

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence) Tax Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 1)* (**the instrument**) 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 instrument 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.

According to the Explanatory Memorandum for the *Radiocommunications (Transmitter Licence Tax) Amendment Bill 1992*, the amount of tax is determined with the use of a disallowable instrument because of a need for flexibility in setting the level of the taxes and to ensure that the ACMA itself can set the level which equitably recoups the costs of spectrum management across all apparatus licences which are issued under the *Radiocommunications Act 1992*.

That Explanatory Memorandum also states that the use of disallowable instruments in the setting of the levels of licence taxes will ensure that there is flexibility to change levels in response to changes in demand for particular parts of the spectrum, and to introduce new tax amounts for new kinds of licences, but will ensure that accountability to the Parliament remains, as the determinations are subject to Parliamentary disallowance.

Allocation of 850/900 MHz band spectrum licences

On 27 October 2020, the Minister for Communications, Cyber Safety and the Arts made the [Radiocommunications \(Spectrum Re-allocation—850/900 MHz Band\) Declaration 2020](#) (**the re-allocation declaration**)¹ for the following frequency ranges:

- 814 MHz to 825 MHz;
- 859 MHz to 870 MHz;
- 890 MHz to 915 MHz;
- 935 MHz to 960 MHz;

on an Australia-wide basis (**the 850/900 MHz band**).²

Consistent with the re-allocation declaration the ACMA has allocated spectrum licences in the 850/900 MHz band, following a competitive public auction which was conducted in accordance with the *Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021*. The spectrum licences allocated in the 850/900 MHz band will commence on 1 July 2024.³

It is expected that the persons to whom spectrum licences have been allocated (**future spectrum licensees**) may apply for transmitter licences authorising the operation of transmitters in the parts of the 850/900 MHz band included in their spectrum licences.

There are already transmitter licences in the parts of the spectrum from 890 MHz to 915 MHz and 935 MHz to 960 MHz (**the 900 MHz band**), which authorise operation of transmitters throughout Australia. The licensees of these transmitter licences (**the incumbent 900 MHz licensees**) pay an amount of transmitter licence tax that is based on the national nature of these licences, regardless of whether the licensees actually operate transmitters in every part of Australia. These licences will be cancelled on 30 June 2024, as a consequence of the re-allocation declaration (section 153H of the Act). It is expected that the incumbent 900 MHz licensees may wish to surrender their national licences, and be issued new transmitter licences that only authorise the operation of transmitters in the areas in which the licensees actually operate the transmitter licences, and pay a proportionate amount of transmitter licence tax. These new licences would also be cancelled on 30 June 2024, as a result of the re-allocation declaration.

Determination of tax in relation to new transmitter licences issued in the 850/900 MHz band

The instrument amends the Tax Determination to set a particular rate of tax for new PMTS Class B transmitter licences issued in the 850/900 MHz band. It does not affect the tax payable for other types of transmitter licences issued in the 850/900 MHz band (including existing PMTS Class B transmitter licences in the 900 MHz band), and it does not affect the tax payable for PMTS Class B transmitter licences in other parts of the radiofrequency spectrum.

The tax payable in relation to new PMTS Class B transmitter licences issued in the 850/900 MHz band is calculated in the same way as the tax payable in relation to PMTS Class B transmitter licences issued in other bands subject to other re-allocation declarations, in Part 7A of Schedule 2 to the Tax Determination. The tax is calculated by multiplying:

- the bandwidth within which transmitters are authorised by the licence; by
- the population of the geographic area in which transmitters are authorised by the licence; by

¹ The re-allocation declaration is taken to have been made by the ACMA, in accordance with item 120 of Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

² This excludes the Mid-West Radio Quiet Zone as specified in the [Radiocommunications \(Mid-West Radio Quiet Zone\) Frequency Band Plan 2011](#).

³ The “downshift spectrum” (i.e. the 2 x 1 MHz of spectrum (824–825 MHz and 869–870 MHz) has also been allocated. This spectrum has been allocated to accommodate a future downshift of spectrum licences. The ACMA does not expect the spectrum to be used as part of the early access arrangements and, as such, the taxation arrangements do not include the downshift spectrum.

- a base rate specified in the Tax Determination.

