

in which the documents may be accessed will also be clarified in the revised Explanatory Statement.

Committee's response

The committee thanks the minister for his response, and notes the minister's advice that the Skills Shortage List and the National Quality Standard are incorporated as at the commencement of the instrument.

The committee also notes the minister's undertaking to register a replacement ES on the Federal Register of Legislation specifying the manner in which the Skills Shortage List and National Quality Standard are incorporated, and also how those documents may be obtained free of charge.

The committee has concluded its examination of the instrument.

Instrument	Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017 [F2017L01375]
Purpose	Sets the amount of tax payable, in relation to individual transmitters, by licensees on whom tax is imposed under the <i>Commercial Broadcasting (Tax) Act 2017</i>
Authorising legislation	<i>Commercial Broadcasting (Tax) Act 2017</i>
Portfolio	Communications and the Arts
Disallowance	15 sitting days after tabling (tabled Senate 13 November 2017) Notice of motion to disallow must be given by 8 February 2018 ¹³
Previously reported in	<i>Delegated legislation monitor 15 of 2017</i>

Incorrect classification of instrument as exempt from disallowance¹⁴

Committee's initial comment:

The instrument is a determination made under subsection 8(2) of the *Commercial Broadcasting (Tax) Act 2017* (CB (Tax) Act). It was classified as exempt from disallowance when received by Parliament and by the committee, and was tabled in the House of Representatives and the Senate on that basis.

13 In the event of any change to the Senate's sitting days, the last day for the notice would change accordingly.

14 Scrutiny principle: Senate Standing Order 23(3)(a).

Subsection 13(5) of the CB (Tax) Act provides that subsection 42 of the *Legislation Act 2003* (Legislation Act) — which provides for the disallowance of legislative instruments — does not apply to determinations made under subsection 8(2) of the CB (Tax) Act.

However, subsection 13(2) of the CB (Tax) Act replaces disallowance under the Legislation Act with an alternative disallowance procedure, under which either House of Parliament may pass a resolution disallowing an instrument made under subsection 8(2). Consequently, although the instrument is not disallowable under the Legislation Act, it is a disallowable instrument. In this regard, the committee notes that the explanatory statement (ES) to the instrument states that 'the Determination is subject to disallowance under section 13 of the Tax Act'.

While the committee understands that the instrument has since been reclassified as subject to disallowance, after being drawn to the attention of the Office of Parliamentary Counsel by the committee's secretariat, the committee is concerned that its initial misclassification as exempt from disallowance has potentially hindered the effective oversight of delegated legislation by Parliament.

This is because section 42 of the Legislation Act allows senators and members 15 sitting days, following the tabling of a disallowable instrument in the relevant House of Parliament, to lodge a notice of motion to disallow that instrument. Where an instrument is initially and incorrectly tabled as exempt from disallowance, members and senators have no opportunity to lodge a notice of motion to disallow the instrument during the period that it is incorrectly classified.

The committee remains concerned about the process for the classification of instruments and continues to monitor this issue.

The committee requests the minister's advice as to the incorrect classification of the instrument as exempt from disallowance.

Minister's response

The Minister for Communications advised:

I am advised that due to an administrative error, the Determination was wrongly classified as exempt from disallowance. I understand the error was rectified by the Office of Parliamentary Counsel (OPC) on 23 November 2017, after the Committee's Secretariat drew it to OPC's attention.

I also understand that the Senate Table Office updated its Disallowable Instruments List on the same day to give notice to Senators of the correct classification of the Determination as being disallowable under the alternative disallowance procedure contained in section 13 of the *Commercial Broadcasting (Tax) Act 2017*. The House Table Office confirmed that it did likewise on the next available sitting day of the House of Representatives (4 December 2017). I conclude from this that,

unfortunately, a period of three disallowable sitting days in each House expired before the Determination was correctly listed.

I agree that this is a serious issue, and I thank the Committee for drawing it to my attention. I am confident that officers in my Department understand the significance of ensuring that instruments tabled in the Parliament are correctly classified, so as not to hinder the Parliament's effective oversight of delegated legislation.

Committee's response

The committee thanks the minister for his response. The committee notes the minister's advice that the misclassification of the instrument as exempt from disallowance was due to an administrative error, and his assurance that his department understands the significance of ensuring that instruments are correctly classified.

The committee has concluded its examination of this instrument. However, the committee remains concerned that the initial incorrect classification of the instrument as exempt from disallowance may have hindered the effective oversight of the instrument by Parliament.

In these circumstances, the committee has resolved to place a protective notice of motion on the instrument to extend the disallowance period by 15 sitting days. The committee will continue to monitor the classification of instruments.