

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Telecommunications (Charges) Amendment Determination 2017 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Charges) Amendment Determination 2017 (No. 1)* (**the instrument**) under subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (**the Act**).

Subsection 60(1) of the Act relevantly 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.

Section 33 of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a powers 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 instrument amends the *Telecommunications (Charges) Determination 2012* (**the Charges Determination**).

Purpose and operation of the instrument

The Charges Determination sets out fees for a number of services to the telecommunications industry, including charges associated with applications in relation to:

- a nominated carrier declaration;
- a connection permit and labelling certification;
- numbers under the numbering plan;
- a facility installation permit;
- a submarine cable installation permit; and
- protection zone declarations.

The instrument amends a number of the charges specified in the Charges Determination. Most of the changes have been made to reflect changes that have been made to the ACMA's hourly rates. The proposed new standard hourly rate is \$202 (excluding GST), which has increased by 2.5 per cent. The rate was established by taking the net cost of services of the ACMA's business units for 2015–16, including an attribution of all corporate and support costs, and dividing this cost by the average staff hours spent by the business units during the financial year 2015–16.

Increases of between 2.4% and 2.8% have also been made to charges relating to:

- the making of an application for a nominated carrier declaration in relation to one or more specified network units;
- the deposit to accompany a facility installation permit application;
- the deposit payable on account of the expenses to be incurred by the ACMA for the holding of a public inquiry in relation to the issuing of a facility installation permit;
- the deposit payable on account of the expenses to be incurred by the ACMA in relation to a protection zone (declaration) request; and

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- the deposit payable on account of the expenses to be incurred by the ACMA in relation to a protection zone (revocation) request or a protection zone (variation) request.

In July 2015, the ACMA amended 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. The charges were intended to recover the costs related to number allocation and administration functions provided by ZOAK Pty Ltd (**Zoak**) under delegation from the ACMA. The ACMA calculated the charge by dividing the annual cost of services provided by Zoak by the estimated number of annual transactions to obtain a flat charge of \$19.50 per transaction.

The ACMA regularly reviews its costs of providing numbering services under contract and has considered that an increase in the relevant numbering related charges set under the Charges Determination is required in order to recover the costs associated with the services provided by Zoak. Consequently, the ACMA has decided to increase the flat-fee transaction charge to \$35.

More significant changes have been made to charges that relate to certain permits to install a submarine cable (see proposed changes to Part 7 of Schedule 1 to the Charges Determination). In 2014, Schedule 3A to the Telecommunications Act was amended. The amendments have resulted in applicants being able to make an application to install a submarine cable both inside and outside a protection zone which has required additional consultation with stakeholders to be undertaken. Consequently, the time taken to consider stakeholder feedback and to prepare decision-making documentation has significantly increased. The ACMA has estimated that the time required to perform this activity has increased by 48 per cent.

The time required for the ACMA to consider and process an application to extend a submarine cable protection and non-protection zone installation permit has also increased by around 133 per cent. This is based on ACMA staff experience in processing such applications since 2014. Consequently, the fees for those applications have increased to reflect the increased processing time.

The time required to consider and process a submarine cable non-protection zone permit application has decreased since 2014. This is because Schedule 3A to the Telecommunications Act no longer requires the ACMA to consult with the Environment Secretary in relation to such applications. The time required for the ACMA to consider and process such applications has reduced by 29 per cent and this is reflected in a lesser fee.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

Attachment B sets out each charge item being amended by the instrument and the variance in comparison with the pre-existing amount of charge. Attachment B also describes the reason for the differentiation in the amount of charge payable.

Documents incorporated by reference

The instrument does not incorporate any documents by reference.

Consultation

The ACMA has consulted with industry stakeholders and the general public on the making of the instrument. Between 28 November 2016 and 6 January 2017, the ACMA conducted a public consultation process inviting submissions on a number of proposed changes to fees for services determined under cost recovery arrangements. The consultation was facilitated through the release of a consultation paper and a draft cost recovery implementation statement on the ACMA's website.