The instrument specifies \$0.1445/MHz (paired)/pop as the base rate for licences in the 850/900 MHz band. The base rate is based on the tax amount for current PMTS Class B licences operating in the 900 MHz band. Those licences are subject to a fixed annual tax amount per MHz of \$3,374,209.

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

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**). The Tax Determination is subject to the sunset provisions of the LA.

Document incorporated by reference

The instrument amends the Tax Determination to include a reference to the instrument's commencement. The instrument is a legislative instrument and is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

Consultation

Before the instrument 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 27 April 2021 to 24 May 2021 to comment on the proposal to amend the Tax Determination as described above, as part of wider consultation on the re-allocation of the 850/900 MHz band. The proposed changes were outlined in a consultation paper, 'Draft instruments for the 850/900 MHz band auction – consultation 16/2021', that was published on the ACMA website www.acma.gov.au.

The ACMA received 8 submissions in response to the consultation paper and 5 of those submissions commented on the proposed changes to the Tax Determination. The ACMA took all submissions into account in making the instrument, but did not make any changes to its proposals. One submission considered that the application of the proposed base rate in regional and remote areas might make it uneconomical for a person to be issued a PMTS Class B transmitter licence for only regional or remote areas. The ACMA did not consider this to be the case.

Regulatory impact assessment

A preliminary assessment of the proposals relating to the allocation of spectrum licences in the 850/900 MHz band was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature (OBPR reference number 43548).

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 instrument 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 instrument is made under subsection 7(1) of the Tax Act and amends the Tax Determination to provide for a tax regime for new PMTS Class B licences issued in the 850/900 MHz band, pending the issue and commencement of spectrum licences in that band. The tax payable in relation to new PMTS Class B transmitter licences issued in the 850/900 MHz band is calculated in the same way as the tax payable in relation to PMTS Class B transmitter licences issued in other bands subject to other re-allocation declarations, in Part 7A of Schedule 2 to the Tax Determination. The tax is calculated by multiplying:

- the bandwidth within which transmitters are authorised by the licence; by
- the population of the geographic area in which transmitters are authorised by the licence; by
- a base rate specified in the Tax Determination.

The instrument specifies \$0.1445/MHz (paired)/pop as the base rate for licences in the 850/900 MHz band. The instrument is likely to affect the persons who have been allocated spectrum licences in the 850/900 MHz band, and the incumbent 900 MHz licensees. It does not affect the tax payable for other types of transmitter licences issued in the 850/900 MHz band (including existing PMTS Class B transmitter licences in the 900 MHz band), and it does not affect the tax payable for PMTS Class B transmitter licences in other parts of the radiofrequency spectrum.

Human rights implications

The ACMA has assessed whether the instrument 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 instrument 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 instrument 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 2022 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 1)*.

Section 2 Commencement

This section provides for the instrument 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.

Section 3 Authority

Section 3 provides that the instrument 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 the Schedule to the instrument.

Schedule Amendments

Item 1

Item 1 makes a change to item 702 of Schedule 2 to the Tax Determination, consequential to the inclusion of the new sub-item described in item 2.

Item 2

Item 2 includes new sub-item 702 (2) of Schedule 2 to the Tax Determination, to provide that the tax rate for PMTS Class B licences in the 900 MHz band issued before the commencement of the instrument (that is, the licences held by the incumbent 900 MHz licensees) continues to apply to those licences.

Item 3

Item 3 makes a change to item 12 of table 702 of Schedule 2 to the Tax Determination consequential on the change made by item 2.

Item 4

Item 4 amends item 701A of Part 7A of Schedule 2 to the Tax Determination, to apply Part 7A to new PMTS Class B licences in the 850/900 MHz band.

Item 5

Item 5 provides a definition for the 850/900 MHz band (i.e. 859 MHz–869 MHz and 935 MHz–960 MHz).

Items 6 and 7

Items 6 and 7 add the 850/900 MHz band to the relevant parts of item 703A, which describes the process for calculating annual amounts of tax for population-based licences.

Item 8

Item 8 adds a new sub-item 704A(3C) in Part 7A of Schedule 2 to the Tax Determination, which sets the base rate of tax for PMTS Class B licences in the 850/900 MHz band of \$0.1445/MHz/pop.