

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications (Carrier Licence Charges) Act 1997

Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022* (the **Determination**) under paragraphs 15(1)(a), (c) and (ca) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the **Act**).

The Act limits the total of the charges that are imposed on carrier licences in force at the beginning of a financial year. Subsection 15(1) of the Act provides that the total of the annual carrier licence charges that are imposed on carrier licences in force at the beginning of a financial year must not exceed the sum of the amounts described in paragraphs 15(1)(a) to (d), three of which are amounts determined by a written instrument made by the ACMA, being:

- the amount determined to be the proportion of the ACMA's costs for the immediately preceding financial year that is attributable to the ACMA's telecommunications functions and powers (paragraph 15(1)(a));
- the amount determined to be the proportion of the Commonwealth's contribution to the budget of the International Telecommunication Union (ITU) for the calendar year in which the beginning of the financial year occurs that is to be recovered from carriers (paragraph 15(1)(c)); and
- the amount determined to be the sum of the amounts paid under section 136C of the *Telecommunications Act 1997* during the immediately preceding financial year (paragraph 15(1)(ca)).

The Determination prescribes the relevant amounts under paragraphs 15(1)(a), (c) and (ca) of the Act.

Purpose and Operation

The Determination has been made for the purposes of paragraphs 15(1)(a), (c) and (ca) of the Act and is relevant to determining the total of the charges that are imposed on carrier licences in force at the beginning of the 2020-2021 financial year.

For the purposes of paragraph 15(1)(a) of the Act, the Determination provides that \$14 521 169 is the amount determined to be the proportion of the ACMA's costs for the 2019-2020 financial year that is attributable to the ACMA's telecommunications functions and powers. This amount has been calculated in accordance with accrual-

based accounting principles in line with the definition of “cost” in subsection 15(4) of the Act.

For the purposes of paragraph 15(1)(c) of the Act, the Determination provides that \$2 289 268 is the amount determined to be the proportion of the Commonwealth's contribution to the budget of the ITU for the 2020 calendar year that is to be recovered from carriers. This amount has been calculated by apportioning the Commonwealth's total contribution to the budget of the ITU for that calendar year between the ITU's Radiocommunication Sector and Telecommunication Standardisation Sector.

For the purposes of paragraph 15(1)(ca) of the Act, the Determination provides that the amount determined to be the sum of the amounts paid under section 136C of the *Telecommunications Act 1997* during the 2019-2020 financial year is \$164 710.

The amounts determined under paragraphs 15(1)(a), (c) and (ca) of the Act are included in the formula that is used to ascertain the amount of charge imposed on a carrier licence that was in force at the beginning of the 2020-2021 financial year, in accordance with the *Telecommunications Carrier Licence Charges (Annual Charges) Determination (No. 1) 2022* (the **ACLIC Determination**).

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

The Determination is a disallowable legislative instrument under the *Legislation Act 2003* (the **LA**).

Documents incorporated by reference

The Determination incorporates the following Acts (including by the adoption of definitions), or otherwise refers to them:

- the Act
- the *Telecommunications Act 1997*.

The Acts listed above may be accessed, free of charge, from the Federal Register of Legislation (<http://www.legislation.gov.au>). The Acts listed above are incorporated as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and subsection 13(1) of the LA.

Consultation

Before the Determination 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 and industry stakeholders on the making of the instrument for a four-week period from 5 April to 2 May 2022. The consultation was

facilitated through the public release of a consultation paper and a draft cost recovery implementation statement (CRIS) on the ACMA's website. The CRIS and consultation paper outlined that the Determination would specify the costs referred to in paragraphs 15(1)(a), (c) and (ca) of the Act.

No submissions were received in response to the consultation.

Regulation Impact Statement

On 19 February 2014, the Office of Best Practice Regulation provided a standing exemption and advised that a Regulation Impact Statement was not required for an instrument in the nature of the Determination (reference number ID 2014/16581).

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 with human rights set out in **Attachment B** has been prepared to meet that requirement.

Notes on sections of the *Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022*.

Section 1 - Name

This section provides for the Determination to be cited as the *Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022* (the **Determination**).

Section 2 - Commencement

This section states that the Determination commences at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 – Authority

This section identifies the provisions of the Act that authorise the making of the Determination, namely paragraphs 15(1)(a), (c) and (ca) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the **Act**).

Section 4 – Repeal of this instrument

This section provides that the Determination is repealed at the start of 1 July 2023.

Section 5 - Definitions

This section states that, for the purposes of the Determination, **Act** means the *Telecommunications (Carrier Licence Charges) Act 1997*.

Section 6 - Determination of amount attributable to telecommunications functions and powers

This section determines an amount of \$14 521 169 for the purposes of paragraph 15(1)(a) of the Act, being the proportion of the ACMA's costs for the 2019–2020 financial year that is attributable to the ACMA's telecommunications functions and powers.

Section 7 - Determination of amount of ITU contribution to be recovered

This section determines an amount of \$2 289 268 for the purposes of paragraph 15(1)(c) of the Act, being the proportion of the Commonwealth's contribution to the budget of the ITU for the 2020 calendar year that is to be recovered from carriers.

Section 8 - Determination of amounts paid under section 136C of the *Telecommunications Act 1997*

This section determines an amount of \$164 710 for the purposes of paragraph 15(1)(ca) of the Act, being the amount paid under section 136C of the *Telecommunications Act 1997* during the 2019–2020 financial year.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority (ACMA) under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022

Overview of the Determination

The *Telecommunications Carrier Licence Charges (Specification of Costs by the ACMA) Determination (No. 1) 2022* (the **Determination**) is made under paragraphs 15(1)(a), (c) and (ca) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the **Act**). Subsection 15(1) of the Act provides that the total of the charges that are imposed on carrier licences in force at the beginning of a financial year must not exceed the sum of the amounts determined under paragraphs 15(1)(a) to (d) of the Act.

The Determination determines the amounts attributable to those items in paragraphs 15(1)(a), (c) and (ca) of the Act.

Human rights implications

The ACMA has assessed whether the Determination 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 Determination does not engage any of those rights or freedoms.

Conclusion

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