

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

*Telecommunications (Charges) Amendment Determination 2015 (No.1)*

*Australian Communications and Media Authority Act 2005*

### Purpose

The *Telecommunications (Charges) Amendment Determination 2015 (No.1)* (the Charges Amendment Determination) has been made by the Australian Communications and Media Authority (ACMA) under section 60 of the *Australian Communications and Media Authority Act 2005* (ACMA Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA).

The Charges Amendment Determination amends the *Telecommunications (Charges) Determination 2012* (Charges Determination) to set charges in relation to number allocation and administration functions provided by ZOAK Pty Ltd (ZOAK) under delegation from the ACMA.

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 Charges Amendment Determination amends the Charges Determination, and revokes the *Telecommunications (Freephone and Local Rate Numbers Auctions – Registration Charge) Determination 2007*.

### Legislative Provisions

Under section 455 of the *Telecommunications Act 1997* (the Telecommunications Act) the ACMA must, by legislative instrument, make a plan for the numbering of carriage services in Australia and the use of numbers in connection with the supply of such services. The ACMA has made the *Telecommunications Numbering Plan 2015* (the Numbering Plan), which repeals the *Telecommunications Numbering Plan 1997*. The substantive provisions of the Numbering Plan will commence on a day to be fixed by the ACMA or, if the ACMA has not fixed a day by 1 October 2015, on that day.

Under subsection 455(5) of the Telecommunications Act, the Numbering Plan may set out rules about the allocation, transfer and surrender or withdrawal of numbers.

Subsection 467(1) of the Telecommunications Act provides that the ACMA may, by writing, delegate all or any of the powers conferred on the ACMA by the Numbering Plan to a body corporate. The ACMA has delegated powers relating to number allocation and administration to ZOAK. Under a contract between the Commonwealth and ZOAK, and in accordance with the ACMA's delegation of powers to ZOAK, ZOAK will commence number allocation and administration services from the commencement of the Numbering Plan. The powers delegated to ZOAK include the allocation of most types of numbers to carriage service providers (CSPs).

The ACMA Act enables the ACMA to fix charges for services it provides and any matter in relation to which expenses are incurred under a number of Acts and legislative instruments (including the Telecommunications Act and instruments made under the Telecommunications Act). These charges must not be such as to amount to taxation. In setting charges under section 60 of the ACMA Act, the ACMA is required to comply with the Australian Government Cost Recovery Guidelines.

The Charges Amendment Determination also contains minor changes to the description of charges payable in relation to permits to install submarine cables, as a consequence of legislative changes made to Schedule 3A of the Telecommunications Act by the *Telecommunications Legislation Amendment (Submarine Cable Protection) Act 2014*.

The Charges Amendment Determination is a legislative instrument, and is disallowable under section 42 of the *Legislative Instruments Act 2003* (LIA). Under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, a statement of compatibility must be prepared for the Charges Amendment Determination, and under paragraph 26(1A)(f) of the LIA, the statement of compatibility must be contained in the explanatory statement in relation to the Determination. A statement of compatibility is provided at Attachment A.

## Background

The ACMA conducted a Request for Tender to identify a provider and, on 12 September 2014, the Commonwealth entered into a contract with ZOAK to provide allocation and administration services for most of Australia's telephone numbers from August 2015.<sup>1</sup>

ZOAK will provide services under delegation from the ACMA, in accordance with its contract with the Commonwealth, consistent with the Numbering Plan.

The ACMA has reviewed the charges it sets under section 60 of the ACMA Act in relation to the provision of numbering services by ZOAK from 1 August 2015.

The ACMA considered a number of alternative charging methodologies for the setting of numbering allocation and administration charges. These methodologies included consideration of historical transaction data, forward demand projections for number transactions and calculation that sought to attribute charges to reflect the complexity of system design. The ACMA also considered replicating the existing structure of charges. It concluded that a methodology that delivers a flat charge structure (no differentiation in the charges for different transaction types) is most appropriate. A flat-fee structure reflects that the ZOAK system will be almost entirely fully automated; for the majority of transactions there will be no requirement for decision-making or discretion.

The ACMA has calculated the charges by dividing the annual cost of the services provided by ZOAK (\$852,924) by the estimated number of annual transactions (estimated 43,796 per annum) to obtain a flat charge of \$19.50 per transaction.

## Operation

The Charges Amendment Determination amends the Charges Determination to impose charges in relation to applications for allocations of geographic numbers, registration of carriage service providers, and registration of applicants for smartnumbers. It also repeals the *Telecommunications (Freephone and Local Rate Numbers Auctions – Registration Charge) Determination 2007* which previously set registration charges for applicants for smartnumbers. In addition, it makes changes to the charges imposed in relation to submarine cable protection zones and permits that are consequential to legislative amendments from 2014.

