

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

*Radiocommunications (Transmitter Licence Tax) Amendment Determination 2015 (No. 1)*

*Radiocommunications Act 1992*

### Purpose

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2015 (No. 1)* (the **Amendment Determination**) amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (the **Determination**) to:

- increase the transmitter licence tax amount for transmitter licences (except for assigned fixed point to point and point to multipoint licences operating in spectrum below 960 MHz in remote density areas) by 1.5 per cent, based on the increase in the consumer price index (**CPI**);
- adjust the transmitter licence tax payable by licensees operating transmitters in certain parts of the 400 MHz frequency band to implement opportunity cost (**OC**) pricing in the band; and
- introduce a new tax regime for government licences in the 400 MHz band.

### Legislative Provisions

The Determination and Amendment Determination are both made under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the **Act**). Section 6 of the Act imposes tax on:

- the issue of a transmitter licence;
- the anniversary of a transmitter licence coming into force; and
- the holding of a transmitter licence.

Subsection 7(1) provides that the Australian Communications and Media Authority (the **ACMA**) may determine the amount of tax imposed by the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where 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.

The Amendment Determination is a disallowable legislative instrument under the *Legislative Instruments Act 2003* (**LIA**).

### Background

It is an object of the *Radiocommunications Act 1992* to provide for management of the radiofrequency spectrum in order to provide an efficient, equitable and transparent system of charging for the use of spectrum. The annual tax levied on apparatus 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 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 Determination sets out the different amounts of transmitter licence tax that the ACMA has determined and that are payable by licensees of particular apparatus licences for transmitters.

## Operation

The Amendment Determination amends the taxing regime for radiocommunications transmitter licences to adjust almost all taxes by a 1.5 percent increase based on the increase in the CPI over the year to June 2015<sup>1</sup>. In real terms there should be no effect on businesses, as the nominal dollar increases merely preserve the value of the licence taxes (and therefore the incentives toward efficient use of spectrum) against erosion by inflation.

The only exception to this CPI increase is that the ACMA has decided to continue the freeze, in dollar amounts, of taxes levied on point to point and point to multi-point licences operating in frequencies below 960 MHz in remote density areas (**RDAs**) at their 2008 levels.

However, in the frequency range of 403 to 520 MHz (**400 MHz band**) the ACMA has applied OC prices. Using OC principles reduces the licence tax rate to \$0.00/kHz in RDAs (subject to the minimum tax amount), given low current demand for spectrum and low forward risk of congestion in the 400 MHz band in these areas.

The Amendment Determination also progresses the application of the ACMA's OC principles in high density areas (**HDAs**) of the 400 MHz band. This involves a second 15 per cent increase in taxes to reflect OC in HDAs (the first occurred in 2012), which is designed to address congestion risk in the 400 MHz band in these areas.

The Amendment Determination also establishes the long term licensing tax arrangements for the harmonised government spectrum within the 400 MHz band. The tax arrangements reflect the ACMA's decision to issue a new class of land mobile licence – the harmonised government band spectrum area (**HGSA**) licence.

## Consultation

### *CPI amendments*

Subsection 18(1) of the LIA provides that the nature of an instrument may be such that consultation may be unnecessary or inappropriate.

The ACMA considered that it was unnecessary in this instance to consult on the changes in the Amendment Determination to increase taxes by the CPI, in particular as CPI increases are routine and machinery in nature. Industry is aware of adjustments to apparatus fees to account for annual CPI increases. Such adjustments have been made by the Spectrum Management Agency, Australian Communications Authority and the ACMA since 1995. Information is available from the ACMA website ([acma.gov.au](http://acma.gov.au)) 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".

The formula the ACMA uses for calculating apparatus licence taxes has been in place since 1995 (it was updated in 2005) and the Amendment Determination is merely applying the same formula. Information about the CPI is freely available to the general public from the Australian Bureau of Statistics.

In the special case of the unchanged taxes for point to point and point to multi-point licences operating below 960 MHz in RDAs, the ACMA considered it unnecessary to consult with relevant stakeholders as there were no changes made affecting their licences.

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<sup>1</sup> Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2015

### *Amendments relating to OC pricing*

In January 2010, the ACMA announced its in-principle decision to use OC principles as one of its suite of tools to manage spectrum. The OC of a part of the radiofrequency spectrum is the highest value alternative use that is denied by granting access to one party rather than to the alternative.

