

# EXPLANATORY STATEMENT

## *Telecommunications (Charges) Determination 2012* *Australian Communications and Media Authority Act 2005*

### **Legislative Provisions**

The *Telecommunications (Charges) Determination 2012* (the Determination) has been made by the ACMA to revoke and replace the following instruments:

- *Telecommunications (Charges) Determination 2009*;
- *Telecommunications (Facility Installation Permit – Application Charge) Determination 2007*;
- *Telecommunications (Facility Installation Permit – Public Inquiry Charges) Determination 2007*;
- *Telecommunications (Nominated Carrier Declaration Application Charge) Determination 2007*; and
- *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008*.

The Determination specifies updated charges arising from a review of the ACMA's cost recovery fees and charges.

Subsection 60(1) of the *Australian Communications and Media Authority Act 2005* provides that the ACMA may, by written instrument, make determinations fixing charges for services provided by the ACMA and for any matter in which expenses are incurred by the ACMA under the *Telecommunications Act 1997* (Telecommunications Act). A charge must not be such as to amount to taxation.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **Background**

The ACMA reviewed its fees and charges as part of a periodic review of its cost recovery arrangements in accordance with the Australian Government's *Cost Recovery Guidelines*. The review resulted in updates to certain existing charges, including charges for services provided by the ACMA under the Telecommunications Act.

The Determination specifies the charges payable to the ACMA for services in relation to:

- a) considering applications for a connection permit for the connection of customer equipment or customer cabling (under subsections 390(1) or 390(2) of the Telecommunications Act);
- b) the activities of an ACMA officer acting as a certification body in connection with dealing with an application for a written statement under paragraph 408(5)(a) of the Telecommunications Act;

- c) applications under paragraph 457(1)(a) of the Telecommunications Act for the allocation of a number otherwise than in accordance with an allocation system determined under section 463 of that Act;
- d) considering applications for a facility installation permit under Division 6, Part 1, Schedule 3 to the Telecommunications Act;
- e) considering requests for declaration of a protection zone or the variation or revocation of such a declaration (under clauses 5 or 24 of Schedule 3A to the Telecommunications Act);
- f) applications under clauses 51 or 64 of Schedule 3A to the Telecommunications Act for permits to install a submarine cable.

The Determination is named the *Telecommunications (Charges) Determination 2012*.

### **Regulation Impact**

The ACMA has obtained the advice of the Office of Best Practice Regulation that a Regulation Impact Statement is not required for the Determination as the proposal does not have a significant impact on business or the economy (exemption reference ID: 2011/13142). A Cost Recovery Impact Statement has been prepared which outlines the basis for calculating the charges payable.

### **Consultation**

On 9 November 2011, the ACMA released a consultation paper about the review of the ACMA's cost recovery fees and charges. The paper proposed changes to the charges in this Determination. The consultation paper was also published on the ACMA's website and was provided directly to a range of industry bodies, associations and companies, including the major telecommunications carriers and carriage service providers.

The ACMA received four submissions on the proposed fees and charges, none of which related to the fees being amended by the Determination.

The ACMA is satisfied that its consultation process in relation to the Determination was appropriate for the purposes of section 17 of the *Legislative Instruments Act 2003*.

### **Commencement of Determination**

The Determination commences on 1 July 2012.

### **Notes on Sections**

The provisions of the Determination are described in Attachment 1.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment 2.

## Notes on Sections

### Part 1 Introduction

#### Section 1 – Name of Determination

Section 1 provides for the citation of the Determination as the *Telecommunications (Charges) Determination 2012*.

#### Section 2 – Commencement

Section 2 provides that the Determination commences on 1 July 2012.

#### Section 3 – Revocation

Section 3 provides for the revocation of the mentioned instruments.

#### Section 4 – Interpretation

Section 4 defines some of the key terms that are used in the Determination.

### Part 2 Charges for services or matters under the Telecommunications Act

#### Section 5 – Purpose of Determination

Section 5 describes the effect of section 60 of the *Australian Communications and Media Authority Act 2005* and provides that the purpose of the Determination is to fix charges for such matters under the Telecommunications Act as are set out in Schedule 1.

#### Section 6 – Charges relating to ACMA's costs

Section 6 specifies the charges for various ACMA telecommunications activities by reference to Schedule 1.

#### Section 7 – Hourly rate of charge

Section 6 specifies the hourly rate of charge (for each hour or part of an hour) for the purposes of the Determination.

#### Section 8 – Special rules – charges for facility installation permit applications (not relating to public inquiry)

Section 8 sets out rules for the treatment of a deposit paid to the ACMA under item 4.1 of Schedule 1.

#### Section 9 – Special rules – charges for facility installation permit applications (relating to public inquiry)

Section 9 sets out rules for the treatment of a deposit paid to the ACMA under item 5.1 of Schedule 1.

#### Section 10 – Special rules – charges payable in relation to a request for a declaration, variation or revocation of a protection zone

Section 10 sets out rules for the treatment of a deposit paid to the ACMA under items 6.1 and 6.2 of Schedule 1.

### **Section 11 – Special rules – charges payable in relation to an application for a permit to install a submarine cable**

Section 11 sets out rules for the treatment of a deposit paid to the ACMA under item 7.4 of Schedule 1.

### **Section 12 - By whom and when is a charge payable?**

Section 12 specifies that charges are payable by the applicant at the times specified in paragraphs 12(a) – (d):

- the charges detailed at paragraph 12(a) are payable when an application is made;
- the charge mentioned at paragraph 12(b) (the deposit payable for the holding of a public inquiry into a facility installation permit application under item 5.1 of Schedule 1) is payable within 7 days of the applicant being notified by the ACMA of its intention to hold the relevant public inquiry;
- paragraph 12(c) provides that charges in excess of the amount of a deposit paid to the ACMA under items 4.1, 5.1, 6.1, 6.2 or 7.4 of Schedule 1 (amounts which are payable in accordance with the rules for the treatment of deposits set out in sections 8, 9, 10 or 11) are payable by the due date specified in an invoice issued by the ACMA;
- paragraph 12(d) provides that in any other case in which a charge is payable at the hourly rate or on the basis of actual costs – the charge is payable by the due date specified in an invoice issued by the ACMA.

## **Part 3 Transitional arrangements**

### **Section 13 – Transitional arrangements – facility installation permit applications (not relating to public inquiry)**

Section 13 provides that any remaining residue of a deposit paid under item 1 of Schedule 1 to the *Telecommunications (Facility Installation Permit – Application Charge) Determination 2007* as at 1 July 2012 will be treated as the relevant deposit for the purposes of section 8.

### **Section 14 – Transitional arrangements – facility installation permit applications (relating to public inquiry)**

Section 14 provides that any remaining residue of a deposit paid under item 1 of Schedule 1 to the *Telecommunications (Facility Installation Permit – Public Inquiry Charges) Determination 2007* as at 1 July 2012 will be treated as the relevant deposit for the purposes of section 9.

### **Section 15 – Transitional arrangements – request for a declaration, variation or revocation of a protection zone**

Section 15 provides that any remaining residue of a deposit paid under item 1 or 2 of Schedule 1 to the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* as at 1 July 2012 will be treated as the relevant deposit for the purposes of section 10.

## **Section 16 – Transitional arrangements – application for a permit to install a submarine cable**

Section 16 provides that any remaining residue of an amount paid under item 4 of Schedule 2 to the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* as at 1 July 2012 will be treated as the relevant deposit for the purposes of section 11.

### **Notes on Schedule 1**

#### **Schedule 1 Charges Payable**

##### **Part 1 Nominated carrier declaration charges**

###### **Item [1.1] Application for a nominated carrier declaration**

Item [1.1] details the charge to accompany an application to the ACMA under section 77 of the Telecommunications Act for a nominated carrier declaration.

##### **Part 2 Charges payable in relation to certain connection permits and labelling certifications**

###### **Item [2.1] Charge for Connection Permit – Customer Equipment**

Item [2] details the charge for considering an application made under subsection 390(1) of the Telecommunications Act for a connection permit for the connection of customer equipment.

###### **Item [2.2] Charge for Connection Permit – Customer Cabling**

Item [2.2] details the charge for considering an application made under subsection 390(2) of the Telecommunications Act for a connection permit for the connection of customer cabling.

###### **Item [2.3] Application for Written Statement**

Item [2.3] details the charge for the activities of an ACMA officer acting as a certification body when dealing with an application for a written statement under paragraph 408(5)(a) of the Telecommunications Act.

##### **Part 3 Charges payable in relation to certain numbering applications**

###### **Item [3.1] Charge for Allocation of Numbers**

Item [3.1] details the charges to accompany an application for the allocation of a number otherwise than in accordance with an allocation system determined under section 463 of the Telecommunications Act and as provided for by section 457 of that Act. This item provides new amounts of charge for on-line and other applications.

##### **Part 4 Facility installation permits – application charges**

**Item [4.1] Deposit – facility installation permit application**

Item [4.1] details the deposit to accompany an application for a facility installation permit.

**Item [4.2] Charges for ACMA workers – facility installation permit application**

Item [4.2] specifies the hourly rate of charge for the activities of ACMA workers in connection with dealing with an application for a facility installation permit that do not relate to a public inquiry in relation to the permit.

**Part 5 Facility installation permits – public inquiry charges**

**Item [5.1] Deposit – facility installation permit application (public inquiry)**

Item [5.1] details the deposit payable to the ACMA on account of the expenses to be incurred in relation to the holding of a public inquiry in relation to a facility installation permit application.

**Item [5.2] Charges for ACMA workers – facility installation permit application (public inquiry)**

Item [5.2] specifies the hourly rate of charge for the activities of ACMA workers in relation to the holding of a public inquiry in relation to a facility installation permit application.

