

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications (Transmitter Licence Tax) Act 1983

Communications (Radionavigation-Satellite Service Retransmission) Amendment Instrument 2025 (No. 1)

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2025 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Communications (Radionavigation-Satellite Service Retransmission) Amendment Instrument 2025 (No. 1)* (the **RNSS Amendment Instrument**) under subsections 60(1) and 64(1) of the *Australian Communications and Media Authority Act 2005* (the **ACMA Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Under the ACMA Act:

- subsection 60(1) provides that the ACMA may, by written instrument, make determinations fixing charges for services provided by the ACMA, and for any matter in relation to which expenses are incurred by the ACMA under various Acts (or instruments made under those Acts), including the *Radiocommunications Act 1992* (the **Act**). The charges must not be such as to amount to taxation.
- subsection 64(1) provides that the ACMA may make a written determination defining one or more expressions used in specified instruments, being instruments that are made by the ACMA under one or more specified laws of the Commonwealth.

The ACMA has also made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2025 (No. 1)* (the **TLT Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the **TLT Act**) and subsection 33(3) of 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;
- the holding of a transmitter licence.

Section 28C of the Act requires the ACMA to have regard to any relevant Ministerial policy statements when performing its spectrum management functions, which includes its functions under the TLT Act. The TLT Amendment Determination affects the calculation of tax for scientific licences (a type of transmitter licence issued under the Act) that authorise the operation of radiocommunications transmitters in, among other frequency bands, the 3.4 GHz to 4 GHz frequency band. In determining these amounts, the ACMA has had regard to the *Radiocommunications (Ministerial Policy Statement – 3.4-4.0 GHz) Instrument 2022*.

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 instruments

The RNSS Amendment Instrument

RNSS generally describes any satellite constellation that provides positioning, navigation and timing services using radiocommunications devices. In many underground or enclosed environments such as aircraft hangars, tunnels or mines, there is often low-to-no RNSS coverage, since RNSS signals from satellites are not powerful enough to penetrate these environments. This lack of coverage is an issue for many RNSS users, given the heavy reliance on RNSS in the consumer, commercial and safety sectors.

RNSS retransmission devices, such as RNSS repeaters, are radiocommunications devices designed to receive RNSS signals from satellites and re-transmit them terrestrially into areas that have low-to-no reception of RNSS signals.

The RNSS Amendment Instrument amends the following legislative instruments:

- the *Radiocommunications (Charges) Determination 2022* (the **Charges Determination**), which specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences issued under the Act, as well as charges payable for other services provided by the ACMA, or for expenses incurred by the ACMA, under the Act and instruments made under the Act;
- the *Radiocommunications (Interpretation) Determination 2025* (the **Interpretation Determination**), which contains certain definitions of expressions found in specified legislative instruments made by the ACMA.

The changes made by the RNSS Amendment Instrument and the TLT Amendment Determination enable long-term apparatus licensing for radionavigation-satellite service (**RNSS**) retransmission technologies by:

- allowing RNSS repeaters to be licensed under radiodetermination licences (a type of transmitter licence issued under the Act);
- prescribing specified charges and taxes for issue of a radiodetermination licence that authorises the operation of an RNSS repeater system.

A radiodetermination licence is a type of transmitter licence that authorises the operation of a radiocommunications transmitter that uses radio waves to determine the position, velocity or other characteristics of an object and obtain information about these characteristics.

Prior to the making of the RNSS Amendment Instrument and the TLT Amendment Determination, the Australian radiocommunications licensing framework did not accommodate long-term use of RNSS repeaters.

Operation of a radiocommunications device is not authorised by an apparatus licence (including a radiodetermination licence) if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). Under section 46 of the Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or a class licence. The Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter, and the offender is an individual – imprisonment for 2 years;

- if the radiocommunications device is a radiocommunications transmitter, and the offender is not an individual – 1,500 penalty units (which is \$495,000 based on the current penalty unit amount of \$330);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$99,000);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a spectrum licence, apparatus licence or class licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

In addition, an apparatus licensee, or a person authorised under section 114 of the Act in relation to an apparatus licence, must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units (\$33,000).

The TLT Amendment Determination

The TLT Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2025* (the **TLT Determination**), which sets the amounts of tax in relation to transmitter licences issued under the Act, to:

- include a paragraph in the note listing various definitions so as to include the expression ***radiodetermination licence (RNSS repeater system)***;
- set the amount of tax applicable to a radiodetermination licence (RNSS repeater system) to be the minimum annual amount.

