

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Spectrum Licence Tax) Act 1997*

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

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2020 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Spectrum Licence Tax) Act 1997* (**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 amount of tax imposed in relation to a spectrum licence is the amount ascertained in accordance with a written determination made by the ACMA. 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 (Spectrum Licence Tax) Determination 2014* (**the Tax Determination**). The Tax Determination determines the amount of tax imposed by the Tax Act on the initial holding date for a spectrum licence, and on each anniversary of that date. The Tax Determination determines different rates of tax in relation to different classes of spectrum licence.

The Amendment Determination amends the Tax Determination to implement the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020* (**the Direction**), which directs the ACMA to change the taxation arrangements in relation to revenue collected for the enhanced Electromagnetic Energy (**EME**) Program (**EME Program**). As a result of the Government's changes, the EME Program requires the collection of revenue of \$2.6m p.a. over the next three financial years (2020-21 to 2022-23) and \$1.9m p.a. (indexed for inflation) from 2023-24 onwards.

The Direction instructs the ACMA to:

- a. reduce most apparatus licence taxes (both transmitter licence taxes and receiver licence taxes) by 0.8 per cent (reflecting the amount collected by these taxes which the Government directed toward the EME Program); and
- b. recover the EME Program's costs from the tax imposed on spectrum licences, subject to some exceptions.

The *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No.2)* and the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2020 (No.2)* commenced on 1 July 2020 and reduced most apparatus licence taxes by 0.8 per cent.

The Amendment Determination introduces an 'EME component' to the spectrum licence tax, consistent with the Direction. The EME component only applies to 'designated spectrum licences', as defined in the Direction. The definition excludes spectrum licences required to be used for rail safety or television outside broadcast services, and spectrum licences held by Commonwealth departments and agencies.

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 incorporates the *Public Service Act 1999* by reference, in accordance with section 10 of the *Acts Interpretation Act 1901* and subsection 13(1) of the LA. The *Public Service Act 1999* may be obtained 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.

The ACMA published a consultation paper that set out its proposed method for apportioning the recovery of the EME component among designated spectrum licences on 15 July 2020, and called for responses by 14 August 2020. The ACMA also specifically consulted with spectrum licensees in August 2020 and answered questions from the Australasian Railway Association (**ARA**) and Telstra clarifying the proposed method for calculating the new EME component. The ACMA also received a submission from the Australian Mobile Telecommunications Association (**AMTA**) that Telstra endorsed. AMTA did not suggest any changes to the proposed method but sought further detail about the EME Program and how the funds would be spent. The ACMA referred these requests to the Department of Infrastructure, Transport, Regional Development, and Communications.

## **Regulatory impact assessment**

The Office of Best Practice Regulation (**OBPR**) has advised that these amendments would not give rise to a regulatory change and therefore formed the opinion that no regulatory impact analysis is required (OBPR reference: 25404).

## **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 introduces the new EME component of the spectrum licence tax imposed on ‘designated spectrum licences’ to recover the costs of the EME Program. The Minister has directed that the ACMA increase the amount of spectrum licence tax imposed on all these licences in aggregate by \$2.6m p.a. for the next three financial years (2020-21 to 2022-23), and by \$1.9m p.a. (indexed for inflation) from 2023-24 onwards.

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

**Section 1 Name**

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2020 (No. 1)*.

**Section 2 Commencement**

This section provides that the Amendment Determination commences at the start of the day after the day it is registered on the Federal Register of Legislation. The Amendment Determination can be accessed free of charge on the Federal Register of Legislation 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 Schedule 1 to the Amendment Determination amends the Tax Determination.

**Schedule 1 Amendments**

**Item 1**

Item 1 inserts the definition of ‘Designated Spectrum Licence’ to include spectrum licences except for those held by Commonwealth departments and agencies, spectrum licences required to be used for television outside broadcast service, and spectrum licences required to be used for rail safety. Item 1 also inserts definitions for the ‘EME Component’ and the ‘Main Component’ of the spectrum licence tax.

**Item 2**

Item 2 repeals section 5 of the Tax Determination (‘Working out spectrum licence tax’) and substitutes new text to include the EME component in the calculation for designated spectrum licences.

**Item 3**

Item 3 amends the heading to Schedule 1 to the Tax Determination by omitting ‘(section 5)’ and substituting it with ‘(section 2)’.

