

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications (Charges) Amendment Determination 2024 (No.1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Charges) Amendment Determination 2024 (No.1)* (the **instrument**) under subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 60(1) of the Act 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 various Acts (or instruments made under those Acts), including the *Radiocommunications Act 1992* (the **Radiocommunications Act**). The charges must not be such as to amount to taxation.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make an 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.

Purpose and operation of the instrument

The instrument amends the *Radiocommunications (Charges) Determination 2022* (the **2022 Determination**). The 2022 Determination specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences issued under the Radiocommunications Act, as well as charges payable for other services provided by the ACMA, or for expenses incurred by the ACMA, under the Radiocommunications Act and instruments made under the Radiocommunications Act.

The instrument amends or removes some of the existing charges specified in the 2022 Determination and introduces some new charges. In particular, the changes include:

- Changes to charge amounts for some activities, following a comprehensive review by the ACMA of all existing charges for radiocommunications, telecommunications and broadcasting activities. The review was undertaken to ensure the cost recovery fees and the methodology used to calculate them continue to remain relevant. Following the review, some of the existing radiocommunications charges were amended (to either increase or decrease) due to a revision of the underlying business processes and corresponding ACMA staffing effort required to provide those services.
- The removal of some charges due to changes in the services provided by the ACMA, including changes that have resulted in some apparatus licence types being replaced by class licences, and no longer being issued by the ACMA.
- The insertion of new charges relating to the ACMA's innovation and industry development exemption framework (the **IIDF**). The charges relate to the ACMA considering whether to give written permission to a person under section 193 of the Radiocommunications Act. That permission allows a person to operate a radiocommunications transmitter in a way that they know is likely to interfere substantially with certain radiocommunications. Operating a radiocommunications transmitter in such a way without that permission is an offence under the Radiocommunications Act.

- The insertion of new charges for applications for the re-assignment of certain call signs that have only been assigned for a limited period, as well as the cancellation of a call sign and its assignment to another person (i.e., to ‘transfer’ the call sign). These are to support the call sign arrangements prescribed in the *Radiocommunications (Amateur Stations) Class Licence 2023* (the **Amateur Class Licence**).

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**), and is disallowable. The 2022 Determination is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

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

Documents incorporated by reference

The instrument amends the 2022 Determination to incorporate the following Act and legislative instruments (including by the adoption of definitions), or otherwise refers to them:

- the Amateur Class Licence;
- the Radiocommunications Act;
- the *Radiocommunications (Allocation of Transmitter Licences – High Powered Open Narrowcasting Licences) Determination 2014*;
- the *Radiocommunications (Exemption) Determination 2024*;
- the *Radiocommunications Licence Conditions (PTS Licence) Determination 2024*.

The Act and legislative instruments listed above may be obtained, free of charge, from the Federal Register of Legislation (www.legislation.gov.au). The Act and legislative instruments listed above are incorporated as in force from time to time, in accordance with section 10 of the AIA and subsection 13(1) of the LA.

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.

Between 3 May 2024 and 31 May 2024, the ACMA conducted a consultation process, inviting submissions on proposed changes to the ACMA’s charges under cost recovery arrangements. The consultation was facilitated through the release of a consultation package, which included a draft Cost Recovery Implementation Statement (**CRIS**) on the ACMA’s website.

A consultation paper outlined the proposed changes to the 2022 Determination. The draft CRIS outlined all of the proposed charges and contained an explanation for the amendments to be made to the 2022 Determination. Interested parties were invited to comment on the proposed changes to the 2022 Determination.

The ACMA received 2 submissions in response to the consultation paper from Commercial Radio and Audio and Free TV Australia. Both submissions raised concerns about the financial impost an increase to the existing charge for processing an application under section 46 of the *Broadcasting Services Act 1992* from \$202 to \$778 would have on industry. In light of the concerns raised, the ACMA has maintained the charge at the current amount, and will undertake further work to streamline processes prior to proposing any increase through a future CRIS. The submissions received are available on the ACMA’s website.

