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MS21-000458

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
Canberra ACT 2600

Dear Senator

Thank you for your letter dated 17 June 2021, regarding the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) concerns in relation to the *Radiocommunications (Spectrum Access Charges - 20 GHz and 30 GHz bands) Determination 2021* (the instrument). The instrument was made by the Australian Communications and Media Authority (ACMA) on 11 March 2021.

The instrument fixes spectrum access charges under section 294 of the *Radiocommunications Act 1992*, payable by the Department of Defence (Defence) for two spectrum licences it holds in the 20 GHz and 30 GHz bands. The licences are used by Defence for military satellite communications. Defence has advised that the use of these bands by Defence and allied partners is extensive and continuing to grow. These licences will expire on 26 April 2036.

I understand the Committee's concerns relate primarily to the operation of section 4 of the instrument, which provides for the repeal of the instrument at the end of 26 April 2036. In particular, the Committee seeks advice concerning the validity and necessity of section 4, including the circumstances in which the ordinary sunset provisions of the *Legislation Act 2003* would not apply to the instrument.

I can confirm that the sunset provisions set out in section 50 of the *Legislation Act 2003* apply to the instrument, so that the instrument will be repealed by the operation of that section on 1 April 2031. Section 4 of the instrument does not, and cannot, seek to alter the effect of section 50 of the *Legislation Act 2003* on the instrument.

I understand that section 4 has been included to provide for the timely repeal of the instrument in the event of a future, unforeseen, change in law that would otherwise lead to the instrument continuing to have effect following the expiry, on 26 April 2036, of the important licences that are subject to the instrument. This means that the only circumstances in which section 4 of the instrument would come into effect is if there is a future change in the law that alters the effect of section 50 of the *Legislation Act 2003* on the instrument. Such a change could only occur through normal legislative and parliamentary processes.

As such, section 4 validly seeks to complement the operation of the sunseting provisions of the *Legislation Act 2003*, and the provision does not seek to circumvent or contradict the operation of these sunseting arrangements.

ACMA has advised me that it undertakes to lodge an updated explanatory statement for the instrument, so as to include a clarification of the effect of section 4 of the instrument. In particular, that updated information will make plain that the ordinary timetable for sunseting under the *Legislation Act 2003* is unaffected by section 4. ACMA will also review the need for, and the appropriate drafting of, such a section in similar instruments in the future, noting the concerns that have been expressed by the Committee.

Thank you for bringing the Committee's concerns to my attention. I hope the information in this letter is of some help.

Yours sincerely

Paul Fletcher

30/6/2021