

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Receiver Licence Tax) Act 1983*

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

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2020 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Receiver 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 receiver licence;
- the anniversary of a receiver licence coming into force; and
- the holding of a receiver 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 (Receiver Licence Tax) Determination 2015* (**the Tax Determination**), which sets the taxes for receiver licences. The annual tax levied on receiver 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 receiver licence tax that the ACMA has determined is payable by licensees of particular receiver licences. The Amendment Determination amends the Tax Determination to increase taxes for receiver 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.<sup>2</sup> Those tax rates will now increase by the CPI inflation rate, similar to the other receiver apparatus licences.

A provision-by-provision description of the Amendment Determination is set out in the notes at **Attachment A**.

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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 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 and to remove ‘freeze’ on receiver 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 published on the ACMA website [www.acma.gov.au](http://www.acma.gov.au).

The ACMA received two submissions. These were published on the ACMA website and 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 a proposal to apply the minimum tax amount to a space licence (a type of transmitter 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. Two of these five submissions also made comment on the proposals relating to the increase in taxes for CPI. Both supported the proposal.

### **Regulatory impact assessment**

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

### **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 receiver licensees, imposed by the Tax Act. The annual tax levied on receiver 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.

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

#### Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Receiver 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 amends the definition of *minimum annual amount* in section 3 of the Tax Determination to increase the minimum tax amount from \$41.17 to \$41.83 (1.6 percent), to reflect changes in the CPI.

##### Item 2

Item 2 substitutes Part 3 of the Tax Determination to introduce new transitional arrangements relating to the changes made by the Amendment Determination. New section 7 of the Tax Determination sets out the relevant definitions and new section 8 provides the transitional arrangements for the implementation of receiver licence tax increases made by the Amendment Determination.

Although the Amendment Determination commences on the day after registration, the increase in tax by the rate of growth in the CPI does not take effect in relation to taxes imposed before 5 April 2020. In instances where the tax is imposed after the date the Amendment Determination commences 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 3

Item 3 substitutes table 202 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for defence receive and major coast receive licences in Part 2 of Schedule 2 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 fixed receive licences in Part 3 of Schedule 2 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 402 (and accompanying note), which sets out the amount of tax for each kHz of bandwidth for earth receive and space receive licences in Part 4 of Schedule 2 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.