In 2012, the ACMA increased taxes in the 400 MHz band by 15 per cent, as the first step towards fully rolling out OC pricing in the band. The ACMA flagged that it would monitor the impacts on demand and congestion before implementing further tax increases. In June 2014 the ACMA consulted with stakeholders (relevant papers are available on the ACMA website) on the monitoring undertaken to identify the impacts on demand and congestion of that increase. The ACMA also published the key findings of the monitoring analysis relating to the demand and congestion, and proposed implementing the second 15 per cent tax increase in HDAs in the 400 MHz band and the reduction of tax in the RDAs. Seven submissions were received from interested stakeholders.

The main concerns raised by stakeholders were that the monitoring framework did not:

- relate to spectrum congestion;
- adequately capture the response from public sector licensees;
- adequately address related complexities caused by the establishment of harmonised government spectrum (**HGS**); and
- reflect impacts of the new band planning arrangements in the 400 MHz band.

The ACMA has considered the views of stakeholders and modified the monitoring framework partly in response to the feedback received. The ACMA undertook further monitoring, focusing on the projected congestion risk over the next few years. The ACMA has also modified the monitoring analysis to exclude public sector demand for spectrum which will generally migrate to the HGS. This revised monitoring framework has been used to inform the ACMA's decision to proceed with the increase in licence taxes of around 15 per cent, as flagged in the consultation paper.

The consultation paper released in June 2014 also flagged an intention to apply opportunity cost principles in the RDAs in the 400 MHz band, by reducing the transmitter licence tax rate to \$0.00/kHz, given low demand and the lack of congestion. That consultation also foreshadowed that the minimum tax amount would continue to apply. Responses received generally supported the application of OC pricing in the RDAs.

The difference between the tax amounts proposed in the June 2014 paper and those specified in the Amendment Determination relate to an increase of 1.5 per cent, to account for the CPI increase over the year to June 2015, as discussed above.

### *Amendments related to harmonised government spectrum (400 MHz band)*

The ACMA undertook extensive consultation around the implementation of the taxing arrangements for HGS in the 400 MHz band, as well as about the introduction of a new licensing regime and the introduction of HGSA licences. The ACMA met regularly with the National Coordinating Committee for Government Radiocommunications (**NCCGR**) to discuss the proposed arrangements. The matter has been discussed as part of 400 MHz 'Tune-up' sessions and at external conferences held by the ACMA. Workshops were held with interested stakeholders on 19 March 2015 and 6 May 2015. These were attended by the NCCGR, the

Australian Radio Communications Industry Association and the Department of Communications. The concept was also discussed with accredited persons<sup>2</sup> on 4 March 2015.

In September 2015, the ACMA released a discussion paper, *Licensing of harmonised government spectrum in the 400 MHz band*, which detailed the proposed licensing, engineering, governance and taxation arrangements for HGSA licences and sought stakeholder feedback. The paper is available on the ACMA website. The paper also attached a draft Amendment Determination, proposing how particular taxation arrangements for the HGSA licences may be implemented by the ACMA. Comments were sought on the proposed policies and taxation arrangements. Nine submissions were received. The ACMA considered the views from stakeholders and has taken them into account by adjusting the base amounts used to calculate the taxes and in amending the transmit frequencies to be included in the HGSA licences.

### **Documents incorporated with reference**

In accordance with paragraph 14(1)(a) of the LIA, the following instrument is incorporated by reference, as in force from time to time:

- *Radiocommunications (Mid-West Radio Quiet Zone) Frequency Band Plan 2011.*

This instrument is available from the Comlaw website: <http://www.comlaw.gov.au>.

### **Regulatory Impact Statement (RIS)**

The Office of Best Practice Regulation (**OBPR**) has considered the routine annual increase in licence tax rates by CPI, and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is ID12297.

In April 2012, the ACMA released the general consultation paper *Adoption of opportunity cost prices for apparatus licences in the 400 MHz band* seeking views on the methodology and proposed OC-based licence tax rates to be set in the HDAs in relation to the 400 MHz band, and flagging the introduction of OC principles in setting the licence tax rate in RDAs in relation to the 400 MHz band. The ACMA undertook a RIS which OBPR endorsed - reference Number 13381.

The ACMA also considered whether a regulatory impact analysis process is required by undertaking a preliminary assessment of the impact of the introduction of OC principles in RDAs in relation to the 400 MHz band. Based on this preliminary assessment the OBPR has determined that the proposed regulatory change in the RDAs of the 400 MHz band is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required – OBPR reference number 14683.

Further, the ACMA considered whether a regulatory impact analysis process is required to implement new taxation arrangements for the HGSA licences by undertaking a preliminary assessment. Based on this preliminary assessment, the OBPR has determined that the proposed regulatory change is minor or machinery in nature and has verified that no further regulatory impact analysis is required – OBPR reference number 11209.

