

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2019 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2019 (No. 1)* (**the Amendment Determination**) 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 Tax Act provides that 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 AIA 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.

Purpose and operation of the instrument

The Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (**the Tax Determination**) which sets the taxes for transmitter licences. 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 Tax Determination sets out the different amounts of transmitter licence tax that the ACMA has determined are payable by licensees of particular apparatus licences for transmitters. The Amendment Determination amends the Tax Determination to increase taxes for radiocommunications transmitter licences by 2.1 percent based on the increase in the consumer price index (**CPI**) over the year to 30 June 2018¹. 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 inflation based escalation is that the instrument continues 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 at their 2008 levels.² The ACMA will consider whether to continue this practice once it has completed its review of the 900 MHz band.

¹ Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2018.

² In 2003, the Australian Communications Authority (ACA) introduced a variant to the tax formula for apparatus licence taxes for fixed services such as point-to-point (P-P) and point-to-multipoint (P-MP) in bands below 960 MHz. The decision was to increase these taxes in addition to CPI for five years until parity was reached with taxes for land mobile services. In November 2008, in response to stakeholder requests, the ACMA decided to freeze these specific taxes, pending a full review. P-P and P-MP taxes in non-remote areas were increased as planned (by CPI and by the fifth price increase) in April 2009 and subsequent years.

The Amendment Determination also amends the Tax Determination to remove the taxes associated with body scanners at international airports and for Public Mobile Telecommunications Service (PMTS) Class B licences in the 700 MHz band. The ACMA recently introduced class licensing arrangements for body scanners at airports. As these arrangements for body scanners are free for airports to use, the ACMA does not expect that continuing apparatus licence arrangements will be required. The tax associated with PMTS Class B arrangements was initially determined to provide early access arrangements for the successful bidders in the auction for spectrum licences in the 700 MHz band in the period prior to the commencement of the spectrum licences. These spectrum licences have now commenced and the early access arrangements, including the tax, are no longer required.

A provision-by-provision description of the Amendment Determination 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 Amendment Determination 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.

Stakeholders were given from between 5 November 2018 and 3 December 2018 to comment on the proposal to amend the Tax Determination to increase taxes by the CPI inflation rate of 2.1 percent, and to remove redundant taxes relating to PMTS Class B licences in the 700MHz frequency band. The proposed changes were outlined on the ACMA website www.acma.gov.au.

The ACMA received three submissions. These were published on the ACMA website. The submissions did not support the imposition of the CPI adjustment with the majority suggesting the ACMA defer the increase until it finalises its Spectrum Pricing Review³. The submissions were taken into account by the ACMA in making the Amendment Determination however the ACMA did not consider it necessary to defer the annual CPI adjustment. As noted above, the application of the growth in the CPI means that 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.

None of the submitters commented on the removal of the tax associated with PMTS Class B licences in the 700 MHz band.

The ACMA did not specifically consult on the proposed amendment to remove taxation arrangements for licences authorising the operation of body scanners in Australian airports. This was because consultation was conducted by the ACMA when it introduced a class licence dealing with body scanners⁴. The ACMA consulted on the proposal to make a class licence to replace the apparatus licences and the consultation documents can be accessed on the ACMA's website at www.acma.gov.au.

³ Information about the Spectrum Pricing Review can be found at:
<https://www.communications.gov.au/documents/spectrum-pricing-review>.

⁴ See *Radiocommunications (Body Scanning – Aviation Security) Class Licence 2018*: www.legislation.gov.au.

Regulatory impact assessment

The Office of Best Practice Regulation (OBPR) has considered the routine annual escalation of licence tax rates by CPI affected by the instrument and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 2011/12297.

OBPR has also considered the removal of the taxes for PMTS Class B licences in the 700 MHz band and the taxes relating to body scanners at international airports affected by the Amendment Determination and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 2018/24620.

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 LA 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 that requirement.

Overview of the instrument

The Amendment Determination is made under subsection 7(1) of the Tax Act and amends the Tax Determination to increase the taxes by the CPI inflation rate and to make other minor and machinery amendments.

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 Amendment Determination is compatible with human rights and freedoms as it does not raise any human rights issues.

Notes to the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2019 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2019 (No. 1)*.

Section 2 Commencement

This section provides that the Amendment Determination commences at the start of the day after it is registered on the Federal Register of Legislation, which can be accessed at www.legislation.gov.au.

Section 3 Authority

Section 3 provides that the Amendment Determination is made under subsection 7(1) of the Tax Act.

Section 4 Amendments

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

Schedule 1 Amendments

Item 1

Item 1 substitutes Part 3 of the Tax Determination to introduce new transitional arrangements relating to the annual increase in taxes for inflation. Section 3.1 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 the Amendment Determination commences on the day after registration, the increase in tax by the rate of the growth in the CPI does not take effect until 5 April 2019. In instances where the tax is payable after the date the Amendment Determination commences but before 5 April 2019, the amount of tax will continue to be based on the Tax Determination as in force immediately before the commencement 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 2

Item 2 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 Tax 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 2.1 percent in line with CPI growth.

