

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 1)

Radiocommunications Act 1992

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

Background

Under the *Radiocommunications Act 1992* (**the Act**), the ACMA is responsible for maintaining an efficient, equitable and transparent system of charging for the use of spectrum.

The 400 MHz band

The 400 MHz band refers to spectrum in the range 403–520 MHz, including the segment 420–450 MHz that supports various Department of Defence and other government applications.

The 400 MHz band is heavily used for land mobile applications such as CB radio, law enforcement/public safety, dispatch (courier, taxi etc) but also accommodates fixed point-to-point and point to multipoint such as telemetry/control, telecommunications, radiolocation and amateur services. Government users are among the main users of this spectrum due to technical requirements (propagation/antenna size) and equipment availability.

This band is heavily congested in major capital cities. Congestion in highly populated areas such as Sydney and Melbourne prevents new users from acquiring spectrum and deploying new systems. Other areas such as Brisbane are also experiencing high levels of licensing in this spectrum.

Review of the 400 MHz Band

In response to the circumstances faced in the band and requests from industry, the ACMA commenced a review of spectrum management arrangements in the 400 MHz band (frequency range 403-430 MHz and 440-520 MHz) in April 2008 with the broad objectives of implementing measures to:

- improve government spectrum harmonisation to facilitate more efficient government networks and improved interoperability;
- improve the efficiency with which the band is allocated and used;
- facilitate new technologies and complementary uses; and
- minimise the need for ongoing ACMA intervention in the band.

In January 2010, the ACMA agreed in-principle to use opportunity cost (OC) pricing as one of its suite of tools to manage spectrum and in December 2010, the ACMA confirmed that the 400 MHz band would be the first band where OC pricing will be introduced.

Another key outcome of the review was the provision of harmonised spectrum within the band for exclusive use by government agencies.

OC pricing principles

The ACMA examined the possibility of using OC pricing to better manage high demand and congestion. In October 2008, Plum Consulting was commissioned to do a pricing report (**the Plum report**).¹ The 400 MHz band was selected as a case study to explore ways in which pricing could be used to better manage high demand and congestion within this band in Sydney (representative of a high density area) and Perth (representative of a medium density area).

In April 2009, the ACMA released a consultation paper “Opportunity Cost Pricing of Spectrum: Public consultation on administrative pricing for spectrum based on opportunity cost” (**the 2009 OC Consultation paper**) on administrative pricing for spectrum based on OC.² In this paper the ACMA examined administrative incentive pricing using OC pricing for administratively allocated spectrum, which is expected to result in more efficient allocation of spectrum. The ACMA also used the Plum report to illustrate how OC pricing could be used to manage high demand and congestion in the 400 MHz band.

In January 2010, the ACMA provided a response to the submissions made to the 2009 OC Consultation paper (**the 2010 OC Response paper**)³. The response noted that many of the submissions expressed general support for OC pricing. Some submissions made useful comments about the methodologies for calculating OC.

In December 2010, the ACMA released the final in a series of four papers concerning the review titled “The way ahead: Timeframes and implementation plans for the 400MHz band” (**The Way Ahead paper**). The ACMA noted in The Way Ahead paper that the introduction of OC pricing in the 400 MHz band would be subject to more consideration and consultation.

Further consideration of OC pricing

Given the changes to the technical arrangements in the 400 MHz band that had taken place since the OC pricing study done in 2008, the ACMA re-engaged Plum Consulting to provide the ACMA with an updated OC price for the high density areas of the 400 MHz band in 2011.

The updated study took into account additional vacant channels that would be available for apparatus licensing upon the expiry of spectrum licences in the 500 MHz band in 2012.⁴ The study also took into account additional factors that were noted in the 2010 OC Response paper. In Plum Consulting’s updated study, it recommended that it would be appropriate to increase apparatus licence taxes for land mobile services in high density areas of the 400 MHz band to \$199 per kHz.

¹ www.acma.gov.au/webwr/_assets/main/lib310867/ifc12-09_app_a_1_plum_report_to_acma.pdf

² http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_311707

³ The ACMA response to public submissions: Opportunity cost pricing of spectrum (http://www.acma.gov.au/WEB/STANDARD/pc=PC_311707)

⁴ The 500 MHz band spectrum licences expired on 31 May 2012. From 1 June 2012, the band is available for apparatus licensing and is used to assist in the overall migration of licences displaced from other parts of the 400 MHz band by the outcomes of the 400 MHz review.

Harmonisation of spectrum

Another key outcome of the ACMA's review was the provision of harmonised spectrum within the band for exclusive use by government agencies.

In order for this to occur, some current users of the band are being required to relocate. In addition, services are being temporarily relocated to allow for a 10 MHz duplex frequency split to be implemented in parts of the 450–470 MHz band. To encourage relocation by non-government licensees from government harmonised spectrum, the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2011 (No. 2)* was made in 2011 to amend the taxation regime in the Determination for radiocommunications receiver licences to provide incentives, discounts to licence fees, to encourage the early adoption by licensees of the new arrangements for the 400 MHz band, as set out in the ACMA's Radiocommunications Assignment and Licensing Instruction (RALI MS 22: 400 MHz Plan (**400 MHz Plan**)). The changes were also intended to assist with the transition to these new arrangements.

The Amendment Determination will clarify the entitlements of licensees to discounts to licence fees consistent with the intention of the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2011 (No. 2)*.

Regulation Impact

The ACMA has obtained the advice of the Office of Best Practice Regulation (OBPR) that a Regulation Impact Statement is required for the Amendment Determination in respect of the amendment that will introduce OC pricing. The OBPR reference number is 13381.

In relation to the amendments that will clarify the entitlements of licensees to discounts to licence fees, the OBPR formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 12601.

Consultation

Section 17 of the *Legislative Instruments Act 2003* requires the ACMA to be satisfied that any consultation it considered to be appropriate and reasonably practicable to undertake has been undertaken.

Consultation in relation to OC pricing

In April 2012, the ACMA released the paper “Adoption of the opportunity cost pricing in the high density areas of the 400 MHz band” for a 6-week consultation period. The consultation period closed on 22 May 2012.

The ACMA received 15 submissions. Submissions were received from Federal and State government agencies engaged in law enforcement, security or public safety and from participants in the telecommunications and radiocommunications industry.

The ACMA has considered these views in preparing the Amendment Determination.

Consultation in relation to harmonisation of spectrum

The amendments to clarify the entitlements of licensees to discounts to licence fees are minor and machinery in nature. The amendments reflect the original proposal which was the subject of extensive consultation. Therefore it was not considered that further public consultation was necessary for these amendments. Further details regarding the previous consultation are set out in the explanatory statement to the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2011 (No. 2)*.

Notes on Sections

The provisions of the Amendment Determination are described in Attachment 1.

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 Attachment 2.

NOTES ON SECTIONS

Section 1 – Name of Amendment Determination

Section 1 provides for the citation of the Amendment Determination as the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 1)*.

Section 2 – Commencement

Section 2 provides that sections 1 to 3 and items 3 to 5 of Schedule 1 to the Amendment Determination will commence on the day after the Amendment Determination is registered. Items 1 and 2 of Schedule 1 will commence on 15 August 2012.

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

Section 3 provides that the *Radiocommunications (Receiver Licence Tax) Determination 2003 (No. 2)* is amended in accordance with Schedule 1.

Schedule 1 Amendments

Item 1

Item 1 introduces a new sub-band 403-520 MHz in the band category >399.9 – 960 MHz in Table 202, and sets out new taxes of \$1.5891 for high density areas, with all other amounts remaining the same.

Item 2

Item 2 introduces a new sub-band 403-520 MHz in the band category >399.9 – 960 MHz in Table 302, and sets out new taxes of \$29.3722 for high density areas, with all other amounts remaining the same.

Item 3

Item 3 amends the frequency range referred to at subparagraph 302A(4)(a)(i) of Schedule 2 to 453-457.50625 MHz.

Item 4

Item 4 amends paragraph 302A(6)(a) of Schedule 2 to refer to the frequency ranges specified in paragraph 302A(2)(a) and paragraph 302A(4)(a).

The amendment will mean that in order for paragraph 302A(6)(a) to apply, one requirement is that the spectrum access under the relevant licence must authorise a radiocommunications

receiver within a frequency that is not in the harmonised government band or any of the frequency ranges specified in paragraph 302A(2)(a) and the new paragraph 302A(4)(a).

Item 5

Item 5 amends paragraph 302A(7)(a) of Schedule 2 to refer to the frequency ranges specified in paragraph 302A(3)(a) and paragraph 302A(5)(a).

The amendment will mean that in order for paragraph 302A(7)(a) to apply, one requirement is that the spectrum access under the relevant licence must authorise a radiocommunications receiver within a frequency that is in the harmonised government band other than those harmonised government band frequency ranges specified in paragraph 302A(3)(a) and paragraph 302A(5)(a).

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. 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

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The Amendment Determination amends the Determination to increase apparatus licence taxes for services in the high density areas of the 400 MHz band.

The Amendment Determination will make some minor amendments to clarify the scheme under which incentives to encourage certain licensees to relocate out of specified bands apply.

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.