

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2018 (No. 1)

Radiocommunications (Transmitter Licence Tax) Act 1983

Purpose

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2018 (No. 1)* (the **Amendment Determination**) amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (the **Determination**).

Legislative Provisions

The Determination and Amendment Determination are both made under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the **Tax Act**) which provides that the Australian Communications and Media Authority (the **ACMA**) may determine the amount of tax in respect of:

- the issue of a transmitter licence;
- the anniversary of a transmitter licence coming into force; and
- the holding of a transmitter licence.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that when an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

The Amendment Determination is a disallowable legislative instrument under section 42 of the *Legislation Act 2003*.

Background

Under the *Radiocommunications Act 1992*, the ACMA is responsible for maintaining an efficient, equitable and transparent system of charging for the use of spectrum. The annual tax levied on apparatus licences allows the ACMA to create economic incentives for efficient use of the spectrum. It encourages licensees to use the minimum amount of bandwidth for their needs, move to less congested bands, and surrender licences that are no longer needed.

The ACMA generally seeks to ensure efficient use of spectrum by allocating channels to licensees with the greatest willingness to pay. If a tax is too low, licensees with low value uses can viably occupy channels excluding more economically efficient uses.

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

Operation

The Amendment Determination amends the taxing regime for radiocommunications transmitter licences to adjust all taxes by a 1.9 percent increase based on the increase in the consumer price index (**CPI**) over the year to June 2017¹. In real terms there is no effect on businesses, as the nominal dollar increases merely preserve the value of the licence taxes (and therefore the incentives toward efficient use of spectrum) against erosion by inflation.

The only exception to CPI escalation is that the Amendment Determination also continues the freeze, in dollar amounts, of taxes levied on point to point and point to multi-point fixed wireless

¹ Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2017

access services below 960 MHz in remote density areas at their 2008 levels. The ACMA will consider whether to continue this practice once it has completed its review of the 900 MHz band.

The Amendment Determination also updates the population information in the Determination resulting from the 2016 Census for taxes for PMTS Class B licences and to clarify the taxes imposed on PMTS Class B licences where those licences authorise the operation of transmitters in areas which are not covered by the Australian Spectrum Map Grid (**ASMG**)².

The Amendment Determination also includes consequential amendments to the Determination resulting from changes to the Tax Act to provide that transmitter licences associated with a commercial broadcasting licence are not subject to tax imposed by the Tax Act.

Documents incorporated by reference

The Amendment Determination incorporates the following document:

- The *Hierarchical Cell Identification Scheme (HCIS) – List of Population Data* published by the ACMA and available on the ACMA website at: www.acma.gov.au.

The document is incorporated as in existence at the time Schedule 2 of the Amendment Determination commences.

Consultation

The ACMA consulted with stakeholders (from 6 December 2017 to 9 February 2018) by releasing a consultation paper outlining the proposed amendments on its website. The ACMA received one comment from Telstra Corporation noting that it was comfortable with the amendments proposed by the ACMA.

Regulatory Impact

The Office of Best Practice Regulation (**OBPR**) has considered the routine annual escalation of licence tax rates by CPI and the other changes affected by the Amendment Determination and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 23113.

Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a rule maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies, to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Amendment Determination made under subsection 7(1) of the Tax Act amends the Determination which specifies the tax applicable to certain transmitter licences. The ACMA has considered whether the Amendment Determination engages any applicable human rights or freedoms and has formed the view that it does not. The Amendment Determination is compatible with human rights as it does not raise any human rights issues.

Amendment Determination Details

Details of the Amendment Determination are provided in **Attachment 1**.

² Further information about the ASMG and the HCIS scheme can be found at <https://acma.gov.au/-/media/Spectrum-Engineering/Information/Word-Documents/The-Australian-spectrum-map-grid-2012.DOCX?la=en>

NOTES ON SECTIONS

Section 1 Name

Section 1 provides the name of the Amendment Determination.

Section 2 Commencement

Section 2 provides that subsection 4(2) and Schedule 2 of the Amendment Determination commence on 5 April 2018, and the rest of the Amendment Determination commence on the day after it is registered.