Item 3

Item 3 repeals and substitutes table 206 (and accompanying note) which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2A of Schedule 2 (scientific licences) of the Tax 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 2.1 percent in line with CPI growth.

Item 4

Item 4 substitutes a new table 302 (and accompanying note) in Part 3 of Schedule 2 (assigned licences in high demand frequency bands) of the Tax 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 2.1 percent.

Item 5

Item 5 substitutes item 305A, including Table 305A and the example, in Part 3A of Schedule 2 (Harmonised government spectrum area licences) of the Tax Determination. New item 305A specifies that the **base amount** of tax for a licence to which Part 3A applies 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 2.1 percent in line with CPI growth. Further, the item previously referred to the base amount of tax for the year 2018 and subsequent years. Given that 2018 is now passed, references to the year 2018 (and subsequent years) have been omitted from the item.

Item 6

Item 6 substitutes a new table 402 (and accompanying note) in Part 4 of Schedule 2 (assigned fixed point to point licences) of the Tax 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 2.1 percent in line with CPI growth, except for frequency bands below 960 MHz in remote density areas, where the amount of tax remains set at the 2008 level.

Item 7

Item 7 substitutes a new table 502 (and accompanying note) in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) of the Tax 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 2.1 percent in line with CPI growth, except for frequency bands below 960 MHz in remote density areas, where the amount of tax remains set at the 2008 level.

Item 8

Item 8 substitutes a new table 602 (and accompanying note) in Part 6 of Schedule 2 (fixed television outside broadcast station) of the Tax 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 2.1 percent in line with CPI growth.

Item 9

Item 9 substitutes a new table 702 in Part 7 of Schedule 2 (assigned licences subject to a fixed annual tax) of the Tax 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 2.1 percent in line with CPI growth.

In addition, the items in the table which specified the tax for radiodetermination licences that authorise the operation of one or more stations that are body scanners at Australian international airports have been omitted. The ACMA has replaced the apparatus licensing arrangements for body scanners with a new class licence. As a result, it is not expecting to issue transmitter licences of this kind and the associated tax is no longer required to be specified in the Tax Determination.

Items 10-15

Items 10-13 amend items 701A, 702A and 703A of Part 7A of Schedule 2 of the Tax Determination to omit references to the “700 MHz band”, and item 15 repeals sub-item 704A(3A) of Part 7A which specified the base rate of tax for PMTS Class B licences authorised to operate in the 700 MHz band. PMTS Class B licences authorised to operate in the 700 MHz band will no longer be issued by the ACMA and, consequently, the associated taxation arrangements are no longer required.

Item 14 amends sub-item 704A(3) of Part 7A of Schedule 2 of the Tax Determination to increase the base rate of tax for PMTS Class B licences that authorise the operation of a transmitter in the 3.5GHz band by CPI growth of 2.1 percent from \$0.0039/MHz/pop to \$0.0040/MHz/pop.

Item 16

Item 16 amends sub-item 704A(3B) of Part 7A of Schedule 2 of the Tax Determination to increase the base rate of tax for a PMTS Class B licence that authorises the operation of a transmitter in the 3.6 GHz band from \$0.0039/MHz/pop to \$0.0040/MHz/pop to reflect CPI growth of 2.1 percent.

Item 17

Item 17 substitutes a new table 802 (and accompanying note) in Part 8 of Schedule 2 (high power open narrowcasting services – broadcasting licences) of the Tax 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 2.1 percent in line with CPI growth.

Item 18

Item 18 amends sub-item 803(2) of Part 8 of Schedule 2 of the Tax Determination to omit references to \$946 and substitute \$984. The increase in price is higher than the 2.1 percent increase for other taxes in the Tax Determination because the tax specified in sub-item 803(2) was not subject to an increase by CPI growth in the previous year due to an omission by the ACMA. The increase from \$946 to \$984 accounts for an increase by inflation over the past two years, (being 1.9 percent and 2.1 percent). This increase brings the tax in line with the amount specified in item 18 of Table 802.

Item 19

Item 19 substitutes a new table 802A (and accompanying note) in Part 8A of Schedule 2 (space system licences) of the Tax 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 2.1 percent in line with CPI growth.

Item 20

Item 20 substitutes a new table 902 in Part 9 of Schedule 2 (non-assigned licences) of the Tax 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 2.1 percent in line with the increase in the CPI.

Item 21

Item 21 amends the definition of the *minimum annual amount* by omitting \$40.32 and substituting \$41.17. This raises the minimum annual amount of tax by 2.1 per cent, being the increase in the CPI.