

## **EXPLANATORY STATEMENT**

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

### ***Radiocommunications (Receiver Licence Tax) Determination 2015***

### ***Radiocommunications (Receiver Licence Tax) Act 1983***

#### **Purpose**

The purpose of the *Radiocommunications (Receiver Licence Tax) Determination 2015* (the Determination) is to revoke and replace the *Radiocommunications (Receiver Licence Tax) Determination 2003 (No. 2)* (the 2003 Determination) which is due to sunset on 1 April 2015 under the automatic repeal provisions of the *Legislative Instruments Act 2003* (the LIA). The new instrument is referred to as 'the Determination' below.

#### **Legislative Provisions**

The Determination is 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 that is imposed by the Act, 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.

The Determination specifies the amount of tax payable for different classes of receiver licences. The Determination revokes the 2003 Determination. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument (such as section 7 of the Act), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary the instrument.

The Determination is a disallowable legislative instrument for the purposes of the LIA.

#### **Background**

Section 6 of the Act imposes tax on the issue of receiver licences. Section 7 of the Act provides that the amount of these taxes is to be determined by the ACMA.

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

Under subsection 7(2) of the Act, the Determination may, among other things, provide for amounts of tax in relation to:

- (a) specified periods; or
- (b) specified classes of licences; or
- (c) specified classes of persons.

The Determination determines the amounts of receiver licence taxes imposed by the Act by setting out the information necessary for the calculation of radiocommunications receiver licence tax amounts.

#### *Differences between the 2003 Determination and the new Determination*

The Determination largely replicates the provisions of the 2003 Determination. However, there are some changes to the provisions. The main differences between the Determination and the 2003 Determination include:

- updated references to other instruments that have changed over time;
- removal of redundant sections; and
- improvements to the flow and readability of the instrument.

Annual consumer price index (CPI) based adjustments have also been incorporated into the Determination.

#### *CPI adjustments*

The Determination amends the taxing regime for radiocommunications receiver licences to adjust all taxes by a 3 percent increase based on the annual CPI movement to June 2014.<sup>1</sup> 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 ACMA and its predecessors have increased apparatus licence taxes each year by CPI since 1995.

The only exception to the CPI increase is that the Determination continues the freeze, in dollar amounts, of taxes levied on fixed receive licences operating in frequencies below 960 MHz in remote density areas. The apparatus licence taxes for these will continue to remain at the same level as in April 2008 pending the ACMA's review of the 900 MHz band, and of the application of opportunity cost prices in remote density areas in the 400 MHz band.

#### **Consultation**

The ACMA held a public consultation process on the proposal to remake the instrument and make the adjustment for CPI over the period 28 November 2014 to 9 January 2015. A consultation paper was published on the ACMA website. The paper outlined the main differences between the 2003 Determination and the Determination.

The public consultation resulted in one submission, from Telstra, supporting the proposed remaking of the Determination. No changes to the Determination resulted from the consultation process.

#### **Documents incorporated by reference**

The following document is incorporated in the Determination by reference:

- the Australian Map Grid (AMG66) published by Geoscience Australia. The map grid can be accessed through the Geoscience Australia website: [www.ga.gov.au](http://www.ga.gov.au).

#### **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to some sunseting legislative instruments. As the ACMA has determined that the 2003 Determination was fit for purpose and should be remade without any significant changes,

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<sup>1</sup> Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2014 All groups CPI.

and has certified those matters to OBPR, no Regulation Impact Statement (RIS) is required in relation to the making of the Determination (OBPR reference ID 17459).

The OBPR has considered the matter of the annual CPI adjustment and formed the opinion that no RIS is required in relation to the annual CPI changes. The OBPR reference number is ID 12297.

### **Determination Details**

Details of the Determination are provided in Attachment 1.

### **Statement of Compatibility with Human Rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HR Act) requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

This statement has been prepared in accordance with Part 3 of the HR Act.

The Determination, the effect of which is to revoke and remake the 2003 Determination, is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HR Act.

The ACMA has considered whether the Determination engages any applicable human rights or freedoms and has formed the view that it does not. The Determination is compatible with human rights as it does not raise any human rights issues.

## NOTES ON SECTIONS

### Part 1 Preliminary

Section 1 of Part 1 provides for the name of the Determination, and section 2 provides for the day on which the Determination commences. Section 3 provides the definitions of terms used in the Determination. Section 3 notes that terms used in the Determination which are defined in the *Radiocommunications (Interpretation) Determination 2015* have the same meaning as in that determination.

Section 4 revokes the 2003 Determination.

### Part 2 Working out receiver licence tax

Part 2 sets out the methodology for working out receiver licence tax, using Schedules 1, 2 and 3 of the Determination. Section 5 sets out what each Schedule provides for. Section 6 provides that, to work out an amount of receiver licence tax for a given licence, a person must:

- (a) identify the Part of Schedule 2 to the Determination that applies to the type of licence;
- (b) apply the provisions of that Part to the particulars of the licence, including “area densities” that are set out in Schedule 1, to derive either an “annual amount” for a spectrum access under a licence, or the annual amount of receiver licence tax for the licence; and
- (c) apply the provisions in Schedule 3 to the amounts so derived.

Some Parts of Schedule 2 allow a person to calculate an annual amount for a spectrum access under a licence. Spectrum access is defined section 3 (definitions) to mean an authorisation to access the spectrum that consists of a unique combination of:

- (a) a particular receive frequency;
- (b) a particular bandwidth; and
- (c) a particular site or access area.