The consultation paper outlined the changes proposed to be made by the instrument as well as changes proposed to the following determinations:

- the *Broadcasting (Charges) Determination 2007*;
- the *Radiocommunications (Charges) Determination 2007*;
- the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012*; and
- the *Telecommunications (Carrier Licence Application Charge) Determination 2012*.

The ACMA did not receive any submissions in response to the consultation paper.

In relation to the proposed changes associated with numbering charges, the ACMA, on 16 December 2016, released a separate consultation paper (**16 December Consultation Paper**) which set out options to recoup the identified and anticipated under-recovery, as well as inviting any comments on future demand for numbers and models for cost recovery. The consultation paper was also published on the ACMA's website and was provided to the ACMA's Numbering Advisory Committee, which includes representatives from government, consumer organisations, the peak communications organisation (Communications Alliance) and telecommunications carriers and CSPs.

The ACMA received four written submissions in response to the 16 December Consultation Paper and all relevant issues were considered when making the instrument. The ACMA took those submissions into account when deciding on the revised numbering changes.

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have a regulatory impact on businesses, community organisations or individuals (see OBPR reference numbers 21266 and 21587).

Statement of compatibility with human rights

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 LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The instrument amends a number of charges specified in the Charges Determination.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Notes to the *Telecommunications (Charges) Amendment Determination 2017 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Charges) Amendment Determination 2017 (No. 1)*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provision that authorises the making of the instrument, namely subsection 60(1) of the *Australian Communications and Media Authority Act 2005*.

Section 4 Amendments

This section provides that the Charges Determination is amended as set out in the Schedule.

Schedule 1 - Amendments

Item [1]

Item [1] repeals and substitutes section 7 of the instrument to amend and increase the ACMA's standard hourly rate. The increased hourly rate is based on the net cost of services, which represents the actual costs incurred by the ACMA in executing its functions and activities for 2015–16.

Item [2]

Item [2] amends the charge for the making of an application mentioned in section 77 of the *Telecommunications Act 1997* for a nominated carrier declaration in relation to one or more specified network units to \$2,375.

Item [3]

Item [3] amends charges payable in relation to applications for numbers under the numbering plan from \$19.50 to \$35.00.

Item [4]

Item [4] amends the deposit amount for a facility installation permit application to \$7,474.

Item [5]

Item [5] amends the deposit amount payable on account of the expenses to be incurred by the ACMA for the holding of a public inquiry in relation to the issuing of a facility installation permit to \$54,540.

Item [6]

Item [6] amends the deposit amount payable on account of the expenses to be incurred by the ACMA in relation to a protection zone (declaration) request to \$200,000.

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Item [7]

Item [7] amends the deposit payable on account of the expenses to be incurred by the ACMA in relation to protection zone (revocation) request or a protection zone (variation) request to \$147,000.

Item [8]

Item [8] amends the charge payable for a protection zone installation permit application to \$4,040 for each submarine cable the subject of the application.

Item [9]

Item [9] amends the charge payable for an application to extend the duration of a protection zone installation permit to \$1,414.

Item [10]

Item [10] amends the charge payable for a non-protection zone installation permit application to \$5,959 for each submarine cable the subject of the application.

Item [11]

Item [11] amends the charge payable for an application to extend the duration of a non-protection zone installation permit to \$1,414.

Fees – Detailed explanation

<i>Telecommunications (Charges) Amendment Determination 2017 (No.1)</i>					
Item being charged	Relevant provision of the instrument	Fees pre-commencement	Fees post commencement	Variance increase/ (decrease)	Reason for increase/decrease
Hourly rate of charge	Item 1, Schedule 1	\$197	\$202	2.5%	Refer to Note 1 for further details.
Making an application mentioned in section 77 of the <i>Telecommunications Act 1997</i> (Telecommunications Act) for a nominated carrier declaration in relation to one or more specified network units	Item 2, Schedule 1	\$2,320.00	\$2,375.00	2.4%	This is due to the increase in the ACMA's standard hourly rate and rounding. Refer to Note 1 for further details.
Making an application mentioned in 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 the Telecommunications Act: (1) Geographic numbers under Part 2, Chapter 6 of the <i>Telecommunications Numbering Plan 2015 (Numbering Plan)</i> (2) Geographic numbers under Part 3, Chapter 6 of the Numbering Plan	Item 3, Schedule 1	\$19.50 \$19.50	\$35.00 \$35.00	79.5%	The increase is a result of a drop in demand for telecommunications number allocations. Refer to Note 2 for further details.
Making an application under subsection 121(1) of the Numbering Plan for registration of a carriage service provider under section 122 of the Numbering Plan	Item 3, Schedule 1	\$19.50	\$35.00	79.5%	The increase is a result of a drop in demand for telecommunications number allocations. Refer to Note 2 for further details.

