

**Response to Consultation: Telecommunications (Consumer Protection and Service Standards)
(Non-Participating Persons) Determination 2025**

September 2025

BAI Communications welcomes the opportunity to respond to ACMA in relation to the exposure draft of the Telecommunications (Consumer Protection and Service Standards) (Non-Participating Persons) Determination 2025 (**Proposed Determination/Non-Participating Persons Determination**) proposed by the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (**Department**).

About BAI Communications

BAI Communications Pty Limited (**BAI**) designs, builds and operates complex communications networks, including digital infrastructure for TV, radio, critical communications and telecommunications services across Australia.

BAI's core business is broadcast transmission, delivering terrestrial television (e.g. ABC and SBS television services) and radio to approximately 99% of the Australian population from a network of over 700 sites across the country. We also provide passive site-sharing services across our tower network to telecommunications operators including NBNCo, Telstra, TPG/Vodafone, Airservices and Optus, and manage the New South Wales public safety network on behalf of the NSW Telco Authority.

Having acquired a carrier licence in 2020 through its subsidiary BAI Communications Networks Pty Ltd and having acquired area-wide apparatus licences from ACMA in 2024, BAI is expanding its passive infrastructure offering to offer innovative and competitive active telecommunications services in both the public wireless and private network spheres.

As a carrier licence holder, we are directly affected by the Proposed Determination, particularly with the proposal to maintain the \$25 million threshold in determining whether a person or a company is a "participating person" or not for the purposes of payment of the Telecommunications Industry Levy (**TIL**).

Executive Summary

BAI objects to two fundamental aspects of the Proposed Determination:

1. **the proposal to not index the \$25 million threshold** to reflect inflation, which will result in smaller and smaller carriers being captured by the levy regime over time, purely due to inflation rather than business growth; and
2. **the continuation of a flawed underlying framework** that inappropriately captures revenue from activities that do not require a carrier licence, creating market distortions and disincentives for innovation.

We urge the Department to adjust the \$25 million threshold to reflect inflation since 2015, and to commit to a comprehensive review of the eligible revenue framework to correct the market distortion that it creates.

Response to Key Issues

1. Failure to index the \$25 million threshold

The Proposed Determination maintains the \$25 million threshold, which has not been adjusted since its introduction in 2015. This has the effects described below.

Inflation impact:

- If the \$25 million threshold was adjusted by the Consumer Price Index (CPI), the threshold number would be approximately \$33 million in 2025.
- Hence, if the \$25 million threshold is not adjusted in the Proposed Determination, then the threshold has effectively decreased by a significant proportion, which means more carriers will potentially be captured due to inflation, and not because, for example, the carrier's eligible revenue has increased because of genuine business growth.
- This results in an inadvertent expansion of the TIL regime which departs from the Department's original intention of implementing the threshold to capture carriers of a certain size.

Policy inconsistency:

- Unlike the threshold for having to pay the TIL, most other government levies and taxes in Australia are regularly reviewed and adjusted for inflation. For example: the Luxury Car Tax threshold and Excise duties (such as Alcohol, Fuel and Tobacco).
- Hence, the failure to index this threshold appears inconsistent with standard regulatory practice in Australia.
- The intent of implementing the threshold was to ensure that larger carriers contributed proportionally to public interest outcomes, such as standard telephone and payphone access across Australia and the National Relay Service. This review of the Non-Participating Persons Determination should be used to continue this intent by applying indexation.

2. Flawed Underlying Framework

Fundamental structural problems:

Under the Proposed Determination, ACMA will continue to use an eligible revenue framework that inappropriately captures revenue generated from activities that can be conducted without a carrier licence. This creates significant market distortions and disincentives for innovation in the telecommunications sector.

