

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority  
*Radiocommunications (Spectrum Licence Tax) Act 1997*  
***Radiocommunications (Spectrum Licence Tax) Determination 2021***

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Spectrum Licence Tax) Determination 2021* (**the Determination**) under subsections 4(1) and 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**).

Section 6 of the Tax Act imposes tax on the initial holding date for a spectrum licence, and for each anniversary of the initial holding date for a spectrum licence.

Subsection 4(1) of the Tax Act provides that the ACMA may, by writing, determine that a specified day is the **initial holding date** for spectrum licences included in a specified class of spectrum licences. Subsection 4(4) provides that a determination made under subsection 4(1) is a legislative instrument.

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 7(3) provides that a determination made under subsection 7(1) is a legislative instrument.

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 repeal that instrument.

## Purpose and operation of the instrument

The Determination repeals and replaces the *Radiocommunications (Spectrum Licence Tax) Determination 2014* (**the 2014 Determination**). The Determination specifies the initial holding date for spectrum licences, and determines the amount of tax imposed by the Tax Act in relation to a spectrum licence.

The Determination retains the substantive provisions of the 2014 Determination. However, those provisions have been amended to determine the amount of tax in relation to new spectrum licences recently issued or re-issued, or proposed to be issued, in the frequency bands generally referred to as:

- 850/900 MHz band;
- 3.4 GHz band;
- 20 GHz and 30 GHz bands;
- 26 GHz band.

According to the explanatory memorandum to the *Radiocommunications (Spectrum Licence Tax) Bill 1997*, it is appropriate to allow the assessment of the cost of spectrum management, and resultant spectrum licence taxes, to be determined by the regulatory authority with close knowledge of the radiocommunications industry, the responsibility for managing spectrum and the responsibility for allocating radiocommunications licences. That explanatory memorandum also said that it was inappropriate to impose a limit on the amount of the spectrum licence tax determined, because of the nature of spectrum licensing and the possibility of a single licensee holding a large proportion of the spectrum in a given band, and therefore paying a proportionally larger amount than other licensees.

That explanatory memorandum also stated that, given this power is legislative in nature, it is appropriate that Parliament be able to disallow an exercise of the power, and that, in accordance with what ultimately became the *Legislation Act 2003* (**LA**), there would be an obligation in relation to consultation before making or varying any instrument under this power.

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

The Determination is a disallowable legislative instrument for the purposes of the LA.

The Determination is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

### **Documents incorporated by reference**

In accordance with subsection 14(1) of the LA, the Determination incorporates the following Acts and legislative instruments as in force from time to time, or otherwise refers to them:

- the AIA;
- the *Australian Communications and Media Authority Act 2005*;
- the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020*;
- the LA;
- the *Public Service Act 1999*;
- the *Radiocommunications Act 1992*;
- the Tax Act.

The Acts and legislative instruments listed above may be obtained, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

In accordance with subsection 14(1) of the LA, the Determination also incorporates the following documents, as existing at the time the Determination commenced, or otherwise refers to them:

- the Australian Spectrum Map Grid 2012;
- the ‘Hierarchical Cell Identification Scheme (HCIS) – List of Population Data’ document.

Each of these documents is available, free of charge, from the ACMA website ([www.acma.gov.au](http://www.acma.gov.au)).

### **Consultation**

Before the 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 the proposed differences between the Determination and the 2014 Determination on 8 July 2021, and called for submissions by 12 August 2021. The ACMA received one submission which raised no objections to the proposals. No changes were made as a result of the consultation.

### **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 44352).

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

### **Overview of the instrument**

The Determination repeals and replaces the 2014 Determination. It retains the substantive provisions of the 2014 Determination, by specifying the initial holding date for spectrum licences and by determining the amount of spectrum licence tax in relation to spectrum licences, as required by the Tax Act.

Unlike the 2014 Determination, the Determination sets the amount of tax in relation to recently issued spectrum licences, or spectrum licences proposed to be issued, in the frequency bands generally referred to as:

- 850/900 MHz band;
- 3.4 GHz band;
- 20 GHz and 30 GHz bands;
- 26 GHz band.

### ***Human rights implications***

The ACMA has assessed whether the 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 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 Determination is compatible with human rights and freedoms as it does not raise any human rights issues.

## Notes to the *Radiocommunications (Spectrum Licence Tax) Determination 2021*

### Section 1 Name

This section provides for the Determination to be cited as the *Radiocommunications (Spectrum Licence Tax) Determination 2021*.

### Section 2 Commencement

This section provides that the Determination commences at the start of the day after the day it is registered on the Federal Register of Legislation.

### Section 3 Authority

Section 3 provides that the Determination is made under subsections 4(1) and 7(1) of the Tax Act.

