

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications (Charges) Amendment Determination 2023 (No.1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Charges) Amendment Determination 2023 (No.1)* (the **instrument**) under subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 60(1) of the Act provides that the ACMA may, by written instrument, make determinations fixing charges for services provided by the ACMA, and for any matter in relation to which expenses are incurred by the ACMA under various Acts (or instruments made under those Acts), including the *Radiocommunications Act 1992* (the **Radiocommunications Act**). The charges must not be such as to amount to taxation.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make an 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 instrument amends the *Radiocommunications (Charges) Determination 2022* (the **2022 Determination**). The 2022 Determination specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences issued under the Radiocommunications Act, as well as charges payable for other services provided by the ACMA, or for expenses incurred by the ACMA, under the Radiocommunications Act and instruments made under the Radiocommunications Act.

The instrument amends or removes some of the charges specified in the 2022 Determination, and introduces new charges. The changes relate to:

- new services, relating to the provision of amateur radio qualifications and call signs by the ACMA, under the *Radiocommunications (Amateur Stations) Class Licence 2023* (**Amateur Stations Class Licence**); and
- area-wide receive licences (**AWRLs**), which the ACMA is proposing to issue in the part of the spectrum from 3.75 GHz to 4 GHz, in 2024.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**). The 2022 Determination is subject to the sunset provisions of the LA.

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

Documents incorporated by reference

The instrument amends the 2022 Determination to incorporate the Amateur Stations Class Licence or, if a later class licence replaces that instrument, the later class licence, as in force from time to time, in accordance with subsection 14(1) of the LA.

The instrument also refers to the Act without incorporating it by reference:

The Act and legislative instrument listed above may be obtained, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

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.

Between 29 August 2023 and 26 September 2023, the ACMA conducted a consultation process, inviting submissions on the proposed changes to charges under cost recovery arrangements. The consultation was facilitated through the release of a consultation package, which included a draft Cost Recovery Implementation Statement (**CRIS**) on the ACMA's website.

A consultation paper outlined the proposed changes to the 2022 Determination. The draft CRIS outlined all of the proposed charges and contained an explanation for the amendments to be made to the 2022 Determination. Interested parties were invited to comment on the proposed changes to the 2022 Determination.

The ACMA received four submissions in response to the consultation paper, in relation to the proposed changes to the 2022 Determination. After considering the submissions, the ACMA:

- decided not to impose different charges for applications for recognition of prior learning under the Amateur Stations Class Licence, which depended on the nature of the prior learning involved. Instead, only one charge applies, regardless of the prior learning involved;
- expressly imposed a charge for applications for 'contest call signs' assigned under the Amateur Stations Class Licence, for clarity;
- has not imposed a charge for assigning a 'replacement call sign' under the Amateur Class Stations Licence.

As a result of the consultation, the ACMA has decided to introduce charges in relation to AWRLs, and to make consequential amendments to the existing charges for area-wide licences (**AWLs**), as originally proposed. This will ensure a standardised approach is applied to charging for AWLs and AWRLs.

The submissions received are available on the ACMA's website.

Regulatory impact assessment

A preliminary assessment of the proposal to make the amendments contained in the instrument was conducted by the Office of Impact Analysis (**OIA**), based on information provided by the ACMA for the purposes of determining whether an Impact Analysis (**IA**) would be required. OIA considered that the proposals were unlikely to have more than a minor regulatory impact on the businesses involved and advised that the preparation of an IA was not required (OIA reference numbers OIA23-05185 and OIA23-05294).

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 2022 Determination, which specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences as well as

*Explanatory Statement to the Radiocommunications (Charges) Amendment Determination 2023
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charges payable for other services provided by the ACMA, or for expenses incurred by the ACMA, under the Radiocommunications Act, and instruments made under the Radiocommunications Act.

The instrument removes or amends some of the charges specified in the 2022 Determination, and introduces new charges. The changes relate to:

- new services, relating to the provision of amateur radio qualifications and call signs by the ACMA, under the Amateur Stations Class Licence; and
- AWRLs, which the ACMA is proposing to issue in the part of the spectrum from 3.75 GHz to 4 GHz in 2024.

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 *Radiocommunications (Charges) Amendment Determination 2023 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Charges) Amendment Determination 2023 (No.1)*.

Section 2 Commencement

This section provides for the instrument to commence from 19 February 2024.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 60(1) of the Act.

Section 4 Amendments relating to area-wide licences and area-wide receive licences

This section sets out that the 2022 Determination is amended as set out in Schedule 1 to the instrument. These changes relate to the introduction of charges for AWRLs.

Section 5 Amendments relating to amateur stations

This section sets out that the 2022 Determination is amended as set out in Schedule 2 to the instrument. These changes relate to the introduction of charges for services provided under the Amateur Stations Class Licence.

Schedule 1— Amendments relating to area-wide licences and area-wide receive licences

Radiocommunications (Charges) Determination 2022 (F2022L01245)

Item 1

Item 1 amends the note to section 5 of the 2022 Determination to add a reference to ‘area-wide receive licence’.

Item 2

Item 2 makes a change to subsection 10(6) of the 2022 Determination that is consequential to the change made by item 6.

Items 3 to 6

Items 3 to 6 amend Table 4 in Part 2 of Schedule 1 to the 2022 Determination. The changes:

- introduce a charge of \$847 for considering an application for an AWRL;
- maintain the existing charge of \$847 for considering an application for a ‘standard’ AWL; and
- extend the additional charge that may apply, where an application for an AWL has to be assessed against one or more other applications, to applications for AWRLs.

Item 7

Explanatory Statement to the Radiocommunications (Charges) Amendment Determination 2023 (No.1)

Item 7 extends the existing charge for an application under section 111 of the Radiocommunications Act to vary the conditions of the licence to an application in relation to an AWRL.

Schedule 2 — Amendments relating to amateur stations

Radiocommunications (Charges) Determination 2022 (F2022L01245)

Items 1 to 4

Items 1 to 4 amend section 5 of the 2022 Determination, which sets out the definition of key terms for the 2022 Determination. The items insert definitions of several new terms by reference to the Amateur Stations Class Licence, repeal a term that is no longer used, and make consequential changes to the notes to the section.

Item 5

Item 5 makes a consequential change to subsection 10(4) of the 2022 Determination, to reflect the introduction of the charges in items 6 and 8 (below).

Item 6

Item 6 adds two new tables to Part 3 of Schedule 1. New table 4 specifies a charge for an application for an ‘ACMA recognition certificate’ under the Amateur Stations Class Licence, except where the applicant has applied for a written exemption from completing an examination, and paid the charge for that application. In this case, no charge is imposed for any subsequent application for an ACMA recognition certificate (whether or not a written exemption was given by the ACMA as a result of that first application).

New table 5 specifies a charge for an application for a written exemption from completing an examination under the Amateur Stations Class Licence.

Item 7

Item 7 repeals table items 4.1.1, 4.1.2 and 4.1.3 of table 1 in Part 4 of Schedule 1 to the 2022 Determination. As a result of the Amateur Stations Class Licence being made, the ACMA will no longer be performing the services mentioned in these table items.

Item 8

Item 8 adds a new table 5 at the end of Part 7 of Schedule 1 to the 2022 Determination, which specifies charges relating to assigning call signs. Different amounts apply, depending on the nature of the call sign the subject of the application. No charge is imposed in relation to ‘replacement call signs’.