



AUSTRALIAN
SENATE

Senate Standing Committee for the
Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600

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www.aph.gov.au/senate_sdlc

17 June 2021

The Hon Paul Fletcher MP
Minister for Communications, Urban Infrastructure, Cities and the Arts
Parliament House
CANBERRA ACT 2600

Via email: dlo@communications.gov.au


Dear Minister,

Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Parliamentary oversight

Senate standing order 23(3)(k) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation. This includes in relation to the sunset dates of instruments. The committee's expectations in relation to this scrutiny principle are set out in [guidelines](#) available on the committee's website.

Section 4 of the instrument provides that the instrument is repealed at the end of 26 April 2036, that is, in 15 years' time.

However, noting that no exemption from sunseting exists for this instrument under section 54 of the *Legislation Act 2003* or under the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is subject to the sunseting provisions of the *Legislation Act*, and is therefore due to sunset on 1 April 2031.

It appears therefore that section 4 of the instrument may be invalid because it is inconsistent with the sunseting provisions of the *Legislation Act* which provide that instruments are repealed ten years after registration (see *Legislation Act*, subsection 50(1)).

The committee understands that it is intended that the instrument would only self-repeal in accordance with its own section 4, that is on 26 April 2036, if it eventuated that the ordinary sunseting mechanism currently provided by section 50 of the *Legislation Act* did not apply for some reason. It is unclear to the committee in what circumstances the ordinary sunseting mechanism of the *Legislation Act* would not apply to this instrument.

In light of the discussion above, the committee requests your advice as to:

- the validity of section 4 of the instrument;
- the circumstances in which the ordinary sunseting mechanism of the Legislation Act would not apply to this instrument; and
- why it is considered necessary that the instrument contain a repeal date that is later than the sunseting date to which it is subject.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.


Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 July 2021**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,


Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation