whole of an eligible revenue period, if the entity:

- is not a participating person, a consolidated related party of a participating person or a non-participating person for the period; and
- is owned, at any time during the period, by a body that owns the participating person at any time during the period; and
- has telecommunications sales revenue in Australia at any time during the same period.

Subsection 8(2) of the instrument provides that an entity is a declared related party of a participating person for any part of an eligible revenue period during which the entity:

- is not:
 - a carrier; or
 - a consolidated related party of a participating person or a non-participating person; or
 - a participating carriage service provider; or
 - a prescribed participating person; and
- is owned by a body that, at any time during the same period, owns the participating person; and
- has telecommunications sales revenue in Australia.

Subsection 8(3) of the instrument provides that a body 'owns' an entity if the body has company interests of more than 49% in that entity. Company interests may be traced in the same manner as company interests are traced under Part 4 of Schedule 1 to the *Broadcasting Services Act 1992*.

Example 1: Entity A wholly (100 per cent) owns Entity B, which is a participating person, and Entity A also owns half (50 per cent) of Entity C. Entity C has telecommunications sales revenue earned in Australia. Entity C is not a participating person, nor a consolidated related party of Entity B. As Entity C meets the requirements of section 8, Entity C is a declared related party of Entity B, the participating person. Entity C could be a declared related party for part or all of the relevant eligible revenue period.

Example 2: An entity may be a declared related party of a participating person for six months of an eligible revenue period, and then become a carrier for the remaining six months of the eligible revenue period. In this instance, the entity would be a declared related party of a participating person for the part of the eligible revenue period during which it was not a carrier (that is, when it did not hold its own carrier licence).

If the entity is a participating person (as defined in section 44 of the Act) for the remaining 6 months of the eligible revenue period, the entity would be required to submit its own eligible revenue return under section 43 of the Act.

If an entity is a declared related party in relation to a participating person for the whole or part of an eligible revenue period, a proportion of the telecommunications sales revenue (determined using the declared related party factor defined in section 10 of the instrument) of that entity is added to the telecommunications sales revenue of the participating person and its consolidated related parties (if any).

Section 9 – Meaning of *declared related party*—non-participating person

Section 9 of the instrument defines a declared related party in relation to a non-participating person. The definition in section 9 is in substantially the same terms as the definition in section 8 of the instrument.

The term 'non-participating person' is defined in section 6 of the instrument as a person who is exempt from section 44 of the Act, and is not required to give the ACMA an eligible revenue return, for that period because of a determination made under subsection 44(2) of the Act.

Section 10 – Meaning of *declared related party factor*

Section 10 of the instrument sets out how to determine the 'declared related party factor' of a declared related party in relation to a participating person or a non-participating person. The declared related party factor is used to determine the proportion of a declared related party's revenue (and the proportion of any applicable deductions) that must be included (or in the case of deductions, excluded) in calculating the eligible revenue of the person in relation to whom the entity is a declared related party. The formulae to be used to calculate the declared related party factor are:

- participating person interest $\times$ party interest; or
- non-participating person interest $\times$ party interest.

The participating person interest or non-participating person interest is the proportion of the participating or non-participating person that is owned by the same body that owns the declared related party of the participating or non-participating person, as the case may be.

The 'party interest' is the proportion of the declared related party that is owned by the same body that owns the participating person or non-participating person. Where there is more than one body that owns the participating person or non-participating person, the proportion is to be based on the body that has the largest or most significant company interest in the declared related party. A note at the end of the section makes it clear that the company interest may be traced in the same way as company interests may be traced under Part 4 of Schedule 1 to the *Broadcasting Services Act 1992*.

The following examples illustrate how the declared related party factor is determined:

Example 1: Entity A wholly (100 per cent) owns Entity B, which is a participating person, and Entity A also owns half (50 per cent) of Entity C. Entity C (under subsection 8(1)) is a declared related party of Entity B, the participating person, for the whole of the eligible revenue period. The declared related party factor is 50 per cent, being 100 per cent $\times$ 50 per cent = 50 per cent.

Example 2: Entity A wholly (100 per cent) owns Entity B (a carrier) and Entity A also owns half (50 per cent) of Entity C. Together entities A and B earned \$20 million eligible revenue during the relevant eligible revenue period. Entity C earned \$12 million in telecommunications sales revenue in the same period, is not a participating person, nor a consolidated related party of a participating person. Entity C is a declared related party of Entity B.

The declared related party factor is 50 per cent, being 100 per cent $\times$ 50 per cent = 50 per cent. Therefore, 50 per cent of the telecommunications sales revenue of Entity C (\$6 million) is the proportion of revenue to be included in Entity B's calculations.

The declared related party factor is referred to throughout the instrument so that only an appropriate portion of the declared related party's revenue (and any applicable deductions) is included in the calculation of the participating person's eligible revenue.

In the above examples, to work out the eligible revenue of the participating person:

- 100 per cent of the revenue and deductions of the participating person, Entity B, are included;
- 100 per cent of the revenue and deductions of any consolidated related parties of Entity B are included; and
- 50 per cent of the revenue and deductions of the declared related party, Entity C, are included in the calculation of Entity B's eligible revenue.

Section 11 – Meaning of *non-telecommunications sale revenue*

Section 11 of the instrument provides that an amount of revenue is non-telecommunications sales revenue if it is earned from an activity outside the telecommunications industry. The term 'telecommunications industry' has the meaning affected by section 7 of the *Telecommunications Act 1997*.

Section 11 of the instrument also provides that the ACMA may, in writing, declare that a specified amount or the value of a specified benefit or service, is non-telecommunications sales revenue. If made, the declaration must state how the ACMA worked out the value of any benefit or service specified in the declaration. The declaration may also apply to more than one participating person, consolidated related party or declared related party, but not generally to all participating persons or parties.

Section 12 – Meaning of *inter-person input payment*

Section 12 of the instrument defines an inter-person input payment. These are amounts paid or payable by a participating person (**the first participating person**) or a consolidated related party or declared related party of the first participating person for an act done by a second person who may be either another participating person (**the second participating person**) or a non-participating person, or a declared related party or consolidated related party of that second person. The act must allow the first participating person or a consolidated related party or declared related party of the first participating person to provide a listed carriage service.

Further, if the second person is a second participating person, section 12 of the instrument provides that an amount is an inter-person input payment only if the amount is included by that participating person as part of its gross telecommunications sales revenue, without claiming the amount as a deduction under any of sections 25 to 30, 32 or 35 of the instrument.

If the second person is a non-participating person, the provision requires that the non-participating person would have been required to include the amount as part of their gross telecommunications sales revenue without deducting the amount under any of sections 25 to 30, 32 or 35 of the instrument, had the person been a participating person. This ensures that only one deduction is made in respect of the one amount constituted by the inter-person input payment. Section 31 of the instrument provides for the deduction of inter-person input payment amounts.

While these amounts are deductions, they differ from other deductible revenue streams because they are payments made (or incurred) by the participating person or related party, rather than a form of income received by that party. Inter-person input payments are to be deducted to ensure that participating persons making the payments are not levied disproportionately, given their input payments represent revenue passed on to their upstream suppliers. By deducting inter-person input payments from gross telecommunications sales revenue, the instrument aims to approximate a value-added tax regime.

Section 12 of the instrument also provides that the ACMA may, in writing, declare that a specified amount is an inter-person input payment in relation to one or more specified participating persons, or declared related parties or consolidated related parties of those persons.

Part 2 – Accounting concepts

Section 13 – Accounting on a group basis

Section 13 of the instrument provides that two or more participating persons that have the same 'ultimate Australian parent entity' may make certain eligible revenue calculations under the instrument, as a group or individually. Section 6 defines the 'ultimate Australian parent entity' of a participating person as an entity described in that way under accounting methods commonly used in Australia, and in the financial statements in which the participating person's revenue is reported.

Subsection 13(2) of the instrument provides that where two or more participating persons have the same ultimate Australian parent entity, each participating person may make its calculations in accordance with the instrument in its own right. As an alternative to subsection 13(2) of the instrument, under subsection 13(3) of the instrument, participating persons with the same ultimate Australian parent entity may make all the calculations required under Parts 3 or 4 of the instrument on a group basis, identifying and accounting for revenue and deductions as a whole. Where an entity calculates on a group basis in accordance with subsection (3), this is described in the instrument as 'accounting on a group basis'.

Under subsection 14(2) of the instrument, where participating persons have the same ultimate Australian parent entity, the starting point for calculating eligible revenue is the consolidated financial statements of the ultimate Australian parent entity. Using consolidated financial statements reduces opportunities for minimising 'eligible revenue', allows for the elimination of payments between participating persons within a corporate group and provides for a more comprehensive audit trail.

Using consolidated financial statements also allows participating persons to make some calculations on a group basis. Section 38 of the instrument provides for the attribution of eligible revenue to individual participating persons where eligible revenue is being worked out by the participating person using the method of accounting on a group basis.

Section 14 – Sales revenue

Subsection 14(1) of the instrument states that the sales revenue of a participating person, consolidated related party or declared related party for an eligible revenue period is to be worked out from particular sources identified in subsections 14(2) and 14(4) of the instrument to identify the revenue for the 'relevant period' (being the period during the eligible revenue period in which the participating person is a carrier, is a participating carriage service provider or a prescribed participating person).

