

EXPLANATORY STATEMENT

Radiocommunications (Interpretation) Amendment Determination 2005 (No. 1)

Issued by the Authority of the Australian Communications Authority (ACA)

Legislative Provisions

Subsection 54 (1) of the *Australian Communications Authority Act 1997* (the ACA Act), section 5, paragraphs 7 (1) (a) and (b), subsection 10A (1), paragraph 16 (1) (ca), subsections 30 (1), 32 (1), 34 (1) and 98 (1), paragraphs 107 (1) (f) and 108A (1) (e), subsections 115 (1), 131AC (1) and 132 (1), section 134, paragraphs 144 (1) (c), (d) and (e) and 147 (1) (c), (d) and (e) and subsection 300 (1) of the *Radiocommunications Act 1992* (the Act) allow the Australian Communications Authority (ACA) to determine definitions of terms that are used in legislative instruments made by the ACA.

Under subsection 54(1) of the ACA Act, the ACA may make a written determination defining one or more expressions used in specified instruments, being instruments that are made by the ACA under one or more specified laws of the Commonwealth. The *Radiocommunications (Interpretation) Amendment Determination 2005 (No. 1)* (the Amendment Determination) is made pursuant to subsection 54(1) of the ACA Act.

Background

This Amendment Determination is part of a package of changes to apparatus licence fees described in the attached Regulation Impact Statement (RIS ID 3876) and given effect by the:

- *Radiocommunications (Receiver Licence Tax) Amendment Determination 2005 (No.1)*. This instrument determines the amount of tax imposed on radiocommunications receiver licences;
- *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2005 (No.1)*. This instrument determines the amount of tax imposed on radiocommunications transmitter licences ; and the
- *Radiocommunications (Charges) Amendment Determination 2005 (No. 1)*. This instrument includes the charge imposed on the issue or recoordination of a 900 MHz studio to transmitter link station.

The instruments can be accessed from the ACA's website www.aca.gov.au .

Purpose and Operation

The Amendment Determination provides a definition for a '900MHz studio to transmitter link station'. In addition, a definition for a 'point to point (58 GHz band) station' has been added to the *Radiocommunications (Interpretation) Determination 2000* (the Interpretation Determination). A definition for a 'point to point station (58 GHz band)' has also been removed from the *Radiocommunications (Transmitter Licence Tax) Determination 2003(No. 2)*.

The definition of a '900MHz studio to transmitter link station' is necessary to support the creation of a new apparatus licensing option under the ACA's fixed licence type. This new option is for point to point links used by radio broadcasters to transmit programs from a studio to a transmitter site. This option is necessary to allow the ACA to establish a charging and tax regime for this licensing option that is different to other fixed options.

Stations which are a 900MHz studio to transmitter link station need to have a different tax regime because they use a wide bandwidth, which, in the package of changes to apparatus licence fees would mean that, unless dealt with differently, fees for these stations would increase significantly. This increase is considered more than is necessary to encourage efficient spectrum use for this type of service. The introduction of the new licensing option allows smaller fee rises for these studio to transmitter links.

In addition, the moving of and amendment to the definition of a 'point to point station (58 GHz band)' from the *Radiocommunications (Transmitter Licence Tax) Determination 2003(No. 2)* to the Interpretation Determination allows this definition to be located in the same instrument as other point to point station definitions. Following the making of this Amendment Determination, the Interpretation Determination will include definitions for:

- point to point (58 GHz band) station;
- 900MHz studio to transmitter link station;

which add to existing Interpretation Determination definitions for:

- point to point station; and
- point to point (5.8 GHz band) station.

These four definitions describe the four options available for point to point services under the fixed licence type.

The *Radiocommunications (Transmitter Licence Tax) Determination 2003(No. 2)* definition of a 'point to point station (58 GHz band)' stated 'means a fixed licence authorising the licensee to operate a pair of point to point stations within the frequency range greater than 57.2 GHz and less than or equal to 58.2 GHz.'

As a result of this Amendment Determination, the Interpretation Determination will state 'point to point (58 GHz band) station means a point to point station that is operated only within the frequency range greater than 57.2 GHz and less than or equal to 58.2 GHz.' This definition is more consistent with the definition of a 'point to point (5.8 GHz band) station', and deletes unnecessary terms.

The words 'means a fixed licence' have been deleted because the new definition inserts 'means a point to point station'. The definition of a point to point station in the Interpretation Determination 'means a station that: (a) is operated under a fixed licence...' Consequently the words 'means a fixed licence' have become redundant.

The words 'authorising the licensee to operate a pair of point to point stations' are also considered unnecessary as the tax for a point to point (58 GHz band) station is for a pair of stations.

Consultation

In relation to the introduction of a definition for a 900MHz studio to transmitter link station, consultation on the package of changes to apparatus licence fees is addressed in the attached RIS. Aspects of the package of changes to apparatus licence fees were considered by a working group of the Radiocommunications Consultative Council (comprising industry groups and government). When fees for fixed licences below 960MHz were increased in 2003, the ACA wrote to all affected licensees stating the reason for the increase and advising that further increases would be implemented. The introduction of a new licensing option which would allow 900MHz studio to transmitter link stations to have a different tax regime, and how these stations would be defined (which is the subject of this instrument) was not mentioned in these consultations.

The ACA is satisfied that, in relation to the package of changes to apparatus licence fees, that appropriate consultation was undertaken. In relation to the introduction of this new licensing option (as defined in this instrument), the Authority believes that, while specific consultation (as discussed in section 17 of the *Legislative Instruments Act 2003* (the Legislative Instruments Act)) did not occur, licensees whose services will be authorised by this new licensing option will not be disadvantaged.

In relation to the moving (and amendment of) the definition for 'point to point (58 GHz band) station', as the definition previously existed in another instrument, and the changes to this definition are not thought to affect licensee rights (making them minor or machinery in nature, as discussed in section 18 of the Legislative Instruments Act), consultation was considered to be unnecessary.

Other Documents Incorporated in this Instrument by Reference

The *Australian Communications Act 1997* is the Act which establishes the ACA and sets out its function and structure. The ACA Act can be obtained at www.aca.gov.au.

Attachments

Details of the Amendment Determination are in Attachment 1.

Attachment 2 contains the Regulation Impact Statement for the apparatus licence fee adjustments. It has been approved by the Office of Regulation Review (RIS ID: 3876).

ATTACHMENT 1

Notes on the instrument

Section 1 Name of Determination

This section provides the citation for the Amendment Determination.

Section 2 Commencement

This section provides for the commencement of the Amendment Determination. The Amendment Determination commences the day after it is registered.

Section 3 Amendment of *Radiocommunications (Interpretation) Determination 2000*

This section provides for the amendment of the *Radiocommunications (Interpretation) Determination 2000*.

Schedule 1 Dictionary

This schedule has been amended to insert the definition of a '900MHz studio to transmitter link station' and to insert the definition of a 'point to point (58 GHz band) station.'