

## EXPLANATORY STATEMENT

### Approved by the Australian Communications and Media Authority

*Telecommunications (Carrier Licence Charges) Act 1997*

### *Telecommunications (Annual Carrier Licence Charge) Determination 2017*

#### Authority

The *Telecommunications (Annual Carrier Licence Charge) Determination 2017* (the Determination) is made by the Australian Communications and Media Authority (the ACMA) under subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (the Charges Act).

#### Legislative provisions

Under section 12 of the Charges Act, an annual charge is imposed on a carrier licence that is in force at the beginning of a financial year (an annual carrier licence charge).

Subsection 14(1) of the Charges Act provides that the amount of an annual carrier licence charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA.

Section 15 of the Charges Act limits the total of charges that may be imposed. Subsection 15(1) 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 determined under paragraphs 15(1)(a) to (d).

Under subsection 14(1) of the *Australian Communications and Media Authority Act 2005*, the Minister may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers. On 26 June 2013, the then Minister for Broadband, Communications and the Digital Economy made the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2013* (the 2013 Ministerial Direction). The 2013 Ministerial Direction directs the ACMA to make such determinations as are necessary under subsection 14(1) of the Charges Act to have the effect of imposing an annual carrier licence charge of \$0 on each carrier licence that is:

- in force at the beginning of a relevant financial year; and
- held by a carrier that was a “non-participating person” for the eligible revenue period immediately preceding that financial year.

The 2013 Ministerial Direction defined “relevant financial year” as the financial year that began on 1 July 2013 and each later financial year. The term “non-participating person” was defined to have the same meaning as in the *Telecommunications (Participating Persons) Determination 2015* (the Participating Persons Determination).

The 2013 Ministerial Direction was repealed by the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2017* on 19 May 2017 but the 2013 Ministerial Direction still applies for the purposes of carrier licences that were in force on 1 July 2016.

A provision-by-provision description of the Determination is set out in the notes at Attachment 1.

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

Subsection 33(3) 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.

### **Purpose and operation of the instrument**

The purpose of the Determination is to set out a method for ascertaining the amount of annual carrier licence charge imposed on each carrier licence that was in force at the beginning of the 2016-2017 financial year, in accordance with subsection 14(1) of the Charges Act and the 2013 Ministerial Direction.

The Determination applies to carrier licences that were in force at the beginning of the 2016-2017 financial year.

The Determination imposes an annual carrier licence charge of \$0 on a carrier licence that was held by a carrier that was a non-participating person for the eligible revenue period that began on 1 July 2015 and ended on 30 June 2016.

The Determination sets out a method for ascertaining the amount of annual carrier licence charge for each other carrier licence that was in force at the beginning of the 2016-2017 financial year. (Further information about that method is set out below in the notes on section 8 of the Determination.)

### **Documents incorporated by reference**

The *Telecommunications (Specification of Costs by the ACMA) Determination 2017* (the Specification of Costs Determination) is incorporated as in force from time to time in accordance with paragraph 2(b) of the Determination and section 589 of the *Telecommunications Act 1997* (the Tel Act).

The Specification of Costs Determination is made under paragraphs 15(1)(a), (c) and (ca) of the Charges Act. Subsection 15(1) of the Charges 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). The Specification of Costs Determination determines the amounts attributable to the items in paragraphs 15(1)(a), (c) and (ca).

The Participating Persons Determination is incorporated as in force from time to time in accordance with subsection 6(2) of the Determination and section 589 of the Tel Act.

The Participating Persons Determination is made under subsection 44(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act). In summary, it provides that a carrier is a “non-participating person” if its initial sales, gross telecommunications or eligible revenue for an eligible revenue period is less than \$25 million and it submits the required statutory declaration in relation to its eligible revenue to the ACMA on time, or the ACMA is otherwise reasonably satisfied of that fact. A “non-participating person” is exempt for the purposes of section 44 of the TCPSS Act and will consequently not be regarded as a participating person.