Additionally, the TLT Amendment Determination makes amendments to taxation arrangements for scientific licences so that the TLT Determination implements the ACMA's original policy intent. Where a scientific licence has multiple spectrum accesses (discrete parts of the spectrum and geographic areas where operation of a radiocommunications transmitter is authorised), the ACMA's policy intent is for the amount of tax payable on the licence to be equal to the average of the tax rates applicable for each spectrum access.

For example, consider a scientific licence with 3 spectrum accesses (A, B and C). If the calculated tax for each spectrum access is A = \$120, B = \$110 and C = \$70, the total is A + B + C = \$300, and subsequently the tax for the licence should be the average, i.e. $300/3 = \$100$.

The *Radiocommunications (Transmitter Licence Tax) Determination 2015* (the **former TLT Determination**) implemented this policy intent. The TLT Determination, as remade to replace the former TLT Determination, instead:

- applied the average tax to each spectrum access within the licence rather than on the whole licence (which occurred at Part 2 of Schedule 1 to the instrument);
- calculated the total tax amount for the licence as the sum of the amounts of tax applicable to each spectrum access.

For example, this would calculate the tax for each spectrum access as A = \$100, B = \$100 and C = \$100, and subsequently the tax for the licence would be \$300.

The TLT Amendment Determination amends provisions of Part 2 of Schedule 1 to the TLT Determination to rectify this.

Generally

A provision-by-provision description of:

- the RNSS Amendment Instrument is set out in the notes at **Attachment A**;
- the TLT Amendment Determination is set out in the notes at **Attachment B**.

The RNSS Amendment Instrument, TLT Amendment Determination and the instruments they amend are legislative instruments for the purposes of the *Legislation Act 2003* (the **LA**), and are disallowable.

The Charges Determination, Interpretation Determination and TLT Determination are subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

The RNSS Amendment Instrument amends the Interpretation Determination to incorporate by reference the spectrum plan made under section 30 of the Act, as in force from time to time. The current spectrum plan is the *Australian Radiofrequency Spectrum Plan 2021*. The spectrum plan is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

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

Between 19 June and 17 July 2024, the ACMA consulted on a proposed framework to enable long-term licensing arrangements for RNSS retransmission devices. The framework included licensing, technical and pricing arrangements, as well as the legislative changes needed to implement the framework for RNSS repeaters.

The ACMA published a consultation paper to invite comments on the proposed new arrangements. The consultation paper was published on the ACMA website.

The ACMA received 7 public submissions. Submissions to the consultation were generally in support of, or agreement with, the arrangements, noting the proposal to licence the devices using the radiodetermination licence type and with low tax rates.

No submissions raised concerns about the substance of the RNSS Amendment Instrument or the TLT Amendment Determination.

Public submissions received and the response to submissions are available on the ACMA website.

This consultation process did not include changes to scientific licence taxation arrangements included in the TLT Amendment Determination since those changes serve to ensure the TLT Determination implements the ACMA's original policy intent. The original policy intent was consulted on prior to making the *Radiocommunications (Scientific Licence – Licence Conditions and Licence Tax) Amendment Determination 2017 (No. 1)*, and the explanatory statement to that instrument provides further information on that consultation.

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 with human rights to be prepared in respect of that legislative instrument.

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

Overview of the instruments

The RNSS Amendment Instrument

The RNSS Amendment Instrument amends the Charges Determination and Interpretation Determination.

The Charges Determination specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences issued under the Act, as well as charges payable for other services provided by the ACMA, or for expenses incurred by the ACMA, under the Act, and instruments made under the Act. The Interpretation Determination contains the definitions of expressions found in specified legislative instruments made by the ACMA.

The effect of the changes made by the RNSS Amendment Instrument and TLT Amendment Determination is to allow RNSS repeater devices to be authorised under a radiodetermination licence and to prescribe specified charges for the ACMA to issue such a licence. The amendments facilitate the long-term licensing of RNSS repeaters and enable more RNSS coverage in environments with poor coverage. There are significant public benefits from this use of the spectrum to accommodate increasing reliance on RNSS for navigation, asset management and productivity purposes.

The changes made by the RNSS Amendment Instrument increase opportunities for innovative and publicly beneficial spectrum use, without impeding the ability of others to use of the spectrum.

The TLT Amendment Determination

The TLT Amendment Determination amends the TLT Determination to prescribe the amount of tax payable in relation to a radiodetermination licence that authorises the operation of RNSS repeater devices.

The TLT Amendment Determination also makes amendments to the TLT Determination to ensure taxation arrangements for scientific licences (a type of transmitter licence) implement the original policy intent, such that the tax amount for the licences is equal to the average of the rates applicable to each of the spectrum accesses on the licence.

Human rights implications

The ACMA has assessed whether the RNSS Amendment Instrument and TLT Amendment Determination are 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 RNSS Amendment Instrument and TLT Amendment Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instruments do not engage any of those rights or freedoms.