Subsection 14(2) of the instrument identifies the sources from which sales revenue is to be worked out as follows:

- where a participating person's sales revenue is included in the consolidated financial statements of an ultimate Australian parent entity, the sources are:
 - the most recent audited financial statements of the ultimate Australian parent entity; or
 - if the ultimate Australian parent entity is not required to audit its financial statements – the most recent financial statements of the ultimate Australian parent entity; and
- where a participating person's sales revenue is not included in the consolidated financial statements of an ultimate Australian parent entity, the sources are:
 - the most recent audited financial statements including the sales revenue of the participating person; or
 - if the participating person is not required to audit its financial statements – the most recent financial statements including the sales revenue of the participating person; and
- for a declared related party, the sources are:
 - the most recent audited financial statements of the declared related party; or
 - if the declared related party is not required to audit its financial statements – the most recent financial statements including the sales revenue of the declared related party.

The sources identified in subsection 14(2) of the instrument are the most recent financial statements for a period ending on or before the end of the relevant eligible revenue period. For example, in working out the sales revenue of a participating person for the eligible revenue period ending on 30 June 2026, the most recent audited financial statements, including the sales revenue of the participating person, for the period from 1 April 2025 to 31 March 2026 could be used because that period ends before the end of the relevant eligible revenue period. However, the audited financial statements for the period from 1 April 2026 to 31 March 2027 cannot be used because that period ends after the end of the relevant eligible revenue period.

Subsection 14(3) of the instrument provides that in some circumstances, revenue for the relevant period may be identified in more than one set of financial statements. Subsection 14(3) further clarifies that the revenue earned by a participating person in a particular period should be covered by the financial statements and be the same length, or match, the 'relevant period'

Under subparagraph 14(3)(b)(ii), the ACMA may decide an alternative period is the most appropriate period for matching with the relevant period. If the ACMA makes such a decision under that paragraph, it must give the relevant participating person written notice of its decision. The notice must

include a statement to the effect that if they are adversely affected by that decision, they may, subject to the *Administrative Review Tribunal Act 2024*:

- (a) make an application to the Administrative Review Tribunal for review of the decision; and
- (b) request a statement of reasons for that decision under that Act.

(See subsection 14(5) of the instrument.)

Subsection 14(4) of the instrument provides that if neither the entity's own financial statements, nor the ultimate Australian parent entity's consolidated financial statements identify the sales revenue of the participating person, consolidated related party or declared related party then the sales revenue is to be calculated using as many sources as are necessary. This subsection recognises that due to the individual circumstances of the entities, a range of sources may be necessary to properly identify sales revenue of the participating person.

For example, during an eligible revenue period, a participating person may change the participating person's ownership or management arrangements in a way that affects how the participating person's annual financial statements are prepared, such as:

- (a) for accounting purposes, the participating person may cease to report in the participating person's own right and start reporting as part of the consolidated group of an ultimate Australian parent entity; or
- (b) for accounting purposes, the participating person may cease to report as part of an ultimate Australian parent entity's consolidated group and start reporting as an entity in the participating person's own right; or
- (c) the participating person may change the reporting date for the participating person's financial statements.

If the ownership or management arrangements change, the information that identifies the participating person's sales revenue for the relevant period may be found in 2 or more annual financial statements.

Section 14 of the instrument gives a broad basis for determining revenue. This broad definitional starting point means there is less chance of appropriate revenue being accidentally omitted while enabling inappropriate revenue to be removed via the transparent deduction processes in Parts 3 and 4 of the instrument. The use of consolidated financial statements for participating persons that are members of corporate groups is designed to discourage and ultimately deal with tactics to minimise eligible revenue and therefore levy contributions, by capturing the revenue of consolidated related parties and declared related parties and then putting the onus on the participating person to justify any deductions claimed.

Section 15 – Bundled revenue

Section 15 of the instrument defines bundled revenue, and provides that in order to work out an amount of revenue to be deducted under Part 3 or 4 (deductible revenue), a participating person must separate the deductible revenue from other amounts with which the deductible revenue is bundled. This section ensures that participating persons are able to deduct amounts that are deductible, but that they do not deduct amounts that are not deductible, which are bundled with deductible amounts.

Subsection 15(2) of the instrument defines bundled revenue as revenue that comes from different sources or acts and is received in a way that does not show how much of the revenue came from the individual sources or acts. Subsection 15(3) of the instrument provides that the value of a benefit or service can be included in bundled revenue.

Subsection 15(4) of the instrument allows the ACMA to make a declaration that a specified amount of revenue of a specified participating person, or a specified consolidated related party or declared related party of a participating person, is bundled revenue. The declaration may apply to more than one participating person, consolidated related party or declared related party (but not to all participating persons or parties). If the ACMA makes a declaration, it must specify the amount of bundled revenue and identify the amount that is deductible revenue (or how the amount that is deductible revenue is to be worked out).

Subsection 15(8) of the instrument provides that if a participating person separates a kind of deductible revenue from bundled revenue for Part 3 or 4 of the instrument, the participating person must identify:

- (a) the total amount of the bundled revenue; and
- (b) the amount of bundled revenue that the person is deducting as deductible revenue; and
- (c) how the participating person worked out the amount of deductible revenue.