### **Amendment Determination Details**

Details of the Amendment Determination are provided in **Attachment 1**.

### **Statement of Compatibility with Human Rights**

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<sup>2</sup> Accredited persons are persons accredited by the ACMA under the *Radiocommunications Act 1992* to perform certain activities related to the use of the radiofrequency spectrum, including frequency coordination and emission level management.

In accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* the ACMA has considered whether the Amendment Determination engages any applicable human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, and has formed the view that it does not. The Amendment Determination is made under subsection 7(1) of the Act and amends the Determination by changing the tax amounts payable by licensees to account for an increase in CPI, to implement the ACMA's OC pricing principles in the 400 MHz band, and to implement a new taxation regime for HGSA licences in the 400 MHz band. The Amendment Determination is compatible with human rights as it does not raise any human rights issues.

## **ATTACHMENT 1**

### **DETAILS OF THE AMENDMENT DETERMINATION**

#### **Section 1                      Name of Determination**

Section 1 specifies the name of the Amendment Determination.

#### **Section 2                      Commencement**

Paragraph 2(a) provides that section 2 and the whole of the rest of the Amendment Determination apart from subsection 3(1) and Schedule 1 commence on the day after the Amendment Determination is registered on the Federal Register of Legislative Instruments. Paragraph 2(b) provides that subsection 3(1) and Schedule 1 commence on 5 April 2016.

#### **Section 3                      Amendment**

Section 3 provides that Schedules 1 and 2 of the Amendment Determination amend the Determination.

#### **Schedule 1    Amendments to the Radiocommunications (Transmitter Licence Tax) Determination 2015 (harmonised government spectrum area licence)**

The amendments in Schedule 1 relate to the implementation of taxation arrangements for HGSA licences in the 400 MHz band.

#### **Item [1]**

Item [1] amends subsection 2.1(2) of the Determination to include a reference to new Part 3A of Schedule 2 (see item [6] below), which sets out the transmitter licence tax amounts relevant for HGSA licences. Section 2.2 of the Determination sets out how to work out an amount of transmitter licence tax.

#### **Item [2]**

Item [2] substitutes subparagraph 2.2(b)(ii) and inserts new subparagraph (iii). The changes reflect that, in relation to HGSA licences, a person must just follow the instructions in the relevant Part of Schedule 2 to work out the amount of transmitter licence tax for a HGSA licence (rather than the *annual* amount of transmitter licence tax or the annual amount for spectrum accesses, as is the case for other Parts of Schedule 2).

**Item [3]**

Item [3] amends paragraph 201(1)(i) of Schedule 2 to the Determination to exclude an ambulatory station operated under a HGSA licence from being covered by Part 2 of Schedule 2 to the Determination. Such licences are covered by new Part 3A of Schedule 2.

**Item [4]**

Item [4] substitutes paragraph 301(d) of Schedule 2 to the Determination with a new provision which excludes wireless audio systems and land mobile systems operated under a HGSA licence, from being covered by Part 3 of Schedule 2 to the Determination. Land mobile systems operated under HGSA licences are covered by new Part 3A of Schedule 2.

**Item [5]**

Item [5] substitutes paragraph 301(f) of Schedule 2 to the Determination with a new provision which excludes wireless audio systems and ambulatory systems operated under a HGSA licence, from being covered by Part 3 of Schedule 2 to the Determination. Ambulatory systems operated under HGSA licences are covered by new Part 3A of Schedule 2.

**Item [6]**

Item [6] inserts a new Part 3A of Schedule 2 to the Determination, immediately before Part 4 of Schedule 2. Part 3A details the base amounts and approach to calculating the amount of tax payable for HGSA licences.

The amount of tax to be imposed on each HGSA licence is based on the taxes collected in 2014 from government licensees eligible for HGSA licences. The base amount for each State and Territory was finalised after consultation with the jurisdictions.

An ongoing public policy discount of 20% is applied to that base amount. Temporary transition incentives, recognising the extra costs incurred by HGSA licensees, to provide an incentive to jurisdictions to move to the HGS are to be applied in both 2016 and 2017, in the form of discounted tax rates for those years.

Division 1 of Part 3A provides that the Part applies to HGSA licences, and defines the terms 'base amount' and 'state or territory of the licence'.

The tax rates in relation to an HGSA licence are set out in Division 2 of new Part 3A:

- each HGSA licence will authorise the operation of devices throughout a particular State or Territory (or, in the case of Western Australia, throughout Western Australia except the Radio Quiet Zone). A different tax rate applies for each State and Territory;
- as mentioned above, discounted rates of tax apply for the first two years after the introduction of the HGSA licensing regime. These discounted rates are set out in new clauses 303A (for 2016) and 304A (for 2017). The tax rates for each year thereafter are set out in new clause 305A. The ACMA intends to increase the rates annually from 2016, to adjust for CPI.