Section 3 Authority

Section 3 provides that the Amendment Determination is made under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

Section 4 Amendments

Section 4 provides that Schedules 1 and 2 of the Amendment Determination amend the *Radiocommunications (Transmitter Licence Tax) Determination 2015*.

Schedule 1 Amendments to the Radiocommunications (Transmitter Licence Tax) Determination 2015 (F2015L00322) (consumer price index increase and other amendments)

Item 1

Item 1 inserts new section 1.4 into the Determination. Subsection 1.4 (1) provides that the Determination does not apply to a transmitter licence **associated with a commercial broadcasting licence**, and subsection 1.4(2) provides that for the purposes of the Determination, the question whether a transmitter licence is **associated with a commercial broadcasting licence** is to be determined in the same manner as that question is determined for the purposes of the *Commercial Broadcasting (Tax) Act 2017*. The *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017* amended the Tax Act to provide that the Tax Act no longer applies to transmitter licences associated with commercial broadcasting licences. Transmitters associated with a commercial broadcasting licence are now subject to a new transmitter licence tax under the *Commercial Broadcasting (Tax) Act 2017*.

Item 2

Item 2 substitutes Part 3 of the Determination to introduce new transitional arrangements relating to the annual increases in tax for inflation. New section 3.1 of the Determination sets out the relevant definitions and section 3.2 provides the transitional arrangements for the implementation of transmitter licence tax increases made by the Amendment Determination.

Although Schedule 1 of the Amendment Determination commences on the day after registration, the increase in tax by the Consumer Price Index (CPI) does not take effect until 5 April 2018. In instances where the tax is payable after the date Schedule 1 commences but before 5 April 2018, the amount of tax will continue to be based on the Determination as in force immediately before the commencement of Schedule 1 of the Amendment Determination. The purpose of these transitional arrangements is to allow the amount of tax shown on renewal notices and instalment notices sent out prior to the commencement of the Amendment Determination, but payable after the commencement of the Amendment Determination, to continue to be valid.

Item 3

Item 3 substitutes a new table 202 (and accompanying note) which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2 of Schedule 2 (assigned licences) of the Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 4

Item 4 substitutes a new table 206 (and accompanying note) in Part 2A of Schedule 2 (scientific licences) of the Determination, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in that Part. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 5

Item 5 substitutes a new table 302 (and accompanying note) in Part 3 of Schedule 2 (assigned licences in high demand frequency bands) of the Determination, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in that Part. All amounts have been raised by the adjustment of 1.9 percent except for frequency bands below 960 MHz in remote density areas, where the amount of tax remains set at the 2008 level.

Item 6

Item 6 repeals table 304A (and accompanying note) in Part 3A of Schedule 2 (Harmonised government spectrum area licences) of the Determination. Table 304A related to taxes which are no longer applicable.

Item 7

Item 7 substitutes a new table 305A (and accompanying note) in Part 3A of Schedule 2 (Harmonised government spectrum area licences) of the Determination. Item 305A specifies that the **base amount** of tax for a licence to which Part 3A applies for 2018 and subsequent years, is determined by multiplying the bandwidth (in MHz) authorised for use by a transmitter under the licence by the tax rate in column 2 of Table 305A for the State or Territory of the licence. All amounts in Table 305A have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 8

Item 8 substitutes a new table 402 (and accompanying note) in Part 4 of Schedule 2 (assigned fixed point to point licences) of the Determination, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in that Part. All amounts have been raised by the adjustment of 1.9 percent except for frequency bands below 960 MHz in remote density areas, where the amount of tax remains set at the 2008 level.

Item 9

Item 9 substitutes a new table 502 (and accompanying note) in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) of the Determination, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in that Part. . The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 10

Item 10 substitutes a new table 602 (and accompanying note) in Part 6 of Schedule 2 (Fixed television outside broadcast station) of the Determination, which sets out the amount of tax for the licensing options specified in that Part. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 11

Item 11 substitutes a new table 702 in Part 7 of Schedule 2 (assigned licences subject to a fixed annual tax) of the Determination, which sets out the amount of tax for certain assigned licences subject to a fixed annual tax. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI. Item 11 also inserts a note which clarifies that the Determination does not apply to broadcasting licences that are transmitter licences associated with a commercial broadcasting licence.