Regulatory impact assessment

A preliminary assessment of the proposal to make the amendments contained in the instrument was conducted by the Office of Impact Analysis (**OIA**), based on information provided by the ACMA for the purposes of determining whether an Impact Analysis (**IA**) would be required. OIA advised that the preparation of an IA was not required (see OIA reference number OIA24-07415).

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 the 2022 Determination, which specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences as well as charges payable for other services provided by the ACMA, or for expenses incurred by the ACMA, under the Radiocommunications Act, and instruments made under the Radiocommunications Act.

The instrument removes or amends some of the charges specified in the 2022 Determination, and introduces some new charges. The changes include:

- an update to some charges following a review of all charges imposed by the ACMA;
- the removal of charges for services that the ACMA no longer provides, or for apparatus licence types that have been replaced by class licences and are no longer issued by the ACMA;
- the inclusion of new charges relating to the IIDF; and
- the inclusion of new charges for the re-assignment of certain call signs that have only been assigned for a limited period, as well as the cancellation of a call sign and its assignment to another person (i.e., its ‘transfer’).

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 *Radiocommunications (Charges) Amendment Determination 2024 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Charges) Amendment Determination 2024 (No.1)*.

Section 2 Commencement

This section provides for the instrument to commence on 1 September 2024.

Section 3 Authority

This section identifies the provision that authorises the making of the instrument, namely subsection 60(1) of the Act.

Section 4 Amendments

This section provides that the 2022 Determination is amended as set out in Schedule 1.

Schedule 1 – Amendments

Items 1 to 9

Items 1 to 9 amend section 5 of the 2022 Determination. Section 5 of the 2022 Determinations sets out the definitions of key terms for the 2022 Determination. The items insert definitions for the following new terms:

- body scanner (item 1);
- fixed licence (television outside broadcast network) (item 3);
- PTS Licence Determination (item 5);
- radiodetermination (body scan licence) licence (item 7).

Items 4 and 8 repeal terms that are no longer used, and items 2 and 6 repeal and substitute terms that rely on other legislative instruments that are no longer in force. The substituted definitions ensure that the definitions refer to the legislative instruments in force.

Item 9 adds a term to note 2 to section 5, about the terms that may be defined in an instrument made under section 64 of the Act that apply to the 2022 Determination.

Items 10 and 11

Items 10 and 11 amend subsection 9(2) of the 2022 Determination to reduce the special hourly rate A from \$255 to \$241. During the 2022-23 financial year the ACMA found that it incurred lower vehicle and technical equipment costs, which is why it has reduced the special hourly rate A.

Item 12

Item 12 repeals subsection 9(3) of the 2022 Determination. The ACMA no longer imposes charges based on special hourly rate B, so the provision is no longer required.

Items 13 to 19

Items 13 to 19 amend section 10 of the 2022 Determination. Section 10 of the 2022 Determination sets out by whom and when charges are payable for a service or matter specified in Schedule 1 to the 2022 Determination. Many of the charges referred to in section 10 have been reordered and renumbered. The changes proposed at items 13 to 19 make consequential changes to pick up the new table item references.

Items 20 and 21

Items 20 and 21 amend paragraph 13(1)(a) of the 2022 Determination to make consequential cross-referencing changes, as Tables 3, 4 and 6 of Part 2 of Schedule 1 have been repealed (see item 29). Section 13 sets an amount of charge for particular apparatus licences, where the licensee has elected to pay apparatus licence tax annually.

Items 22 and 23

Items 22 and 23 amend paragraph 14(1)(a) of the 2022 Determination to make consequential cross-referencing changes as Tables 5 and 6 of Part 2 of Schedule 1 have been repealed (see item 29). Section 14 sets an amount of charge for particular apparatus licences, where the licensee has elected to pay apparatus licence tax annually.

Item 24

Item 24 replaces paragraph (a) of the note in section 16 of the 2022 Determination, so as to remove the reference to paragraph 9(3)(b). Paragraph 9(3)(b) has been repealed by item 12.

Item 25

Item 25 repeals Part 3 of the 2022 Determination. Part 3 contained transitional provisions which are no longer required.

