

**COMMUNICATIONS  
ALLIANCE LTD**



**Draft Cost Recovery Implementation Statement  
(CRIS) for the 2019-20 Proposed Annual Carrier  
Licence Charge (ACLC)**

COMMUNICATIONS ALLIANCE SUBMISSION

May 2021

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### **About Communications Alliance**

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

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

## INTRODUCTION

Communications Alliance appreciates the opportunity to comment on the ACMA's Draft Cost Recovery Implementation Statement (CRIS) for the 2019-20 Proposed Annual Carrier Licence Charge (ACLC).

While the CRIS is largely an operational process, this year's draft presents an appropriate opportunity to raise some broader principle and policy questions on some of the activities and programs that are funded through the ACLC.

There should be further consideration with all stakeholders of what activities are or are not appropriate to cost recover for, and from whom. As telecommunications has become vital for the broader economy and government, and the industry itself has become broader and more complex, the question should be raised of who "creates extra or specific demand for [the] specific regulatory activity."

As a detailed example, while we do not dispute the importance of the National Relay Service or the ACMA's role in dealing with complaints about the Service, there may be more appropriate sources for such funding. More broadly, there is established precedent that some related regulatory and enforcement activities "are considered not appropriate to recover from telecommunications carriers, as the direct beneficiaries are members of the public" – in this case, spam and e-security activities.<sup>1</sup> We would request that this matter be further considered by the ACMA and other appropriate stakeholders when considering what activities should be captured in future CRISs, and for all parties to begin considering these questions in advance of the next Portfolio Charging Review.

Additionally, industry is concerned that cost recovery fees are often not being factored into Regulatory Impact Statements (RISs), or the initial analysis on whether a RIS is required, despite that being expected under the Government Charging Framework.<sup>2</sup> This is further discussed in the section on the NBN Consumer Experience Rules. Ultimately, we would like to see appropriate RISs developed when considering the implementation of new activities, that also discuss the cost recovery aspect – both amount and who will be cost recovered from, in line with the Government's Guide to Regulatory Analysis.

This submission also raises questions about the ACMA's 'Consumer Safeguards Program' addressed in the CRIS, re-states our continued concerns about the lack of transparency around the financials of the ACCC's Measuring Broadband Australia program, and queries if funding for the Australian Communications Consumer Action Network (ACCAN) should come from a broader range of industry participants that more accurately reflects ACCAN's activities.

More broadly, while we appreciate the ACMA and ACCC's ongoing work to increase efficiency, we strongly encourage that work to continue. The ACLC is a significant cost on the telecommunications industry at a time when it is focusing on rolling out new and advanced networks while continuing to deliver higher value services to consumers – at fairly stable prices. In light of this, ensuring these fees are kept as low as reasonably possible will benefit all parties, including consumers. It does appear there may be more opportunities to find efficiencies – for example, the Draft CRIS discusses a decrease in the ACCC's "overhead costs from corporate support functions" as they were spread across new or expanded functions.<sup>3</sup> While we appreciate the ACCC's choice to use its resources efficiently, this does raise the question of if those overhead costs could have been lower in prior years.

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<sup>1</sup> Draft CRIS, p 37

<sup>2</sup> [Australian Government Cost Recovery Guidelines \(RMG 304\) | Department of Finance](#), Paragraph 69, and [australian-government-guide-to-regulatory-impact-analysis.pdf \[pmc.gov.au\]](#), p 36

<sup>3</sup> Draft CRIS, p 19

While the structure of the ACLC is such that the activities contained in this CRIS have already occurred, we consider that the questions raised in this submission should start to form part of a broader discussion on the importance of considering the financial sustainability of the telecommunications industry when making decisions on future regulatory activities and cost recovery structures.

Communications Alliance would like to see further discussions on these matters take place with all appropriate stakeholders to potentially adjust the approach for future ACLCs.

## ACMA COMPONENT

Industry appreciates the ACMA's work to increase efficiency, as noted in the Draft CRIS.<sup>4</sup>

While we do not have comments on the specific charging structure put forward in the Draft CRIS, we do note that there is an independent audit currently being undertaken for the 2018-19 ACLC costs, with the outcome to be reflected in the final CRIS.<sup>5</sup> While this is for the charges of the year prior, this information would appear to be relevant to consideration of this CRIS and the ACMA's ongoing charging structure. In the interest of transparency and full consideration, it would be appropriate for stakeholders to have access to the results of that audit prior to finalising comments on this year's CRIS.

