**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

***Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Amendment Determination 2017 (No. 1)***

**Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Amendment Determination 2017 (No. 1)* (**the instrument**) under paragraphs 102C(2)(b) and 102D(2)(b) of the *Radiocommunications Act 1992* (**the Act**).

Section 102C of the Act sets out the requirements to be met before a category 1 digital radio multiplex transmitter licence can be issued. Paragraph 102C(2)(b) provides that the ACMA must not issue a foundation category 1 digital radio multiplex transmitter licence unless the application is accompanied by a fee to be determined by the ACMA by legislative instrument.

Section 102D of the Act sets out the requirements to be met before a category 2 digital radio multiplex transmitter licence can be issued. Paragraph 102D(2)(b) provides that the ACMA must not issue a foundation category 2 digital radio multiplex transmitter licence unless the application is accompanied by a fee to be determined by the ACMA by legislative instrument.

The Act, at subsections 102C(8) and 102D(9), provides that fees determined under paragraphs 102C(2)(b) and 102D(2)(b) must not be such as to amount to taxation.

Section 33 of the *Acts Interpretation Act 1901* relevantly provides that, where an Act confers a power to make a legislative 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. The instrument amends the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012.*

**Purpose and operation of the instrument**

The instrument amends the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012* to increase the amount of the application fee for a foundation category 1 digital radio multiplex transmitter licence and a foundation category 2 digital radio multiplex transmitter licence from $460 to $472 for each application.

The fee represents a 2.5% increase to the existing fee and was calculated based on the ACMA’s hourly rate multiplied by the estimated time taken to assess an application for a foundation category 1 digital radio multiplex transmitter licence or a foundation category 2 digital radio multiplex transmitter licence. The calculation methodology is consistent with the methodology adopted in an earlier review that the ACMA conducted in relation to its cost recovery arrangements for various radiocommunications services in 2014.[[1]](#footnote-1) The proposed new standard hourly rate is $202 (excluding GST), which has increased by 2.5 per cent. The rate was established by taking the net cost of services of the ACMA’s business units for 2015–16, including an attribution of all corporate and support costs, and dividing this cost by the average staff hours spent by the business units during the financial year 2015–16.

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

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

**Attachment B** sets out each charge item being amended by the instrument and the variance in comparison with the pre-existing amount of charge. Attachment B also describes the reason for the differentiation in the amount of charge payable from the commencement of the instrument.

**Documents incorporated by reference**

The instrument does not incorporate any documents by reference.

**Consultation**

The ACMA has consulted with industry stakeholders and the general public on the making of the instrument. Between 28 November 2016 and 6 January 2017, the ACMA conducted a public consultation process inviting submissions on a number of proposed changes to fees for services determined under cost recovery arrangements. The consultation was facilitated through the release of a consultation paper and a draft cost recovery implementation statement on the ACMA’s website.

The consultation paper outlined a number of changes proposed to be made by the instrument as well as proposed changes to the following determinations:

* the *Broadcasting (Charges) Determination 2007*;
* the *Radiocommunications (Charges) Determination 2007*;
* the *Telecommunications (Carrier Licence Application Charge) Determination 2012*; and
* the *Telecommunications (Charges) Determination 2012*.

The ACMA did not receive any submissions in response to the consultation paper. 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.

**Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have a regulatory impact on businesses, community organisations or individuals (OBPR reference number 21266).

**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 *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012* to increase the amount of the application fee for a foundation category 1 digital radio multiplex transmitter licence and a foundation category 2 digital radio multiplex transmitter licence.

***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.

**Attachment A**

**Notes to the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Amendment Determination 2017 (No. 1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Amendment Determination 2017 (No. 1)*.

**Section 2 Commencement**

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

**Section 3 Authority**

This section identifies the provisions that authorise the making of the instrument, namely paragraphs 102C(2)(b) and 102D(2)(b) of the *Radiocommunications Act 1992*.

**Section 4 Amendments**

This section provides that the *Radiocommunications (Digital Radio Multiplex Transmitter Licences – Application Fee) Determination 2012* is amended as set out in Schedule 1 to the instrument.

**Schedule 1 - Amendments**

**Item [1]**

Item [1] amends the amount of the application fee for a foundation category 1 digital radio multiplex transmitter licence to $472.

**Item [2]**

Item [2] amends the amount of the application fee for a foundation category 2 digital radio multiplex transmitter licence to $472.

**Attachment B**

**Fees – Detailed explanation**

| *Radiocommunications* *(Digital Radio Multiplex Transmitter Licences – Application Fee) Amendment Determination 2017 (No. 1)* | | | | | |
| --- | --- | --- | --- | --- | --- |
| Item being charged | Relevant provision of the instrument | Fees pre-commencement | Fees post commencement | Variance increase/ (decrease) | Reason for increase/decrease |
| Processing an application for a foundation category 1 digital radio multiplex transmitter licence | Item 1, Schedule 1 | $460.00 | $472.00 | 2.5% | This is due to the increase in the ACMA’s standard hourly rate. Refer to Note 1 for further details. |
| Processing an application for a foundation category 2 digital radio multiplex transmitter licence | Item 2, Schedule 1 | $460.00 | $472.00 | 2.5% | This is due to the increase in the ACMA’s standard hourly rate. Refer to Note 1 for further details. |

**Notes:**

**Methodology** – For the calculation of fees, the ACMA applied its standard hourly rate and survey information obtained in 2016 on the average time taken by a proficient officer to perform the activity. The ACMA’s standard hourly rate has been updated to reflect its current costs and as a result it has increased from $197 to $202 (that is, a 2.5 percent increase). The figure is based on the cost of services incurred by the ACMA in executing its functions for the financial year 2015–16. This rate was established by taking the net cost of services of the ACMA’s business units for 2015–16, including an attribution of all corporate and support costs, and dividing this cost by the average staff hours spent by the business units during the financial year 2015–16. The increase in the hourly rate is in line with the increase in the Consumer Price Index for all groups. The calculation methodology has not changed from the one adopted when the fees were last reviewed by the ACMA in 2014.[[2]](#footnote-2)

1. The ACMA last reviewed its cost recovery arrangements for various radiocommunications, telecommunications and broadcasting services in 2014. A copy of the Cost Recovery Implementation Statement which provides information on those cost recovery charges as well as the cost recovery model adopted by the ACMA can be found at: <http://www.acma.gov.au/~/media/Finance%20Budgets%20and%20Revenue%20Assurance/Report/Word%20Document/Cost%20recovery%20implementation%20statement%2020141017%20docx.docx>. [↑](#footnote-ref-1)
2. See <http://www.acma.gov.au/~/media/Finance%20Budgets%20and%20Revenue%20Assurance/Report/Word%20Document/Cost%20recovery%20implementation%20statement%2020141017%20docx.docx>. [↑](#footnote-ref-2)