## Incorporation by reference

The Charges Amendment Determination refers to Acts and other legislative instruments as in force from time to time (as permitted by section 13 of the LIA). Those legislative instruments are:

- the Telecommunications Act;
- the Numbering Plan;
- the *Telecommunications Numbering Plan 1997*.

The Charges Amendment Determination also inserts a reference to the *Telecommunications (Freephone and Local Rate Numbers Auctions – Registration Charge) Determination 2007*, as in force immediately before the commencement of the Charges Amendment Determination.

These Acts and legislative instruments are available on the ComLaw website at <http://www.comlaw.gov.au>.

## Regulation Impact

The Office of Best Practice Regulation has determined that the regulatory changes effected by the Charges Amendment Determination are minor or machinery in nature and has therefore verified that a Regulatory Impact Statement is not required (Exemption reference ID: 18657).

Under Commonwealth cost-recovery guidelines, a Cost Recovery Impact Statement (CRIS) is required to reflect changes to charges set under section 60 of the ACMA Act and included in the Charges Amendment Determination. The Minister for Communications agreed to the relevant CRIS.

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<sup>1</sup> ZOAK will deliver allocation and administration services as a delegate of the ACMA for all number types specified in the Numbering Plan, except for international signalling point codes, mobile network codes and some special types of numbers (such as emergency service numbers).

## Consultation

On 8 April 2015, the ACMA released a consultation paper and draft charging instruments which proposed charges that would apply for numbering allocation and administration services from 1 August 2015, including charges imposed by the Charges Amendment Determination. The consultation paper and draft instruments were also published on the ACMA's website and were provided to the ACMA's Numbering Advisory Committee which includes representatives from government, consumer organisations, the peak communications industry organisation (Communications Alliance) and telecommunications carriers and CSPs.

The ACMA received three written submissions in response to the consultation paper and all relevant issues raised were considered when making the Charges Amendment Determination. Copies of the submissions can be found [here](#).

## Notes on sections

### Section 1 – Name of Determination

Section 1 provides that the name of the Charges Amendment Determination is the *Telecommunications (Charges) Amendment Determination 2015 (No.1)*.

### Section 2 – Commencement

Section 2 effectively provides that:

- the changes related to submarine cables charges, in Schedule 1 to the Charges Amendment Determination, commence the day after the Determination is registered; and
- the changes related to the services provided under the Numbering Plan, in Schedule 2 to the Charges Amendment Determination, commence on the later of:
  - the day on which the substantive provisions of the Numbering Plan commence (a day to be fixed by the ACMA or, if the ACMA has not fixed a day by 1 October 2015, on that day); or
  - immediately after Schedule 1 to the Charges Amendment Determination commences.

### Section 3 – Amendments – submarine cables

Section 3 provides that Schedule 1 amends the Charges Determination.

### Section 4 – Amendments – numbering applications

Section 4 provides that Schedule 2 amends the Charges Determination.

### Section 5 – Revocation

Section 5 provides that the *Telecommunications (Freephone and Local Rate Numbers Auctions – Registration Charge) Determination 2007* is revoked. This instrument was made under section 60 of the ACMA Act and set charges for registration to participate in smartnumbers auctions which will no longer occur after the substantive provisions of the Numbering Plan commence.

### Schedule 1 – Amendments to the *Telecommunications (Charges) Determination 2012 – submarine cables*

Schedule 1 amends the Charges Determination in relation to the submarine cabling regime, as a consequence of legislative changes made to Schedule 3A of the Telecommunications Act by the *Telecommunications Legislation Amendment (Submarine Cable Protection) Act 2014*. Among the changes made by that Act were changes which allowed a carrier to apply for a single permit that covers the installation of a submarine cable within a protection zone and in Australian waters that are not in a protection zone and not the coastal waters of a State or Territory. Previously, the carrier had to apply for two separate permits. Accordingly, the ACMA has made consequential changes to the definitions and terminology to reflect this new regime. The amounts of the charges remain unchanged.

### Schedule 2 – Amendments to the *Telecommunications (Charges) Determination 2012 – numbering applications*

Section 4 of the Charges Determination defines the terms used within the Determination.

Item 1 inserts the term *carriage service provider* as defined by the Telecommunications Act into section 4.

Item 2 inserts the terms *enhanced rights of use*, *EROU applicant* and *EROU-holder*, which are all defined by reference to the Numbering Plan into section 4.

Item 3 inserts the term *geographic number* as defined in the Numbering Plan into section 4.

Item 4 inserts the term *numbering plan* which is defined as the Numbering Plan into section 4.

Item 5 omits the definition of *online application* and the note to the definition, as these terms are no longer used in determining applicable charges.

Item 6 inserts the term *registered carriage service provider* as defined in the Numbering Plan into section 4.

Item 7 inserts the term *standard unit* as defined in the Numbering Plan into section 4.

Item 8 inserts the term *unassigned unallocated smartnumber* as defined in the Numbering Plan into section 4.