**Item 4**

Item 4 omits all occurrences of the words ‘spectrum licence tax’ in Schedule 1 and substitutes ‘the Main Component’ in each place.

**Item 5**

Item 5 corrects a typographical error in Table 1 of Schedule 1 to the Tax Determination.

**Item 6**

Item 6 omits the word ‘payable’ from Step 3 of Part 2 of Schedule 1 to the Tax Determination. This is a consequential change to the introduction of Schedule 2 to the Tax Determination.

**Item 7**

Item 7 inserts a new Schedule 2 to the Tax Determination, titled ‘Working out the EME Component’.

The Direction requires the ACMA to amend the Tax Determination to include an amount attributable to the new EME component of no greater than \$2.6 million p.a. for the next three financial years, and

for \$1.9 million p.a. thereafter (**Combined Spectrum Tax EME Component**), and to apportion that amount between the taxes to be imposed in respect of all Designated Spectrum Licences. The Direction provides that these amendments must discretely designate, in a clear and unambiguous way, the component of spectrum licence tax which represents the increase in that tax arising from the implementation of the Direction, and label the component ‘EME Component’.

The component of spectrum licence tax calculated in accordance with new Schedule 2 to the Tax Determination is the ‘EME Component’.

Part 1 of new Schedule 2 sets out the definitions for the Schedule

Part 2 of new Schedule 2 sets out how the Combined Spectrum Tax EME Component for a financial year is to be apportioned between Designated Spectrum Licences. In effect, it sets out a formula that relies on the ‘Main Component’ of spectrum licence tax payable by the licensees of these licences, which is the amount calculated by reference to Schedule 1 to the Tax Determination. Under Schedule 1, the Main Component is worked out by reference to the amount of spectrum authorised by a spectrum licence, and the population of the geographic area covered by the spectrum licence.

Each Designated Spectrum Licence will have an amount worked out in accordance with Schedule 1 (its Main Component). Under Schedule 2, to work out the EME Component for a Designated Spectrum Licence, first work out the total of the Main Components worked out for all Designated Spectrum Licences (**Total Main Component**). For a particular Designated Spectrum Licence, the quotient obtained from dividing its Main Component by the Total Main Component is the proportion of Combined Spectrum Tax EME Component to be apportioned to the licence.

Accordingly, this proportion is then multiplied by the Combined Spectrum Tax EME Component to calculate the EME Component for the licence. This number is rounded down to the nearest whole dollar.

The example below illustrates how the updated spectrum licence tax calculation works.

For a particular financial year, there are a total of four spectrum licences issued. Three are Designated Spectrum Licences, and one is not a Designated Spectrum Licence (**Fourth Licence**). These are listed in column 1 of the table below.

Say the Main Component for each spectrum licence, calculated in accordance with Schedule 1, is the amount set out in column 2 of the table below for the licence.

The total of the Main Component for the three Designated Spectrum Licences is \$370,000. This does not include the Main Component for the Fourth Licence.

For Designated Spectrum Licence 1, its Main Component is \$120,000. Accordingly, the proportion of its Main Component of the total of the Main Component for the three Designated Spectrum Licences is \$120,000 divided by \$370,000, or about 32.4%.

If the Combined Spectrum Tax EME Component is \$2.6 million, then for Designated Spectrum Licence 1, the EME Component is obtained by multiplying \$2.6 million by 32.4%, which results in \$843,243.24. Rounded down to the nearest dollar, this amount (in column 4) is added on to the Main Component to obtain the total spectrum licence tax payable for Designated Spectrum Licence 1, namely, \$963,243 (in column 5).

<i>Column 1</i> Spectrum licence	<i>Column 2</i> Main Component	<i>Column 3</i> Proportion of total of Main Component for all Designated Spectrum Licences	<i>Column 4</i> EME Component	<i>Column 5</i> Total Spectrum Licence Tax impose
Designated Spectrum Licence 1	\$120,000	32.4%	\$843,243	\$963,243
Designated Spectrum Licence 2	\$200,000	54.1%	\$1,405,405	\$1,605,405
Designated Spectrum Licence 3	\$50,000	13.5%	\$351,351	\$401,351
<b>Total of amounts for Designated Spectrum Licences</b>	\$370,000	100%	\$2,599,999	2,969,999
Fourth Licence	\$49,000	N/A	\$0	\$49,000
<b>Total of all amounts</b>	\$419,000	N/A	\$2,599,999	\$3,018,999