For example, under section 28 of the instrument, revenue from the *content* of a content service is deductible, whereas revenue from *carriage* of a content service is not deductible. If a participating person earns revenue from pay TV services, with the revenue from content and carriage services being bundled together, then in order to claim a deduction for revenue from content services, the participating person must identify:

- (a) the total amount of the bundled revenue (including revenue earned from both content and carriage components); and
- (b) the amount of the bundled revenue attributable to the content of the content service, which is deductible; and
- (c) how the participating person worked out the deductible amount.

Part 3 – Gross telecommunications sales revenue

Section 16 – Purpose of Part

Section 16 of the instrument explains that the purpose of Part 3 of the instrument is to set out how the participating person's gross telecommunications sales revenue for an eligible revenue period is worked out.

Section 17 – Initial sales revenue

Section 17 of the instrument provides that the initial sales revenue of a participating person and their consolidated related parties and declared related parties for the whole of an eligible revenue period is to be worked out using the sources specified in section 14 of the instrument.

For the participating person and any of their consolidated related parties, 100 per cent of the sales revenue identified in the financial statements must be included as 'initial sales revenue'. This is added to the sales revenue of the participating person's declared related parties (if any) which is again identified from the sources specified in section 14 of the instrument. For the participating person's declared related parties, the amount of their sales revenue to be included as part of the participating person's revenue is the declared related party's sales revenue multiplied by the declared related party factor. A person who is a declared related party for only part of an eligible revenue period only needs to include their sales revenue (multiplied by the declared related party factor) for the period during which they were a declared related party.

Subsection 17(5) of the instrument provides that the ACMA may make declarations about whether the sales revenue (either part or whole) of a declared related party of a participating person (specified in the declaration) is not part of the participating person's initial sales revenue.

Section 18 – Non-telecommunications sales revenue

Section 18 of the instrument allows a participating person to deduct from the initial sales revenue it has identified under section 17 of the instrument, any amount that is earned from an activity outside the telecommunications industry (that is, non-telecommunications sales revenue, which is defined in section 11 of the instrument). This enables the removal of sales revenue not earned from an activity in the telecommunications industry and which is not considered appropriate to be subject to the levy imposed under the *Telecommunications (Industry Levy) Act 2012*. Such deductions are appropriate for two main reasons: persons who conduct activities outside the telecommunications industry are not direct beneficiaries of the universal telecommunications services; and in operating in such markets, participating persons may be competing with entities not otherwise subject to the levy.

Section 18 of the instrument provides that non-telecommunications sales revenue of participating persons and their consolidated related parties and declared related parties may be deducted. Any

non-telecommunications sales revenue of the participating person's declared related parties must be multiplied by the declared related party factor for that party to work out the amount that is deductible.

For example: Entity A wholly (100 per cent) owns Entity B, which is a participating person, and Entity A also owns half (50 per cent) of Entity C. Entity C is Entity B's declared related party. Entity C earned \$100,000 sales revenue during the eligible revenue period. Of this, \$25,000 was earned from activities outside of the telecommunications industry. The declared related party factor (worked out using the formula in section 10 of the instrument) is 50 per cent. As Entity C is a declared related party, a proportion of Entity C's sales revenue must be included in the calculation of the eligible revenue of the participating person, Entity B. In this example:

- \$50,000 of Entity C's sales revenue would be included as initial sales revenue (being \$100,000 sales revenue earned x declared related party factor of 50 per cent) as calculated under section 17;
- \$12,500 of Entity C's sales revenue would be deductible as non-telecommunications sales revenue (being \$25,000 sales revenue earned outside the telecommunications industry x declared related party factor of 50 per cent) from Entity B's initial sales revenue as calculated under section 17.

Any amount of revenue being deducted must be based on adequate and sufficient evidence and have been included in the participating person's initial sales revenue calculated under section 17 of the instrument. Subsection 18(3) of the instrument provides that any amount deducted must not be more than the total amount received by the participating person, or its consolidated related party or declared related party, in connection with the activity that created the non-telecommunications sales revenue. This is to ensure that only revenue actually received in connection with activities outside the telecommunications industry is deducted.

Section 19 – Other telecommunications sales revenue

Section 19 of the instrument requires a participating person to also include in its gross telecommunications sales revenue other amounts that could reasonably be described as telecommunications sales revenue of the participating person, its consolidated related party or declared related party. This is designed to be a general safeguard to capture telecommunications sales revenue which might otherwise escape the levy net, for example, because it is somehow disguised in a participating person's annual financial statements.

An amount of revenue is telecommunications sales revenue if it is income earned from an activity undertaken by the person within the telecommunications industry. The term 'telecommunications industry' has the meaning affected by section 7 of the *Telecommunications Act 1997*.