Item 9 substitutes the existing section 5 (Purpose of Determination) with a new section 5. This section sets out the power which the ACMA has to set charges for the services it provides and any matter where the ACMA incurs expenses under a number of Acts including the Telecommunications Act and instruments made under such Acts, including the Numbering Plan.

This item further provides that charges set under these provisions must specify by whom the charges are to be paid and within what timeframe.

Finally, this item provides that the purpose of the Charges Determination is to set charges for certain matters under the Telecommunications Act and certain instruments made under the Telecommunications Act (including the Numbering Plan) and that these charges are contained in Schedule 1 to the Charges Determination.

Item 10 provides for the insertion of a new section 7A. Section 7A provides that where a person has made an application for the allocation of a number otherwise that in accordance with an allocation system determined under section 463 of the Telecommunications Act and the ACMA decides not to approve the application, the ACMA must refund any payment of the application charge imposed on the application by the Charges Determination.

Items 11 to 16 make consequential changes to section references.

Item 17 provides for the insertion of a new subparagraph 12(1)(aa), which provides that the charges that will apply for an application for allocation of geographic numbers, will be payable by the applicant in accordance with the timeframes set out in the Numbering Plan. In this regard, subsection 457(1) of the Telecommunications Act requires the Numbering Plan to impose a requirement that an application for allocation of a number must be accompanied by the charge fixed by a determination under section 60 of the ACMA Act.

Item 18 provides for the inclusion of a new subsection 12(2) which sets out that a person registering to use the electronic system for applying for and managing the enhanced rights of use (EROU) of a smartnumber must pay the charge immediately before registration.

Item 19 provides for the inclusion of a new section 17. Section 17 sets out the transitional arrangements that apply to an application made under the *Telecommunications Numbering Plan 1997* (the 1997 Plan) for the allocation of a number and where section 135 of the Numbering Plan requires the application to be dealt with in accordance with the 1997 Plan as if the instrument had not been repealed. Section 17 provides that the *Telecommunications (Charges) Determination 2012* as in force immediately before the commencement of this section applies to the application. The changes made by the Charges Amendment Determination will only apply to applications made under the Numbering Plan, and not those made under the 1997 Plan.

New section 17 also sets out transitional arrangements that will apply in the event that an application for registration to be an EROU applicant is received before this section commences and where a decision regarding the application for registration has not been made when the section commences. In such a case, then the *Telecommunications (Freephone and Local Rate Numbers Auctions – Registration Charge) Determination 2007* applies to the application as if that instrument had not been repealed. The charges mentioned in item 3.3 of Schedule 1 would not apply to this application. The changes made by the Charges Amendment Determination will only apply to applications made after the substantive provisions of the Numbering Plan commence, and not those made beforehand.

Item 20 replaces Part 3 of Schedule 1 to the Charges Determination.

New item 3.1 of Schedule 1 to the Charges Determination sets the charge for making an application for a number otherwise than in accordance with an allocation system determined under section 463 of the Telecommunications Act. Column 3 sets out the application charges for an application for the allocation of one or more standard units of geographic numbers under Part 2 of Chapter 6 of the Numbering Plan and an application for allocation of geographic numbers under Part 3 of Chapter 6 of the Numbering Plan. In both cases the application charge is \$19.50. Column 3 confirms that there is zero charge for any other application made under the numbering plan for allocation of a number. This is because other numbers are subject to an allocation charge, set out in instruments made under the *Telecommunications (Numbering Charges) Act 1997*, and not under the ACMA Act.

Item 3.2 sets the charge for an application for a CSP to register to use the numbering system at \$19.50.

Item 3.3 sets the charge for an applicant to register to apply for and manage the enhanced rights of use of a smartnumber at \$19.50.

## **Attachment A Statement of Compatibility – Human Rights Issues**

### **Australian Communications and Media Authority**

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

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

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 LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

#### ***Telecommunications (Charges) Amendment Determination 2015 (No. 1)***

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

The *Telecommunications (Charges) Amendment Determination 2015 (No. 1)* has been made by the Australian Communications and Media Authority (ACMA) to set charges for applications for the allocation of geographic numbers under the *Telecommunications Numbering Plan 2015*, and for registration to use the system that allows the making of applications under that plan. It also makes minor amendments to the provisions relating to charges imposed in relation to submarine cable protection zones and permits that are consequential to statutory amendments.

#### **Human rights implications**

The *Telecommunications (Charges) Amendment Determination 2015 (No. 1)* 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*.

#### **Conclusion**

The ACMA has considered whether the *Telecommunications (Charges) Amendment Determination 2015 (No. 1)* engages any applicable human rights or freedoms and has formed the view that it does not. The *Telecommunications (Charges) Amendment Determination 2015 (No. 1)* is compatible with human rights as it does not raise any human rights issues.