

Explanatory Statement

Telecommunications Amendment (Participating Person Exemption—Public Safety) Determination 2024

Issued by the authority of the Minister for Communications

Purpose

The purpose of the *Telecommunications Amendment (Participating Person Exemption—Public Safety) Determination 2024* (the ‘Amending Determination’) is to amend the *Telecommunications (Participating Person Exemption—Public Safety) Determination 2022* (the Original Determination) by extending its expiry date by 24 months.

The Amending Determination is made by the Minister for Communications under subsection 44(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act) and is a legislative instrument for the purposes of the *Legislation Act 2003* (paragraph 13(1)(b)). Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make, grant or issue any 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.

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 and the Annual Carrier Licence Charge (together, ‘the charges’).

Carriers that are participating persons in an eligible revenue period are obliged 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 largely contribute to funding access to universal voice services and payphones, the National Relay Service, handling of calls by Telstra to the emergency call service, and relevant functions of the ACMA and the Australian Competition and Consumer Commission (ACCC) as they relate to the regulation of the telecommunications sector.

Carriers that are not participating persons at any time during an eligible revenue period will not have their eligible revenue assessed and will therefore 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 Amending Determination will continue, for a further two eligible revenue periods, the exemption from the charges that is currently in place for Departments of State and agencies, authorities and instrumentalities of the States and Territories that:

- own, or are vested with and operate a Government Radio Network;
- supply carriage services (on a wholly non-commercial or not-for-profit basis) only to other government bodies and non-government organisations for the purposes of public safety, law enforcement or national security.

If the Original Determination is not amended and extended before the self-repeal date of 1 July 2024, or a replacement determination is not made in similar terms to cover the next two eligible revenue periods before 30 June 2025, relevant government entities would potentially have to commence paying the charges arising from the 2024-25 revenue period and later revenue periods, which could result in higher fees to end-users. Those end users are national security, law enforcement and emergency services agencies and non-government organisations performing government functions, which are themselves largely funded by taxpayers.

This could either impact national security and lower the quality of public safety radiocommunications services or re-direct funding earmarked by governments for public safety and national security services to the purposes for which the charges are collected. This could be an undesirable result.

Background

The Original Determination was time limited on the basis that other long-term options would be explored. The Original Determination, as currently in force, would be repealed at the start of 1 July 2024.

The objective of the Amending Determination is, in effect, to maintain the current arrangements by continuing the exemption set out in the Original Determination for a further two eligible revenue periods. This will provide time for Government to consider broader issues, noting it is separately consulting on delivery of a modern and more fit-for-purpose universal service regime, and sustainable long-term funding of non-commercial telecommunications services, particularly in regional and remote areas. This work is examining key assumptions underpinning the design and operation of existing funding mechanisms, including who contributes and appropriate exemption arrangements. Accordingly, as that broader work proceeds, the need and form of the *Telecommunications (Participating Person Exemption–Public Safety) Determination 2022* (incorporating the proposed amendments) may need to be further revisited in future.

Details of the instrument are set out in Attachment A.

Consultation

On 8 March 2024, the Department commenced a targeted consultation on the proposal to extend the exemption for a further two revenue periods. The ACMA, the ACCC, Communications Alliance (the industry peak body) and carriers were invited to make submissions. The Department received five submissions to the consultation from the New South Wales Telecommunications Authority, Telstra, TPG Telecom, Triple Zero Victoria, and the ACCC.

The Office of Impact Analysis (OIA) has determined that detailed impact analysis is not required under the Australian Government's Policy Impact Analysis Framework. The OIA reference number is OIA24-07419.

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.

Notes on the *Telecommunications Amendment (Participating Person Exemption—Public Safety) Determination 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Telecommunications Amendment (Participating Person Exemption—Public Safety) Determination 2024* (the Amending Determination).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

Section 4 of the Amending Determination provides that *Telecommunications (Participating Person Exemption—Public Safety) Determination 2022* (the Original Determination) is varied in the terms set out in each Schedule to the Amending Determination. There is only one Schedule to the Amending Determination.

Schedule 1 to the Amending Determination

Item 1

Item 1 amends the self-repeal date set out in section 4 of the Original Determination. The date is changed from 1 July 2024 to 1 July 2026.

Item 2

Item 1 amends the definition of ‘Specified Period’ at section 5 (Definitions) of the Original Determination to add two new paragraphs referring to ‘the 2024-25 financial year’ and ‘the 2025-26 financial year’ respectively. This change, in combination with the change at item 1, will effectively continue the exemption for a further two revenue periods.

Statement of Compatibility with Human Rights

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

Telecommunications Amendment (Participating Person Exemption—Public Safety) Determination 2024

This Amending 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 Amendment (Participating Person Exemption—Public Safety) Determination 2024* (the Amending Determination) is made by the Minister for Communications under subsection 44(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

The Amending Determination amends the *Telecommunications (Participating Person Exemption—Public Safety) Determination 2022* (the Original Determination) to extend the existing exemption for a further two eligible revenue periods and to extend the repeal date of the Original Determination by a corresponding two years.

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 and the Annual Carrier Licence Charge (together, ‘the charges’).

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. The charges contribute to funding of universal voice services, payphones, the National Relay Service, the emergency call service, and in part, the operations of the Australian Communications and Media Authority and the Australian Competition and Consumer Commission.

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 have any liability to subsequently pay the charges when eligible revenue is used to assess the charges payable.

The Original Determination means that departments of State and agencies, authorities and instrumentalities of the States and Territories are not treated as participating persons, while certain conditions continue to be met. Those conditions are that they own, or are vested with and operate a Government Radio Network, and supply carriage services (on a wholly non-commercial or not-for-profit basis) only to other government bodies and non-government organisations for the purposes of public safety, law enforcement or national security. The current determination applies to the whole of the 2021-22, 2022-23 and 2023-24 revenue periods. If not continued for a further two revenue periods, relevant government entities

could be potentially assessed as liable to pay charges arising from the 2024-25 and 2025-26 revenue periods. In turn, this could either impact national security and lower the quality of public safety radiocommunications services or re-direct funding earmarked by governments for public safety and national security services to the purposes for which the charges are collected. This could be an undesirable result.

The Amending Determination amends the repeal date at section 4 of the Original Determination from 1 July 2024 to 1 July 2026 and the definition of ‘Specified Period’ at section 5, to continue the existing exemption for a further two revenue periods. This reflects the fact that the Government is separately consulting on delivery of a modern and more fit-for-purpose universal service regime, and sustainable long-term funding of non-commercial telecommunications services, particularly in regional and remote areas.

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 baseline communications services which are important for social, economic, cultural and political participation.

Human rights implications

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

Conclusion

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