Item 12

Item 12 substitutes a new sub-item 3 of item 704A in Part 7A of Schedule 2, which sets out the annual amount of tax for assigned licences subject to a population based annual tax. The annual tax amount has been raised by the adjustment of 1.9 percent in line with the CPI.

Item 13

Item 13 substitutes a new table 802 (and accompanying note) in Part 8 of Schedule 2 (High power open narrowcasting service broadcasting licences) of the Determination, which sets out the amount of tax for the licensing options specified in that Part. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 14

Item 14 substitutes a new table 802A (and accompanying note) in Part 8A of Schedule 2 (Space system licences) of the Determination, which sets out the amount of tax for the licensing options specified in that Part. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 15

Item 15 substitutes a new table 902 in Part 9 of Schedule 2 (non-assigned licences) of the Determination, which sets out the amount of tax for the licensing options specified in that Part 9. All amounts have been raised by the adjustment of 1.9 percent in line with the CPI.

Item 16

Item 16 amends the definition of the *minimum annual amount* by omitting \$39.57 and substituting \$40.32. This raises the minimum annual amount of tax by 1.9 per cent, the increase in the CPI.

Schedule 2 Amendments to the Radiocommunications (Transmitter Licence Tax) Determination 2015 (F2015L00322) (Amendments to Part 7A)

Item 1

Item 1 amends item 702A by substituting a new definition of *population of an HCIS block* and accompanying note. The ACMA has updated the *Hierarchical Cell Identification Scheme – Population Data (Population Document)* to reflect the population figures published by the Australian Bureau of Statistics in the 2016 Census. Previously, the population data in the Population Document was based on the 2011 Census. The Population Document is incorporated as in existence at the time Schedule 2 of the Amendment Determination commences - that is, 5 April 2018. The population data is used to determine the tax for Public Mobile Telecommunications Service (Class B) licences covered by Part 7A of Schedule 2 to the Determination.

Items 2 and 3

Item 2 amends paragraph 703A (b) of Part 7A of Schedule 2 to the Determination by inserting the words 'subject to sub-item 705A(2)'. Item 3 substitutes new item 705A which includes a new sub-item 705A(2).

The amount of tax payable in respect of each spectrum access under a licence to which Part 7A applies is calculated as set out in item 703A. The formula specified in paragraphs (a) and (b) require the identification of the population of an Hierarchical Cell Identification Scheme (HCIS) block. HCIS blocks and cells are used to identify areas within the Australian Spectrum Map Grid (ASMG). The **population of an HCIS block** is defined in item 702A as the population of the HCIS block listed in the Population Document.

Paragraph 703A(b) sets out the method for calculating the tax in circumstances where the licence does not specify any HCIS blocks. This paragraph is now subject to sub-item 705A(2) which provides that if the **HCIS area of a licence** (a term defined in item 702A) does not include any Level 2 HCIS blocks the amount of tax in respect of each spectrum access under the licence is taken to be the minimum annual amount.

The amendments affect a small number of PMTS Class B licences to which Part 7A applies and which authorise the operation of transmitters in geographic areas outside the ASMG that are a part of Australia. (The ASMG does not include external territories of Australia, such as the Torres Strait.) Given that the geographic area is outside the ASMG, the population of the area cannot be determined using the ASMG. The ACMA currently determines the tax payable in relation to these licences by applying the formula specified and inserting the value 'zero' for the population component. The tax payable is the minimum annual amount of tax (given that the amount of tax worked out is below the minimum annual amount).

Sub-item 705A(2) clarifies that where the licence does not specify HCIS blocks or HCIS cells and the HCIS area of the licence does not include any Level 2 HCIS blocks, and hence the population cannot be determined using the ASMG and HCIS blocks, the amount of tax for a spectrum access under the licence is the minimum annual amount of tax.