Item 26

Item 26 repeals Part 1 of Schedule 1. Part 1 of Schedule 1 of the 2022 Determination previously set out the charge for testing of certain of radiocommunications devices. The ACMA no longer performs this function, so a charge is not required.

Item 27

Item 27 repeals Table 1 of Part 2 of Schedule 1 to the 2022 Determination and replaces it with a new table. The new table fixes charges relating to applications for the issue of the listed assigned, non-assigned, area-wide and area-wide receive licences. The licences have been sorted by charge amount. The table sets out charges for:

- Considering an application for the issue of assigned apparatus licences under section 99 of the Radiocommunications Act, where the application may be accompanied by a frequency assignment certificate (FAC) issued by an accredited person (table items 2.1.1 to 2.1.3). The charge applies whether the licence is issued or not. An assigned apparatus licence is an apparatus licence that specifies the frequency on which, or frequency range within which, a radiocommunications device may operate, but does not include a category 1 digital radio

multiplex transmitter licence, category 2 digital radio multiplex transmitter licence or a category 3 digital radio multiplex transmitter licence.

- Considering an application for the issue of assigned apparatus licences under section 99 of the Radiocommunications Act, where the application is not accompanied by a FAC (table items 2.1.4 to 2.1.16). Depending on the type of apparatus licence, charges are payable either on a per licence or per 'spectrum access' basis, as specified in the table. The charge applies whether the licence is issued or not. In most cases, the charges for these items are lower or the same as the charge previously set out in the 2022 Determination. The charge has slightly increased for the following licence types: fixed receive licence, radiodetermination licence and scientific licence (scientific assigned station). The change in charge is a result of a bottom-up assessment of the actual time and effort to provide the service applied to the ACMA's standard hourly rate.
- Considering an application for the issue of non-assigned apparatus licences and issuing the licence (if applicable) (table item 2.1.17). A non-assigned apparatus licence means an apparatus licence which does not specify the frequency on which, or frequency range within which, a radiocommunications device authorised by the licence may operate. The frequencies on which a radiocommunications device authorised by a non-assigned apparatus licence may operate are specified in a licence condition determination, made under section 110A of the Radiocommunications Act, that applies to the licence. The charge for these applications (\$36) remains unchanged.
- Considering an application for the issue of FSS area-wide licences, standard area-wide licences or area-wide receive licences (table items 2.1.18 to 2.1.22). The charges for standard area-wide and area-wide receive licences vary depending on whether, in considering the application, the ACMA is required to assess the application against an application for an area-wide licence or an area-wide receive licence by another person. If the ACMA is required to assess the application against other applications, the applicant is required to pay a charge of \$847 at the time the application is made, and further charges, calculated using the formulas in table items 2.1.21 or 2.1.22 payable on invoice. The charges remain unchanged from the current 2022 Determination amounts.

Item 28

Item 28 repeals Table 2 of Part 2 of Schedule 1 to the 2022 Determination and replaces it with a new Table 2. The new Table 2 fixes other charges for apparatus licences. These include charges for the variation, renewal and transfer of apparatus licences as well as charges for frequency assignments or participation in an allocation of various apparatus licence types.

Table item 2.2.1 fixes the charge for considering an application for the renewal of an assigned apparatus or a non assigned apparatus licence that does not include a renewal statement or a renewal application period statement (as defined in section 5 of the 2022 Determination) and renewing it (if applicable).

The charge remains unchanged from the current 2022 Determination amount. For some licences listed in table item 2.2.1 the charge specified in column 3 is payable per licence and for others, the charge is payable on a per spectrum access (that is, for each frequency assigned, or requested for assignment) or a per frequency assigned basis.

Table items 2.2.2, 2.2.3 and 2.2.5 fix the charges for considering an application to vary, under section 111 of the Radiocommunications Act, the conditions of an assigned licence or a non-assigned licence (and varying it if applicable). The charge remains unchanged from the current 2022 Determination amount.

Table item 2.2.4 fixes the charge for consideration of an application for the transfer of one or more apparatus licences under section 131AA of the Radiocommunications Act, and transferring the licence if applicable. The charge remains unchanged from the current 2022 Determination amount.

