

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Transmitter Licence) Tax Act 1983*

## ***Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No.1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (**the Tax Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**). Subsection 7(1) of the Tax 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; and
- the holding of a transmitter licence.

Subsection 33(3) of the AIA 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 Tax Determination**), which sets the 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.

The Tax Determination sets out the different amounts of transmitter licence tax that the ACMA has determined is payable by licensees of particular transmitter licences. The Amendment Determination amends the Tax Determination to increase taxes for transmitter licences by 1.6 percent, based on the increase in the consumer price index (**CPI**) over the year to 30 June 2019.<sup>1</sup> In real terms there is 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 Amendment Determination removes the freeze on taxes applied on point to point (**P-P**) and point to multi-point (**P-MP**) fixed wireless access services below 960 MHz in remote density areas. Those taxes are currently at rates originally set in 2008.<sup>2</sup> Those tax rates will now increase by the CPI inflation rate, similar to the other transmitter apparatus licences.

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<sup>1</sup> Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2019.

<sup>2</sup> In 2003, the Australian Communications Authority introduced a variant to the tax formula for apparatus licence taxes for fixed services such as P-P and P-MP in bands below 960 MHz. The decision was to increase these taxes in addition to CPI for five years until parity was reached with taxes for land mobile services. In November 2008, in response to stakeholder requests, the ACMA decided to freeze these specific taxes, pending a full review.

The Amendment Determination also amends the Tax Determination to extend the frequency range to which taxes apply for Public Mobile Telecommunications Service (**PMTS**) Class B licences in the 3.5 GHz band. The amendment is intended to extend the relevant frequency ranges to include the 3425–3475 MHz range.

The Amendment Determination further sets the minimum tax amount as the tax payable in respect of spectrum accesses under space licences in the following frequency ranges: 10.7 GHz–11.7 GHz, 18.2 GHz–18.8 GHz and 19.3 GHz–19.7 GHz. These changes in taxes are to complement new licensing arrangements in the *Radiocommunications (Communication with Space Object) Class Licence 2015* that will allow for the use of uncoordinated, unprotected earth station receivers.

The Amendment Determination also makes some consequential changes to the definition of **low power spectrum access** in the Tax Determination.

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 (the LA)*.

### **Documents incorporated by reference**

The Amendment Determination inserts transitional provisions into the Tax Determination that refer to the Tax Determination as in force at a particular time, namely, immediately before the commencement of the Amendment Determination, as permitted by section 14 of the LA. That version of the Tax Determination is available free of charge from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.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.

Stakeholders were given from 12 December 2019 to 3 February 2020 to comment on the proposal to amend the Tax Determination to increase taxes by the CPI inflation rate of 1.6 percent, to remove the ‘freeze’ on transmitter licence taxes relating to fixed services below 960 MHz in remote-density areas and to extend the frequency range for taxes relating to PMTS Class B licences in the 3.5 GHz band. The proposed changes were outlined on the ACMA website [www.acma.gov.au](http://www.acma.gov.au).

The extension of the frequency range for taxes relating to PMTS Class B licences in the 3.5 GHz band relates to the process of defragmentation of the 3400 to 3575 MHz band. Part of the defragmentation process means that NBN Co will be ‘moving’ some of its apparatus licences to different frequency ranges. So that NBN Co can continue paying the same apparatus licence tax rate, the ACMA proposed to amend the Tax Determination. This was outlined in the ACMA’s *Optimising arrangements for the 3400–3575 MHz band: Planning decisions and preliminary views* paper (**the decision paper**), which noted the new extended range as 3425–3442.5 MHz.<sup>3</sup> There was a minor error in the decision paper, in terms of the frequency range. While most of its licences will be moving to the frequency range 3425–3442.5 MHz, in some parts of regional Western Australia, NBN Co will also need to move its licences to the 3442.5–3475 MHz frequency range. This means that the extended range in total is 3425–3475 MHz. The ACMA corrected the consultation paper on 22 January 2020 to note the change.

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<sup>3</sup> The decision paper is available on the ACMA at website [acma.gov.au](http://acma.gov.au).

The ACMA received two submissions. These were published on the ACMA website and were taken into account in making the Amendment Determination. The two submissions did not suggest the ACMA's proposals should be changed.

The ACMA separately consulted stakeholders on the proposal to apply the minimum tax amount to a space licence for the following frequency ranges: 10.7 GHz–11.7 GHz, 18.2 GHz–18.8 GHz, and 19.3 GHz–19.7 GHz. Stakeholders were given from 12 December 2019 to 3 February 2020 to comment on this proposal. The proposed changes were outlined on the ACMA website [www.acma.gov.au](http://www.acma.gov.au).

The ACMA received five submissions relating to these proposed changes to the Tax Determination. They were published on the ACMA website. Each of the five submissions supported the proposal. Two of these five submissions also made comment on the proposals relating to the increase in taxes for CPI and the extension of the frequency range in the 3.5 GHz band. Both supported the proposals.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (**OBPR**) has considered the routine annual escalation of licence tax rates by CPI with respect to the Tax Determination and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 2011/12297.

In November 2019, the ACMA certified that its independent review of the “Optimisation of arrangements in the 3400-3575 MHz band” followed a similar process to that required by a regulatory impact statement. The OBPR reference number is 2019/25773.

Consequential changes made by the Tax Determination to the low power definition related to previous amendments to tax arrangements for scientific licence taxes. OBPR has considered the amendment of tax arrangements for scientific licences and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 2017/22580.