**Item [5.3] Other expenses – facility installation permit application (public inquiry)**

Item [5.3] details that other expenses for the holding by the ACMA of a public inquiry in relation to a facility installation permit application, besides those in items 8 and 9, can be charged on a cost incurred basis.

**Part 6 Charges payable to declare, vary or revoke a protection zone**

**Item [6.1] Deposit – request to declare a protection zone**

Item [6.1] details the deposit payable to the ACMA on account of the expenses to be incurred in relation to a request to declare a protection zone.

**Item [6.2] Deposit – request to vary or revoke a declaration of a protection zone**

Item [6.2] details the deposit payable to the ACMA on account of the expenses to be incurred in relation to a request to vary or revoke a declaration of a protection zone.

**Item [6.3] Charges for ACMA staff - request to declare a protection zone or vary or revoke a declaration of a protection zone**

Item [6.3] specifies the hourly rate of charge for the activities of ACMA staff in relation to a request to declare a protection zone or vary or revoke a declaration of a protection zone.

**Item [6.4] External costs – request to declare a protection zone or vary or revoke a declaration of a protection zone**

Item [6.4] details that external costs incurred by the ACMA in relation to a request to declare a protection zone or vary or revoke a declaration of a protection zone can be charged on a cost incurred basis.

## **Part 7 Charges payable in relation to certain permits to install a submarine cable**

### **Item [7.1] Charge for application for a protection zone installation permit**

Item [7.1] details a charge for considering and processing an application for a protection zone installation permit.

### **Item [7.2] Charge for application to extend a protection zone installation permit or a linked (NPZ) installation permit**

Item [7.2] details a charge for considering and processing an application to extend the duration of a protection zone installation permit or a linked (NPZ) installation permit.

### **Item [7.3] Charge for application for a non-protection zone installation permit, other than a linked (NPZ) installation permit application**

Item [7.3] details a charge for considering and processing an application for a non-protection zone installation permit, other than a linked (NPZ) installation permit which excludes the additional charges mentioned at items 7.4 and 7.5

### **Item [7.4] Deposit - application for a non-protection zone installation permit or a linked (NPZ) installation permit**

Item [7.4] details the deposit payable in relation to an application for a non-protection zone installation permit or a linked (NPZ) installation permit on account of the charges at item 7.5.

### **Item [7.5] External costs – use of external consultants for application for a non-protection zone installation permit or a linked (NPZ) installation permit**

Item [7.5] details that external costs incurred by the ACMA for the use of external consultants in considering an application for a non-protection zone installation permit or a linked (NPZ) installation permit can be charged on a cost incurred basis.

### **Item [7.6] Charge for application to extend the duration of a non-protection zone installation permit, other than a linked (NPZ) installation permit**

Item [7.6] details a charge for considering and processing an application to extend the duration of a non-protection zone installation permit, other than a linked (NPZ) installation permit.

### **Item [7.7] Charge for application for a linked (NPZ) installation permit**

Item [7.7] details a charge for considering and processing an application for a linked (NPZ) installation permit, which excludes the additional charges mentioned at items 7.4 and 7.5. Item 7.7 is a lower charge than item 7.3 due to the lower costs for processing an application for a non-protection zone installation permit (in this case, a trans-zone (NPZ) installation permit) and an application for a protection zone

installation permit which are submitted together in relation to the same submarine cable.



## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Telecommunications (Charges) Determination 2012***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The *Telecommunications (Charges) Determination 2012* (the Determination) provides updated charges arising from a review of the ACMA's cost recovery fees and charges in relation to certain activities of the ACMA under the *Telecommunications Act 1997* (Telecommunications Act).

Subsection 60(1) of the *Australian Communications and Media Authority Act 2005* provides that the ACMA may, by written instrument, make determinations fixing charges for services provided by the ACMA and for any matter in relation to which expenses are incurred by the ACMA under the Telecommunications Act. The charges must not be such as to amount to taxation.

The ACMA has reviewed its fees and charges as part of a periodic review of its cost recovery arrangements in accordance with the Australian Government's *Cost Recovery Guidelines*. The review resulted in updates to a range of existing charges, including charges for services provided by the ACMA under the Telecommunications Act.

The Determination specifies the charges payable to the ACMA for services in relation to:

- a) considering applications for a connection permit for the connection of customer equipment or customer cabling (under subsections 390(1) or 390(2) of the Telecommunications Act);
- b) the activities of an ACMA officer acting as a certification body in connection with dealing with an application for a written statement under paragraph 408(5)(a) of the Telecommunications Act;
- c) applications under paragraph 457(1)(a) of the Telecommunications Act for the allocation of a number otherwise than in accordance with an allocation system determined under section 463 of that Act;
- d) considering applications for a facility installation permit under Division 6, Part 1, Schedule 3 to the Telecommunications Act;
- e) considering requests for declaration of a protection zone or variation or revocation of such a declaration (under clauses 5 or 24 of Schedule 3A to the Telecommunications Act);

f) applications under clauses 51 or 64 of Schedule 3A to the Telecommunications Act for permits to install a submarine cable.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.