Table item 2.2.6 of fixes the charge for considering an application to participate in a price-based allocation of a high power open narrowcasting licence, in accordance with the *Radiocommunications (Allocation of Transmitter Licences – High Powered Open Narrowcasting Licences) Determination 2014*. The charge remains unchanged from the current 2022 Determination amount.

Table items 2.2.7 to 2.2.10 fix the charges for considering applications to vary certain apparatus licences. The charges remain unchanged from the current 2022 Determination amounts.

Table item 2.2.11 provides that the charge for considering an application for the renewal of an assigned apparatus or a non-assigned apparatus licence that includes a renewal statement or a renewal application period statement (as defined in section 5 of the 2022 Determination) and renewing it (if applicable), is the hourly rate. The charge remains unchanged from the current 2022 Determination amount.

Item 29

Item 29 repeals Tables 3 to 8 of Part 2 of Schedule 1 to the 2022 Determination. Most of the table items that were listed in these tables have been moved into either new Table 1 or Table 2 of Part 2 of Schedule 1 (see items 27 and 28), so the remaining tables are no longer needed.

Some of the licence types referred to in Table 5 of Part 2 are now class licensed and the ACMA therefore no longer issues apparatus licences of those licence types. Those licence types were set out at table item 2.5.1 (a), (d) and (e) of the 2022 Determination, before it was amended by the instrument.

Item 30

Item 30 makes one minor change to insert the word ‘the’ before ‘*Radiocommunications Act 1992*’ in column 2 of table item 3.1.1 in Table 1 in Part 3 of Schedule 1 to the 2022 Determination.

Item 31

Item 31 amends the heading of Table 3 in Part 3 of Schedule 1 to the 2022 Determination to add the words ‘or under section 193 of the Radiocommunications Act’. The change has been made as additional table items have been added to the table which relate to applications for permissions under section 193 of the Radiocommunications Act.

Item 32

Item 32 adds two new table items to the end of Table 3 in Part 3 of Schedule 1 to the 2022 Determination. The charges relate to the ACMA’s consideration and giving of a written permission to a person under section 193 of the Radiocommunications Act. That permission allows a person to operate a radiocommunications transmitter in a way that they know is likely to interfere substantially with certain radiocommunications. Operating a radiocommunications transmitter in such a way without that permission is an offence under the Radiocommunications Act. The charge is the hourly rate.

Item 33

Item 33 repeals Table 4 of Part 3 of Schedule 1 to the 2022 Determination and replaces it with a new Table 4. The new Table 4 fixes the charges relating to amateur and marine radio examinations and certificates. The new Table 4 merges table items from Tables 4 and 5 of Part 3 of Schedule 1 to the 2022 Determination, and one item from Part 4 of Schedule 1. The charges remain unchanged from the current 2022 Determination amounts.

Item 34

Item 34 repeals Table 5 of Part 3 of Schedule 1 to the 2022 Determination. The table item listed in Table 5 has been moved to Table 4 of Part 3 (see item 33).

Item 35

Item 35 repeals Part 4 of Schedule 1. The table item listed in Table 1 of Part 4 has been moved to Table 4 of Part 3 (see item 33).

Item 36

Item 36 repeals table item 5.1.2 of Table 1 of Part 5 of Schedule 1 to the 2022 Determination, and replaces it. The item slightly amends the description of table item. The charge has also been amended from \$38 to the hourly rate. The change has been made as the staffing effort to process the information is not consistent. Amending the charge to an hourly rate will ensure charges for this item appropriately reflect the actual staff effort to undertake the activity.

Item 37

Table 5 of Part 7 of Schedule 1 to the 2022 Determination fixes charges relating to considering an application made under the Amateur Class Licence relating to call signs.

Item 37 amends the table to insert five new charges relating to applications for the re-assignment of certain call signs that have only been assigned for a limited period, as well as for an application for the cancellation of a call sign, and its subsequent assignment to another person (i.e., the ‘transfer’ of the call sign). These additional charges are to support the call sign arrangements prescribed in the Amateur Class Licence.