**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Radiocommunications (Transmitter Licence Tax) Act 1983*

***Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 1)***

**Authority**

The Australian Communications and Media Authority (**the** **ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (**the TLT Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**). Subsection 7(1) of the TLT 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; or

·         the holding of a transmitter licence.

Subsection 33(3) of the AIA relevantly 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 Determination**), which sets the annual taxes for transmitter licences.

The annual tax levied on transmitter 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.

According to the Explanatory Memorandum for the Radiocommunications (Transmitter Licence Tax) Amendment Bill 1992, the amount of tax is determined with the use of a disallowable instrument because of a need for flexibility in setting the level of the taxes and to ensure that the ACMA itself can set the level which equitably recoups the costs of spectrum management across all apparatus licences which are issued under the *Radiocommunications Act 1992*.

That Explanatory Memorandum also states that the use of disallowable instruments in the setting of the levels of licence taxes will ensure that there is flexibility to change levels in response to changes in demand for particular parts of the spectrum, and to introduce new tax amounts for new kinds of licences, while also ensuring that accountability to the Parliament remains, as the Determination is subject to Parliamentary disallowance.

The Amendment Determination introduces an annual tax of $0.0041/MHz/pop for area-wide licences (**AWLs**) in the 3.4 to 4.0 GHz band. The ACMA expects to allocate AWLs in the band in 2023.

A provision-by-provision description of the instrument 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* (**LA**).

**Documents incorporated by reference**

In accordance with subsection 14(1) of the LA, the Amendment Determination incorporates the following documents, as existing at the time the Amendment Determination commenced:

1. the ‘Australian Spectrum Map Grid 2012’;
2. the ‘Hierarchical Cell Identification Scheme (HCIS) – List of Population Data’.

These documents are available, free of charge, from the ACMA website ([www.acma.gov.au](http://www.acma.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.

On 2 March 2022, the ACMA published a consultation paper that set out a proposal to allocate AWLs in remote areas of Australia in the 3.4 GHz to 4 GHz band, and called for submissions by 4 May 2022. The ACMA received 30 submissions. Overall, the submissions received from this consultation process supported the $/MHz/pop pricing construct for the AWLs, as well as a transmitter licence tax rate of $0.0041/MHz/pop for AWLs in the 3.4–4.0 GHz band.

**Regulatory impact assessment**

The ACMA prepared a regulatory impact statement (**RIS**) for the introduction of AWLs in remote areas of Australia in the 3.4 GHz to 4 GHz band to facilitate local area wireless broadband. The RIS analysis shows that introducing AWLs in remote areas is expected to be net beneficial by at least $51,000 each year over the next 10 years compared with the status quo. On 20 April 2023, the Office of Impact Analysis (**OIA**) certified the RIS as adequate (OBPR21-01290).

**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 of compatibility has been prepared in accordance with that requirement.

***Overview of the instrument***

The purpose of the Amendment Determination is to introduce an annual tax for AWLs in the 3.4 to 4.0 GHz band of $0.0041/MHz/pop, to allow the ACMA to allocate AWLs in the band in 2023.

***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.

**Attachment A**

**Notes to the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 1)***

**Section 1         Name**

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (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](file:///C%3A/Users/tzampag/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/9XSPXWMB/www.legislation.gov.au).

**Section 3         Authority**

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

**Section 4         Amendments**

Section 4 provides that the Determination is amended as set out in Schedule 1 to the Amendment Determination.

**Schedule 1—Amendments**

**Item 1**

Item 1 repeals Part 3 of the Determination. Part 3 related to transitional arrangements for amendments introduced in a previous tax amendment determination (the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 3)*). These transition arrangements are no longer relevant.

**Item 2**

Item 2 repeals Part 7B of Schedule 2 to the Determination (except for the heading) and substitutes it with a new Part 7B. New item 701B adds the 3.4 to 4.0 GHz band to the other bands already subject to the AWL population based annual tax specified in this Part.

New Part 7B also includes a new item 702B that adds a definition of the ‘3.4 to 4.0 GHz band’.

New Part 7B also includes a new third example of the tax calculation in new item 703B. The new example uses the tax rate introduced for the 3.4 to 4.0 GHz band of $0.0041/MHz/pop (specified in the new sub-item 704B(2)).