

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Transmitter Licence) Tax Act 1983*

## ***Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (No.1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (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 decrease taxes for transmitter licences by 0.3 percent, based on the decrease in the consumer price index (**CPI**) over the year to 30 June 2020.<sup>1</sup>

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

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<sup>1</sup> Australian Bureau of Statistics, Catalogue 6401.0, Consumer Price Index, June Quarter 2020.

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 2020 to 8 January 2021 to comment on the proposal to amend the Tax Determination to decrease taxes by the decrease in the CPI of 0.3 percent. The proposed changes were outlined on the ACMA website [www.acma.gov.au](http://www.acma.gov.au). No submissions were received from stakeholders in response to the proposal.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (**OBPR**) has considered the routine annual adjustment 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 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 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 decrease the taxes by the CPI.

### ***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 2021 (No.1)***

**Section 1 Name**

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (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 decreases made by the Amendment Determination.

Although the Amendment Determination commences on the day after registration, the changes made by the Amendment Determination do not take effect in relation to taxes imposed before 5 April 2021. In instances where the tax is imposed after the commencement of the Amendment Determination but before 5 April 2021, 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

**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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 5**

Item 5 amends the definition of *state or territory of the licence* to insert the word ‘area’ after ‘spectrum. This amends the definition to correctly refer to ‘harmonised government spectrum area licence’ as referred to in the *Radiocommunications (Transmitter Licence Tax) Determination 2015*.

#### **Item 6**

Item 6 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 have been decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 7**

Item 7 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 8**

Item 8 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 9**

Item 9 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 10**

Item 10 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 11**

Item 11 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 12**

Item 12 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. This amount has been decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 13**

Item 13 substitutes table 802A (and accompanying note), 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 frequency range and area density of the spectrum access. All amounts have been decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 14**

Item 14 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 decreased by the adjustment of negative 0.3 percent in line with changes to the CPI.

#### **Item 15**

Item 15 amends the definition of the *minimum annual amount* in the Dictionary to decrease the minimum tax amount from \$41.49 to \$41.37 to reflect changes in the CPI.