

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Telecommunications (Carrier Licence Charges) Act 1997*

***Telecommunications (Carrier Licence Charges) (Application) Determination 2022***

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Carrier Licence Charges) (Application) Determination 2022* (**the instrument**) under subsection 9(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (**the Act**).

Section 7 of the Act provides that a charge is imposed on an application for a carrier licence. Subsection 9(1) specifies that the amount of charge imposed is the amount ascertained in accordance with a written determination made by the ACMA. Subsection 9(2) provides that a determination made under subsection 9(1) is a legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

## Purpose and operation of the instrument

Section 54 of the *Telecommunications Act 1997* (**the Tel Act**) provides that an application for a carrier licence made under section 52 of the Tel Act must be accompanied by the charge, if any, imposed on the application by Part 2 of the Act. Section 7 of the Act imposes a charge on an application for a carrier licence.

The instrument sets the amount of charge imposed on an application for a carrier licence for the purposes of subsection 9(1) of the Act at \$2,708.

The new charge represents a 28% increase from the previous charge of \$2,122, which was specified in the *Telecommunications (Carrier Licence Application Charge) Determination 2012* (**the previous instrument**). In accordance with section 50 of the LA, the previous instrument sunsets on 1 October 2022, the day on which the instrument commences.

The increase in the charge from \$2,122 to \$2,708 is due, primarily, to an increase in the ACMA's standard hourly rate of 12 per cent to \$226. The revised hourly rate was established by taking the net cost of services of the ACMA's business units for 2020-21, 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 2020-21. The application charge was determined by multiplying the standard hourly rate by the average staff effort taken to assess an application for a carrier licence.

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

The instrument is a disallowable legislative instrument for the purposes of the LA.

## **Documents incorporated by reference**

The instrument incorporates the Act. The Act may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>). The Act is 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 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.

The ACMA consulted the public, including industry stakeholders, on the making of the instrument. Between 27 June 2022 and 25 July 2022, the ACMA conducted a consultation process inviting submissions on a number of proposed changes to fees for services determined under various cost recovery arrangements, including the carrier licence application charge set by the instrument. The consultation was facilitated through the release of a consultation package which included draft instruments and a draft Cost Recovery Implementation Statement (CRIS) on the ACMA's website.

The consultation package contained a number of legislative instruments, including the instrument. The draft CRIS and the consultation page on the ACMA website outlined the proposed changes to the carrier licence application charge and the reasons for the change. The ACMA invited submissions on the draft instrument.

The ACMA received five submissions in response to the consultation paper. One submission sought further information on the reason for the increase in the carrier licence application charge but otherwise did not comment on the instrument. The ACMA has, in response, provided further information on the reasons for the increase in the final CRIS, which along with the submissions is available on the ACMA website.

No material changes were made to the instrument as a result of the consultation.

## **Regulatory impact assessment**

A preliminary assessment of the proposal 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 considered that the proposal was unlikely to have more than a minor regulatory impact on business and advised that the preparation of a RIS was not required (see OBPR reference number 22-01877).

## **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***

Section 54 of the Tel Act provides that an application for a carrier licence made under section 52 of the Tel Act must be accompanied by the charge, if any, imposed on the application by Part 2 of the Act. Section 7 of the Act imposes a charge on an application for a carrier licence, and section 9 provides that the amount of charge is the amount ascertained in accordance with a written determination made by the ACMA. The ACMA has made the instrument under subsection 9(1) of the Act, for the purposes of setting the amount of carrier licence application charge payable by a person applying for a carrier licence under section 52 of the Tel Act.

### ***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.

**Notes to the *Telecommunications (Carrier Licence Charges) (Application) Determination 2022***

**Section 1 – Name**

This section provides for the instrument to be cited as the *Telecommunications (Carrier Licence Charges) (Application) Determination 2022 (the instrument)*.

**Section 2 – Commencement**

This section provides for the instrument to commence on 1 October 2022. The notes at the end of section 2 explain that the instrument will be registered on the Federal Register of Legislation and that, in accordance with subsection 50(1) of the *Legislation Act 2003*, the *Telecommunications (Carrier Licence Application Charge) Determination 2012* (Registration No. F2012L01234) sunsets on 1 October 2022.

**Section 3      Authority**

This section identifies the provision that authorises the making of the instrument, namely subsection 9(1) of the *Telecommunications (Carrier Licence Charges) Act 1997*.

**Section 4      Carrier licence application charge**

This section specifies that the charge imposed on an application for a carrier licence is \$2,708. This amount represents a 28% increase in the charge from the previous amount of \$2,122, set by the *Telecommunications (Carrier Licence Application Charge) Determination 2012* which sunsets on 1 October 2022.

The amount of the charge has been determined using a bottom-up assessment of the actual time and effort taken by the ACMA to provide the service of assessing applications for a carrier licence, averaged over a year. The average time taken was then multiplied by the ACMA's standard hourly rate (\$226) to determine the charge of \$2,708.

The increase in the charge was primarily due to an increase in the ACMA's standard hourly rate from \$202 to \$226 (that is, 12% or a 2.4 % increase over five years). The figure is based on the cost of services incurred by the ACMA in executing its functions for the financial year 2020-21. This rate was established by taking the net cost of services of the ACMA's business units for 2020-21, 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 2020-21. In addition to the processing costs, the costs of gazettal and company search were included in the licence fee. The calculation methodology has not changed from the one adopted when the ACMA conducted a review on the cost recovery arrangements for annual carrier licence charges in 2015-16.

For the calculation of fees, the ACMA applied its standard hourly rate and survey information obtained in 2020-21 of the average time taken by a proficient officer to perform the activity.