**EXPLANATORY STATEMENT**

**Prepared by the Australian Communications and Media Authority**

*Radiocommunications (Transmitter Licence Tax) Amendment Determination 2012 (No. 1)*

*Radiocommunications (Transmitter Licence Tax) Act 1983*

The Australian Communications and Media Authority (the **ACMA**) makes the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2012 (No. 1)* under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the **Act**)*.*

**Background**

Subsection 7(1) of the Act provides that the amount of tax in respect of the issue of a transmitter licence, the anniversary of a transmitter licence coming into force or the holding of a transmitter licence is the amount determined by the ACMA.

The ACMA has determined such an amount under the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)* (the **Determination**) by reference to, among other things, the type of licence involved and whether it meets certain criteria.

One of the types of licences to which the Determination applies is a fixed licence:

1. that:
2. is issued under section 100 of the *Radiocommunications Act 1992* (the **Act**) on or after 15 November 2002; or
3. was issued under section 100 of the Act on or after 15 November 2002, and is being renewed under section 130 of the Act; and
4. that authorises the licensee to provide services within the frequency range 403 MHz to 420 MHz or 450 MHz to 520 MHz, other than 1 or more of the following frequency bands:
5. 451.5125 MHz to 452.5 MHz;
6. 461.0125 MHz to 462 MHz;
7. 500.99375 MHz to 504.99375 MHz;
8. 510.99375 MHz to 514.99375 MHz.

Under the Determination, a licence which meets those criteria is a licence relating to “point to multipoint station (land mobile spectrum)”.

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2012 (No. 1)* (the **Amendment Determination**) is being made to amend the definition of “point to multipoint station (land mobile spectrum)” to accommodate certain changes to the 403-520 MHz radiofrequency band (the **400 MHz band**).

The first change to the 400 MHz band relates to the expansion of the frequency range formerly described as 403 MHz to 420 MHz. That frequency range is now described as 403 MHz to 430 MHz.

The second change relates to spectrum licences in certain segments in the frequency bands 500.99375 MHz to 504.99375 MHz and 510.99375 MHz to 514.99375 MHz (the **relevant segments**). The relevant segments are designated under section 36 of the Act for the issue of spectrum licences. On 31 May 2012, the spectrum licences in the relevant segments are due to expire. On 1 June 2012, the relevant segments will no longer be designated, but will revert to the issue of apparatus licences as a consequence of the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996 Instrument of Revocation No. 1 of 2010* made by Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy on 20 December 2010 (the **Revocation Notice**).

**Operation of the Amendment Determination**

The Amendment Determination will substitute paragraph (b) of the definition of “point to multipoint station (land mobile spectrum)” with a new one that:

* will make reference to the newly described frequency range 403 MHz to 430 MHz (instead of the frequency range formerly described as 403 MHz to 420 MHz); and
* will include, rather than carve out, licences that authorise the licensee to provide services within the relevant segments.

The Amendment Determination will commence on 1 June 2012, being the day on which the relevant segments will revert to the issue of apparatus licences as a consequence of the Revocation Notice.

**Purpose of the Amendment Determination**

By expanding the coverage of the definition of “point to multipoint station (land mobile spectrum)”, the Amendment Determination will ensure that the transmitter licence tax consequences are consistent across the 400 MHz band.

**Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in the Attachment.

**Consultation**

The ACMA undertook a review of the 400 MHz band which involved extensive consultation through the release of four discussion papers and direct contact with affected licensees.

Based on the consultation undertaken, the ACMA formed the view that:

* the existing spectrum licences in force in the relevant segments should be allowed to expire; and
* upon expiration of those licences, the relevant segments should no longer be designated for the issue of spectrum licences, but should revert to the issue of apparatus licences.

The ACMA also formed the view that licence fees should be consistent across the 400 MHz band. These views were made public in 2010*.*

The Amendment Determination is consistent with the outcomes of the review of the 400 MHz band.

The Office of Best Practice Regulation (**OBPR**) was consulted in relation to the proposed changes and advised that no Regulation Impact Statement was required. The OBPR reference number is ID 13666.

**Statement of Compatibility with Human Rights**

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

**Radiocommunications (Transmitter Licence Tax) Amendment Determination 2012 (No. 1)**

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 amount of tax payable in respect of a licence that relates to a “point to multipoint station (land mobile spectrum)” is calculated in accordance with Part 3 of the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No.2)* (**the Tax Determination**) (see item 301 of the Tax Determination). Paragraph (b) of the definition of “point to multipoint station (land mobile spectrum)” in the Dictionary to the Tax Determination expressly excludes services within those segments of the 500 MHz band that are to revert from spectrum licensing to apparatus licensing on 1 June 2012.

The Legislative Instrument will replace paragraph (b) of the definition of “point to multipoint station (land mobile spectrum)”. The new paragraph (b) will include those segments of the 500 MHz band that are to revert to apparatus licensing. This will ensure that the tax consequences for licences that relate to a point to multipoint station (land mobile spectrum) are consistent across the 400 MHz band and those segments of the 500 MHz band that are to revert to apparatus licensing.

The new paragraph (b) also refers to the newly expanded frequency band 403MHz- 430MHz instead of the formerly described 403- 420 MHz frequency band. This will ensure that the tax consequences for licences that relate to a point to multipoint station (land mobile spectrum) are consistent across the 403-430 frequency band.

 **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.

**Australian Communications and Media Authority**