

Explanatory Statement

TELECOMMUNICATIONS (PARTICIPATING PERSON EXEMPTION – PUBLIC SAFETY) DETERMINATION 2022

Issued by the authority of the Minister for Communications

Purpose

The *Telecommunications (Participating Person Exemption–Public Safety) Determination 2022* (the Determination) is made by the Minister for Communications under subsection 44(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act). Section 44(2) of the Act provides that a person is not a ‘participating person’ for an ‘eligible revenue period’ if the person is of a kind determined in writing by the Minister to be exempt. In effect, the Minister can exempt kinds of persons from paying two telecommunications-specific charges – the Telecommunications Industry Levy (TIL) and the Annual Carrier Licence Charge (ACLC) (together, ‘the charges’).

In general, any person that owns a network unit (such as a mobile base station or a telecommunications line) and uses it to supply communications to the public must hold a carrier licence or there must be a nominated carrier declaration in place for the operation of the network unit. Carriers have competition, consumer protection and public interest obligations.

Carriers that are participating persons in an eligible revenue period have the obligation to pay the charges. These charges are paid by carriers that generate more than \$25 million in ‘eligible revenue’ in a relevant financial year, as assessed by the Australian Communications and Media Authority (ACMA). The charges fund universal voice services, payphones, the National Relay Service, the emergency call service, and in part, the operations of the ACMA and Australian Competition and Consumer Commission (ACCC).

Carriers that are not participating persons at any time during an eligible revenue period will not have their eligible revenue assessed and will therefore in practice not be liable to pay the charges in relation to the subsequent financial year when eligible revenue is used to assess the charges payable.

The Determination exempts from the charges (i.e. by providing that they will not be considered to be participating person) Departments of State and agencies, authorities and instrumentalities of the States and Territories that own, are vested with and operate a Government Radio Network, and supply carriage services only to other government bodies and non-government organisations for the purposes of public safety, law enforcement or national security, provided that each carriage service they supply is wholly non-commercial or not-for-profit. The exemption will be in place for the whole of the 2021-22, 2022-23 and 2023-24 financial years.

If the exemption was not in place, government entities providing radiocommunications for public safety, law enforcement and national security purposes would have to pay the charges. Those entities would have two options to deal with those costs. They could absorb them, decreasing the resources they could use to support communications services used to respond to national security, law enforcement requirements or emergencies like fires and floods. Alternatively, they could pass the costs through to their users in the form of higher fees.

Those users are national security, law enforcement and emergency services agencies and non-government organisations performing government functions, which are themselves largely funded by taxpayers.

In effect, in the absence of an exemption, there would either be a detriment to national security and public safety radiocommunications services or funding earmarked by governments for public safety and national security services would instead be directed to the purposes for which the TIL and ACLC are collected. The Minister has decided that this would be undesirable.

Background

In December 2021, the NSW Minister for Customer Service and the Digital Economy requested that the then Minister for Communications consider exempting the New South Wales Telecommunications Authority (NSWTA) from the charges. NSWTA's Government Radio Network provides operational services to a range of Government agencies on a not for profit basis for the purposes of public safety and national security. Prior to December 2021, NSWTA was exempted from the obligation to hold a carrier licence and, consequently, did not have an obligation to pay the charges. NSWTA obtained a carrier licence in December 2021. The request led the Government to consider whether entities like NSWTA ought to be liable to pay these charges. After a period of public consultation, the Government resolved that an exemption covering the kinds of persons specified in the Determination should be made. The exemption is not limited to the NSWTA and covers a class of public interest telecommunication network owners and operators that satisfy certain characteristics.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that this proposal is unlikely to have a more than minor impact on individuals, businesses or community groups and consequently a Regulation Impact Statement was not required. The OBPR reference number is OBPR22-02257.

Statement of compatibility with human rights

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

Consultation

The ACMA and carriers were consulted. The proposed exemption instrument was placed on the Department of Infrastructure, Transport, Regional Development and Communications and the Arts' website. The Department received three submissions to the consultation – from the NSWTA, Communications Alliance (CA) (the industry peak body) and Australian Tower Network Pty Ltd (ATN). The Department sought further information from NSWTA during the consultation process, and a supplementary submission was provided.

Notes on the *Telecommunications (Participating Person Exemption—Public Safety) Determination 2022*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Telecommunications (Participating Person Exemption—Public Safety) Determination 2022* (the Determination).

Section 2 – Commencement

Section 2 provides that the Determination will commence on the day after it is registered.

Section 3 – Authority

Section 3 provides that the source of authority for making the Determination is subsection 44(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

Section 4 – Repeal

Section 4 provides that the instrument is repealed at the start of 1 July 2024.

Section 5 – Definitions

Section 5 defines words and phrases that are used in the Determination.

The note provides that a number of expressions used in the Determination are defined in the Act. By virtue of paragraph 13(1)(b) of the *Legislation Act 2003*, those expressions have the same meaning as in the enabling legislation. These terms include ‘eligible revenue’, and ‘participating person’. Similarly, the terms ‘carriage service’, ‘communications’, ‘radiocommunications’ and ‘telecommunications network’ have the same meaning as in the *Telecommunications Act 1997*.

The term **Act** in the Determination means the *Telecommunication (Consumer Protection and Service Standards) Act 1999*.

