COST RECOVERY IMPACT STATEMENT

Charges for Requests to Declare, Vary or Revoke a Submarine Cable Protection Zone
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1 Overview

1.1 Purpose

The Australian Communications and Media Authority (ACMA) is Australia’s regulator for broadcasting, the internet, radiocommunications and telecommunications.

The purpose of this Cost Recovery Impact Statement is to set out and assess the impact of ACMA introducing charges based on cost recovery principles for requests to declare, vary or revoke Protection Zones (PZs) over submarine cables of national significance.

1.2 Background

The *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005* (Schedule 3A) provides that a PZ may be declared (clause 5), varied or revoked (clause 24) on ACMA’s own initiation or at the request of a person.

A PZ is a gazetted zone over a submarine cable deemed by ACMA to be of national significance, where certain activities are prohibited or restricted. It is an offence to undertake a prohibited or restricted activity, or cause damage to a submarine cable in a protection zone, and criminal penalties apply.

If ACMA agrees to initiate the work, then costs are recovered from the Telecommunications Industry under the Annual Carrier Licensing Charge arrangements. Otherwise, ACMA would seek to recover costs directly from the person requesting the work be done.

As part of the process of formally declaring, varying or revoking a PZ, ACMA is required to develop a proposal, undertake comprehensive public consultation, establish an advisory committee of key stakeholders and consider inputs from public submissions and the Environment Secretary.

Where ACMA deems it appropriate to charge a person rather than seek to have costs recovered from the industry as a whole, it is proposed that there will be a deposit for ACMA to complete work on declaring, varying or revoking a PZ under clause 5 or 24 of Schedule 3A. This will be based on the anticipated work to be done in fulfilling the statutory requirements of Schedule 3A. There will also be a requirement for the person to pay for actual direct external costs that may be incurred such as publishing the proposal (statutory requirement), room hire, advisory committee catering, map development or other matters reasonably related to consultation or any expert consultancy required.

Charges

The *Telecommunications (Submarine Cable Permit – Application Charge) Determination 2007* (the Charges Determination) made by ACMA on 9 February 2007 sets out the charges related to processing requests for protection zone and non protection zones installation permits.

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1 Environment Secretary means the Secretary of the Department administered by the Minister who is responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*. **Environment Protection and Biodiversity Conservation Act 1999**.
The Charges Determination will be amended to incorporate the charges for ACMA to declare, vary or revoke a submarine cable protection zone in accordance with Section 60 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act). The new charges are to commence the day after the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* is registered.

1.3 **Australian government cost recovery policy**

In December 2002 the Australian Government adopted a formal cost recovery policy to improve the consistency, transparency and accountability of its cost recovery arrangements and promote the efficient allocation of resources. Cost recovery policy is administered by the Department of Finance and Administration and outlined in the *Australian Government Cost Recovery Guidelines*. The underlying principle of the policy is that agencies should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives.

2 **Policy Review**

2.1 **Is charging consistent with policy objective?**

The ACMA is required to comply with the Australian Government Cost Recovery Guidelines. The *ACMA Act* also makes it clear that ACMA must recover costs related to its functions under the *Telecommunications Act 1997* (the Telecommunications Act).

The introduction of new charges was the subject of wide public consultation by the Department of Communications, Information Technology and the Arts and explained in the Explanatory Memorandum to Schedule 3A approved by Parliament in 2005. The ACMA will determine whether it is appropriate to recover costs for declaring, varying or revoking a PZ either from the telecommunications industry generally or from a person requesting the work be done.

Charges for permits to install submarine cables have previously been introduced in the *Telecommunications (Submarine Cable Permit - Application Charge) Determination 2007*. These charges were the subject of a Cost Recovery Impact Statement agreed by the Department of Finance and Administration.

2.2 **Is charging efficient and cost effective?**

The development of fees enables the appropriate cost recovery mechanism to be applied to any request received to declare, vary or revoke a PZ under clause 5 or 24 of Schedule 3A. This is consistent with recovering the cost for ACMA providing a service from the person requesting the service.

ACMA initiating action for matters with broad benefits or public interest considerations would be consistent with an identified objective of the legislation, which was to recover the costs of the protection regime from the telecommunications industry.
Few applications to declare, vary or revoke a PZ are anticipated. This is because the installation of major new submarine cable infrastructure outside declared protection zones is likely to be rare. In declaring a PZ, ACMA is required to develop a proposal, publish it, seek advice from an advisory committee of key stakeholders and have consideration of public submissions and advice from the Environment Secretary. ACMA believes that this process reduces the likelihood of requests to vary PZs.

2.3 Who should pay cost recovery charges?

ACMA may determine there are public interest factors or there appear to be multiple beneficiaries for work to declare, vary or revoke a PZ. This suggests it would be appropriate for costs to be recovered from the telecommunications industry more broadly (under the Annual Carrier Licence Charge arrangement) rather than from the person making the initial request. In this case, ACMA would initiate the work and not seek a payment from any person.

Otherwise, the costs will be paid by the person who requests either that a new PZ be declared, or that an existing PZ be varied or revoked. It is appropriate that they pay the charge as they are the party requesting the service and obtaining a benefit.

3 Design and Implementation

3.1 Basis of charging – fee or levy

The Explanatory Memorandum to Schedule 3A noted that:

- charges will reflect the costs of providing protection zone services and are directly related to the provision of protection zone services; and
- recovery of costs for these activities would be consistent with the Government’s cost recovery policy.

Cost recovery charges can be introduced using:

- a fee that charges a person directly for the costs of providing the activity; or
- a levy on a group of individuals or organisations (legally a form of taxation). Levies need to be established using a Tax Act.

For the majority of ACMA’s activities, the charges proposed are a fee for service to the direct beneficiary of activity, with the calculation of the charge based on the amount of time taken to perform the activity.

By developing fees for work to declare, vary or revoke a protection zone, ACMA can decide on a case by case basis whether to charge that fee directly or charge the telecommunications industry more broadly through the existing Annual Carrier Licensing Charge (ACLC). For this reason, fees are proposed to recover the costs of declaring, varying or revoking a protection zone.

Section 15 of the *Telecommunications (Carrier Licence Charges) Act 1997* requires the ACLC on carrier licences be calculated on the cost that is attributable to ACMA’s telecommunications functions and powers. The amount of charge imposed on each carrier licence is made up of a fixed component and a variable component. The fixed component, which is a cost recovery based administration charge for the calculation, review and approval of the charge, is allocated equally to the individual carrier licence.
holder. However, the variable component is allocated in the same proportion of their reported eligible revenue. When ACMA charges directly a person or an organisation the fee for work to declare, vary or revoke a protection zone, the cost for these activities will be excluded from the determination of the cost of telecommunications functions and powers.

### 3.2 Legal requirements

Section 60 of the ACMA Act allows ACMA to make determinations fixing charges for any matter in relation to which expenses are incurred under the Telecommunications Act. These charges can be for “any matter in relation to which expenses are incurred by the ACMA” but “must not be such as to amount to taxation.”

### 3.3 Costs to be included in the charges

ACMA uses an Activity Based Costing model to determine the cost of activities undertaken by ACMA as a basis for determining fees and charges. The Activity Based Cost modelling process has been reviewed by KPMG (ACMA’s former internal auditor) through an annual quality review, along with Ernst & Young as part of their assessment of ACMA’s cost recovery arrangements. Both reviews confirmed the appropriateness of the costing methodology in the attribution and allocation of costs to activities as the basis for determining cost recovery fees and charges.

The telecommunications charges used by ACMA are based on ACMA’s 2005-06 net cost of services which resulted in an hourly rate of $164.00 excluding GST. The net cost of services is the total expense, which includes all relevant staff costs, overheads and cost of capital, but excludes non-appropriated revenue. To determine the hourly rate the net cost of services was divided by the total number of direct staff hours for the same period. This hourly rate is multiplied by the anticipated average time required to declare, vary or revoke a submarine cable PZ as outlined in Table 1 and Table 2 below;

**Table 1 – Calculation of Deposit – varying or revoking a PZ**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time Required (Hours)</th>
<th>Charge ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Assessment – decision to refuse a</td>
<td>52.5</td>
<td>8,610</td>
</tr>
<tr>
<td>Preliminary Assessment – decision to proceed</td>
<td>28</td>
<td>4,592</td>
</tr>
<tr>
<td>Develop, distribute, submit and advertise proposal</td>
<td>235.5</td>
<td>38,622</td>
</tr>
<tr>
<td>Convene advisory committee, conduct meetings, submit report</td>
<td>207.5</td>
<td>34,030</td>
</tr>
<tr>
<td>Conduct stakeholders consultation and submit report</td>
<td>89</td>
<td>14,596</td>
</tr>
<tr>
<td>Develop final submission to Authority, notify decision and comply with statutory requirements</td>
<td>147</td>
<td>24,108</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>707</strong></td>
<td><strong>115,948</strong></td>
</tr>
</tbody>
</table>

**Other Costs – varying or revoking a PZ**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cost Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising</td>
<td>Actual</td>
</tr>
<tr>
<td>Venue hire, catering, other costs for consultation, if required</td>
<td>Actual</td>
</tr>
<tr>
<td>Activity</td>
<td>Time Required (Hours)</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>External consultants, if required</td>
<td></td>
</tr>
</tbody>
</table>

**Table 2 – Calculation of Deposit – declaring a PZ**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time Required (Hours)</th>
<th>Charge ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Assessment – decision to refuse a</td>
<td>52.5</td>
<td>8,610</td>
</tr>
<tr>
<td>Preliminary Assessment – decision to proceed</td>
<td>28</td>
<td>4,592</td>
</tr>
<tr>
<td>Develop, distribute, submit and advertise proposal</td>
<td>337.5</td>
<td>55,350</td>
</tr>
<tr>
<td>Convene advisory committee, conduct meetings, submit report</td>
<td>249.5</td>
<td>40,918</td>
</tr>
<tr>
<td>Conduct stakeholders consultation and submit report</td>
<td>141.5</td>
<td>23,206</td>
</tr>
<tr>
<td>Develop final submission to Authority, notify decision and comply with statutory requirements</td>
<td>234</td>
<td>38,376</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>989.5</strong></td>
<td><strong>162,278</strong></td>
</tr>
</tbody>
</table>

**Other Costs – Declaring a PZ**

<table>
<thead>
<tr>
<th>Activity</th>
<th></th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising</td>
<td></td>
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<td>Venue hire, catering, other costs for consultation, if required</td>
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<td>Actual</td>
</tr>
<tr>
<td>External consultants, if required</td>
<td></td>
<td>Actual</td>
</tr>
</tbody>
</table>

a If ACMA refuses to proceed with the application at the preliminary assessment stage, the applicant would be refunded the deposit less the ‘preliminary assessment-decision to refuse’ cost.

The proposed deposit for varying or revoking a PZ is $116,000, GST exempt (rounded to nearest thousand). The proposed initial deposit for declaring a PZ is $162,000, GST exempt (rounded to nearest thousand). However, ACMA will monitor staff work on any matter and either refund any unspent amount (for simple matters) or, for more complex matters, invoice the applicant for additional payments if required. The deposit will be payable at the time the request is forwarded to ACMA.

In developing the above charges, ACMA has had regard to the work it undertook to develop protection zones off New South Wales and Western Australia. By providing a template for the declaration of new protection zones, the work and total costs involved have been minimised. In the same way, the extensive consultation undertaken as part of declaring existing protection zones should also minimise the likelihood of variations being required.

Should ACMA decide at the preliminary assessment point to refuse to declare, vary or revoke a PZ, then the proposed charge is $8,610, with the balance of the deposit being refunded.

Other costs associated with the request will reflect the actual costs incurred in meeting statutory obligations under Schedule 3A for publishing or public consultation on a proposal to develop, vary or revoke a PZ. As the cost of publishing the proposal, venue hire or other similar matters cannot be pre-determined, it is appropriate to pass on the actual costs for any such activities required under Schedule 3A to the applicant when they arise.
3.4 Refunds

As described above and in accordance with the proposed *Telecommunications (Submarine Cable Permit – Application Charge) Determination 2008*, ACMA’s costs for processing an application to declare, vary or revoke a PZ will be deducted from the deposit and any remaining amount will be refunded.

4 Ongoing Monitoring

4.1 Mechanism for on-going monitoring

The mechanism for on-going monitoring of the efficiency and effectiveness of the cost recovery charge will be consistent with other telecommunications charges imposed by ACMA.

ACMA annually reviews its organisational net cost of services based on a combination of time recording, average staffing levels and floor space cost drivers using the ABC model which includes a corporate overhead component. Appropriate internal consultation occurs as part of this process with consideration given to market sensitivities to ensure the recovery of ACMA’s costs is efficient and consistent with Australian Government Cost Recovery Guidelines.

The ABC model is reviewed annually by a suitably qualified external consultant to ensure the model results in activity costs that are fair and equitable.

4.2 Stakeholder consultation

The *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005 (Schedule 3A)* was developed over 6 years as a result of recommendations from the National Broadband Inquiry before it was approved by Parliament in August 2005. The Commonwealth consulted with key stakeholders in developing Schedule 3A. Consultations included circulation of discussion papers for comment with State and Territory Governments, Commonwealth Agencies with marine and maritime responsibilities, telecommunications carriers and cable owners, peak bodies representing fishing and other resource industries.

As part of the process of declaring PZs off New South Wales and Western Australia, ACMA also consulted with cable owners, oil and gas industry bodies and the Commonwealth Department of Industry about the principle of cost recovery for declaring, varying or revoking protection zones.

4.3 Periodic review

ACMA intends to conduct a full review of its costs and prices of its activities periodically, and consult stakeholders on the outcomes of these review processes.

If in the next five years there is a significant change in ACMA’s responsibilities and activities, then a review of cost recovery arrangements will be conducted for the relevant activities and a cost recovery impact statement produced in accordance with the policy.
5 Certification

This cost recovery impact statement was certified by the Chair of ACMA on 24 January 2008. The Common Seal of the Australian Communications and Media Authority was affixed to this document in the presence of:

_________________________________               _______________________________
Signature of Chairman  Signature of Member

Name: ___________________________               Name: _________________________

6 Cost Recovery Links

The Australian Government Cost Recovery Guidelines and the accompanying Finance circular can be found at:

Information regarding regulation and requirements for regulation impact statements can be found at the Office of Regulation Review website: http://www.pc.gov.au/orr/index.html