

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications Act 1992

Radiocommunications (Scientific Licence – Licence Conditions and Licence Tax) Amendment Determination 2017 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Scientific Licence – Licence Conditions and Licence Tax) Amendment Determination 2017 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (**the TLT Act**) and paragraph 107(1)(f) of the *Radiocommunications Act 1992* (**the Radiocommunications Act**).

Subsection 7(1) of the TLT Act stipulates 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.

Paragraph 107(1)(f) of the Radiocommunications Act permits the ACMA to determine, by legislative instrument, conditions in relation to particular types of apparatus licences.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make a legislative instrument, 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 any such instrument.

Purpose and operation of the instrument

The Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (**the Determination**) to reduce taxes for scientific licences by applying a discount of 90 per cent to the scientific apparatus licence taxes, and charging a single tax for the licence, rather than on a per spectrum access/transmitter basis.

The Amendment Determination also removes a requirement in the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2015* that a scientific station must not be operated by the licensee if the activity that is to be undertaken can be undertaken using a station under another type of licence.

The ACMA conducted a review of apparatus licences taxes for scientific licences in response to industry concerns that the structure of the current apparatus licence tax formula, along with changing spectrum demands of modern radiocommunications technology, had made the licence taxes associated with scientific licences a disincentive for innovators to seek licences for the testing of new technologies.

Scientific licences are intended to facilitate research and innovation in the use of the radio frequency spectrum and the ACMA has determined that there are compelling reasons to reduce the taxes attached to the licence type, in order to facilitate technology innovations in the use of radiocommunications.

The ACMA has also removed a requirement that a scientific station must not be operated by the licensee if the activity that is to be undertaken can be undertaken using a station under another type of

licence. Some activities able to be conducted under a scientific licence may also be allowed to be conducted under a range of alternative licence types. By making this amendment, the ACMA intends to ensure that where genuine scientific testing and trialling of equipment is being undertaken, this condition should not prevent licensees from gaining the benefit of the reduced scientific licence tax.

Documents incorporated by reference

This Amendment Determination does not incorporate any documents by reference.

Consultation

In August 2016, the ACMA published a consultation paper that outlined the proposed tax reductions and the proposed licence conditions change. The ACMA received 5 submissions all of which were taken into consideration before the making of the Amendment Determination.

Regulatory impact assessment

The Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory changes regarding apparatus licence tax arrangements and licence conditions for scientific licences in this submission are minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required. The OBPR reference ID number for this matter is 22580.

Statement of compatibility with human rights

Overview of the instrument

The Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015 (the Determination)* to:

- reduce taxes for scientific licences by applying a discount of 90 per cent to the scientific apparatus licence taxes, and charging a single tax for the licence, rather than on a per spectrum access/transmitter basis.

Human rights implications

The ACMA has assessed whether the Amendment Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Amendment Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Notes to the *Radiocommunications (Scientific Licence – Licence Conditions and Licence Tax) Amendment Determination 2017 (No. 1)*

Section 1 Name

This section provides that the instrument may be cited as the *Radiocommunications (Scientific Licence – Licence Conditions and Licence Tax) Amendment Determination 2017 (No. 1)*.

Section 2 Commencement

This section provides that the instrument commences at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 3 Authority

This section identifies the relevant provisions of the Acts that authorise the making of the instrument, namely the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications Act 1992*.

Section 4 Amendments

This section provides that the instruments listed in Schedule 1 to the Amendment Determination are amended as set out in that Schedule. Those instruments are the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2015* and the *Radiocommunications (Transmitter Licence Tax) Determination 2015*.

Schedule 1 Amendments

Item [1]

This item removes the paragraph number at subsection 7(1) of the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2015* (the Scientific Licence Determination).

Item [2]

This item repeals subsection 7(2) of the Scientific Licence Determination, which required that a scientific station must not be operated by the licensee if the activity that is to be undertaken can be undertaken using a station under another type of licence. As noted above, the ACMA aims to ensure that where testing and trialling of equipment is being undertaken, this condition should not prevent licensees from gaining the benefit of the reduced scientific licence tax.

Item [3]

Item [3] repeals paragraph (1)(r), which provided that scientific assigned stations were subject to the provisions at Part 2 of Schedule 2 of the Determination. Scientific licences, more broadly, will now be subject to a new Part 2A of Schedule 2.

Item [4]

Item [4] inserts taxes for scientific assigned licences in the *Radiocommunications (Transmitter Licence Tax) Determination 2015*. Part 2A details the amount of tax in respect of each spectrum access under a scientific licence.