EXPLANATORY STATEMENT

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2009 (No. 1)

Legislative Provisions
The Radiocommunications (Transmitter Licence Tax) Amendment Determination 2009 (No. 1) ("the Amendment Determination") amends the Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2) ("the Determination").

The Determination and Amendment Determination are both made under subsection 7(1) of the Radiocommunications (Transmitter Licence Tax) Act 1983 (the Act) which provides that the Australian Communications and Media Authority (ACMA) may determine the amount of tax in respect of:

- the issue of a transmitter licence;
- the anniversary of a transmitter licence coming into force; and
- the holding of a transmitter licence.

Background
Under the Radiocommunications Act 1992, ACMA is responsible for maintaining an efficient, equitable and transparent system of charging for the use of spectrum. The annual tax levied on apparatus licences allows ACMA to create economic incentives for efficient use of the spectrum. It encourages licensees to use the minimum amount of bandwidth for their needs, move to less congested bands, and surrender licences that are no longer needed.

Where frequencies are in very limited supply, ACMA seeks to ensure efficient use of spectrum by allocating channels to licensees with the greatest willingness to pay. If a tax is too low, licensees with more economically efficient uses may be excluded, while those with low-value uses are occupying channels.

In 2003, ACMA’s precursor, the Australian Communications Authority (ACA) increased the tax applied to fixed licence types operating in bands below 960 MHz, in response to increasing congestion in fixed licence segments of these spectrum bands. At the time, a decision was made to increase the tax in five annual increments to bring the fixed licence tax into parity with the land mobile tax\(^1\).

The land mobile tax is an appropriate reference point for the fixed licence taxes for two reasons:

- Land mobile services and fixed services share the same frequency bands; and
- client behaviour indicates that the ‘opportunity cost’ of fixed licences is, at least, as high as the land mobile tax\(^2\).

\(^1\) The regulation impact statement for this five year plan was tabled with the explanatory statement for changes to the Radiocommunications (Transmitter Licence Tax) Amendment Determination 2005 (No. 1) registered on 18 February 2005.

\(^2\) Opportunity cost is the value of spectrum in the best alternative use. In its 2002 report on radiocommunications, the Productivity Commission recommended that ACA price spectrum on its opportunity cost.
It was intended that by 2010 the fixed point to multipoint licence tax would be equal to the land mobile tax, while the fixed point to point licence tax would be one quarter of the land mobile tax.

In April 2008, ACMA implemented the fourth increase in licence tax in accordance with this plan.

It has been drawn to ACMA’s attention that the tax increases may be acting as an impediment to the deployment of services in remote areas. ACMA has decided to suspend the fifth planned increase in taxes in remote areas, and to set these taxes at the 2008 level, pending further consideration of administrative pricing issues in relation to this licence category.

**Purpose and Operation**

The Amendment Determination amends the taxing regime for radiocommunications transmitter licences to:

- Raise taxes for fixed services in bands below 960 MHz in accordance with ACMA’s five year plan except for fixed services in remote density areas where taxes are capped at the 2008 level.
- Adjust all other taxes by a 4.50% adjustment based on the annual CPI movement to June 2008.

**Impact and Effect**

The Amendment Determination will enhance the efficiency and equity of the taxing regime by further aligning the taxes for fixed and land mobile licences in the same bands. As a result of the changes, licensees with fixed licences in bands below 960 MHz will generally face higher taxes. This is a necessary consequence of the realignment to improve equity for apparatus licence holders.

**Consultation**

When taxes for fixed licences in bands below 960 MHz were increased in 2003, the former ACA wrote to all affected licensees stating the reason for the increase and advising that further increases would be implemented.

In the year following April 2005, fixed licensees were informed in renewal notices of the second increase, together with information that their licence tax will increase each year until 2010 until the point to multipoint tax is equal to the land mobile tax, and the point to point tax is one-quarter of the land mobile tax.

The Office of Regulation Review advised that the RIS prepared for the first increase in the five year plan would apply to all five tax increases and that consultation is not required for CPI adjustments.

In the special case of status quo taxes for remote density areas fixed licences in bands below 960 MHz, ACMA considered it unnecessary to consult with stakeholders as there were no changes made affecting their licences.
Legal and other requirements
The Amendment Determination is a legislative instrument. All legal and other requirements for the making of the Amendment Determination have been met.