### Section 4 Repeal of the *Radiocommunications (Spectrum Licence Tax) Determination 2014*

Section 4 repeals the 2014 Determination.

### Section 5 Interpretation

Section 5 defines some key terms used in the Determination, including the term **Designated Spectrum Licence**, which is based on the definition in the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020*. It also provides that, in the Determination, a reference to a part of the spectrum, a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

### Section 6 References to other instruments

This section provides that in the Determination, unless the contrary intention appears:

- a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force at the time the Determination commences.

### Section 7 Initial holding date

Section 7 defines the **initial holding date**, for subsection 4(1) of the Tax Act, which is relevant for when the spectrum licence tax is imposed. For each spectrum licence, the initial holding date is the first 11 October, starting with 11 October 2021, that occurs after the licence comes into force.

### Section 8 Amount of spectrum licence tax

Section 8 determines the amount of spectrum licence tax for a spectrum licence, for subsection 7(1) of the Tax Act.

In accordance with the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020*:

- for a Designated Spectrum Licence, the amount of spectrum licence tax is the sum of the Main Component for the licence, calculated in accordance with Schedule 1, and the EME Component for the licence, calculated in accordance with Schedule 2;
- for any other spectrum licence, the amount of spectrum licence tax is the Main Component, calculated in accordance with Schedule 1.

Most spectrum licences will be Designated Spectrum Licences. Those that are not include spectrum licences held by government agencies, those used for the provision of rail safety, rail operations or rail control, and those used for the provision of a television outside broadcast service.

## Schedule 1 Main Component

Schedule 1 provides for the calculation of the Main Component for a spectrum licence.

The ACMA has set the amount of the Main Component in order to recover the indirect costs of spectrum management activities, such as international coordination, domestic planning, interference investigation and policy determination. Schedule 1 provides for the ascertainment of the Main Component for a spectrum licence by reference to a 'base amount', which is different for licences in different frequency bands, and by reference to populations covered by a spectrum licence, based on Census data.

### Clause 1 Definitions

Clause 1 defines the key terms used for the calculation of the Main Component for a spectrum licence.

For the purposes of the calculation of the Main Component, the Australian population is defined to be 23,347,848. This is the Australian population as contained in the *Hierarchical Cell Identification Scheme (HCIS) – List of Population Data* document (**the HCIS population data document**), which has been derived from data in the 2016 Census.

Each spectrum licence contains a core condition that specifies the geographic areas within which the licensee may use a radiocommunications device. For a spectrum licence, the population of the geographic areas so specified are used to calculate the Main Component. The HCIS population data document sets out population data for areas in the Hierarchical Cell Identification Scheme levels 1 to 4, which are set out in the Australian Spectrum Map Grid 2012. The HCIS identifiers are used in the core condition of a spectrum licence to specify the geographic areas. The current version of the HCIS population data document, and the Australian Spectrum Map Grid 2012, are available free of charge on the ACMA website ([www.acma.gov.au](http://www.acma.gov.au)).

### Clause 2 Base amount, relevant frequency band, total specified spectrum and SL bandwidth

Clause 2 defines the **base amount** and the **total specified spectrum** for each frequency band, and the **relevant frequency band** and **SL bandwidth** for each spectrum licence. Each of these is a key input into the calculation of the Main Component.

A 'base amount' is a component of the tax formula and represents the indirect costs of the ACMA's spectrum management functions attributable to spectrum licences. The method used to determine the base amounts first involves the calculation of the spectrum maintenance component (SMC) percentage.

The SMC percentage is calculated by reference to the tax collected by the ACMA from apparatus licensees under the *Radiocommunications Act 1992*. This tax (**apparatus licence tax**) is imposed by the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications (Receiver Licence Tax) Act 1983*. The ACMA sets the amount of these apparatus licence taxes under these Acts on the basis that it partly represents the value of the licences and partly recovers the ACMA's indirect costs of spectrum management attributable to apparatus licences. The SMC percentage represents the total indirect costs of spectrum management expressed as a percentage of total apparatus licence tax revenue (i.e., it separates out the indirect cost recovery component of apparatus licence tax revenue from the value component).

The ACMA has taken the apparatus licence tax revenue collected in the 2016-2017 financial year, and the ACMA's indirect costs of spectrum management attributable to apparatus licences in that year, to calculate the SMC percentage to be 20.18 per cent (i.e., 20.18 per cent of the apparatus licence tax revenue in that year was attributable to indirect cost recovery; the remaining 79.82 percent was attributable to the value of the apparatus licences concerned). Relying on the costs and revenue from the 2016-2017 financial year provides some consistency to the amount of tax paid by existing spectrum licensees since that time.