Section 19 of the instrument also enables the ACMA to make a declaration to the effect that a participating person must recognise the value of a benefit or service, or part thereof, as telecommunications sales revenue of the participating person or a consolidated related party or declared related party of the participating person (specified in the declaration), and therefore part of its gross telecommunications sales revenue. A declaration must state how the ACMA worked out the value of any benefit or service specified in the declaration or any proportion of the value of a benefit or service specified in the declaration.

Section 20 – Revenue before person becomes carrier, participating carriage service provider or prescribed participating person

Section 20 of the instrument allows the deduction of revenue earned during an eligible revenue period but prior to the participating person becoming a carrier, a participating carriage service provider or a prescribed participating person from the participating person's initial sales revenue determined under section 17 of the instrument. It is intended that an entity may only deduct revenue under section 20, if that revenue was included in the initial sales revenue identified under section 17.

Section 20 of the instrument allows deductions of revenue earned by participating persons and their consolidated related parties and the deduction of a proportion of revenue earned by their declared related parties, in the period during the eligible revenue period before the participating person becomes a carrier, participating carriage service provider or prescribed participating person. Section 20 of the instrument needs to be read in combination with section 14 of the instrument, which

requires that the sales revenue to be identified is the sales revenue for the 'relevant period'. The relevant period is the period of time, during the eligible revenue period, in which the participating person is a carrier, is a participating carriage service provider or a prescribed participating person.

For example, Entity D becomes a carrier on 1 January 2026 and maintains that status for 6 months of the eligible revenue period that runs from 1 July 2025 to 30 June 2026. For Entity D, the 'relevant period' for which sales revenue is to be identified is 6 months. Entity D would identify its initial sales revenue, under section 17 of the instrument, and then under section 20 of the instrument deduct revenue earned prior to it becoming a carrier. The result, in accordance with section 14 of the instrument, is that the calculation of Entity D's eligible revenue is based on 6 months of revenue.

Paragraph 20(3)(a) of the instrument provides that a participating person cannot, under section 20 of the instrument, deduct an amount of revenue that was earned before the day participating person became a carrier, a participating carriage service provider or a prescribed participating person, if the amount relates to an activity in the telecommunications industry that was required, by law, to be performed on or after that day.

Paragraph 20(3)(b) of the instrument provides that a participating person cannot, under subsection 20(1) of the instrument, claim a deduction for revenue earned by a consolidated related party of the participating person, in the period prior to the participating person becoming a carrier, a participating carriage service provider or prescribed participating person, if the amount was earned while the consolidated related party was a carrier, was a participating carriage service provider or was a prescribed participating person. The purpose of this provision is to prevent potential revenue shifting between related parties done for the purpose of claiming maximum deductions for an eligible revenue period.

Section 21 – Revenue after person ceases to be carrier, participating carriage service provider or prescribed participating person

Section 21 of the instrument works in a similar way to section 20 of the instrument. It allows revenue earned during an eligible revenue period, but after a participating person ceases to be a carrier, a participating carriage service provider or a prescribed participating person, to be deducted from the participating person's initial sales revenue determined under section 17 of the instrument. As with section 20 of the instrument, it is intended that an entity may only deduct revenue under section 21 of the instrument if that revenue was included in the initial sales revenue identified under section 17 of the instrument.

Similarly to subsection 20(3) of the instrument, subsection 21(3) of the instrument sets out the circumstances in which a participating person cannot deduct revenue earned after ceasing to be a carrier, a participating carriage service provider or a prescribed participating person.

Section 22 – Declarations about revenue

Section 22 of the instrument allows the ACMA to make declarations that specified amounts or values of a specified benefit or service, are part of a participating person's gross telecommunications sales revenue for an eligible revenue period.

A benefit or service includes:

- (a) a benefit or service received by a participating person (for example, a payment in kind); and
- (b) a benefit or service provided by the participating person without receiving remuneration for the benefit or service at reasonable market rates (for example, a subsidy in kind).

This will ensure that participating persons include all amounts that the ACMA believes should reasonably be included as part of the participating person's gross telecommunications sales revenue.

Subsection 22(3) of the instrument provides that a declaration made under section 22 of the instrument may apply to one or more participating persons but not to all participating persons. The ACMA's power to make declarations is therefore limited to the particular participating person(s) who are specified in the declaration.

Section 23 – Gross telecommunications sales revenue

Section 23 of the instrument provides the methodology for determining a participating person's gross telecommunications sales revenue for an eligible revenue period.

Part 4 – Net telecommunications sales revenue

Once a participating person's gross telecommunications sales revenue for an eligible revenue period is calculated under Part 3 of the instrument, the next step is to work out the participating person's net telecommunications sales revenue for that period. Particular amounts detailed in sections 25 to 32, and 35 of the instrument, may be deducted from gross telecommunications sales revenue, in order to determine net telecommunications sales revenue.