Detailed description of the Amendment Determination
Details of the Amendment Determination are in Attachment 1.
ATTACHMENT 1

Notes on the instrument

**Section 1 Name of Determination**

Section 1 provides the name of the Amendment Determination.

**Section 2 Commencement**

Section 2 provides that the Amendment Determination commences on the day after it is registered.

**Section 3 Amendment of Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)**

Section 3 provides that Schedule 1 of the Amendment Determination amends the Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2).

**Schedule 1 Amendments**

**Item 1**

Item 1 sets out the heading for the transitional Part of the determination that deals with the new amendment. Section 4.1 of new Part 4 then sets out the relevant definitions.

Item 1 also substitutes new transitional arrangements in Section 4.2 of Part 4. Although the Amendment Determination commences on the day after registration, in some instances where the tax is payable after this date, the amount of tax will continue to be based on the Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2) as in force immediately before the commencement of the Amendment Determination. The purpose of these transitional arrangements is to allow the amount of tax shown on renewal notices and instalment notices sent out prior to the commencement of the Amendment Determination, but payable after the commencement of the Amendment Determination, to continue to be valid.

**Item 2**

Item 2 substitutes a new table 202 (and accompanying note) which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2 of Schedule 2. The amount of tax varies with frequency range and location of the spectrum access. All amounts have been raised by the adjustment of 4.50%.

**Item 3**

Table 302 in Part 3 of Schedule 2 (assigned licences in high demand frequency bands) sets out the amount of tax for each kHz of bandwidth for the licensing options. The amount of tax varies with frequency range and density of the spectrum access. All amounts have been raised by the adjustment of 4.50%.
Item 4
Table 402 in Part 4 of Schedule 2 (assigned fixed point to point licences) has raised the minimum tax for each kHz of bandwidth for the licensing options. The amount of tax varies with frequency range and location of the spectrum access. All amounts with frequency bands below 960 MHz (except remote density areas) have been raised in the fifth and final increment of a five-year program to align fixed licence taxes with land mobile licence taxes. All amounts have been raised by the adjustment of 4.50% except for frequency bands below 960 MHz in remote density areas where the amount of tax remained set at the 2008 level.

Item 5
Table 502 in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) has raised the minimum tax for each kHz of bandwidth for the licensing options. The amount of tax varies with frequency range and location of the spectrum access. All amounts with frequency bands below 960 MHz (except remote density areas) have been raised in the fifth and final increment of a five-year program to align fixed licence taxes with land mobile licence taxes. All amounts have been raised by the adjustment of 4.50% except for frequency bands below 960 MHz in remote density areas where the amount of tax remained set at the 2008 level.

Item 6
Table 602 in Part 6 of Schedule 2 (fixed television outside broadcast station) sets out the amount of tax for each kHz of bandwidth for the licensing options. The amount of tax varies with frequency range and location of the spectrum access. All amounts have been raised by the adjustment of 4.50%.

Item 7
Table 702 in Part 7 of Schedule 2 (assigned licences subject to a fixed annual tax) sets out the amount of tax for the licensing options. All amounts have been raised by the adjustment of 4.50%.

Item 8
Table 802 in Part 8 of Schedule 2 sets out the amount of tax for certain high power open narrowcasting licences. All amounts have been raised by the adjustment of 4.50%.

Item 9
Table 902 in Part 9 of Schedule 2 sets out the amount of tax for high power open narrowcasting licences. All amounts have been raised by the adjustment of 4.50%.

Item 10
Item 10 sets out the amount of tax for the licensing options specified in Part 10 of Schedule 2 (non-assigned licences). All amounts have been raised by the adjustment of 4.50%.
Item 11

The Amendment Determination also sets out further amendments as follows:

- Minimum tax for the different licensing options as detailed in Schedule 2 items 205, 304, 403, 504, and 603 from $31.93 to $33.36, representing an increase of 4.50%;
- Item 904, Part 9 of Schedule 2 of the Amendment Determination has raised the minimum tax for power open narrowcasting licences from $764 to $798, an increase of 4.50%.; and
- Step 3 of Table 103, Table 104, and Table 105 in Schedule 3 ensures the minimum annual amount of tax for all licences has been raised from $31.93 to $33.36.