OBPR has considered the application of the minimum tax amount to space licences within the following frequency ranges: 10.7 GHz–11.7 GHz, 18.2 GHz–18.8 GHz, and 19.3 GHz–19.7 GHz. OBPR formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 2019/25852.

### **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 has been prepared in accordance with that requirement.

### **Overview of the instrument**

The Amendment Determination amends the Tax Determination, which sets the amount of tax payable by transmitter licensees, imposed by the Tax Act. 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 Amendment Determination is made under subsection 7(1) of the Tax Act and amends the Tax Determination to increase the taxes by the CPI inflation rate, to extend the range of frequencies for which the tax rate for PMTS Class B licences applies, to apply the minimum tax amount to certain space licences, and to make consequential amendments.

### ***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 2020 (No.1)***

**Section 1 Name**

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (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](http://www.legislation.gov.au).

**Section 3 Authority**

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

**Section 4 Amendments**

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

**Schedule 1 Amendments**

**Item 1**

Item 1 substitutes Part 3 of the Tax Determination to introduce new transitional arrangements relating to the changes made by the Amendment Determination. New section 3.1 of the Tax Determination sets out the relevant definitions and new section 3.2 provides the 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, the changes made by the Amendment Determination, including the increase in tax by the rate of the growth in the CPI, do not take effect in relation to taxes imposed before 5 April 2020. In instances where the tax is imposed after the commencement of the Amendment Determination but before 5 April 2020, the amount of tax will continue to be based on the Tax Determination as in force immediately before the commencement of the Amendment Determination.

**Item 2**

Item 2 substitutes 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 (assigned licences) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

**Item 3**

Item 3 substitutes table 206 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 2A of Schedule 2 (scientific licences) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Item 4**

Item 4 substitutes table 302 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 3 of Schedule 2 (assigned licences in high demand frequency bands) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Item 5**

Item 5 substitutes table 305A (and the example), in Part 3A of Schedule 2 (Harmonised government spectrum area licences) to the Tax Determination. Table 305A sets the tax rates applicable for the State or Territory to which a licence relates. All amounts in Table 305A have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Item 6**

Item 6 substitutes table 402 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 4 of Schedule 2 (assigned fixed point to point licences) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Item 7**

Item 7 substitutes table 502 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Item 8**

Item 8 substitutes table 602 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for the licensing options specified in Part 6 of Schedule 2 (fixed television outside broadcast station) to the Tax Determination. The amount of tax varies with frequency range and area density of the spectrum access. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Item 9**

Item 9 substitutes table 702 in Part 7 of Schedule 2 (assigned licences subject to a fixed annual tax) to the Tax Determination, which sets out the amount of tax for certain assigned licences subject to a fixed annual tax. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

#### **Items 10**

Items 10 amends the definition of **3.5 GHz band** in item 702A of Schedule 2 to the Tax Determination, to extend the application of the tax rate for PMTS Class B licences from 3425 MHz to 3475 MHz.

#### **Item 11**

Item 11 amends sub-item 704A(3) of Schedule 2 to the Tax Determination, to increase the base rate of tax for PMTS Class B licences that authorise the operation of a transmitter in the 3.5 GHz band by CPI growth of 1.6 percent (that is, from \$0.0040/MHz/pop to \$0.0041/MHz/pop).

## Item 12

Item 16 amends sub-item 704A(3B) of Schedule 2 to the Tax Determination, to increase the base rate of tax for PMTS Class B licences that authorise the operation of a transmitter in the 3.6 GHz band by CPI growth of 1.6 percent (that is, from \$0.0040/MHz/pop to \$0.0041/MHz/pop).

## Item 13

Item 13 substitutes table 802 (and accompanying note), which sets out the amount of tax for the licensing options specified in Part 8 of Schedule 2 (high power open narrowcasting services – broadcasting licences) to the Tax Determination. The amount of tax varies with the location of the licence. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

## Item 14

Item 14 amends sub-item 803(2) of Schedule 2 to the Tax Determination, which sets a minimum rate of tax for high power open narrowcasting licences that have limited power or coverage, from \$948 to \$1000. This amount has been raised by the adjustment of 1.6 percent in line with CPI growth.

## Item 15

Item 15 substitutes table 802A, which sets out the amount of tax for the licensing options specified in Part 8A of Schedule 2 (space system licences) to the Tax Determination. The amount of tax varies with the location of the licence. All amounts have been raised by the adjustment of 1.6 percent in line with CPI growth.

## Item 16

Item 16 amends the heading to item 803A of Schedule 2 to the Tax Determination, consequential to the changes made by item 17.

## Item 17

Item 17 inserts new item 803AA into Part 8 of Schedule 2 to the Tax Determination. New item 803AA applies the minimum tax amount to spectrum accesses under a space licence for the following frequency ranges: 10.7 GHz–11.7 GHz, 18.2 GHz–18.8 GHz, and 19.3 GHz–19.7 GHz.

## Item 18

Item 18 substitutes table 902, which sets out the amount of tax for the licensing options specified in Part 9 of Schedule 2 (non-assigned licences) to the Tax Determination. All amounts have been raised by the adjustment of 1.6 percent in line with the increase in the CPI.

## Item 19

Item 19 makes a change to subparagraph (a)(i) of the definition of *low power spectrum access* in the Dictionary to correct a cross-referencing error.

## Item 20

Item 20 makes a change to paragraph (a) of the definition of *low power spectrum access* in the Dictionary to correct a cross-referencing error.

## Item 21

Item 21 amends the definition of the *minimum annual amount* in the Dictionary to increase the minimum tax amount from \$41.17 to \$41.83 (1.6 percent), to reflect changes in the CPI.