

4.3 TELECOMMUNICATIONS INDUSTRY LEVY AND ANNUAL CARRIER LICENCE CHARGE

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The Australian Communications and Media Authority (ACMA) is expecting to finalise the 2022–23 Telecommunications Industry Levy (TIL) Assessment in early November 2023. The outcome of the judicial review sought by Indara Inbuilding Solutions (Axicom), in relation to its assessment as a participating person in relation to the 2020–21 TIL assessment, was handed in ACMA's favour. The proposed 2022–23 Annual Carrier Licence Charge (ACLC), which closed for consultation with Industry on 16 October 2023, is expected to be finalised in late November/early December 2023.

KEY ISSUES

2022-23 TIL

- The 2022–23 TIL, which will be based on the overall levy target amount (OLTA) set by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**), is expected to be finalised by early November 2023 and the invoices issued, shortly after.
- The OLTA is expected to be issued by the Department by 31 October 2023.
- Carriers who held a carrier licence at any time from 1 July 2021 to 30 June 2022, and earned more than \$25 million in eligible revenue, were identified as participating persons and required to contribute towards the TIL.
- These participating persons, with an aggregated eligible revenue of \$24.8 billion, as reflected in the 2021–22 Eligible Revenue Assessment, will contribute to the 2022–23 TIL.

Outcome of Judicial Review - Axicom

- Axicom sought a judicial review of its assessment as a participating person for the purposes of the 2020–21 TIL assessment, which also had an impact on the 2020–21 Annual Carrier Licence Charge and the subsequent 2021–22 TIL assessment.
- On 8 September 2023, the ACMA received a favourable outcome on the judicial review. The Court made orders for the judicial review to be dismissed and for Axicom to pay the ACMA's cost, as agreed or taxed.

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The ACMA are also liaising with the Department on the impact of the continuing delay to the collection of the TIL, in relation to its meeting its Universal Service obligations.

- As Axicom surrendered its carrier licence on 28 June 2021, there are no subsequent assessments, other than those identified above, pertaining to Axicom at the time of drafting this brief.

2022–23 Annual Carrier Licence Charge (ACLC)

- The ACLC is established by the *Telecommunications (Carrier Licence Charges) Act 1997* (the Act) and reflects the actual costs of the ACMA, Australian Competition and Consumer Commission (ACCC) and the Department in regulating certain activities in the telecommunications industry.
- The 2022–23 ACLC, for which the consultation with Industry was closed on 16 October 2023, is based on 5 cost components as prescribed in paragraphs 15(1)(a) to 15(1)(d) of the Act:

Act ref	Cost component	Cost base	Proposed ACLC 2022–23	ACLC 2021–22	Variance	Change %
15(1)(a)	ACMA includes Consumer Safeguards Part A - \$0.8m	2021–22 actuals	\$12.92m	\$14.94m	(\$2.02m)	(13.5%)
15(1)(b)	ACCC includes MBA - \$1.8m	2021–22 actuals	\$12.05m	\$11.20m	\$0.85m	7.6%
15(1)(c)	Department - ITU contribution	2022 Calendar year	\$2.20m	\$2.21m	(\$0.01m)	(0.5%)
15(1)(ca)	ACMA develop or vary codes	2021–22 actuals	\$0.00m	\$0.00m	(\$0.00m)	(0.0%)
15(1)(d)	Department - grants for consumer representation and research	2022–23 Grants made	\$2.44m	\$2.38m	\$0.05m	2.3%
Total			\$29.60m	\$30.73m	(\$1.13m)	(3.7%)

Note: MBA refers to Measuring Broadband Australia program. ITU refers to the International Telecommunication Union

- The 2022–23 ACLC of \$29.60 million was a 3.7% decrease from the preceding financial year's charge of \$30.73 million.
- The ACMA's costs has reduced by 13.5% from the previous financial year. The ACMA continues to base its resourcing decisions around its priorities, which will see fluctuations in spend over time between its important regulatory activities. The ACMA's Consumer Safeguards Part A program costs have also decreased from the prior year with the program work moving into business-as-usual activities.
- The increase in ACCC's costs of 7.6% was mainly driven by support costs associated with investment in the ACCC's ICT to stabilise its infrastructure and build analytical capabilities as well as agency growth which increased the need in the human resources function to support a larger workforce.

- The decrease in the Department's costs by 0.5% was due mainly to the impact of the foreign exchange rate on the International Telecommunication Union (ITU) contribution, which was partially offset by the Minister for Communications' grant allocation, which was subject to a 2.3% increase in indexation from the previous year.
- The ACMA recently consulted on the 2022–23 ACLC through a Cost Recovery Implementation Statement (ACLC CRIS) for a 4-week period from 18 September to 16 October 2023. The consultation outcome was unavailable at the time of preparing this brief.
- Following consultation, the final ACLC CRIS will be certified by the ACMA Chair, as the accountable authority and then sent to the Minister for Communications, the Hon Michelle Rowland MP (the Minister) for approval. The final legislative instruments are expected to be made by the ACMA Authority in November/December 2023.
- The ACMA will raise the relevant invoices soon after the legislative instruments are registered with the Federal Register of Legislative Instruments, expected to be in December 2023/early January 2024.

