

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Broadcasting Services (Class Licences) Determination 2017

Broadcasting Services Act 1992

Purpose

The Australian Communications and Media Authority (the **ACMA**) has made the *Broadcasting Services (Class Licences) Determination 2017* (the **Determination**). The Determination revokes and replaces the *Broadcasting Services Act 1992 – Determination of Class Licences (01/10/1992)* (the **1992 Determination**) without making any significant changes to the regulatory arrangements created by the 1992 Determination.

The ACMA has made the Determination because the 1992 Determination was due to “sunset” (i.e. be repealed automatically) on 1 October 2017 in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). Following review, and consultation as described below, the ACMA formed the view that the 1992 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. To preserve the effect of the 1992 Determination, the ACMA has revoked the 1992 Determination before its sunset date and remade it with only minor drafting changes as are necessary.

Legislative Provisions

Section 12 of the *Broadcasting Services Act 1992* (the **BSA**) specifies the licence type — be that individual or class — that applies to each category of broadcasting service. Subsection 12(1) provides that the provision of commercial and community broadcasting services, and subscription television services require individual licences whereas subsection 12(2) provides that all other broadcasting services (other than national broadcasting services) are to be provided under the relevant class licence.

Section 117 of the **BSA** provides that the ACMA may, by legislative instrument, determine a class licence for the provision of:

- > subscription radio broadcasting services; or
- > subscription radio narrowcasting services; or
- > subscription television narrowcasting services; or
- > open narrowcasting radio services; or
- > open narrowcasting television services.

The Determination is made under section 117 of the BSA and is a legislative instrument for the purposes of the LA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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.

Operation

The Determination gives effect to the requirement in section 12 of the BSA that certain categories of broadcasting services are to be provided under a relevant class licence. The determination specifies those broadcasting services referred to in section 117 of the BSA.

Consultation

Subsection 17(1) of the LA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake has been undertaken.

The ACMA published a draft instrument and consultation paper on its website between 2 February 2017 and 17 February 2017. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing class licensing arrangements should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

The ACMA received two submissions in response to the consultation paper. One submission supported the remaking of the Determination and the other was silent on the matter.

Regulation Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunseting legislative instruments. As the ACMA has determined that the 1992 Determination was fit for purpose and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation Impact Statement is required in relation to the making of the Determination. The OBPR reference number is 17279.

Statement of Compatibility with Human Rights

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is attached as Attachment A.

NOTES ON THE DETERMINATION

Section 1 Name of Determination

Section 1 provides that the Determination is the *Broadcasting Services (Class Licences) Determination 2017*.

Section 2 Commencement

Section 2 provides that the Determination commences at the start of the day after the day it is registered on the Federal Register of Legislation.

Section 3 Authority

Section 3 specifies the provision of the *Broadcasting Services Act 1992* under which the Determination is made.

Section 4 Revocation of previous Determination

Section 4 provides that the *Broadcasting Services Act 1992 – Determination of Class Licences (01/10/1992)* is revoked.

Section 5 Determination of Class Licences

Section 5 specifies the five categories of broadcasting services for which the provision of each is authorised by a class licence.

Attachment A

Statement of Compatibility with Human Rights

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

Broadcasting Services (Class Licences) Determination 2017

This legislative instrument 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 of the Legislative Instrument

The *Broadcasting Services (Class Licences) Determination 2017* (the **Determination**) revokes and replaces the *Broadcasting Services Act 1992 – Determination of Class Licences (01/10/1992)* without making any significant changes to the regulatory arrangements made by that instrument.

The Determination is made under section 117 of the *Broadcasting Services Act 1992*. It specifies the five categories of broadcasting services that are to be provided under a class licence.

Human rights implications

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

Conclusion

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

Australian Communications and Media Authority