EXPLANATORY STATEMENT

Issued by the Authority of the Australian Communications and Media Authority

Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008

Australian Communications and Media Authority Act 2005

LEGISLATIVE PROVISIONS

Subsection 60(1) of the Australian Communications and Media Authority Act 2005 (the Act) provides that the Australian Communications and Media Authority (ACMA) may, by written instrument, make determinations fixing charges.

A Determination made under subsection 60(1) of the Act is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Purpose

The Telecommunications (Protection Zone and Submarine Cable Permit Application Charges) Determination 2008 revokes the Telecommunications (Submarine Cable Permit – Application Charge) Determination 2007, makes charges for considering and processing a request from a person to declare, vary or revoke a protection zone in relation to a submarine cable installed in Australian waters, and makes charges in relation to certain permits to install a submarine cable.

BACKGROUND

It is government policy to recover the cost of providing services. Subsection 60(1) of the Act provides the power to levy the charge.

The Telecommunications (Submarine Cable Permit – Application Charge) Determination 2007 made charges in relation to certain permits to install a submarine cable. That determination is revoked and the Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008 now incorporates charges in relation to these permits as well as making charges for considering and processing a request from a person to declare, vary or revoke a protection zone.


Clauses 5 and 24 of Schedule 3A of the Telco Act provide that ACMA may declare, vary or revoke a protection zone in relation to a submarine cable at the request of a person. If ACMA decides to develop a proposal for a protection zone in response to a request it must have regard to a number of specified considerations, including a
number of economic, technical, environmental and heritage considerations (clauses 19 and 20 and 21 of Schedule 3A). If a person requests ACMA to vary or revoke a protection zone, ACMA must, as soon as practicable, give details of the request to each carrier who is responsible for a submarine cable or cables in the protection zone. If ACMA then decides to develop a variation or revocation proposal for a protection zone it must have regard to a number of specified considerations, including a number of environmental and commercial considerations (clauses 33 and 34 of Schedule 3A).

There may be occasions when ACMA, in order to consider matters not properly within its expertise, needs to engage external consultants to provide advice. Accordingly, the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* makes provision for expenditure on such consultants to be borne by the applicant.

Clause 53 and 66 of Schedule 3A of the Telco Act provide that an application for a protection zone installation permit, or a non-protection zone installation permit, must be accompanied by the charge (if any) imposed on the application by a determination under subsection 60 of the ACMA Act.

A protection installation zone permit allows a carrier to install one or more submarine cables in a protection zone declared by ACMA under clause 4 of Schedule 3A. A non-protection zone installation permit allows a carrier to install one or more submarine cables in Australian waters that are not in a protection zone and that are not coastal waters of a State or the Northern Territory.

**Consultation**

The legislation relating to submarine cabling, passed by Parliament in August 2005, was developed over a six year period and follows from recommendations of the National Broadband Inquiry. The Commonwealth consulted with key stakeholders in developing Schedule 3A of the Telco Act. This included the circulation of discussion papers for comment to 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 Protection Zones off New South Wales and Western Australia, ACMA 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 now reflected in *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008*.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement (RIS) was prepared by the Department of Communications, Information Technology and the Arts at the decision making stage of Schedule 3A to which the charges relate (OBPR Reference 3008). Accordingly, a further RIS is therefore not required for the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* (OBPR Reference 9134).
The Department of Finance and Administration and the Department of Communications, Information Technology and the Arts was consulted in the preparation of the Cost Recovery Impact Statement. The basis on which the charges imposed by the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* have been calculated is contained in the Cost Recovery Impact Statement.

*Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008* commences on the day after it is registered. Details of this determination are set out in Attachment 1.
Section 1 Name of Determination

Section 1 states that the Determination may be cited as the *Telecommunications (Protection Zone and Submarine Cable Permit – Application Charges) Determination 2008.*

Section 2 Commencement

Section 2 provides for the commencement of the Determination on the day after it is registered.

Section 3 Revocation

Section 3 revokes the *Telecommunications (Submarine Cable Permit – Application Charge) Determination 2007.*

Section 4 Interpretation

Section 4 provides definitions for the purposes for the Determination.

Section 5 Purpose of the Determination

Section 5 identifies the legislative power, namely, subsection 60(1) of the ACMA Act for ACMA to make determinations fixing charges. It identifies the clauses within Schedule 3A to the *Telecommunications Act 1997* that provide for persons to request ACMA to declare, vary or revoke a protection zone. It also identifies the clauses that provide for carriers to apply to ACMA for a permit to install one or more submarine cables in a protection zone, and in waters that are not in a protection zone and that are not coastal waters of a State or a the Northern Territory and the requirement that permit applications be accompanied by a charge.