BAI's experience:

- Under the definitions in the current regulatory framework, ACMA has advised that passive co-location services of the nature provided by tower operators such as BAI are considered to fall within the definition of the 'telecommunications industry', and the revenue from these services is therefore considered to be 'eligible revenue'. However, these services do not require the service provider to hold a carrier licence, and indeed BAI provided such services without a carrier licence for over twenty years.

- After acquiring a carrier licence in 2020 (via a subsidiary company) for the purpose of providing innovative telecommunications services unrelated to its tower co-location business, BAI now faces the prospect of paying the TIL on revenue generated from co-location, even though some of the largest tower operators in Australia do not face this issue as they provide these services without holding a carrier licence.
- While BAI's eligible revenue has not yet reached the \$25m threshold, we face the prospect of it reaching this threshold soon, particularly if the threshold is not indexed to account for inflation.

Market distortion:

- When BAI's eligible revenue crosses the \$25m threshold, under the Proposed Determination, BAI will be required to pay the TIL on revenue generated from passive co-location services.
- However, our non-carrier competitors that offer identical passive site-sharing services are not and will not be required to pay the TIL, regardless of the quantum of their revenue, simply because they do not hold a carrier licence. This is clearly an uneven playing field with market distorting consequences.

Innovation disincentive:

- The current framework forces companies like BAI to continually assess whether to retain or relinquish their carrier licences due to potential levy liability on non-carrier related revenue.
- Relinquishing carrier licences would detrimentally affect innovative service offerings, with negative impacts on innovation and productivity. A company does not necessarily hold a carrier licence because it requires the licence to conduct carrier-related activities, but because holding the carrier licence gives the company the ability to plan and engage with the market knowing they are legally compliant.
- Therefore, the framework discourages innovation of telecommunications services that government policy seeks to promote.

Interaction with Eligible Revenue Determination:

The concurrent proposal to remove ACMA's declaration powers under the Eligible Revenue Determination (**ERD**) compounds these issues:

- The Non-Participating Persons Determination relies on eligible revenue calculations under the ERD.
- The ERD's framework contains structural flaws in how it defines and captures eligible revenue. Removing ACMA's declaration powers eliminates the ability to address these flaws.
- The proposal not to increase the \$25m threshold means more companies may be captured by this flawed framework.

Recommendations

In light of the issues raised above, BAI suggests that the Department and ACMA take steps to do the following:

1. **Index the \$25m threshold:** while there is a strong case for annual CPI indexation of the \$25 million threshold to maintain its real value and align with the intention of the policy, at a minimum the Proposed Determination should increase the threshold to at least \$33 million to reflect the intervening increase in CPI. A decision not to take this action is a decision to capture smaller carriers than intended when the Determination was made in 2015, with no policy justification for this change.
2. **Comprehensive framework review:** we recommend that ACMA and the Department undertake a thorough review of the interaction between the Non-Participating Persons Determination and the Eligible Revenue Determination to address structural flaws, including changing the mechanisms that assess revenue generated by activities such as provision of passive infrastructure services that do not require a carrier licence as 'eligible revenue'.
3. **More regular review mechanism:** establish periodic review processes to ensure the framework remains fit for purpose as the telecommunications industry evolves. A review period of 10 years is too infrequent for a fast-changing industry.


Conclusion

The Proposed Determination fails to address two fundamental problems: the erosion of the threshold's real value through inflation and the perpetuation of a flawed underlying framework that captures inappropriate revenue streams.

The failure to index the \$25 million threshold means carriers will be drawn into the levy regime purely due to inflation, contrary to the policy intent of exempting smaller operators. More fundamentally, the continuation of a framework that captures revenue from non-carrier activities creates market distortions and discourages innovation in the telecommunications sector.

We urge the Department (in conjunction with ACMA) to address these issues by indexing the threshold and reviewing the underlying framework before implementing the new Proposed Determination. The telecommunications industry continues to evolve rapidly, and the regulatory framework must be sufficiently flexible and fair to support innovation and competition.

We would welcome the opportunity to discuss this submission further.


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