

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

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

Radiocommunications (Receiver Licence) Tax Act 1983

Purpose

The *Radiocommunications (Receiver Licence Tax) Amendment Determination 2018 (No. 1)* (the **Amendment Determination**) amends the *Radiocommunications (Receiver Licence Tax) Determination 2015* (the **Determination**) to increase the receiver licence tax amount for receiver licences (except for fixed receive licences operating in spectrum below 960 MHz) by 1.9 per cent, based on the increase in the consumer price index (**CPI**).

Legislative Provisions

The Determination and Amendment Determination are both made under subsection 7(1) of the *Radiocommunications (Receiver Licence Tax) Act 1983* (the **Act**). Section 6 of the Act imposes tax on:

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

Subsection 7(1) provides that the Australian Communications and Media Authority (the **ACMA**) may determine the amount of tax imposed by the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where 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 the *Legislation Act 2003*.

Background

It is an object of the *Radiocommunications Act 1992* to provide for management of the radiofrequency spectrum in order to provide 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 also encourages licensees to use the minimum amount of bandwidth for their needs, to move to less congested bands, and to surrender licences that are no longer needed.

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

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

Operation

The Amendment Determination amends the taxing regime for radiocommunications receiver licences to adjust all taxes by a 1.9 percent increase, based on the increase in the CPI over the year to June 2017¹. In real terms there should be no effect on businesses, as the nominal dollar

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

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 the CPI increase is that the ACMA has decided to continue the freeze, in dollar amounts, of taxes levied on point to point and point to multi-point fixed wireless access services below 960 MHz in remote density areas (**RDAs**) at their 2008 levels. The ACMA will consider whether to continue this practice once it has completed its review of the 900 MHz band.

Documents incorporated by reference

The Amendment Determination does not incorporate any documents by reference.

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 online comment from Telstra Corporation noting that it was comfortable with the amendments proposed by the ACMA.

The difference between the existing tax amounts and those specified in the Amendment Determination is an increase of 1.9 per cent, to account for the CPI changes for 2017.

Regulatory Impact

The Office of Best Practice Regulation (**OBPR**) has considered the routine annual escalation of licence tax rates by CPI 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 Act amends the Determination which specifies the tax applicable to certain receiver 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**.

DETAILS OF THE AMENDMENT DETERMINATION

Section 1 *Name*

Section 1 specifies the name of the Amendment Determination.

Section 2 *Commencement*

Section 2 provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 *Authority*

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

Section 4 *Amendments*

Section 4 provides that Schedule 1 of the Amendment Determination amends the Determination.

Schedule 1 *Amendments to Radiocommunications (Receiver Licence Tax) Determination 2015 (F2015L00321)*

Item [1]

Item [1] amends the definition of the 'minimum annual amount' in section 3 of the Determination 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.

Item [2]

Item [2] substitutes Part 3 of the Determination to introduce new transitional arrangements. Section 7 sets out the relevant definitions for Part 3, and the section 8 provides transitional arrangements for the implementation of the receiver licence tax amendments 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) in Part 3 of Schedule 2 to 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 the frequency range and area density of the spectrum access of a licence. All amounts have been raised by 1.9 per cent.

Item [4]

Item [4] substitutes a new table 302 (and accompanying note) in Part 3 of Schedule 2 to the Determination, which sets out the amount of tax for each kHz of bandwidth for fixed receive licences.

The amount of tax varies with the frequency range and area density of the spectrum access of a licence. All amounts have been raised by 1.9 per cent, except for frequency bands below 960 MHz in RDAs where the amount of tax remains set at the 2008 level.

Item [5]

Item [5] substitutes a new table 402 (and accompanying note) in Part 3 of Schedule 2 to the Determination, which sets out the amount of tax for each kHz of bandwidth for spectrum access to operate a space station to receive transmissions within the given frequency ranges.

The amount of tax varies with the frequency range and area density of the spectrum access of a licence. All amounts have been raised by 1.9 per cent, except for frequency bands below 960 MHz in RDAs where the amount of tax remains set at the 2008 level.