The Specification of Costs Determination and the Participating Persons Determination are registered on the Federal Register of Legislation. The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

## **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 industry stakeholders on the making of the instrument for a four-week period from 18 April 2017 inviting feedback on the proposed changes to the annual carrier licence charge 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 ACMA received one written submission in response to its consultation. The submission did not raise any substantive issues regarding the drafting of this Determination.

## **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 instruments in the nature of the Determination as proposed to be made on the basis that the changes would be minor in nature (reference number ID 2014/16581). The Determination is covered by that exemption.

## **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 Legislative Instrument**

Under section 12 of the Charges Act an annual carrier licence charge is imposed.

Subsection 14(1) of the Charges Act provides that the amount of an annual carrier licence charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA.

The Determination has been made by the ACMA under subsection 14(1) of the Charges Act. It sets out the method for ascertaining the amount of annual carrier licence charge imposed on the holder of each carrier licence that was in force at the beginning of the 2016-2017 financial year.

### ***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.

## **Notes on sections of the *Telecommunications (Annual Carrier Licence Charge) Determination 2017***

### **Section 1 – Name of Determination**

This section provides for the Determination to be cited as the *Telecommunications (Annual Carrier Licence Charge) Determination 2017*.

### **Section 2 – Commencement**

This section provides that the Determination commences on the later of the start of the day after it is registered on the Federal Register of Legislation and the commencement of the Specification of Costs Determination. Both events must occur before the Determination commences.

The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### **Section 3 – Authority**

This section identifies the provision of the Charges Act that authorises the making of the Determination, namely subsection 14(1) of that Act.

### **Section 4 – Repeal of this Determination**

This section provides that the Determination is repealed at the end of 30 June 2019.

### **Section 5 – Application**

This section provides that the Determination applies to carrier licences that were in force at the beginning of the 2016-2017 financial year.

### **Section 6 – Definitions**

Subsection 6(1) sets out definitions for the key terms used in the Determination, including *Act*, *carrier licence*, *carrier licence charge*, and *exempt carrier licence*.

The term *eligible revenue period* has the same meaning as in the TCPSS Act and the term *non-participating person* is defined as having the same meaning as in the Participating Persons Determination.

Subsection 6(2) has the effect that legislative instruments incorporated by reference in the Determination are incorporated as in force from time to time.

### **Section 7 – Carrier licence charge – exempt carrier licence**

This section provides that the amount of carrier licence charge imposed on an exempt carrier licence is \$0, in accordance with the 2013 Ministerial Direction.

## **Section 8 – Method of ascertaining carrier licence charge – other carrier licences**

This section sets out the method for ascertaining the amount of carrier licence charge imposed on a carrier licence that is not an exempt carrier licence (a relevant carrier licence).

The amount is ascertained, for a relevant carrier licence, using the following formula:

$$(\text{MCA} - \text{OTC}) \times \frac{\text{ER}}{\text{TER}}$$

Where:

- MCA (maximum charge amount) is the total sum of the amounts determined under subsection 15(1) of the Charges Act;
- OTC (other telecommunication costs) is an amount relating to costs that:
  - (a) are part of the proportion of the ACMA's costs for the 2015-2016 financial year that is attributable to the ACMA's telecommunications functions and powers; and
  - (b) have been recovered from telecommunications charges (other than annual carrier licence charges) or the ACMA considers are not appropriate to recover from carriers because of the nature of the activities with which the costs are associated;
- ER (eligible revenue), for the holder of the relevant carrier licence, is the eligible revenue of the holder for the 2015-2016 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act;
- TER (total eligible revenue) is the total sum of the eligible revenue of all holders of a relevant carrier licence for the 2015-2016 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act.

The total charge amount is calculated by subtracting the other telecommunication costs from the maximum charge amount. The total charge amount is then allocated to each holder of a relevant carrier licence in the same proportion as that holder's eligible revenue to the total eligible revenue.

### **Schedule 1**

Schedule 1 sets out, for each holder of a relevant carrier licence, the holder's:

- Name;
- ACN/ARBN/ABN; and
- eligible revenue for the 2015-2016 financial year as assessed by the ACMA under subsection 47(1) of the TCPSS Act.