

EXPLANATORY STATEMENT

Australian Communications and Media Authority Act 2005

Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2017

Issued by the Authority of the Minister for Communications

Authority

The *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2017* (Direction) is made by the Minister for Communications (the Minister) under section 14 of the *Australian Communications and Media Authority Act 2005* (ACMA Act). Section 14 of the ACMA Act provides that the Minister may give written directions to the Australian Communications and Media Authority (ACMA) in relation to the performance of its functions and the exercise of its powers.

Purpose

The purpose of this Direction is to direct the ACMA to make determinations under subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* (Carrier Licence Charges Act) which have the continued effect of removing the annual carrier licence charge for a licence held by a carrier that was a 'non-participating person' for an eligible revenue period immediately preceding the relevant financial year. The Direction is in substantially the same terms as the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2013*, however it makes several updates to legislative references stemming from the abolition of the *Telecommunications Universal Service Management Agency Act 2012* (the TUSMA Act) and updates to the determination which specifies the class of carriers that are participating persons for the purposes of carrier licencing charges.

Background

Annual Carrier Licencing

Under section 13 of the Carrier Licence Charges Act, a holder of a telecommunications carrier licence is required to pay annual carrier licence charges. The annual carrier licence charge recovers the costs of regulating the telecommunications industry. The amount of the annual carrier licence charge is annually set by the ACMA in a written determination, under section 14 of the Carrier Licence Charges Act.

The *Telecommunications (Participating Persons) Determination 2015* (the Participating Persons Determination) provides that carriers that satisfy specific criteria will be non-participating persons under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* for the relevant eligible revenue period. The criteria includes:

- have an initial sales revenue, gross telecommunications sales revenue or eligible revenue of less than \$25 million, or the person is an externally-administered body corporate, or is deregistered; and
- lodge an eligible statutory declaration with the ACMA within the specified timeframe.

The purpose of this Direction is to continue to direct the ACMA to provide that a ‘non-participating person’ under the Participating Persons Determination, for the eligible revenue period immediately preceding the 2016-17 financial year, will not be liable to pay an annual carrier licence charge for that financial year.

For example, Carrier A is a non-participating person for the 2016-17 eligible revenue period. Applying this Direction, the determination made by the ACMA under section 14 of the Carrier Licence Charge Act would provide that Carrier A is not liable to pay an annual carrier licence charge for the 2015-16 financial year.

This Direction applies to the 2016-17 eligible revenue period and future eligible revenue periods.

The Direction is a legislative instrument for the purposes of the *Legislation Act 2003*. The Determination is a class of instruments specified at item 2 of the table at section 9 of the *Legislation (Exemptions and Other Matters) Regulations 2015* for the purposes of paragraph 42(2)(b) of the Legislation Act, and is therefore exempt from disallowance.

Consultation

The Direction is of a minor nature and does not substantially alter existing arrangements. The ACMA advised that full industry consultation was not required. Comment was sought from the Communications Alliance, and its Board of Directors advised that industry consultation was unnecessary.

Regulatory impact

The Office of Best Practice Regulation (OBPR) has advised that the regulatory changes arising from the Direction are machinery in nature and that a Regulation Impact Statement is not required (OBPR reference: 21273).

Notes on sections

Section 1 - Name of Direction

Section 1 provides that the name of the Direction is the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2016*.

Section 2 – Commencement

Section 2 provides that the Direction commences on the day after the Direction is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Direction is made under section 14 of the *Australian Communications and Media Authority Act 2005*.

Section 4 – Repeal

Section 4 repeals the *Australian Communications and Media Authority (Annual Carrier Licence Charge) Direction 2013*.

Section 5 – Definitions

Section 5 sets out the key definitions used in the Direction.

Section 6 – Direction

Section 6 directs the ACMA to make such determinations as are necessary under subsection 14(1) of the Carrier Licence Charges Act that have the effect of imposing a nil annual carrier licence charge for a relevant financial year on ‘non-participating persons’ (as defined in the Participating Persons Determination).

The ACMA must have regard to the Direction when making a determination under subsection 14(1) of the Carrier Licence Charges Act in relation to the 2016-17 financial year and beyond.