

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications (Charges) Amendment Determination 2012 (No. 2)

Australian Communications and Media Authority Act 2005

The Australian Communications and Media Authority (the **ACMA**) makes the *Radiocommunications (Charges) Amendment Determination 2012 (No. 2)* under subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (the **Act**).

Background

Subsection 60(1) of the Act relevantly provides that the ACMA may make determinations fixing charges for services provided by the ACMA and any matter in relation to which expenses are incurred by the ACMA under the *Radiocommunications Act 1992*.

Under the *Radiocommunications (Charges) Determination 2007* (the **Determination**), the ACMA has fixed, among other things, charges for issuing certain types of licences, or considering the issue of such licences without proceeding to issue them.

One of the types of licences to which the Determination relates is a radiodetermination licence. That type of licence is incorrectly described in the Determination as a “radiocommunications determination licence”.

The charge for issuing a radiodetermination licence, or considering the issue of such a licence without proceeding to issue it, is the amount specified at item 6.26 of Part 6 of Schedule 2 to the Determination.

The Australian Government plans to introduce body scanners at all Australian international airports for the purpose of aviation security screening from November 2012. The *Aviation Transport Security Amendment (Screening) Bill 2012*, which has been passed by the Commonwealth Parliament, will support those arrangements once enacted.

The ACMA will issue radiodetermination licences to authorise the operation of these body scanners for the purposes of the *Radiocommunications Act 1992* (the **Radcomms Act**).

The *Radiocommunications (Charges) Amendment Determination 2012 (No. 2)* (the **Amendment Determination**) is being made to fix a charge for issuing a radiodetermination licence that authorises the operation of one or more stations that are body scanners at an Australian international airport for the purpose of aviation security screening (a **radiodetermination licence for body scanners**), or considering the issue of such a licence without proceeding to issue it.

The charge fixed for issuing other radiodetermination licences, or considering the issue of such licences without proceeding to issue them, is to continue to be the amount specified at item 6.26 of Part 6 of Schedule 2 to the Determination.

Operation of the Amendment Determination

The Amendment Determination will:

- amend item 6.26 in Part 6 of Schedule 2 to the Determination:
 - by replacing “radiocommunications determination licence” with “radiodetermination licence” (to correct the description of the type of licence); and
 - by carving out from that item’s application the issuing of a radiodetermination licence for body scanners, or considering the issue of such a licence without proceeding to issue it;
- insert an item (item 6.26A) in Part 6 of Schedule 2 to the Determination to fix a charge for issuing a radiodetermination licence for body scanners, or considering the issue of such a licence without proceeding to issue it; and
- insert a definition of “body scanner” as meaning a scanner that is capable of detecting metallic and non-metallic items on a person by using millimetre-wave radio frequency technology.

The amount of charge for issuing or considering the issue of a radiodetermination licence for body scanners will, after the Amendment Determination is made, represent a lesser amount than the amount that would otherwise be payable. The existing charge for issuing or considering the issue of a radiodetermination licence as specified at item 6.26 of Part 6 of Schedule 2 to the Determination is \$345 for each frequency assigned, or requested for assignment, for the purpose of transmission. After the Amendment Determination is made, the charge for issuing or considering the issue of a radiodetermination licence for body scanners (as distinct from any other radiodetermination licence) will be \$345 for each airport to which the licence relates (irrespective of each frequency assigned or requested for assignment).

This instrument will commence on the day after it is registered.

Purpose of the Amendment Determination

The Amendment Determination will facilitate the Australian Government’s plans to introduce body scanners to further strengthen Australia’s aviation security by ensuring that the charges payable for the issue of radiodetermination licences for body scanners are cost-effective.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purpose of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in the Attachment.

Consultation

From 23 May 2012 to 6 June 2012, the ACMA consulted publicly on the proposed licensing arrangements for the operation of body scanners at all Australian international airports.

As part of that consultation process, the ACMA released a public discussion paper which proposed that one licence would be issued for each Australian international airport to authorise the operation of a body scanner at that airport for the purposes of the Radcomms Act.

The ACMA also had direct contact with the Department of Infrastructure and Transport on the proposed licensing arrangements and the terms of the Amendment Determination.

The Office of Best Practice Regulation (**OBPR**) was also consulted and advised that no Regulation Impact Statement was required. The OBPR reference number is ID 13687.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Radiocommunications (Charges) Amendment Determination 2012 (No. 2)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Subsection 60(1) of the *Australian Communications and Media Authority Act 2005* relevantly provides that the ACMA may make determinations fixing charges for services provided by the ACMA and any matter in relation to which expenses are incurred by the ACMA under the *Radiocommunications Act 1992*.

Under the *Radiocommunications (Charges) Determination 2007* (the **Determination**), the ACMA has fixed, among other things, charges for issuing certain types of licences, or considering the issue of such licences without proceeding to issue them.

One of the types of licences to which the Determination relates is a radiodetermination licence. That type of licence is incorrectly described in the Determination as a “radiocommunications determination licence”.

The charge for issuing a radiodetermination licence, or considering the issue of such a licence without proceeding to issue it, is the amount specified at item 6.26 of Part 6 of Schedule 2 to the Determination.

The Legislative Instrument will:

- amend item 6.26 in Part 6 of Schedule 2 to the Determination:
 - by replacing “radiocommunications determination licence” with “radiodetermination licence” (to correct the description of the type of licence); and
 - by carving out from that item’s application the issuing of a radiodetermination licence that authorises the operation of one or more stations that are body scanners at an Australian international airport for the purpose of aviation security screening (a **radiodetermination licence for body scanners**), or considering the issue of such a licence without proceeding to issue it;
- insert an item (item 6.26A) in Part 6 of Schedule 2 to the Determination to fix a charge for issuing a radiodetermination licence for body scanners, or considering the issue of such a licence without proceeding to issue it; and
- insert a definition of “body scanner” as meaning a scanner that is capable of detecting metallic and non-metallic items on a person by using millimetre-wave radio frequency technology.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

The human right implications associated with introducing body scanners to all Australian international airports for the purpose of aviation security screening have been considered through the passing of the *Aviation Transport Security Amendment (Screening) Bill 2012*.

The Legislative Instrument only fixes a charge for services in relation to radiodetermination licences for body scanners for the purposes of the *Radiocommunications Act 1992*.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority