EXPLANATORY STATEMENT
Issued by the Australian Communications and Media Authority

Radiocommunications (Receiver Licence Tax) Amendment Determination 2011 (No. 3)
Radiocommunications Act 1992

Purpose
The Radiocommunications (Receiver Licence Tax) Amendment Determination 2011 (No. 3) (the Amendment Determination) amends the Radiocommunications (Receiver Licence Tax) Determination 2003 (No. 2) (the Determination).

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

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

Subsection 33(3) of the Acts Interpretation Act 1901 provides that when an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Background
Under the Radiocommunications Act 1992, the 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 (receiver licences and transmitter licences) allows the 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, the ACMA seeks to ensure efficient use of spectrum by allocating channels to licensees with the greatest willingness to pay for the use of the spectrum. If a tax is too low, licensees with more economically efficient uses may be excluded, while those with low-value uses are occupying channels.

The Determination sets out the different amounts of receiver licence tax that the ACMA has determined are payable by licensees of particular apparatus licences.

Operation
The Amendment Determination amends the taxing regime for radiocommunications receiver licences to increase the taxes payable by licensees under the Determination by 3.60 percent, an adjustment based on the annual consumer price index (CPI) movement to June 2011.

The only exception to the CPI increase is that the Amendment Determination also continues the freeze in dollar amounts of taxes levied on point to point and point to multi-point fixed wireless access services below 960 MHz in remote areas at their 2008 levels, pending a review.

In real terms there is no effect on businesses, as the nominal dollar increases merely preserve the value of the licence taxes against erosion by inflation.
Consultation
Subsection 18(1) of the Legislative Instruments Act 2003 provides that the nature of an instrument may be such that consultation may be unnecessary or inappropriate. The ACMA considered it unnecessary in this instance to consult on the changes proposed in the Amendment Determination, particularly because an instrument which applies CPI increases is of a minor or machinery nature and does not substantially alter existing arrangements.

The formula the ACMA uses for calculating apparatus licence taxes has been in place since 1995 (it was updated in 2005) and the changes made to the Determination by the Amendment Determination merely apply the same formula used for existing arrangements.

In addition, industry is aware of adjustments to apparatus licence taxes to account for CPI increases. Such adjustments have been made by the Spectrum Management Agency, Australian Communications Authority and the ACMA since 1995. Information about the CPI is freely available to the general public. Information is also available from the ACMA website about apparatus licence fees including the statement that “All apparatus licence taxes are adjusted annually for changes in the Consumer Price Index (CPI), to compensate for the effects of inflation.”

In the special case of taxes for point to point and point to multi-point fixed wireless access services operating in frequency bands below 960 MHz in remote density areas, the ACMA considered it unnecessary to consult as no changes have been made to the amount of taxes payable under the Determination.

Regulatory Impact
The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that no regulatory impact analysis is required for the Amendment Determination. The OBPR reference number is ID12297.

Amendment Determination Details
Details of the Amendment Determination are provided at the Attachment.
NOTES ON SECTIONS

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 on the Federal Register of Legislative Instruments.

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

Schedule 1 Amendments

Item 1
Item 1 amends paragraph 1.3(1)(b) of the Determination by omitting the words ‘, made under subsection 54(1) of the Australian Communications Authority Act 1997’. The purpose of this amendment is to update the provision as it is no longer necessary to refer to the transitional arrangements put in place when the ACMA came into existence in 2005.

Item 2
Item 2 substitutes Part 4 of the Determination to introduce new transitional arrangements. New section 4.1 sets out the relevant definitions, and new section 4.2 provides new transitional arrangements for the implementation of receiver licence tax increases made by the Amendment Determination.

Item 3
Item 3 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 of the Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 3.60 percent.

Item 4
Item 4 substitutes a new table 302 (and accompanying note) which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 3 of Schedule 2 of the Determination. All amounts have been raised by the adjustment of 3.60 percent except for frequency bands below 960 MHz in remote density areas where the amount of tax remains set at the 2008 level.
Item 5
Item 5 amends the Dictionary in the Determination by substituting the definition of ‘ACA’ with a definition of ‘ACMA’ to update the Determination.

Item 6
Item 6 sets out further amendments to specific amounts in the Determination to reflect the increase in taxes by the CPI of 3.60 percent. These changes include substituting:

- each mention of $249 with $258 in subitem 203(1) in Part 2 of Schedule 2 of the Determination; and
- the amount of $34.91 with the amount of $36.17 (adjustment of 3.60 percent) in items 204 and 303 of Schedule 2 and step 3 of tables 103, 104 and 105 in Schedule 3, of the Determination.