

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Transmitter Licence) Tax Act 1983*

## ***Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No.3)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 3)* (**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 relevantly 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**

In January 2020, the ACMA determined a new apparatus licence type, known as the area-wide licence (**AWL**) under subsection 98(1) of the *Radiocommunications Act 1992* (**the Act**).

An AWL authorises the operation of one or more radiocommunications devices within a defined geographic area at a frequency or frequencies specified in the licence, subject to the conditions included in the issued licence. The licence type is scalable, enabling its use for authorising radiocommunications devices in different-sized geographic areas and bandwidths. Unlike existing apparatus licence types—which typically align with specific uses and purposes—the AWL, is capable of authorising a variety of services, uses, applications and technologies.

### **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 by the addition of Part 7B – Assigned area-wide licences subject to a population based annual tax. This addition relates to the ACMA’s introduction of the new apparatus licence type, AWLs, operating within the frequency range 24.7–30.0 GHz. The Amendment Determination amends the Tax Determination to impose the fixed base tax rate of \$0.0003/MHz/pop for all AWLs.

The method of calculating the annual tax for an AWL licence uses the following formula:

$$\text{AWL tax} = \$/\text{MHz/pop price} \times \text{bandwidth (MHz)} \times \text{population of the geographic area}$$

- > ‘\$/MHz/pop’ price is the tax rate for one MHz of spectrum per head of population. The base tax rate for an AWL is \$0.0003/MHz/pop.
- > ‘bandwidth’ is the total amount of spectrum in MHz authorised by the licence.
- > ‘population’ (based on the Hierarchical Cell Identification Scheme (HCIS) - List of Population Data) is the population of the geographic area authorised by the licence. The area will be defined in terms of the hierarchical cell identification scheme (HCIS) system<sup>1</sup>. The population is based on the aggregate population of all the geographic cells to be authorised by the licence. The effective population of a single HCIS 00 cell (the minimum cell size, which will be referred to as a single ‘AWL cell’) and HCIS 0 block, for the purposes of tax calculations will be determined by taking the average population of all AWL cells within a broader HCIS 1 cell.

A single AWL can encompass multiple non-adjacent geographic locations as well as non-adjacent frequencies. For example:

Company A is seeking an AWL within the frequency ranges 27.5-28.0 GHz and 29.5-30.0 GHz. It desires this spectrum in three separate locations across Western Australia: Broome, Karratha and Port Hedland. Company A wishes to have an AWL covering a number of the smallest cell size (HCIS Level 00) in the Karratha and Port Hedland locations, whilst requesting the entire city of Broome and surroundings via a combination of HCIS Level 1 and 2 blocks.

- > \$0.0003/MHz/pop is the base tax rate
- > 1000 MHz of bandwidth in total
- > Total population of 14,390.78
  - > Population of the Broome area (HCIS Codes DQ5M3, DQ5M6, DQ5M9, DQ8A3, DQ5N) totalled 14,250
  - > Population of a single HCIS level 00 cell in Port Hedland = 3,534 / 300 = 11.78\*
  - > Population of ten HCIS level 00 cells in Karratha = 3,870 / 300 x 10 cells = 129\*\*

\* HCIS Level 1 block CR4G2 in Port Hedland has a total population of 3,534 (average population per HCIS 00 cell is 11.78).

\*\* HCIS Level 1 block BR5L8 in Karratha has a total population of 3,870 (average population per HCIS 00 cell is 12.90).

$$\begin{aligned}\text{AWL tax} &= \$0.0003 \times 1000 \text{ MHz} \times 14,390.78 \text{ population} \\ &= \mathbf{\$4,317}\end{aligned}$$

The minimum annual tax constraint will be applied to the aggregate cost of the AWL and will be equivalent to the minimum annual tax for apparatus licences. Where the tax worked out using the method outlined above is less than the minimum annual tax, the tax will be the minimum annual tax. Total taxes are rounded to the nearest dollar.

Currently, the minimum annual tax amount for all apparatus licences is \$41.49.

The ACMA has developed an AWL Tax Calculator, which is available on the ACMA’s website ([www.acma.gov.au](http://www.acma.gov.au)).