Conclusion

The instruments are compatible with human rights as they do not raise any human rights issues.

Notes to the *Communications (Radionavigation-Satellite Service Retransmission) Amendment Instrument 2025 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Communications (Radionavigation-Satellite Service Retransmission) Amendment Instrument 2025 (No. 1)*.

Section 2 Commencement

This section provides for the instrument 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

This section identifies the provision of the Act that authorises the making of the instrument, namely subsections 60(1) and 64(1) of the ACMA Act.

Section 4 Amendments

This section provides that the instruments that are specified in Schedule 1 are amended as set out in the applicable items in that Schedule.

Schedule 1—Amendments

Radiocommunications (Charges) Determination 2022 (F2022L01245)

Item 1

Item 1 inserts ‘radiodetermination licence (RNSS repeater system)’ to note 2 to subsection 5(1) of the Charges Determination. That note sets out the terms that may be defined in an instrument made under section 64 of the ACMA Act that apply to the Charges Determination. This amendment is consequential as a result of the amendment in item 3.

Item 2

Table item 2.1.11 of Table 1 of Part 2 of Schedule 1 to the Charges Determination sets the charges imposed for considering applications under section 99 of the Act for two kinds of fixed licences, where there is no frequency assignment certificate for the application. The charge is \$482 per licence. The effect of item 2 is to add to the table item an application for a ‘radiodetermination licence (RNSS repeater system)’ (see item 3). The charge for an application for this kind of radiodetermination licence, where there is no frequency assignment certificate for the application, is therefore \$482 per licence.

The charge is payable on a per licence basis and applies whether the licence is issued or not.

Radiocommunications (Interpretation) Determination 2025 (F2025L00362)

Item 3

The Schedule to the Interpretation Determination defines particular expressions used in the legislative instruments specified in section 6 of the Interpretation Determination.

Item 3 inserts definitions of the new expressions into the Schedule to establish a licensing framework for RNSS repeaters.

Under those new definitions:

- something is **indoors** if it is in a space that is enclosed by permanent walls, a permanent roof and a permanent floor, and that is permanently fixed to a location.
- a **radiodetermination licence (RNSS repeater system)** is a radiodetermination licence that authorises the operation of radiocommunications transmitters in an RNSS repeater system.
- the expression **radionavigation-satellite service** has the meaning given by the spectrum plan;
- an **RNSS frequency** is a frequency that the spectrum plan specifies is for RNSS use;
- an **RNSS radiocommunication** is a radiocommunication made using an RNSS frequency;
- an **RNSS receiver** is a radiocommunications receiver that receives RNSS communications;
- an **RNSS repeater station** is used for the reception and automatic retransmission of RNSS radiocommunications on particular frequencies, is authorised by a radiodetermination licence, and is located indoors, in an underground environment, or in a tunnel; and
- an **RNSS repeater system** is a system comprising one or more RNSS repeater stations.

***Notes to the Radiocommunications (Transmitter Licence Tax) Amendment
Determination 2025 (No. 1)***

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2025 (No. 1)*.

Section 2 Commencement

This section provides for the instrument 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

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 7(1) of the TLT Act.

Section 4 Amendments

This section provides that the instrument that is specified in Schedule 1 is amended as set out in the applicable items in that Schedule.

Schedule 1—Amendments

Radiocommunications (Transmitter Licence Tax) Determination 2025 (F2025L00058)

Item 1

Item 1 inserts ‘radiodetermination licence (RNSS repeater system)’ in note 2 to subsection 5(1) of the TLT Determination. That note sets out the terms that may be defined in an instrument made under section 64 of the ACMA Act that applies to the TLT Determination.

Item 2

Item 2 inserts ‘(the **component access**)’ after ‘separate spectrum access’ in paragraph 9(1)(b) of Schedule 1 to the TLT Determination, for the purposes of the change in item 3.

Item 3

Item 3 repeals sub-item 9(2) of Schedule 1 and substitutes new provisions stating that:

- for the purposes of the TLT Determination, the component accesses are taken to be a single spectrum access called the **combined access**.
- the annual amount for the combined access is equal to the sum of the amounts worked out under items 7 or 8 of Schedule 1 to the TLT Determination for all of the component accesses, divided by the number of radiocommunications transmitters authorised by the licence.

Item 4

Part 8 of Schedule 1 to the TLT Determination sets out how to calculate the annual amounts for specified kinds of assigned licences, which are listed in Table 8.

Item 4 adds a new table item 15 to Table 8, to specify that the annual amount for a radiodetermination licence (RNSS repeater system) is the minimum annual amount under the TLT Determination. At the time that table item 15 was inserted, the minimum annual amount was \$42.88.