

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2018 (No. 2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2018 (No. 2)* (**the instrument**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (**the Tax Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 7(1) of the Act allows the ACMA to determine the amount of tax imposed by the Tax Act on the issue of a transmitter licence under the *Radiocommunications Act 1992* (**the Act**), on the anniversary of such a licence coming into force, or on the holding of such a licence.

Subsection 33(3) of the AIA 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

Background

The instrument amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (**the Tax Determination**). The Tax Determination determines the amount of tax imposed by the Tax Act on the issue of a transmitter licence, on the anniversary of such a licence coming into force, or on the holding of such a licence. The Tax Determination determines different rates of tax in relation to different classes of transmitter licence.

The ACMA made the Tax Determination to create economic incentives for efficient use of the spectrum. The amounts of tax imposed encourage transmitter 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.

Allocation of 3.6 GHz spectrum licences

The Minister for Communications has made declarations¹ under section 153B of the Act in relation to the 3575 MHz to 3700 MHz frequency range (**the 3.6 GHz band**). The ACMA intends to allocate, by auction, spectrum licences under the Act in accordance with those declarations.

It is expected that, after the allocation of those spectrum licences, the successful bidders at the auction may apply for transmitter licences authorising the operation of transmitters in the parts of the 3.6 GHz band that they have won.

Determination of tax in relation to transmitter licences issued to spectrum licensees

The instrument amends the Tax Determination to set a particular rate of tax for PMTS Class B transmitter licences issued in the 3.6 GHz band. It does not affect the tax payable for other types of

¹ The *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018*, the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018*, and the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Regional Australia) Declaration 2018*.

transmitter licences issued in the 3.6 GHz band, and it does not affect the tax payable for PMTS Class B transmitter licences in other parts of the radiofrequency spectrum.

The tax payable in relation to PMTS Class B transmitter licences in the 3.6 GHz band is calculated in the same way as the tax payable in relation to PMTS Class B transmitter licences in the 3.5 GHz band. The tax is calculated by multiplying:

- the bandwidth authorised by the transmitter licence; by
- the population of the geographic area in which transmitters are authorised by the licence; by
- a base rate specified in the Tax Determination.

The instrument specifies \$0.0039/MHz/pop as the base rate for licences in the 3.6 GHz band. It is expected that similar services can be provided using the spectrum in the frequency range between 3.4 GHz and the top of the 3.6 GHz band. The transmitter licence tax rate for PMTS Class B licences in the 3.6 GHz band is consistent with the licence tax rate applied for PMTS Class B licences in the 3.5 GHz band. The licence tax rate for PMTS Class B licences in the 3.5 GHz band was originally based on the spectrum access charges for the spectrum licences issued in the 3.4 GHz band. The method for calculating the 3.5 GHz licence tax rate based on the spectrum access charges in the 3.4 GHz band can be found in the explanatory statement to the Tax Determination.²

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

Documents incorporated by reference

The instrument does not incorporate any documents by reference.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA released a consultation paper on the legislative instruments required for the allocation of spectrum licences in the 3.6 GHz band, published on the ACMA's website. The consultation was open from 18 May 2018 to 15 June 2018. The consultation paper set out the ACMA's proposal to determine the tax payable for PMTS Class B transmitter licences in the 3.6 GHz band, including the proposed base rate of \$0.0039/MHz/pop.

Three submissions commented directly on the licence tax rate proposed or the construct of that tax. The submissions were taken into account in the making of the instrument.

Regulatory impact assessment

The Department of Communications and the Arts considered whether a regulatory impact analysis process was required in relation to the allocation of spectrum licences in the 3.6 GHz band by undertaking a preliminary assessment, and based on this preliminary assessment the Office of Best Practice Regulation (**OBPR**) determined no further regulatory impact analysis is required – OBPR reference number 23261.

² <https://www.legislation.gov.au/Details/F2015L00322/Explanatory%20Statement/Text>

Statement of compatibility with human rights

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

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The instrument amends the Tax Determination to set a particular rate of tax for PMTS Class B transmitter licences issued in the 3.6 GHz band.

The tax payable in relation to PMTS Class B transmitter licences in the 3.6 GHz band is calculated by multiplying:

- the bandwidth authorised by the transmitter licence; by
- the population of the geographic area in which transmitters are authorised by the licence; by
- a base rate specified in the Tax Determination.

The instrument specifies \$0.0039/MHz/pop as the base rate for licences in the 3.6 GHz band.

The instrument is likely to affect the winning bidders at auction for spectrum licences in the 3.6 GHz band, where those bidders intend to operate transmitters for the provision of a public mobile telephone service. It does not affect the tax payable for other types of transmitter licences issued in the 3.6 GHz band, and it does not affect the tax payable for PMTS Class B transmitter licences in other parts of the radiofrequency spectrum.

Human rights implications

The ACMA has assessed whether the instrument 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 instrument 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 (Transmitter Licence Tax) Amendment Determination 2018 (No. 2)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2018 (No. 2)*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

Section 4 Amendments

This section provides that the amendments set out in Schedule 1 have effect.

Schedule 1—Amendments

Item 1 Schedule 2, clause 701A

This item amends clause 701A of Schedule 2 to the *Radiocommunications (Transmitter Licence Tax) Determination 2015 (the Tax Determination)*. Clause 701A sets out which transmitter licences are covered by the tax calculations set out in Part 7A of Schedule 2 to the Tax Determination. The amendment extends the application of Part 7A to PMTS Class B licences that authorise the operation of a transmitter in the 3.6 GHz band (3575 MHz to 3700 MHz).

Item 2 Schedule 2, clause 702A

This item amends clause 702A of Schedule 2 to the Tax Determination to define **3.6 GHz band** as the part of the spectrum from 3575 MHz up to and including 3700 MHz.

Item 3 Schedule 2, subclause 704A(3A)

This item inserts a new subclause after subclause 704A(3A) of Schedule 2 to the Tax Determination. Clause 704A sets out the base rate of tax for PMTS Class B licences issued in several bands. This base rate is used in the formula in clause 703A to calculate the amount of tax payable in relation to the licence. The amendment includes a base rate for PMTS Class B licences issued in the 3.6 GHz band. That rate is \$0.0039/MHz/pop.