

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Receiver Licence Tax) Act 1983

Radiocommunications (Receiver Licence Tax) Amendment Determination 2021 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2021 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Receiver 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 receiver licence;
- the anniversary of a receiver licence coming into force; and
- the holding of a receiver 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 (Receiver Licence Tax) Determination 2015* (**the Tax Determination**), which sets the taxes for receiver licences. The annual tax levied on receiver 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 receiver licence tax that the ACMA has determined is payable by licensees of particular receiver licences. The Amendment Determination amends the Tax Determination to decrease taxes for receiver licences by 0.3 percent, based on the decrease in the consumer price index (**CPI**) over the year to 30 June 2020.¹

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

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

Documents incorporated by reference

The Amendment Determination inserts transitional provisions into the Tax Determination that refer to the Tax Determination as in force at a particular time, namely, immediately before the commencement of the Amendment Determination, as permitted by section 14 of the LA. That version

¹ Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2020

of the Tax Determination is available free of charge from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before the Amendment Determination 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 12 December 2020 to 8 January 2021 to comment on the proposal to amend the Tax Determination to decrease taxes by the decrease in the CPI of 0.3 percent. The proposed changes were published on the ACMA website www.acma.gov.au. No submissions were received from stakeholders in response to the proposal.

Regulatory impact assessment

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

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 amends the Tax Determination, which sets the amount of tax payable by receiver licensees, imposed by the Tax Act. The annual tax levied on receiver 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 Amendment Determination is made under subsection 7(1) of the Tax Act and amends the Tax Determination to decrease the taxes by the CPI.

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 (Receiver Licence Tax) Amendment Determination 2021 (No.1)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2021 (No. 1)*.

Section 2 Commencement

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

The Federal Register of Legislation may be accessed, free of charge, 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 the Tax Determination is amended as set out in Schedule 1 of the Amendment Determination.

Schedule 1 Amendments

Item 1

Item 1 amends the definition of *minimum annual amount* in section 3 of the Tax Determination to decrease the minimum tax amount from \$41.49 to \$41.37 to reflect changes in the CPI.

Item 2

Item 2 substitutes Part 3 of the Tax Determination to introduce new transitional arrangements relating to the changes made by the Amendment Determination. New section 7 of the Tax Determination sets out the relevant definitions and new section 8 provides the transitional arrangements for the implementation of receiver licence tax decreases made by the Amendment Determination.

Although the Amendment Determination commences on the day after registration, the decrease in tax by the decrease in the CPI does not take effect in relation to taxes imposed before 5 April 2021. In instances where the tax is imposed after the date the Amendment Determination commences but before 5 April 2021, the amount of tax will continue to be based on the Tax Determination as in force immediately before the commencement of the Amendment Determination.

Item 3

Item 3 substitutes table 202 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for defence receive and major coast receive licences in Part 2 of Schedule 2 to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

Item 4

Item 4 substitutes table 302 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for fixed receive licences in Part 3 of Schedule 2 to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

Item 5

Item 5 substitutes table 402 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for earth receive and space receive licences in Part 4 of Schedule 2 to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.