**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

***Radiocommunications (Digital Radio Multiplex Transmitter Licence – Application Fee) Determination 2022***

**Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Digital Radio Multiplex Transmitter Licence – Application Fee) Determination 2022* (**the instrument**) under paragraphs 102C(2)(b) and 102D(2)(b) of the *Radiocommunications Act 1992* (**the Act**).

Paragraph 102C(2)(b) of the Act provides that the ACMA must not issue a foundation category 1 digital radio multiplex transmitter licence (**category 1 DRMT licence**) for a particular designated BSA radio area otherwise than in accordance with a price‑based allocation system determined under section 106 of the Act, unless the application for the licence is accompanied by the fee determined by the ACMA by legislative instrument.

Paragraph 102D(2)(b) of the Act provides that the ACMA must not issue a foundation category 2 digital radio multiplex transmitter licence (**category 2 DRMT licence**)for a particular designated BSA radio area otherwise than in accordance with a price‑based allocation system determined under section 106 of the Act, unless the application for the licence is accompanied by the fee determined by the ACMA by legislative instrument.

The instrument determines the application fees for a category 1 DRMT licence and a category 2 DRMT licence for the purposes of paragraphs 102C(2)(b) and 102D(2)(b) of the Act.

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 repeals the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012* (F2012L01228)(**2012 Determination**).

**Purpose and operation of the instrument**

This instrument, made under paragraphs 102C(2)(b) and 102D(2)(b) of the Act, specifies the fee payable to the ACMA for an application for a category 1 DRMT licence and a category 2 DRMT licence. The instrument repeals and replaces the 2012 Determination.

The application fees have increased by 139% from the fee prescribed in the 2012 Determination. The increase is reflective of the staffing effort required to perform the underlying business processes, applied to the ACMA’s standard hourly rate ($226).

For the calculation of charges, the ACMA applied its standard hourly rate and monthly survey information obtained in the 2020-21 financial year to the average time taken by a proficient officer to perform the activity of assessing an application for a category 1 DRMT licence or a category 2 DRMT licence. The average time was multiplied by the hourly rate to arrive at a fee of $1130.

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

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

**Documents incorporated by reference**

The instrument incorporates, or otherwise refers to, the Act.

Commonwealth legislation can be accessed, free of charge, on the Federal Register of Legislation ([http://www.legislation.gov.au](http://www.legislation.gov.au/)).

**Consultation**

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.

The ACMA consulted with the public, including industry stakeholders, on the making of the instrument. Between 27 June 2022 and 25 July 2022, the ACMA conducted a consultation process inviting submissions on a number of proposed changes to various fees for services determined under cost recovery arrangements, including the proposed fees for a category 1 DRMT licence and a category 2 DRMT licence. The consultation was facilitated through the release of a consultation package which included draft instruments and a draft Cost Recovery Implementation Statement (**CRIS**) on the ACMA’s website.

The consultation package outlined the proposed changes to the fees and included a draft instrument for comment.

The ACMA received five submissions in response to the consultation paper. None of the submissions commented on the instrument or the proposed new fees for applications for a category 1 DRMT licence or a category 2 DRMT licence. No material changes were made to the instrument as a result of the consultation.

**Regulatory impact assessment**

A preliminary assessment of the proposal 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 considered that the proposal was unlikely to have more than a minor regulatory impact on business and advised that the preparation of a RIS was not required (see OBPR reference number 22-01877).

**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***

Theinstrumentis made under paragraphs 102C(2)(b) and 102D(2)(b) of the Act*.* The instrument sets the fees for applications for a category 1 DRMT licence and a category 2 DRMT licence, for the purposes of paragraphs 102C(2)(b) and 102D(2)(b) of the Act.

***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.

**Attachment A**

**Notes to the *Radiocommunications (Digital Radio Multiplex Transmitter Licence – Application Fee) Determination 2022***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Multiplex Transmitter Licence – Application Fee) Determination 2022* (**the instrument**).

**Section 2 Commencement**

This section provides that the instrument commences on 1 October 2022. The instrument will be registered on the Federal Register of Legislation, which may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3 Authority**

This section identifies the provisions that authorise the making of the instrument, namely paragraphs 102C(2)(b) and 102D(2)(b) of the *Radiocommunications Act 1992* (**the Act**).

**Section 4 Repeal of the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012***

This section provides that the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012* (Registration No. F2012L01228) is repealed.

**Section 5 Definitions**

This section defines the ‘Act’ as the *Radiocommunications Act 1992.*

The terms ‘foundation category 1 digital radio multiplex transmitter licence’ and ‘foundation category 2 digital radio multiplex transmitter licence’ are defined in theAct.

**Section 6 Amount of application fee – foundation category 1 digital radio multiplex transmitter licence**

This section specifies that the fee imposed on an application for a foundation category 1 digital radio multiplex transmitter licence is $1130. The new fee represents a 139% increase from the fee prescribed in the 2012 Determination of $472. The reason for the increase is reflective of the staffing effort required to perform the underlying business processes to assess applications for a foundation category 1 digital radio multiplex transmitter licence based on the small number of licences issued to date. The fee was determined by multiplying the average time taken by an ACMA staff member (based on a survey conducted in 2020) to assess an application by the ACMA’s new standard hourly rate of $226. The fee reflects the true costs of performing the function based on the small number of licences issued to date.

**Section 7 Amount of application fee – foundation category 2 digital radio multiplex transmitter licence**

This section specifies that the fee imposed on an application for a foundation category 2 digital radio multiplex transmitter licence is $1130. The application fee has increased by 139% from the fee specified in the 2012 Determination, for similar reasons as the increase in application fee for a foundation category 1 digital radio multiplex transmitter licence. That is, the increase is reflective of the staffing effort required to perform the underlying business processes to assess applications for a foundation category 2 digital radio multiplex transmitter licence based on the small number of licences issued to date. The fee was determined by multiplying the average time taken by an ACMA staff member (based on a survey conducted in 2020) to assess an application by the ACMA’s new standard hourly rate of $226. The fee reflects the true costs of performing the function based on the small number of licences issued to date.