This would assist us to have fully informed exchanges with the ACMA on a variety of the charges included, including the cost of \$1.9m for the provision of submissions, and a total cost of \$7m for regulatory development, which are both somewhat surprising.

### NBN Consumer Experience Rules

Of particular concern is the "\$2.6m provided in 2018-19...as a cost-recovered measure" for activities around the NBN Consumer Experience Rules.<sup>6</sup> While these costs are not directly identifiable in the cost recovery tables throughout the Draft CRIS, it appears from the text that these costs are either being or are expected to be cost-recovered from industry.

This is in direct contradiction to our information regarding the short-form RIS developed on this matter, which estimated a total \$1.5m regulatory cost for all relevant instruments, including those not directly related to NBN services (the Complaints Handling Standard and the Complaints Handling RKR). Industry has publicly stated multiple times that the compliance costs alone for these instruments would surpass \$1.5m, thus necessitating a full RIS – and now, there will apparently be a cost-recovery amount that should have been considered in the RIS which is significantly larger than that initially estimated \$1.5m.

In light of this, it may be appropriate for Government or the ACMA to otherwise cover these costs, as they were not included in the RIS and thus do not appear to align with the Government's Cost Recovery Guidelines expectations of transparency.

At a minimum, there should be a clear expectation that RISs must be undertaken for significant regulatory activities, including the anticipated costs to be recovered.

### Consumer Safeguards Program

We are unable to provide full and considered comments on this section of the CRIS as there is limited information about what precisely this program is and how it differs from the ACMA's normal course of operations, which already includes industry monitoring, compliance, enforcement, and consumer education.

From the referenced budget papers, our understanding is that this program was initially the intended ACMA oversight discussed in the Consumer Safeguards Review Part A Report, funded at \$7.2m over four years.<sup>7</sup> In the July 2020 MYEFO, Government announced it was not proceeding with this – but it appeared from that paper that there would be a program of \$2.6m over four years, "providing enhanced analysis and reporting of complaints data through the TIO," as shown in the following chart.<sup>8</sup>

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<sup>4</sup> Draft CRIS, p 6

<sup>5</sup> Draft CRIS, p 14

<sup>6</sup> Draft CRIS, p 6

<sup>7</sup> [Budget Measures, Budget Paper No. 2 2019-20](#), p 56

<sup>8</sup> [Economic and Fiscal Update - July 2020 \(budget.gov.au\)](#), p 149

**Consumer Safeguards — targeted measures — amendments**

Payment (\$m)	2019-20	2020-21	2021-22	2022-23	2023-24
Australian Communications and Media Authority	-1.0	-0.9	-0.8	-0.8	-0.8
<i>Related receipts (\$m)</i>					
Australian Communications and Media Authority	-	-1.4	-1.3	-0.8	-0.8
<i>Related capital (\$m)</i>					
Australian Communications and Media Authority	..	..	..	-	-

The Government is revising its 2019-20 Budget measure *Consumer Safeguards – targeted measures*. The Government will not proceed with legislative amendments to provide the Australian Communications and Media Authority with responsibility for direct oversight of the Telecommunications Industry Ombudsman (TIO).

This measure is expected to have a negligible financial impact as related costs were to be recovered from 2020-21.

The Government will continue to proceed with improvements to dispute resolution for Australian telecommunications consumers by providing enhanced analysis and reporting of complaints data through the TIO.

However, the Draft CRIS discusses an amount of \$4.2m for this program.<sup>9</sup>

Thus, there are two key clarifications that need to be provided before further discussion can take place.

The first is, what amount of money is being allocated (and cost recovered from industry) for this 'consumer safeguards' program – is it the \$2.6m in the MYEFO or the \$4.2m referenced in the Draft CRIS?

The second is, what exactly is the program? If it is simply enhanced analysis and reporting of TIO complaints data, how does that differ from the TIO's data analysis that industry already funds, and funding already provided for ACMA research, consumer safeguards monitoring and data analysis, and similar activities?

The information presented in this Draft CRIS does not appear to offer sufficient clarity to determine if this activity aligns with the Government's cost recovery principles or requirements.

