



AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600  
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4 February 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](mailto:dlo@communications.gov.au)

Dear Minister,

**Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 3)  
[F2020L01337]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument.

***Levying of taxation in delegated legislation  
Matters of interest to the Senate***

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary legislation rather than delegated legislation). This includes whether an instrument imposes a tax or levy. In addition, Senate standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest.

The Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 3) (the instrument) amends the Radiocommunications (Transmitter Licence Tax) Determination 2015 to provide for the rate of tax in relation to area-wide transmitter licences. The instrument is made under subsection 7(1) of the Radiocommunications (Transmitter Licence Tax) Act 1983 (the Act) which empowers the Australian Media and Communications Authority (ACMA) to set the amount of tax in relation to transmitter licences. However, the explanatory statement does not justify why it is considered necessary and appropriate for rate of this tax to be left to be determined in delegated legislation.

The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, it does not appear there is a cap on the face of the Act as to the amount of tax that may be imposed, which compounds the committee's scrutiny concerns in relation to this tax due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved draw these instruments to the attention of the Senate in its *Delegated Legislation Monitor 2 of 2021*, however the committee is not seeking any further information or advice from you in relation to this particular instrument. As a matter of best practice for the future, the committee considers that explanatory statements to instruments which set the rate of a tax should set out why it is considered necessary and appropriate to set the rate of a tax in delegated legislation, as opposed to specifying such matters in primary legislation.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

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](mailto: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**