Section 24 – Purpose of Part

Section 24 provides that the purpose of Part 4 of the instrument is to set out how the net telecommunications sales revenue of a participating person for an eligible revenue period is worked out. Part 4 outlines all of the applicable deductions from gross telecommunications sales revenue that can be made under the instrument to calculate a participating person's net telecommunications sales revenue for that period.

A participating person is not required to deduct an amount under Part 4 of the instrument from its gross telecommunications sales revenue.

It is intended that an entity may only deduct revenue under sections 25 to 30 of the instrument if that revenue was included in the entity's initial sales revenue identified under section 17 of the instrument.

Section 25 – Deductions - overseas activities

Section 25 of the instrument allows deduction of telecommunications sales revenue that was earned by a participating person or a consolidated related party of the participating person, and the deduction of a proportion of telecommunications sales revenue earned by a declared related party of the participating person, if the revenue was earned from overseas activities. Subsection 25(4) of the instrument defines overseas activities as specific acts (specified in paragraphs (a)-(f) of the definition) that are carried out outside Australia, such as the supply of a carriage service that originates and terminates outside Australia, in a place outside Australia.

The intention of section 25 of the instrument is to allow a deduction of telecommunications sales revenue earned by participating persons, and their consolidated related parties and declared related parties, from operating in telecommunications markets overseas. Revenue from these operations should not be counted for the purposes of determining a participating person's contribution to the industry levy which is collected to facilitate the provision of public interest carriage services in Australia.

Section 25 of the instrument allows deductions of revenue earned by participating persons and consolidated related parties and the deduction of a proportion of revenue earned by declared related parties, where the amount of revenue claimed for an entity as a deduction was earned by the same entity in undertaking the overseas activity.

Under section 25 of the instrument, revenue is only deductible if it is earned from acts carried out overseas while providing telecommunications services overseas. For example, revenue earned from operating satellites, cables, networks or other facilities located in or outside of Australia would only be deductible when it is earned in relation to operations in or between countries other than Australia. Similarly, revenue earned from providing global roaming services would only be deductible under section 25 of the instrument if the carriage service is supplied outside Australia and calls made using the service originate and terminate outside Australia.

Subsection 25(3) of the instrument provides, for the avoidance of doubt, that revenue earned from supplying a telecommunications carriage service to or from Australia is not deductible.

Section 26 – Deductions – acts in Australia for overseas services

Section 26 of the instrument provides for the deduction of revenue that has been earned from acts carried out in Australia solely for the purposes of the supply of a telecommunications carriage service, in a place outside Australia and which originates and terminates outside Australia.

The intention of section 26 of the instrument is to allow a deduction of revenue earned by participating persons, and their consolidated related parties and declared related parties, from operating in telecommunications markets overseas, even though acts may be done in Australia in relation to the provision of those services. Such acts include, for example, providing transit, switching, signalling or management services in Australia. It is not intended that revenue from these operations be counted for the purposes of determining a person's eligible revenue. It is not considered appropriate that revenue from a market segment that is mainly contested by persons other than participating persons should form part of a participating person's eligible revenue and therefore be subject to levy.

Section 26 of the instrument allows deductions of revenue earned by participating persons and consolidated related parties and the deduction of a proportion of revenue earned by declared related parties, where the amount of revenue claimed for an entity as a deduction was earned by the same entity in undertaking the activity.

Subsection 26(3) of the instrument clarifies, for the avoidance of doubt, that revenue earned from acts relating to supply of a telecommunications carriage service to or from Australia is not deductible.

Section 27 – Deductions – customer equipment

Section 27 of the instrument provides a deduction for revenue earned from selling, installing, insuring, repairing or maintaining customer equipment, or renting customer equipment to a customer. Customer equipment has the same meaning as in section 21 of the *Telecommunications Act 1997*. It is not considered appropriate that revenue from a market segment that is so widely contested by persons other than participating persons should form part of a participating person's eligible revenue and therefore be subject to levy. Section 27 of the instrument allows deductions of revenue earned by participating persons and consolidated related parties and the deduction of a proportion of revenue earned by declared related parties, where the amount of revenue claimed for an entity as a deduction was earned by the same entity in undertaking the activity.

Section 28 – Deductions – content services

Section 28 of the instrument provides for a deduction in relation to revenue earned from the content of content services. Revenue from content is not intended to be subject to the industry levy, given the focus of the levy scheme is on the provision of carriage services. In earning revenue from the content of content services, participating persons may also compete with a range of entities that are not participating persons and therefore are not subject to the industry levy. Subsection 28(3) of the instrument clarifies that the section cannot be used to deduct an amount earned from *carrying* a content service. For example, revenue earned from fees charged for access to content on subscription internet services is not usually deductible.