Division 3 of new Part 3A sets out the process for calculating the amount of tax imposed on the issue of a HGSA licence, the anniversary of a HGSA licence coming into force, and the holding of a HGSA licence. These provisions largely replicate the provisions in Schedule 3 of the Determination, modified to apply specifically to HGSA licences.

New item 306A deals with full payment of tax on issue of a HGSA licence in force for a period of 12 months or less.

New item 307A deals with full payment of tax on issue of a HGSA licence in force for a period greater than 12 months, where the licensee has not elected to pay the tax by instalments. Table 307A effectively requires the addition of the amounts calculated for all years in which the licence is in force, to determine the transmitter licence tax for the licence. Steps one and two of table 307A require the addition of the base amounts for the licence for the year that includes the day on which the licence came into force, and for each year that includes the anniversary of the day on which the licence came into force where the licence is in force on that anniversary, other than the year that includes the last anniversary before the end of the licence period. For the year that includes the last anniversary before the end of the licence period, step three of table 307A requires that the base amount for that year be multiplied by the number of days in the period starting on the last anniversary and ending at the end of the licence period, and divided by 365. The amounts worked out in steps two and three are added together. If that works out to be less than the minimum annual amount, the amount becomes the minimum annual amount.

New item 308A deals with imposition of tax on issue of a HGSA licence in force for more than 12 months, where the licensee has elected to pay the tax by instalments on issue and on each anniversary of the day a licence comes into force. Table 308A effectively calculates the annual amount for the HGSA licence for each year (pro-rated in any year where the licence is not in force for the entire year), to determine the annual transmitter licence tax for the licence. If that works out to be less than the minimum annual amount, the amount becomes the minimum annual amount.

New item 309A deals with imposition of the tax on a particular day, being the anniversary of the day the licence comes into force (if subsection 6(5) of the Act applies) or the day after the end of the 60 day period after the anniversary of the day the licence comes into force, (if subsection 6(6) of the Act applies). It applies if item 308A, where the licensee has elected to pay the tax by instalments, ceases to apply before the last instalment is paid. Table 309A effectively requires the addition of the amounts calculated for all years in which the licence is in force after item 308A ceases to apply (pro-rated in any year where the licence is not in force for the entire year), to determine the remaining transmitter licence tax for the licence. If that works out to be less than the minimum annual amount, the amount becomes the minimum annual amount.

New item 310A discounts February 29 in leap years from any calculation of transmitter licence tax where a licence is issued for a period of 12 months or more.

New item 311A provides for rounding up or down of calculated amounts to the nearest whole dollar.

#### **Item [7]**

Item [7] substitutes item 18 of Table 702 of Schedule 2 to the Determination to exclude a wireless audio system operated under a HGSA licence from being covered by Part 7. Wireless audio systems operated under HGSA licences are covered by new Part 3A of Schedule 2.

#### **Item [8]**

Item [8] inserts a definition of HGSA licence into the Dictionary immediately after the definition of *fixed earth station*. A HGSA licence is a land mobile licence that authorises the licensee to operate a device in every part of a State or Territory (except in the case of Western Australia, where a licence cannot be issued in relation to the Radio Quiet Zone, except in certain circumstances) and on every frequency in one or more of the transmit frequency ranges specified in subparagraphs (b) (i)-(viii) of the definition. The ACMA's policies in relation to the issuing of such licences will generally be available from the ACMA website.

**Schedule 2 Amendments to the Radiocommunications (Transmitter Licence Tax) Determination 2015 (consumer price index increase)**

**Item [1]**

Item [1] corrects an error in the note to section 2.2 of the Determination by replacing the reference to a receiver with a reference to transmitter.

**Item [2]**

Item [2] substitutes Part 3 of the Determination to introduce new transitional arrangements. New section 3.1 of the Determination sets out the relevant definitions for Part 3 and new section 3.2 provides new transitional arrangements for the implementation of transmitter licence tax increases made by the Amendment Determination.

Under the Act, tax is imposed on the issue of a licence and, subject to decisions and actions of the licensee, on each anniversary of the day the licence comes into force, or otherwise upon the holding of a licence. Where tax is imposed on issue of a licence, the ACMA intends for the higher tax rates, which account for the increase in CPI and for the increases due to implementation of OC pricing, to apply only to those licences that come into force on or after 5 April 2016 (whether or not the licence was issued before 5 April 2016).