### Part 3 Transitional and savings

Part 3 sets out transitional arrangements to allow for the taxes in the 2003 Determination to continue to apply to certain receiver licences. Section 7 defines terms used in the Part, and section 8 provides that Part 3 has effect despite the revocation of the 2003 Determination. Section 9 provides for the transitional arrangements. Although the Determination commences on the day after it is registered, in some instances where receiver licence tax is payable after this date and before 5 April 2015, the amount of tax will continue to be based on the 2003 Determination as in force immediately before the commencement of the Determination.

### Schedule 1 – Area densities

Under Schedule 2 of the Determination, some calculations of tax for particular licences require an assessment of the “density” of the area that relates to the licence. Different rates of tax may apply to licences of the same type, if the licences authorise the use of a device in areas of different densities. For example, a licence that authorises the use of a device in the

range 30-70 MHz, to which item 202 of Part 2 of Schedule 2 applies, will have one rate applied if it authorises the use of the device in the Brisbane area (which is an area of high density (item 201 of Part 2 of Schedule 1), and a different rate applied if it authorises the use of the device in an area of remote density (see Table 202).

Schedule 1 sets out particular areas and defines what category of density those areas are.

### **Part 1 Areas**

Part 1 of Schedule 1 sets out map grid coordinates for different geographic areas, necessary for working out receiver licence tax. The map grid coordinates are based on the Australian Map Grid and the 1966 Australian Geodetic Datum. The 1966 Australian Geodetic Datum was gazetted in the *Gazette* No. 84, 6 October 1966. Information on the Australian Map Grid and the Geodetic Datum is available on the website of Geoscience Australia: [www.ga.gov.au](http://www.ga.gov.au). Further information is also available on the website of the Intergovernmental Committee on Surveying and Mapping: [www.icsm.gov.au](http://www.icsm.gov.au).

### **Part 2 Density types**

Part 2 of Schedule 1 sets out the density types for the different areas specified in Part 1, for the purposes of the Determination. The density types are - high density, medium density, low density, remote density and Australia wide.

## **Schedule 2 – Annual amounts**

### **Part 1 General rules**

Item 101 of Part 1 of Schedule 2 provides that where an item of Schedule 2 applies to a licence that authorises the use of a station of a particular kind, the item applies to a licence that authorises the operation of more than 1 station of that kind, 2 or more stations including a station of that kind, or supplementary stations, for the purpose of working out the receiver licence tax. It also provides that spectrum access that is described in a licence as “supplementary spectrum access” is not to be included in the calculation of receiver licence tax.

### **Part 2 Receive licences**

Part 2 of Schedule 2 sets out how to work out the annual amount of tax for specified receive licences (listed in item 201). Item 202 provides that, subject to item 203, the amount of tax in respect of each spectrum access under the types of licences specified in item 201 is the amount specified in Table 202, for the frequency range and area density type applicable to the spectrum access, multiplied by the bandwidth (in kHz) of the spectrum access. Item 203 provides for a different tax amount for particular types of space receive licences. Item 204 provides that if the tax amount worked out using items 202 or 203 is less than the minimum annual amount (\$38.60) the applicable tax is taken to be the minimum amount.

### **Part 3 Fixed receive licences**

Part 3 of Schedule 2 sets out how to work out the tax amounts for fixed receive licences. Item 302 provides that the amount of tax in respect of each spectrum access under a fixed receive licence is the amount specified in Table 302 for the frequency range and density type applicable to the spectrum access, multiplied by the bandwidth (in kHz) of the spectrum access. Item 303 is similar to item 204 in imposing the minimum annual amount of tax.

### **Schedule 3 – Working out receiver licence tax for a particular licence period**

Schedule 3 sets out how to calculate a receiver licence tax for a particular licence period. Section 6 of the Act sets out when tax is imposed on a receiver licence. Holders of licences issued for a period exceeding 12 months may also elect for tax to be imposed at a particular time – for example, on issue of the licence or on issue and on each anniversary of the date the licence came into force during the period of the licence.

Item 101 of Schedule 3 discounts February 29 in leap years from any calculation of receiver licence tax.

Item 102 of Schedule 3 provides for rounding up or down of calculated amounts to the nearest whole dollar.

Item 103 of Schedule 3 deals with full payment of tax on issue of a licence in force for a period of 12 months or less, and a licence in force for a period greater than 12 months where the licensee has not elected to pay the tax by instalments. Table 103 effectively requires the addition of the amounts calculated for all spectrum accesses in the licence (pro-rated in any year where the licence is not in force for the entire year), to determine the receiver licence tax for the licence. If that works out to be less than the minimum annual amount, the amount becomes the minimum annual amount. A discount is applied for the Royal Flying Doctor Service of Australia (RFDS) (an eligible person, as defined in section 3 of the Determination).

Item 104 of Schedule 3 deals with imposition of tax on issue of a licence in force for more than 12 months, where the licensee has elected to pay the tax by instalments on issue and on the anniversary of the day a licence comes into force. Table 104 effectively requires the addition of the amounts calculated for all spectrum accesses in the licence (pro-rated in any year where the licence is not in force for the entire year), to determine the receiver licence tax for the licence. If that works out to be less than the minimum annual amount, the amount becomes the minimum annual amount. A discount is applied for the RFDS.

Item 105 of Schedule 3 deals with imposition of the tax on a particular day, being the anniversary of the day the licence comes into force (if subsection 6(5) of the Act applies) or the day after the end of the 60 day period after the anniversary of the day the licence comes into force, (if subsection 6(6) of the Act applies). It is the corollary to item 104, where the licensee has elected to pay the tax by instalments. Table 105 effectively requires the addition of the amounts calculated for all spectrum accesses in the licence (pro-rated in any year where the licence is not in force for the entire year), to determine the receiver licence tax for the licence. If that works out to be less than the minimum annual amount, the amount becomes the minimum annual amount. A discount is applied for the RFDS.