Unbundling provisions in section 15 of the instrument enable content revenue bundled with other telecommunications sales revenue to be dealt with separately without significantly adding to the regulatory burden of participating persons. For example, revenue earned from the *content* of a pay TV service may be deductible, whereas revenue earned from the *carriage* of the pay TV service would not be deductible under section 28 of the instrument. If the revenues from these two items are bundled together, they will have to be unbundled under section 15 of the instrument to identify the deductible and non-deductible amounts. The term 'carry' is defined in section 6 of the instrument as having the meaning affected by section 7 of the *Telecommunications Act 1997* and includes to 'transmit, switch and receive.'

Section 28 of the instrument allows deductions of revenue earned by participating persons and consolidated related parties and the deduction of a proportion of revenue earned by declared related parties where the amount of revenue claimed for an entity as a deduction was earned by the same entity in providing the content service.

Section 29 – Deductions – exempt base station

Section 29 of the instrument provides for a deduction of revenue earned from the use of an exempt base station. This exemption is intended to prevent revenue earned by any participating person or related party from the distribution of subscription or other broadcasting by microwave or other radiocommunications means being included as part of the participating person's eligible revenue. Such an outcome could arise because such an activity falls within the definition of the telecommunications industry under section 7 of the *Telecommunications Act 1997*. The regulatory scheme of that Act, however, generally aims to exclude such terrestrial radiocommunications broadcasting activities from regulation; activity occurring under broadcasting licences is regulated under other legislation.

Section 29 of the instrument allows deductions of revenue earned by participating persons and consolidated related parties and the deduction of a proportion of revenue earned by declared related parties where the amount of revenue claimed for an entity as a deduction was earned by the same entity in use of an exempt base station.

Section 30 – Deductions – infrastructure revenue

Section 30 of the instrument provides a deduction for revenue earned in the construction, installation or maintenance (or from management of the construction, installation or maintenance) of the infrastructure of a telecommunications network on the network side of the boundary of the telecommunications network. It is not considered appropriate that revenue from a market segment that is so widely contested by persons other than participating persons should form part of a participating person's eligible revenue and therefore be subject to the levy.

Section 30 of the instrument allows deductions of revenue earned by participating persons and consolidated related parties and the deduction of a proportion of revenue earned by declared related parties where the amount of revenue claimed for an entity as a deduction was earned by the same entity in undertaking the activity.

Other revenue earned through telecommunications infrastructure, such as revenue from the supply of services using infrastructure or leasing of infrastructure is not deductible under this section. For example, revenue earned from the leasing of tower sites to enable telecommunications services to be provided from those sites is not deductible.

Section 31 – Deductions – inter-person input payments

Section 31 of the instrument provides for the deduction of inter-person input payments. These have been defined in section 12 of the instrument and relate to payments made by a participating person (**the first participating person**) or that first participating person's consolidated related party or declared related party, to a second person who may be either another participating person (**the second participating person**) or a non-participating person, or that second person's consolidated related party or declared related party. As defined in section 12 of the instrument, an amount is an inter-person input payment only if the person receiving the payment includes the amount (or would be required to do so if they were a participating person) as part of their gross telecommunications sales revenue and does not claim the amount as a deduction under the instrument.

Section 31 of the instrument clarifies that such payments are only deductible if the payment is made while the first participating person and the second person are each either a carrier, a participating carriage service provider or a prescribed participating person.

Section 31 of the instrument allows deductions of payments made by participating persons and consolidated related parties and the deduction of a proportion of any payments made by declared related parties where the payment amount claimed for an entity as a deduction was incurred by the same entity providing a telecommunications carriage service.

Section 32 – Other input amounts

Section 32 of the instrument provides that the ACMA may declare that a specified amount paid or payable by a specified participating person, or a specified consolidated related party or declared related party of a participating person is an input amount. Once declared, a participating person may

deduct that amount from its gross telecommunications sales revenue. Subsection 32(2) of the instrument provides that the declaration may relate to one or more specified participating persons, but not all participating persons.

This section provides scope for the ACMA to extend the provisions to enable participating persons, in calculating their eligible revenue, to deduct various declared input costs or amounts which are not otherwise deductible under the instrument, and thus make the definition of eligible revenue a better approximate as a value-added based levy.

Section 33 – Limit on deductions

Subsection 33(1) of the instrument clarifies that an amount to be deducted under sections 25 to 30 must not exceed the total net amount received by the participating person or its related party in connection with the activity that created the deductible amount, in relation to the relevant eligible revenue period.

Similarly, subsection 33(2) of the instrument provides that inter-person input payment amounts to be deducted must not be greater than the total net amount paid (or received) by or on behalf of the participating person in connection with the activity that led to the payment, in relation to the relevant eligible revenue period.

The amount of the deduction must also not be more than the proportion of the declared related party factor (worked out under section 10 of the instrument) for any declared related party of the participating person, in relation to the relevant eligible revenue period.

