

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 2)* (**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. These measures are intended to provide incentives for efficient use of spectrum. The ACMA seeks to adopt taxes that promote the best use of spectrum.

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 reduces the tax rate for television outside broadcast network (TOBN) licences from \$415,889 to \$211,701. TOBN licences are used by television broadcasters to facilitate wireless applications used as part of news gathering, special events or media production. The change is intended to better align pricing as a consequence of previous changes that reduced location weightings for

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the parts of the spectrum between 5.0 and 8.5 GHz, and between 8.5 GHz and 14.5 GHz, by 50% and 90%, respectively.

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 (LA)*. The Determination is subject to the sunset provisions of the LA.

Documents incorporated by reference

The Amendment Determination does not amend the Determination to incorporate any documents by reference.

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 23 March 2023, the ACMA published a consultation paper that set out a number of proposals relating to apparatus licence taxes, including changes to the tax rate for TOBN licences. The ACMA received 11 submissions to the consultation. On this matter, one submitter provided comment supporting the proposal to reduce the rate.

Regulatory impact assessment

The ACMA submitted a certification letter in place of a regulatory impact statement (RIS) for changes to 'location weightings', which are used in setting the tax rates for a number of different kinds of transmitter licence. Because of those weighting changes, the ACMA considered that the tax rate for TOBN licences should be lowered from \$415,889 to \$211,701. On 10 July 2021, the Office of Impact Analysis (OIA) (previously the Office of Best Practice Regulation) assessed that the options analysed in the independent review were sufficiently relevant to the regulatory proposal. Consistent with OIA's previous decision and based on the information provided, OIA consider the associated tax amendment proposal was unlikely to have a more than minor impact. As such, the preparation of an Impact Analysis (IA) was not required (OIA23-05319).

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 reduce the tax rate in relation to television outside broadcasting licences, which are used by television broadcasters to conduct outside broadcasts.

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 2023 (No. 2)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 2)*.

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 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 lowers the tax rate for TOBN licences to \$211,701, down from \$415,889.