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Item being charged	Relevant provision of the instrument	Fees pre-commencement	Fees post commencement	Variance increase/ (decrease)	Reason for increase/decrease
Registering to use the electronic system, made available by the ACMA, for enhanced rights of use (EROU) applicants to apply with a registered carriage service provider under section 73 of the Numbering Plan for the initial allocation of an unassigned unallocated smartnumber, and for EROU-holders to manage their EROU	Item 3, Schedule 1	\$19.50	\$35.00	79.5%	The increase is a result of a drop in demand for telecommunications number allocations. Refer to Note 2 for further details.
Deposit to accompany an application for a facility installation permit	Item 4, Schedule 1	\$7,290.00	\$7,474.00	2.5%	This is due to the increase in the ACMA's standard hourly rate. Refer to Note 1 for further details.
Deposit payable on account of the expenses to be incurred by the ACMA in relation to the holding of the public inquiry in relation to the issuing of a facility installation permit	Item 5, Schedule 1	\$53,190.00	\$54,540.00	2.5%	This is due to the increase in the ACMA's standard hourly rate. Refer to Note 1 for further details.
Deposit payable on account of the expenses to be incurred by the ACMA in relation to a protection zone (declaration) request	Item 6, Schedule 1	\$195,000.00	\$200,000.00	2.6%	This is due to the increase in the ACMA's standard hourly rate and rounding. Refer to Note 1 for further details.
Deposit payable on account of the expenses to be incurred by the ACMA in relation to a protection zone (revocation) request or a protection zone (variation) request	Item 7, Schedule 1	\$143,000.00	\$147,000.00	2.8%	This is due to the increase in the ACMA's standard hourly rate and rounding. Refer to Note 1 for further details.

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Item being charged	Relevant provision of the instrument	Fees pre-commencement	Fees post commencement	Variance increase/ (decrease)	Reason for increase/decrease
Protection zone installation permit — charge for the purposes of clause 53 of Schedule 3A to the Telecommunications Act, in relation to considering and processing a protection zone installation permit application	Item 8, Schedule 1	\$2,660.00 (for each submarine cable the subject of the application)	\$4,040.00 (for each submarine cable the subject of the application)	51.9%	This fee is subject to increase in the ACMA’s standard hourly rate. Also, the processing time has increased by 48%. Refer to Notes 1 and 3(a) for further details.
Protection zone installation permit—considering and processing an application under clause 61 of Schedule 3A to the Telecommunications Act to extend the duration of a protection zone installation permit	Item 9, Schedule 1	\$595.00	\$1,414.00	137.6%	This fee is subject to increase in the ACMA’s standard hourly rate. Also, the processing time has increased by 133%. Refer to Notes 1 and 3(c) for further details.
Non-protection zone installation permit application — charge for the purposes of clause 66 of Schedule 3A to the Telecommunications Act, in relation to considering and processing a non-protection zone installation permit application, excluding the additional charges mentioned at items 7.4 and 7.5 of Schedule 1 to the <i>Telecommunications (Charges) Determination 2012</i>	Item 10, Schedule 1	\$8,176.00 (for each submarine cable the subject of the application)	\$5,959.00 (for each submarine cable the subject of the application)	(27.1%)	This fee is subject to increase in the ACMA’s standard hourly rate. Also, the processing time has reduced by 29%. Refer to Notes 1 and 3(b) for further details.
Non-protection zone installation permit — considering and processing an application under clause 76 of Schedule 3A to the Telecommunications Act to extend the duration of a non-protection zone installation permit	Item 11, Schedule 1	\$595.00	\$1,414.00	137.6%	This fee is subject to increase in the ACMA’s standard hourly rate. Also, the processing time has increased by 133%. Refer to Notes 1 and 3(c) for further details.