Section 34 – Suspension of deduction entitlements

Section 34 of the instrument provides that the ACMA may declare that one or more specified participating persons (but not all participating persons) are not entitled to deduct a specified amount or payment under the instrument. The declaration must state that the declaration is to have effect for a specified eligible revenue period or until the declaration is revoked. The ACMA's ability to make such declarations is intended to enable the ACMA to restrict access to deductions where experience with the regime shows they are inappropriate or are being abused.

Section 35 – Declarations about deductible revenue

Section 35 of the instrument provides that the ACMA may declare that a specified amount of gross telecommunications sales revenue of one or more specified participating persons (but not all participating persons) may be deducted. This declaration could serve two purposes - to clarify what can be deducted or extend the scope of allowable deductions where appropriate.

Section 36 – Net telecommunications sales revenue

Section 36 of the instrument provides that the result of deducting amounts identified under sections 25 to 32 and 35 of the instrument (as applicable) from a participating person's gross telecommunications sales revenue for an eligible revenue period is that person's net telecommunications sales revenue for that period. A person is not required to deduct an amount from their gross telecommunications sales revenue. Hence, a person's gross and net telecommunications sales revenue may be the same.

Part 5 – Eligible revenue

Section 37 – Purpose of Part

Section 37 of the instrument provides that the purpose of Part 5 of the instrument is to set out how a participating person works out their eligible revenue for the eligible revenue period.

Section 38 – Revenue accounted for on a group basis

Section 38 of the instrument provides that if the net telecommunications sales revenue of two or more participating persons has been accounted for on a group basis (that is, revenue and deductions are accounted for and made on a group basis, under subsection 13(3) of the instrument), then the amount of net telecommunications sales revenue relating to each participating person in the group must now be separately identified.

After working out their net telecommunications sales revenue on a group basis, each participating person in the group must identify, from the accounts prepared on a group basis, how much of the net telecommunications sales revenue of the group is their net telecommunications sales revenue, and how much is the net telecommunications sales revenue of other participating persons or persons in the group.

Eligible revenue is calculated on an individual, not group basis, hence it is necessary to determine the net telecommunications sales revenue of each individual participating person in a group.

Subsection 38(3) of the instrument provides that the ACMA may declare that the net telecommunications sales revenue of a specified participating person is to be attributed in a specified way when it is being worked out by the person as a member of a group. This power is intended to enable the ACMA to deal with circumstances where it considers the way revenue is being attributed is inappropriate, for example, because it favours a particular participating person in a group to the disadvantage of others in the group.

Section 39 – Eligible revenue

Section 39 of the instrument provides that a participating person's eligible revenue for an eligible revenue period is equal to the participating person's net telecommunications sales revenue for that period, if their net telecommunications sales revenue is zero or more. If a participating person's net telecommunications sales revenue is less than zero, then their eligible revenue is taken to be zero. If section 38 applies, the net telecommunications sales revenue of the participating person is ascertained in accordance with that section.

Part 6 – Miscellaneous

Section 40 – Engaging with affected participating persons before deciding whether to make a declaration

Section 40 of the instrument provides that before making a declaration under the instrument, the ACMA must satisfy a number of requirements. Subsection 40(2) of the instrument requires the ACMA to give each participating person to whom the declaration would apply a notice that informs the person that the ACMA proposes to make the declaration and invites the person to make written submissions about the proposal. The ACMA must consider any submissions received.

Subsection 40(5) of the instrument provides that the ACMA may also consult with other persons about the ACMA's proposal to make a declaration, and to do so in such manner as it sees fit.

If, after consultation, the ACMA makes a declaration it must give each participating person to whom the declaration applies a written notice of its decision and a statement to the effect that if the person is adversely affected by the decision, the person may, subject to the *Administrative Review Tribunal Act 2024*:

- (a) make an application to the Administrative Review Tribunal for review of the decision; and
- (b) request a statement of reasons for the decision under that Act.

If the ACMA decides not to make a declaration, these statements must also be provided to a participating person adversely affected by that decision.

Subsection 40(6) of the instrument provides that a declaration that is made without complying with section 40 has no effect. This provision recognises that a declaration could potentially have significant implications for a participating person and therefore emphasises the importance of following specified procedures when making a declaration.

Section 41 – Review of decisions

Section 41 of the instrument provides that a person who is adversely affected by a decision of the ACMA:

- (a) made under subparagraph 14(3)(b)(ii) of the instrument (to decide that a particular period is the most appropriate period for matching with a relevant period); or
- (b) to make or not to make a declaration under the instrument,

may, subject to the *Administrative Review Tribunal Act 2024*, make an application to the Administrative Review Tribunal for review of the decision.

Section 42 – Period for lodging eligible revenue return

Section 42 of the instrument specifies the period within which a participating person is required to lodge an eligible revenue return with the ACMA in accordance with paragraph 43(1)(b) of the Act. The period specified is 4 months after the eligible revenue period ends. For example, if the eligible revenue period ends on 30 June 2026, a participating person must give the ACMA its eligible revenue return before 1 November 2026.