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> The HCIS is the system used by the ACMA to define geographic areas for radiocommunications licensing and is based on the [Australian Spectrum Map Grid \(ASMG\)](#). HCIS is a naming convention that applies unique identifiers to each of the cells that make up the ASMG. Geographic areas must consist of whole HCIS cells. The smallest geographic area authorised by an AWL is a single HCIS level 00 cell comprising an area of 20x15 seconds of arc. The ASMG has been updated to include additional HCIS levels, level 0 cells comprising an area of 1x1 minutes of arc and level 00 cells comprising an area of 20x15 seconds of arc.

The Amendment Determination is a disallowable legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

### **Documents incorporated by reference**

The Australian Spectrum Map Grid (ASMG) 2012 is used to identify geographic areas and the associated hierarchical cell identification scheme (HCIS) data. This information is required to define geographic areas where certain conditions apply to radiocommunications transmitters, which is used to calculate the AWL tax. The ASMG is incorporated as existing at the time the Amendment Determination commenced, as permitted by subsection 314A(2) of the Act. The ASMG is available free of charge from the ACMA's website ([www.acma.gov.au](http://www.acma.gov.au)).

The Hierarchical Cell Identification Scheme (HCIS) - List of Population Data (**the population document**) identifies each ASMG cell and ASMG block (a grouping of ASMG cells) by its HCIS identifier and lists a corresponding population for the 2016 Census. It is also incorporated as existing at the time the Amendment Determination commenced. The population document is available free of charge from the ACMA's website ([www.acma.gov.au](http://www.acma.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 19 August 2020 to 23 September 2020 to comment on the proposed draft apparatus licensing arrangements and tax construct for 5G applications in the 26 GHz and 28 GHz millimetre wave bands. The consultation included a proposal for use of apparatus licences for fixed satellite services (FSS) in the 27–30 GHz range. The proposed changes were outlined on the ACMA website [www.acma.gov.au](http://www.acma.gov.au).

On 19 August 2020, the ACMA published the “Apparatus Licences in the 26 GHz and 28 GHz bands consultation paper” and a draft Applicant Information Pack, inviting stakeholders to comment on the tax construct for AWLs and the initial base rate. The ACMA received 16 submissions in this consultation process, nine of which made reference to the proposed changes to the Tax Determination. These were published on the ACMA website and were taken into account in making the Amendment Determination. Those nine submissions supported the ACMA's initial proposed tax construct and base rate for the AWLs.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR) has considered the addition of the tax rate for AWLs with respect to the Tax Determination. OBPR advised the proposed regulatory change is minor or machinery in nature and formed the opinion that no regulatory impact analysis is required. The OBPR reference number is 43143.

### **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 impose the \$/MHz/pop price construct to the new AWL licence type in the wider 26 and 28 GHz bands. This amendment provides the basis to collect the annual tax amounts for these assigned licences which are subject to a population-based tax.

### ***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.3)***

**Section 1 Name**

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 3)*.

**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 inserts a new part, Part 7B - Assigned area-wide licences subject to a population based annual tax, after Part 7A of Schedule 2 to the Tax Determination. New Part 7B introduces the new AWL apparatus licence type and its associated tax construct. Part 7B provides for the following:

**Item 701B**

New item 701B specifies the application of the new tax regime to area-wide licences (AWLs) in the wider 26 and 28 GHz bands.

The Part 7B tax rate applies to AWLs anywhere in the frequency range 24.7 GHz – 30.0 GHz.

**Item 702B**

New item 702B defines a number of relevant terms for the purposes of Part 7B of the Tax Determination. These terms primarily provide guidance about the identification of ‘blocks’ and ‘cells’, forming part of the Hierarchical Cell Identification Scheme (HCIS), which is a central feature in calculating the tax payable for an AWL.

**Item 703B**

New item 703B sets out the tax calculation method for the new AWLs using the \$/MHz/pop price construct. AWLs are subject to a population based tax, whereby the base rate (\$0.0003 at the time the Amendment Determination was made) is multiplied by the total bandwidth (MHz) and aggregated population across specified locations.

**Item 704B**

New item 704B specifies that the base rate for AWLs in the wider 26 and 28 GHz bands is \$0.0003/MHz/pop. Item 704B also provides an explanation of this terminology.

**Item 705B**

Item 705B provides for a minimum annual amount of tax to be imposed on AWLs. The minimum annual tax amount is consistent with the rate applicable to all apparatus licences under the Tax Determination. The rate at the time of making the Amendment Determination is \$41.49.

**Item 2**

Item 2 inserts a reference to “area-wide licence” in the note to the Dictionary.