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Notes:

1. **Methodology** – For the calculation of fees, the ACMA applied its standard hourly rate and survey information obtained in 2016 on the average time taken by a proficient officer to perform the activity. The ACMA’s standard hourly rate has been updated to reflect its current costs and as a result it has increased from \$197 to \$202 (that is, a 2.5 percent increase). See in particular, item 1 of Schedule 1 to the instrument. The change to the hourly rate affects the following parts and items of Schedule 1 to the *Telecommunications (Charges) Determination 2012*: Part 2, item 4.2 of Part 4, item 5.2 of Part 5 and item 6.3 of Part 6). The figure is based on the cost of services incurred by the ACMA in executing its functions for the financial year 2015–16. This rate was established by taking the net cost of services of the ACMA’s business units for 2015–16, including an attribution of all corporate and support costs, and dividing this cost by the average staff hours spent by the business units during the financial year 2015–16. The calculation methodology has not changed from the one adopted when the charges were last reviewed by the ACMA in 2012.¹
2. On 1 August 2015 a flat charge of \$19.50 was imposed for all numbering activities. The charge was determined by dividing the total estimated annual cost of services by the total estimated annual number of transactions. Following the ACMA’s review of the operation of the numbering system in years one and two, the ACMA has adopted the same approach to determining charges as it did in 2015. However, the flat fee per transaction charge determined by the ACMA has increased to \$35 having regard to:
 - a. accumulated under-recovery and a small number of system enhancements, with the annual recoverable costs now estimated as having increased by approximately 15 percent since 2015; and
 - b. the significantly lower than anticipated number of annual user transactions expected for the 2016/17 financial year (expected to decrease by about 35 percent compared to the 2015/16 financial year figures).
3. In addition to the increase in the hourly rate, the fee for the following telecommunications activities has changed as a result of the changes in the estimated time required to perform the activities:

¹ The ACMA last reviewed its cost recovery arrangements for various telecommunications services in 2012. A copy of the Cost Recovery Implementation Statement which provides information on those cost recovery charges as well as the cost recovery model adopted by the ACMA can be found at: <http://www.acma.gov.au/~media/Finance%20Budgets%20and%20Revenue%20Assurance/Report/pdf/Cost%20recovery%20impact%20statement.PDF>. A more limited review of telecommunications charges was also conducted in 2014. The Cost Recovery Implementation Statement in relation to that review can be found at: <http://www.acma.gov.au/~media/Finance%20Budgets%20and%20Revenue%20Assurance/Report/Word%20Document/Cost%20recovery%20implementation%20statement%2020141017%20docx.docx>.

- a. The estimated time required to consider and process a submarine cable protection zone permit application has increased due to legislative amendment (to Schedule 3A to the Telecommunications Act) in 2014. The process now covers a permit application to install a submarine cable both inside and outside a protection zone. Under this combined process additional consultation with stakeholders is undertaken which also increases the time taken to consider stakeholder feedback and to prepare decision-making documentation for the delegate. As a result, the time required to perform this activity has increased by 48 percent.
- b. The estimate of the time required to consider and process a submarine cable non-protection zone permit application has decreased as a result of legislative amendments to Schedule 3A to the Telecommunications Act. This amendment has removed the requirement to consult the Environment Secretary in relation to such applications. As a consequence, the consultation process is more streamlined and requires less staff time to administer. This has reduced the required time by 29 percent.
- c. The estimated time required to consider and process an application to extend a submarine cable protection installation (and non-protection zone installation) permit has increased by 133 percent based on staff experience in processing such applications since the ACMA last internally reviewed the charge for that service in early 2014.