**Apportionment methodology**

Considering the above questions about the 'Consumer Safeguard Program,' we are unable to offer any comment at this time on the proposed methodologies for apportioning the cost recovery.

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<sup>9</sup> Draft CRIS, p 29

## ACCC COMPONENT

We encourage the ACCC and the ACMA to continue working together to identify areas of overlapping activities – and thus potential cost-savings - going into the future. However, our comments on the ACCC's component of the ACLC focus on the Measuring Broadband Australia (MBA) program.

### Measuring Broadband Australia

Communications Alliance's members have diverse views on a number of factors about the MBA program, including sources of funding and the program's future. This submission does not put forward any views on those matters, and we encourage the ACMA to consider individual submissions from our members. However, there are shared concerns about a lack of transparency on the budget and financial performance of the program.

While we have raised these in previous submissions, such as the review of the program, the ACCC has yet to provide information which directly answers the below questions. In our August 2019 submission to the ACLC consultation on behalf of our RSP members, we also queried the appropriateness of charging industry for the program considering that a Regulatory Impact Statement had not been conducted.

#### Expansion of budget

The MBA program was developed with a specific set budget for its operation, of \$7m over 2 years. However, the Draft CRIS states that costs associated with the program ("project and contract management, and publishing of results") are not cost-recovered under the program.<sup>10</sup> Additionally, while not captured in the 2018-19 costs, there was apparently expenditure on consultants to "provide independent procurement advice on the tender process for the MBA program."<sup>11</sup>

While the ACCC has previously reported that the program has delivered 'on budget,' these costs being excluded from the \$7m cost recovery (and cost recovered in the broader ACCC charges) would imply that the program went beyond its \$7m budget. In the This leads to the conclusion that those costs are above and beyond the budgeted \$7m.

Seeing as one of the intended outcomes of cost recovery is to "increase cost consciousness for all stakeholders by raising awareness of how much a government activity costs,"<sup>12</sup> all costs for the MBA program should be captured under that program's budget and financial reports.

#### Lack of whiteboxes

As previously raised by Communications Alliance, the underdeployment of whiteboxes does not align with the ACCC's claims that the program is being delivered on budget.

Although the table on page 50 of the Draft CRIS states that the number of devices deployed for 2019-20 and 20-21 are "to be reported," the published reports have included the number of deployed whiteboxes, and thus this information should be included in the CRIS. The most recent publication only reports on 1,199 Whiteboxes, significantly below the 4,000 scheduled to be deployed.<sup>13</sup>

Additionally, the Draft CRIS states that there will be an update of forward estimates and actual costs in May.<sup>14</sup> It would seem appropriate for this information – which would be at a

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<sup>10</sup> Draft CRIS, p 43

<sup>11</sup> Draft CRIS, p 19

<sup>12</sup> [Australian Government Cost Recovery Guidelines \(RMG 304\) | Department of Finance](#)

<sup>13</sup> [Measuring Broadband Australia - Report 12 - March 2021 \(accc.gov.au\), p 41](#)

<sup>14</sup> Draft CRIS, p 51

maximum 2 weeks from publication – to be available for comment prior the finalisation of the CRIS.

When these questions have been raised in consultation on Draft CRISs in years prior, the ACCC's response has been that the lower numbers were due a delay in start-up, and that the full complement of devices was forecast to be deployed in the program's fourth year.<sup>15</sup>

As this is clearly no longer the case, there should be some clarity on what adjustments will be made to the program's budget and resulting cost recovery.

## **ACCAN COMPONENT**

Communications Alliance appreciates the extensive work done by the Australian Communications Consumer Action Network (ACCAN), and their participation in numerous code revisions, government consultations, and other activities.

In recent years, ACCAN's activities have spread beyond traditional 'telecommunications,' (voice and internet) services, with work being done on topics such as digital platforms, captioning on free-to-air television, and Australian content on broadcast services, as some examples. To be clear, we in no way object to ACCAN's involvement in these areas. However, currently, 100% of ACCAN's funding comes via the ACLC – a charge on telecommunications carriers - and we ask that consideration be given by all involved stakeholders to how fees can be gathered from all appropriate sections of industry in the future.

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<sup>15</sup> <https://www.acma.gov.au/sites/default/files/2019-12/Cost%20Recovery%20Implementation%20Statement%20ACLC%202018-19.docx>, p 56





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