Section 6 Charges payable in relation to an application for a declaration, variation or revocation of a protection zone

Subsection 6(1) identifies that the regulation applies to an application to ACMA to declare, vary or revoke a protection zone.

Subsection 6(2) states that the hourly rate charge for an item as set out in Schedule 1 is the amount mentioned for the item in column 3 of Schedule 1.

Subsection 6(3) provides for the deduction of any amount paid under item 3 of schedule 1 to be deducted from the deposit paid under item 1 or 2 of Schedule 1.

Subsection 6(4) provides that if the charge at item 3 of Schedule 1 is greater than the amount of the deposit paid under item 1 or 2 of Schedule 1, then the charge is taken to be increased by the amount of the difference.
Subsection 6(5) provides that if the charge is less than the amount of the deposit paid under item 1 or 2 of Schedule 1, then ACMA must refund to the applicant the excess amount paid by the applicant.

**Section 7 Charges payable in relation to an application for a permit to install a submarine cable**

Subsection 7(1) states that the section applies to an application for a permit to install a submarine cable.

Subsection 7(2) states that the charge for an matter is the charge mentioned for that item in Schedule 2.

Subsection 7(3) provides that if ACMA’s expenditure on external consultants is greater than the amount required as a deposit at item 4 of Schedule 2 the charge is taken to be increased by the amount of that difference.

Subsection 7(4) provides that if ACMA’s expenditure on external consultants is less than the amount required as a deposit at item 4 of Schedule 2 then ACMA must refund to the applicant the amount by which the expenditure is less than the amount paid by the applicant.

**Section 8 By whom and when are the charges payable**

Section 8 provides details of by whom and when charges are payable.

Subsection 8(1) states that the charges specified in Schedule 1 and 2 are payable upon a person making a request to ACMA to declare, vary or revoke a protection zone, or making an application for a non-protection zone installation permit, a protection zone installation permit or an application for an extension of such permits.

Subsection 8(2) provides for a further charge mentioned in subsection 6(4) or subsection 7(3), to be paid by the applicant by the due date of an invoice issued by ACMA for that charge.

Subsection 8(3) provides that an actual cost mentioned in item 4 of Schedule 1 incurred by ACMA in relation to an application to declare, vary or revoke a protection zone is payable by the applicant by the due date of an invoice issued by ACMA for that cost.

**Schedule 1- Charges payable to declare, vary or revoke a protection zone**

Item [1] specifies the deposit payable on account of the expenses to be incurred by ACMA in relation to an application to declare a protection zone.

Item [2] specifies the deposit payable on account of the expenses to be incurred by ACMA in relation to an application to vary or revoke a protection zone.
Item [3] specifies the charge for each hour or part of an hour for the activities of ACMA staff in relation to an application to declare, vary or revoke a protection zone.

Item [4] specifies the charge as it relates to external costs incurred by ACMA in relation to an application to declare, vary or revoke a protection charge.

**Schedule 2 - Charges payable in relation to certain permits to install a submarine cable**

**Item [1] Protection zone installation permit charge**

Item [1] specifies the application charge for the consideration and processing of an application to install a submarine cable in a protection zone.

**Item [2] Protection zone installation permit – permit extension**

Item [2] specifies the charge to consider and process an application to extend the duration of a permit granted to install a submarine cable in a protection zone, including extension of a linked non-protection zone permit (if any).

**Item [3] Non-protection zone installation permit charge**

Item [3] specifies the application charge for the consideration and processing of an application to install a submarine cable in a non-protection zone, other than a linked non-protection zone permit. This item excludes the charge for use by ACMA of external consultants, which is dealt with by item [4].

**Item [4] Non-protection zone expert consultancy charge**

Item [4] specifies the charge for the use by ACMA of external consultants to assist in considering the application mentioned in item [3].

**Item [5] Non-protection zone installation permit – permit extension**

Item [5] specifies the charge to consider and process an application to extend the duration of a non-protection zone installation permit, other than a linked non-protection zone installation permit, granted to install a submarine cable in a non-protection zone.

**Item [6] Non-protection zone installation permit**

Item [6] specifies the charge to consider and process an application for a linked non-protection zone permit, other than for use of external consultants.