In order for a licensee to know, as early as possible, the amount of tax that will be imposed on the issue of its licence, the Amendment Determination will commence the day after it is registered. However, because the ACMA intends for the tax imposed on licences that come into force before 5 April 2016 to be the amount of tax payable before the tax increases in the Amendment Determination are accounted for, transitional provisions are required to ensure that the tax continues to be calculated in accordance with the Determination as in force immediately before the day on which the Amendment Determination commences. That is to say, licences issued after the commencement of the Amendment Determination that come into force before 5 April 2016 will have the tax on issue of the licence calculated by reference to tax rates that have not been adjusted for the CPI increase, or OC pricing.

**Item [3]**

Item [3] substitutes a new table 202 (and accompanying note) in Part 2 of Schedule 2 to the Determination, which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2 of Schedule 2 (Assigned licences) to the Determination. The amount of tax varies with the frequency range and area density of the spectrum access of a licence. All amounts have been raised by the adjustment of 1.5 percent. The amounts relevant to the HDAs and RDAs of the 400 MHz band also reflect the implementation of OC pricing.

**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) to 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 to the Determination. The amount of tax varies with the frequency range and area density of the spectrum access of a licence. All amounts have been raised by the adjustment of 1.5 percent. The amounts relevant to the HDAs and RDAs of the 400 MHz band also reflect the implementation of OC pricing.

**Item [5]**

Item [5] substitutes a new table 402 (and accompanying note) in Part 4 of Schedule 2 (Assigned Fixed Point to Point Licences) to 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 to the Determination. All amounts have been raised by the adjustment of 1.5 percent except for frequency bands below



960 MHz in RDAs, where the amount of tax remains set at the 2008 level. The amounts relevant to the HDAs and RDAs of the 400 MHz band also reflect the implementation of OC pricing.

**Item [6]**

Item [6] substitutes a new table 502 (and accompanying note) in Part 5 of Schedule 2 (Assigned Fixed Point to Multipoint Licences) to 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 to the Determination. All amounts have been raised by the adjustment of 1.5 percent except for frequency bands below 960 MHz in RDAs, where the amount of tax remains set at the 2008 level. The amounts relevant to the RDAs and RDAs of the 400 MHz band also reflect the implementation of OC pricing.

**Item [7]**

Item [7] substitutes a 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 6 of Schedule 2 to the Determination. The amount of tax varies with the frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.5 percent. The amounts relevant to the HDAs and RDAs of the 400 MHz band also reflect the implementation of OC pricing.

**Item [8]**

Item [8] substitutes a new table 702 in Part 7 of Schedule 2 (Assigned licences subject to a fixed annual tax) to the Determination, which sets out the amount of tax for the licensing options specified in Part 7 of Schedule 2 to the Determination. All amounts have been raised by the adjustment of 1.5 percent.

**Item [9]**

Item [9] amends sub-item 704A(3) of Part 7A of Schedule 2 to the Determination which sets out the 'base rate' of tax for a Public Mobile Telecommunications Service (PMTS) Class B licence that authorises the operation of a transmitter in the 3.5 GHz band. The base rate of \$0.0037/MHz/pop has been raised by the adjustment of 1.5 per cent to \$0.0038/MHz/pop.

**Item [10]**

Item [10] substitutes a new table 802 (and accompanying note) in Part 8 of Schedule 2 (High Power Open Narrowcasting Services — Broadcasting Licences) to the Determination, which sets out the amount of tax for certain high power open narrowcasting licences. All amounts have been raised by the adjustment of 1.5 percent.

**Item [11]**

Item [11] amends sub-item 803(2) of Part 8 of Schedule 2 to the Determination. Item 803 sets out the amount of tax for high-power open narrowcasting licences which are subject to power or coverage limitations. The tax amount is the amount worked out under item 802, divided by 2. Sub-item 803(2) provides that if the amount is less than a specified amount, the tax is taken to be that amount. The amount specified (\$923) has been increased by the adjustment of 1.5 per cent to \$937.

**Item [12]**

Item [12] substitutes a new table 902 in Part 9 of Schedule 2 (Non-Assigned Licences) to the Determination, which sets out the amount of tax for certain non-assigned licences. All amounts have been raised by the adjustment of 1.5 percent.

**Item [13]**

Item [13] amends the definition of the minimum annual amount of tax by omitting \$38.60 and substituting \$39.18. This raises the minimum annual amount of tax by 1.5 per cent, the increase in CPI.

**Item [14]**

Item [14] inserts a definition of *transmitter licence tax* into the Dictionary immediately after the definition of *temporary fixed link station*. The purpose of this amendment is to clarify that the term 'transmitter licence tax' means the tax imposed under the Act.