EXPLANATORY STATEMENT
Issued by the Australian Communications and Media Authority
Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 3)
Radiocommunications (Receiver Licence Tax) Act 1983

Purpose
The Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (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 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. 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 is payable by licensees of particular apparatus licences.

Operation
The Amendment Determination amends the taxing regime for radiocommunications receiver licences to adjust all taxes by a 1.20 per cent increase based on the annual consumer price index (CPI) movement to June 2012. 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.

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 operating in frequency bands below 960 MHz in remote density areas at their 2008 levels. The apparatus licence taxes for these remote density area services will continue to remain at the same level for 2012-13.
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 considers that it is unnecessary in this instance to consult on the Amendment Determination, in particular as CPI increases are routine and machinery in nature.

The formula the ACMA uses for calculating apparatus licence taxes has been in place since 1995 (it was updated in 2005) and the Amendment Determination is merely applying the formula used for existing arrangements. Information about the CPI is freely available to the general public.

In addition, industry is aware of adjustments to apparatus fees to account for CPI increases. Such adjustments have been made by the Spectrum Management Agency, Australian Communications Authority and the ACMA since 1995. Information is available from the ACMA website (acma.gov.au) about apparatus licence fees including the statement that “All apparatus licence taxes are adjusted annually for changes in the 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 with stakeholders as there were no changes made affecting their licences.

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 in Attachment 1.

Statement of Compatibility with Human Rights

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.

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 substitutes Part 4 of the Determination to introduce new transitional arrangements. New section 4.1 of the Determination 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.

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 (Receiver 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 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 1.20 per cent.

Item 3
Item 3 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 1.20 per cent except for frequency bands below 960 MHz in remote density areas where the amount of tax remains set at the 2008 level.

Item 4
Item 4 sets out further amendments to specific amounts in the Determination to reflect the increase in taxes by the CPI of 1.20 per cent. These changes include substituting:
- the mention of $258 with $261 for sub item 203(1) in Part 2 of Schedule 2 of the Determination; and
- the amount of $36.17 with the amount of $36.60 for items 204 and 303 of Schedule 2 and step 3 of tables 103, 104 and 105 in Schedule 3 of the Determination.
Statement of Compatibility with Human Rights

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

Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 3)

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 Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 3) (Amendment Determination) amends the Radiocommunications (Receiver Licence Tax) Determination 2003 (No. 2) (the Determination). Both the Determination and Amendment Determination are made under subsection 7(1) of the Radiocommunications (Receiver Licence Tax) Act 1983.

The Amendment Determination amends the Determination to increase receiver licence taxes by the consumer price index (CPI) for all licences, except for point to point and point to multi-point fixed wireless access service licences below 960 MHz in remote density areas, for which such taxes remain unchanged.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.