The base amount for a frequency band that is spectrum licensed represents the amount of the ACMA's indirect costs that would be recovered from spectrum licensees in the frequency band as if licensees were entitled to use the total bandwidth of that band, in all parts of Australia. To work out the base amount, the ACMA works out the apparatus licence tax that would be payable in relation to an apparatus licence for the total bandwidth of the band, in all parts of Australia. It then applies the SMC to the amount of apparatus licence tax that would be payable, to identify the component of that tax that is attributable to indirect cost recovery.

As an example, the 26 GHz band has a total bandwidth of 2400 MHz (or 2,400,000 kHz). The rate of transmitter licence tax for a general Australia-wide transmitter licence in that band is currently \$0.1047/kHz, and the SMC is 20.18%. The calculation for the base amount is:

$$2,400,000 \text{ kHz} \times \$0.1047/\text{kHz} \times 20.18\% = \$50,708.$$

The amount of the Main Component for a spectrum licence within a particular frequency band is calculated as a share of the base amount for that frequency band, on a per MHz per population basis.

### Clause 3 Calculating the Main Component for a spectrum licence

Clause 3 sets out the formula and the steps for calculating the Main Component for a spectrum licence.

First, for a spectrum licence, for each frequency range specified in the licence that falls within the same relevant frequency band, calculate the following:

$$\frac{\text{area population for the geographic area}}{\text{Australian population}} \times \frac{\text{SL bandwidth for the frequency range}}{\text{total specified spectrum for the frequency band}}$$

This is the proportion of the frequency band, on a MHz per population basis, attributable to the frequency range specified in the licence. This proportion is then multiplied by the base amount for the frequency band.

If spectrum licence tax is imposed on the last anniversary of the initial holding date for a spectrum licence to occur before the licence is due to expire, the proportion is pro-rated by reference to the number of days remaining before the licence expires.

After this is done, all the amounts so calculated are added together.

If the spectrum licence authorises the use of spectrum in 2570 MHz to 2585 MHz, or 2605 MHz to 2620 MHz, the sum of the amounts so calculated is reduced by one third.

After this is done, the resultant amount is rounded to the nearest dollar. If this is less than \$7, then the Main Component for the licence is \$7; otherwise, the Main Component is the rounded amount.

For example, consider a licence that authorises the use of 5 MHz in the 703 MHz to 748 MHz frequency band, and 5 MHz in the 758 MHz to 803 MHz frequency band, across Australia.

For this licence, the area population of the geographic area is the same as the Australian population, and the SL bandwidth for each frequency range is 5 MHz. Accordingly, for the licence, we add together:

$$\frac{23,347,848}{23,347,848} \times \frac{5 \text{ MHz}}{90 \text{ MHz}} + \frac{23,347,848}{23,347,848} \times \frac{5 \text{ MHz}}{90 \text{ MHz}}$$

which equals 1/9.

This amount is then multiplied by the base amount for the frequency band, \$49,938, to give \$5,548.67. This amount is rounded up to the next dollar, so the Main Component for this licence is \$5,549.

The ACMA is proposing to issue two spectrum licences in the 850/900 MHz band that have an SL bandwidth of 2 MHz each (**the downshift licences**). The downshift licences are primarily being

issued to allow existing spectrum licences in the 850 MHz band to ‘downshift’ their frequency ranges by 1 MHz. Clause 3 provides that the amount of spectrum licence tax in relation to the downshift licences is \$7.

## **Schedule 2 EME Component**

Schedule 2 provides for the calculation of the EME Component for a Designated Spectrum Licence, consistently with the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020*.

### **Clause 1 Definitions**

Clause 1 defines some key terms used for the calculation of the EME Component for a Designated Spectrum Licence.

In accordance with the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020*, the ACMA aims to collect \$2.6 million from the EME Components of the taxes imposed on Designated Spectrum Licences for each financial year (**the total annual EME Component**), until 2023-2024 (when it reduces to \$1.9 million). That direction then requires the amount to be adjusted annually, by reference to the consumer price index.

### **Clause 2 Calculating the EME Component for a Designated Spectrum Licence**

Clause 2 sets out the formula and the steps for calculating the EME Component for a Designated Spectrum Licence. The formula relies on the Main Component for each of these licences, which is the amount calculated for a licence in Schedule 1.

To work out the EME Component for a Designated Spectrum Licence, first work out the total of the Main Components, which is the sum of every Main Component for every Designated Spectrum Licence (**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 total annual EME Component to be apportioned to the licence.

This proportion is then multiplied by the total annual 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 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 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 Main Component for the three Designated Spectrum Licences is \$120,000 divided by \$370,000, or 32.4% (column 3).

If the total annual 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 of Designated Spectrum Licence 1 to obtain the total spectrum licence tax imposed on and 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 Main Component	<i>Column 4</i> EME Component	<i>Column 5</i> Total Spectrum Licence Tax
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