BACKGROUND

TIL

- The TIL was first established under the *Telecommunications (Industry Levy) Act 2012* (the **Levy Act**) and imposes a charge on telecommunications carrier licence holders (carriers), that is then used to partially fund the Universal Services Obligation.
- The ACMA assesses and collects the TIL imposed on carriers under the *Telecommunications (Consumer Protection and Service Standards) Act 1997* (the **TCPSS Act**).
- As per the Telecommunications (Participating Persons) Determination 2015, made by the former Minister for Communications, Malcolm Turnbull, carriers who held a licence at any time during an eligible revenue period, as defined under section 5 of the TCPSS Act, earning in excess of \$25 million of eligible revenue are considered to be participating persons and eligible to pay the TIL.
- The TIL proceeds are managed by the Department, to pay contractors and grant recipients, through the Public Interest Telecommunications Services Special Account (set out under section 37 of the TCPSS Act).

Axicom Inbuilding Solutions (previously Axicom Land Pty Ltd) judicial review in relation to the 2021–22 TIL assessment.

- For the 2021–22 TIL assessment, Axicom submitted an eligible statutory declaration (**ESD**) on 29 October 2021, noting its eligible revenue was below \$25 million and therefore was exempt from paying the TIL.
- The ACMA, having reviewed the Axicom's publicly available financial statements, was not satisfied that its eligible revenue for the relevant period was below \$25 million. Additional information was sought from Axicom on 3 May 2022 to support its ESD.

- The ACMA received a request by Axicom to exercise its powers under the Telecommunications (Eligible Revenue) Determination 2015 to make a declaration to deduct a specified amount the effect of which would exempt Axicom from being a participating person for the 2020–21 eligible revenue period and subsequently contributing to the 2021–22 TIL (assessment).
- The ACMA considered and decided not to make the requested declarations on 21 September 2022, instead determining that Axicom was a participating person for the purposes of the 2021–22 TIL assessment.
- The ACMA considered a similar request for declarations by the same entity in relation to the 2019–20 eligible revenue period and from contributing to the 2020–21 TIL assessment. The ACMA did not make the requested declarations and that decision has been challenged via an application for judicial review by Axicom in the Federal Court. The matter was heard on 27 July 2022.

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- The Axicom matter was in the public domain, with the publisher, Communications Day, running an article on 28 July 2022 titled '*Unfair for Axicom to pay telco levy*'. The article noted the ACMA's decision to apply a \$1.9m TIL assessment to Axicom and that the case was before the Federal Court on 27 July 2022, seeking a judicial review of the ACMA's decision.
 - On 8 September 2023, the ACMA received favourable outcome on this application as the Court made orders for the judicial review be dismissed and for Axicom to pay the ACMA's cost, as agreed or taxed.
 - The Communications Day ran an article in its 11 September issue titled '*ACMA wins towerco levy fight*'. The article noted that Indara subsidiary has failed to convince the Federal Court to overturn a decision by the ACMA to charge a \$1.9 million tax bill and the court had ordered it to pay the regulator's legal costs.

2022–23 ACLC

- The Act imposes an ACLC on carrier licences that are in force at the beginning of the 2022–23 financial year. In accordance with the Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2017, the charge is payable by carriers whose eligible revenue was \$25 million or more in the 2021–22 eligible revenue period.
- The ACMA prepares a CRIS for the ACLC in accordance with the Australian Government Charging Framework (Framework), incorporating all the relevant details of the cost components and describing the methodology used to calculate each cost component.
- Section 14 of the Act requires the ACMA to make a written determination setting out the charges to be imposed on carriers. As this charge is imposed under a cost recovery arrangement, the ACMA must comply with the Australian Government Charging Framework. The Framework requires that the CRIS prepared for this cost recovery arrangement be certified by the accountable authority of the ACMA and approved by the Minister for Communications, before imposing the charge.

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- On 14 September 2023, the Authority approved consultation on the proposed charges for the 2022–23 ACLC and a draft version of the CRIS was published, as part of the consultation package, which opened for comments from 18 September to 16 October 2023.
- The 2021–22 ACLC CRIS was certified by the ACMA Chair, as the accountable authority on 28 March 2023 and approved by the Minister, on 26 April 2023, with the legislative instruments made by the ACMA Authority on 18 May 2023.
- The ACMA issued the invoices to the relevant carriers on 22 May 2023, following the registration of the legislative instruments with the Federal Register of Legislative Instruments on 19 May 2023, with the final payments received by the ACMA on 21 June 2023.

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