The term **Government Radio Network** means a radiocommunications system which is owned and operated by a State or Territory or a corporation owned wholly by a State or Territory, and is used to supply carriage services using trunked radiocommunications.

The term **Permitted Purpose** means any voice or data communication necessary or desirable to facilitate the exercise of functions in connection with: preventing, preparing for, responding to or recovering from, an emergency, public safety incident or other incident posing a risk of harm to any person or property (including training activities in relation to the exercise of those functions); or law enforcement and compliance; or national security.

The term **Permitted User** means a department, agency, authority, institution or instrumentality of the Commonwealth of Australia, a State or Territory, or a corporation

owned wholly by either. This term also covers non-government entities involved in the provision of public safety activities or public safety services. Non-government entities commonly assist government during emergencies, including during natural disasters, and rely on radiocommunications services provided over government radio networks to do so.

The term **Qualifying Entity** refers to Departments of State, or agencies, authorities or instrumentalities of a State or Territory. By virtue of the Determination, only government entities will qualify for an exemption.

The term **specified period** means an eligible revenue period comprising any of the financial years from 2021-22 to 2023-24.

Section 6 – Exemption

Section 6 sets out a kind of person that, subject to satisfying a number of conditions, is exempt from paying the charges that could arise relating to the following financial years as a result of the 2021-22, 2022-23 and 2023-24 eligible revenue periods. The kind of person exempted is a Department of State or an agency, authority or instrumentality of a State or Territory that owns, is vested with and operates a Government Radio Network, and supplies carriage services only to other government bodies and non-government organisations for the purposes of public safety or national security, provided that each carriage service it supplies is wholly non-commercial or not-for-profit.

A carrier that came within the class of person specified in the Determination at any time during the 2021-22 financial year will be treated as a non-participating person for the whole of that financial year, so long as other relevant conditions are satisfied. As a result, the carrier's revenue would not be the subject of the charge assessment by the ACMA related to the following financial year. A carrier seeking to benefit from status as a non-participating person by virtue of the exemption may be required to provide information or documentation reasonably requested by the ACMA to demonstrate that it falls within the exempted class.

The Determination does not operate to retrospectively remove any charge liability. The Determination is made within the 2021-22 financial year and designates a class of persons as non-participating persons for the whole of 2021-22 year and two subsequent years.

Statement of Compatibility with Human Rights

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

Telecommunications (Participating Person Exemption–Public Safety) Determination 2022

This Determination 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

The *Telecommunications (Participating Person Exemption–Public Safety) Determination 2022* (the Determination) is made by the Minister for Communications under subsection 44(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act). Section 44(2) of the Act provides that a person is not a ‘participating person’ for an ‘eligible revenue period’ if the person is of a kind determined in writing by the Minister to be exempt. In effect, the Minister can exempt kinds of persons from paying two telecommunications-specific charges – the Telecommunications Industry Levy (TIL) and the Annual Carrier Licence Charge (ACLC) (together, ‘the charges’).

In general, any person that owns a network unit (such as a mobile base station or a telecommunications line) and uses it to supply communications to the public must hold a carrier licence or there must be a nominated carrier declaration in place for the operation of the network unit. Carriers have competition, consumer protection and public interest obligations.

Carriers that are participating persons in an eligible revenue period have the obligation to pay the charges. These charges are paid by carriers that generate more than \$25 million in ‘eligible revenue’ in a relevant financial year, as assessed by the Australian Communications and Media Authority (ACMA). The charges fund universal voice services, payphones, the National Relay Service, the emergency call service, and in part, the operations of the ACMA and Australian Competition and Consumer Commission (ACCC).

Carriers that are not participating persons at any time during an eligible revenue period will not have their eligible revenue assessed and will therefore in practice not be liable to pay the charges in relation to the subsequent financial year when eligible revenue is used to assess the charges payable.

The Determination exempts from the charges (i.e. by providing that they will not be considered to be participating person) Departments of State and agencies, authorities and instrumentalities of the States and Territories that own, are vested with and operate a Government Radio Network, and supply carriage services only to other government bodies and non-government organisations for the purposes of public safety, law enforcement or national security, provided that each carriage service they supply is wholly non-commercial or not-for-profit. The exemption will be in place for the whole of the 2021-22, 2022-23 and 2023-24 financial years.

If the exemption was not in place, government entities providing radiocommunications for public safety, law enforcement and national security purposes would have to pay the charges.

Explanatory Statement – Telecommunications (Participating Person Exemption – Public Safety) Determination 2022

Those entities would have two options to deal with those costs. They could absorb them, decreasing the resources they could use to support communications services used to respond to national security, law enforcement requirements or emergencies like fires and floods. Alternatively, they could pass the costs through to their users in the form of higher fees. Those users are national security, law enforcement and emergency services agencies and non-government organisations performing government functions, which are themselves largely funded by taxpayers.

In effect, in the absence of an exemption, there would either be a detriment to national security and public safety radiocommunications services or funding earmarked by governments for public safety and national security services would instead be directed to the purposes for which the TIL and ACLC are collected. The Minister has decided that this would be undesirable.

The exemption will not affect the overall level of funding for the charges and therefore will not affect the delivery of downstream services, including access to basic communications services which can often be important for social, economic, cultural and political participation.

Human rights implications

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

Conclusion

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