

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

***Radiocommunications (Transmitter Licence Tax) Amendment Determination 2011 (No. 3)***

***Radiocommunications Act 1992***

### **Purpose**

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2011 (No. 3)* (the Amendment Determination) amends the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)* (the Determination).

### **Legislative Provisions**

The Determination and Amendment Determination are both made under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* which provides that the Australian Communications and Media Authority (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 *Acts Interpretation Act 1901* 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.

### **Background**

Under the *Radiocommunications Act 1992*, the ACMA is responsible for maintaining an efficient, equitable and transparent system of charging for the use of spectrum. The annual tax levied on apparatus licences (transmitter licences and receiver licences) allows the ACMA to create economic incentives for efficient use of the spectrum. It encourages licensees to use the minimum amount of bandwidth for their needs, move to less congested bands, and surrender licences that are no longer needed.

Where frequencies are in very limited supply, the ACMA seeks to ensure efficient use of spectrum by allocating channels to licensees with the greatest willingness to pay for the use of the spectrum. If a tax is too low, licensees with more economically efficient uses may be excluded, while those with low-value uses are occupying channels.

The Determination sets out the different amounts of transmitter licence tax that the ACMA has determined are payable by licensees of particular apparatus licences.

### **Operation**

The Amendment Determination amends the taxing regime for radiocommunications transmitter licences to increase the taxes payable by licensees under the Determination by 3.60 percent, an adjustment based on the annual consumer price index (CPI) movement to June 2011.

The only exception to the CPI increase is in relation to taxes levied on point to point and point to multi-point fixed wireless access services operating in frequency bands below 960 MHz in remote density areas. Taxes payable by licensees for this specific class will remain at the same level (unchanged since 2008) pending a review by the ACMA.

In real terms there is no effect on businesses caused by the tax increase as the nominal dollar increases merely preserve the value of the licence taxes against erosion by inflation.

## **Consultation**

Subsection 18(1) of the *Legislative Instruments Act 2003* provides that the nature of an instrument may be such that consultation may be unnecessary or inappropriate. The ACMA considered it unnecessary in this instance to consult on the changes proposed in the Amendment Determination, particularly because an instrument which applies CPI increases is of a minor or machinery nature and does not substantially alter existing arrangements.

The formula the ACMA uses for calculating apparatus licence taxes has been in place since 1995 (it was updated in 2005) and the changes made to the Determination by the Amendment Determination merely apply the same formula used for existing arrangements.

In addition, industry is aware of adjustments to apparatus licence taxes to account for CPI increases. Such adjustments have been made by the Spectrum Management Agency, Australian Communications Authority and the ACMA since 1995. Information about the CPI is freely available to the general public. Information is also available from the ACMA website about apparatus licence fees including the statement that “All apparatus licence taxes are adjusted annually for changes in the CPI, to compensate for the effects of inflation.”

In the special case of taxes for point to point and point to multi-point fixed wireless access services operating in frequency bands below 960 MHz in remote density areas, the ACMA considered it unnecessary to consult as no changes have been made to the amount of taxes payable under the Determination.

## **Regulatory Impact**

The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that no regulatory impact analysis is required for the Amendment Determination. The OBPR reference number is ID12297.

## **Amendment Determination Details**

Details of the Amendment Determination are provided at the Attachment.

**NOTES ON SECTIONS****Section 1                      Name of Determination**

Section 1 provides the name of the Amendment Determination.

**Section 2                      Commencement**

Section 2 provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3                      Amendment of Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)**

Section 3 provides that Schedule 1 of the Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2003 (No. 2)*.

**Schedule 1                      Amendments****Item 1**

Item 1 amends paragraph 1.3(1)(b) of the Determination by omitting the words ‘, made under subsection 54(1) of the *Australian Communications Authority Act 1997* and continued in force under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*’. The purpose of this amendment is to update the provision as it is no longer necessary to refer to the transitional arrangements put in place when the ACMA came into existence in 2005.

**Item 2**

Item 2 substitutes Part 4 of the Determination to introduce new transitional arrangements. New section 4.1 sets out the relevant definitions, and new section 4.2 provides new 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, in some instances where the tax is payable after this date, the amount of tax will continue to be calculated in accordance with the Determination as in force immediately before the commencement of the Amendment Determination (the ‘pre-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 3**

Item 3 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. The amount of tax varies with frequency range and density of the spectrum access. All amounts have been raised by the adjustment of 3.60 percent.

**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 Determination, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 3 of Schedule 2. The amount of tax varies with frequency range and density of the spectrum access. All amounts have been raised by the adjustment of 3.60 percent.

**Item 5**

Item 5 substitutes new Table 402 (and accompanying note) in Part 4 of Schedule 2 (assigned fixed point to point licences) of the Determination which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 4 of Schedule 2. The amount of tax varies with frequency range and density of the spectrum access. All amounts have been raised by the adjustment of 3.60 percent except for frequency bands below 960 MHz in remote density areas where the amount of tax remains set at the 2008 level.

**Item 6**

Item 6 substitutes new Table 502 (and accompanying note) in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) of the Determination which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 5 of Schedule 2. The amount of tax varies with frequency range and density of the spectrum access. All amounts have been raised by the adjustment of 3.60 percent 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 new Table 602 (and accompanying note) in Part 6 of Schedule 2 (fixed television outside broadcast station) of the Determination which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 4 of Schedule 2. The amount of tax varies with frequency range and location of the spectrum access. All amounts have been raised by the adjustment of 3.60 percent.

**Item 8**

Item 8 substitutes new Table 702 in Part 7 of Schedule 2 (assigned licences subject to a fixed annual tax) of the Determination which sets out the amount of fixed annual tax payable for the licensing options specified in Part 7 of Schedule 2. All amounts have been raised by the adjustment of 3.60 percent.

**Item 9**

Item 9 substitutes new Table 802 (and accompanying note) in Part 8 of Schedule 2 of the Determination which sets out the amount of tax for certain high power open narrowcasting licences specified in Part 8 of Schedule 2. The amounts vary depending on the location of the open narrowcasting service. All amounts have been raised by the adjustment of 3.60 percent.

**Item 10**

Item 10 substitutes new Table 902 (and accompanying note) in Part 9 of Schedule 2 which sets out the amount of tax for certain high power open narrowcasting licences specified in Part 9 of Schedule 2. The amounts vary depending on the location of the open narrowcasting service. All amounts have been raised by the adjustment of 3.60 percent.

**Item 11**

Item 11 substitutes new Table 1002 in Part 10 of Schedule 2 (non-assigned licences) of the Determination which sets out the amount of tax for the licensing options specified in Part 10 of Schedule 2. All amounts have been raised by the adjustment of 3.60 percent.

**Item 12**

Item 12 sets out further amendments made to the Determination to increase certain fixed taxes by the CPI increase of 3.60 percent, as follows:

- the minimum tax payable for the different licensing options as detailed in Schedule 2 items 205, 304, 403, 504, and 603 has been increased from \$34.91 to \$36.17, representing an increase of 3.60 percent;

- Item 904, Part 9 of Schedule 2 of the Determination is amended to specify the minimum annual tax amount for certain high power open narrowcasting licences as \$865, an increase of 3.60 percent from the current amount of \$835; and
- Step 3 of Table 103, Table 104, and Table 105 in Schedule 3 is amended to raise the minimum annual amount of tax for all licences from \$34.91 to \$36.17, representing an increase of 3.60 percent.