

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 3)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 3)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (**the TLT Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**). Subsection 7(1) of the TLT 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; or
- 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.

Purpose and operation of the instrument

The Amendment Determination amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (**the Determination**), which sets the annual 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 stated 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, while also ensuring that accountability to the Parliament remains, as the Determination is subject to Parliamentary disallowance.

The Amendment Determination changes references to the 2016 Census of Population and Housing (**2016 Census**) in the Determination to instead refer to the most recent 2021 Census of Population and Housing (**2021 Census**) and population figures from it. These population figures are used to calculate the transmitter licence tax in Parts 7A and 7B of the Determination, that use a \$/MHz/pop pricing approach where the annual tax depends on the population coverage of the licence.

The Amendment Determination also updates the base tax rate for a PMTS Class B¹ (850/900 MHz band)² transmitter licence from \$0.1445/MHz/pop to \$0.133/MHz/pop to maintain incentives to promote early access to the spectrum won at auction in 2021, and to encourage the incumbent licensees to transition to their new spectrum arrangements.

The base rate of tax for PMTS Class B licences for the 850/900 MHz band of \$0.1445/MHz/pop is based on the PMTS 935–960 MHz tax of \$3,374,209 per MHz (item 12 of Table 702 of the TLT Determination), divided by the 2016 Australian population within the Australian Spectrum Map Grid 2012 (ASMG) of 23,347,848.

With the update to the census, the 2021 population of Australia within the ASMG is 25,362,351. To ensure that both the PMTS 935–960 MHz tax and the 850/900 MHz base rate of tax remain consistent, the Amendment Determination includes the new base rate for the 850/900 MHz band of \$0.133/MHz/pop.³ The change to the 850/900 MHz base rate due to changes in census data is consistent with feedback received in the public consultation about the 850/900 MHz auction.

A provision-by-provision description of the instrument 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 (LA)*.

Documents incorporated by reference

In accordance with subsection 14(1) of the LA, the Amendment Determination incorporates the following document, as existing at the time the Amendment Determination commenced:

1. the ‘Hierarchical Cell Identification Scheme (HCIS) – List of Population Data’.

This document is available, free of charge, from the ACMA website (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.

On 22 August 2022, the ACMA published a consultation paper that set out the proposed changes to the Determination and similar changes to the *Radiocommunications (Spectrum Licence Tax) Determination 2021* and called for submissions by 19 September 2022.

The ACMA received only one submission, from Optus. Optus supported the proposed population update, however, noted that using the updated population figures would increase its 2100 MHz Public Telecommunications Service licences taxes and its 26 GHz area-wide licence taxes.

Regulatory impact assessment

The Office of Best Practice Regulation (OBPR) has advised that these amendments are unlikely to have a more than minor regulatory impact and therefore formed the opinion that no regulatory impact analysis is required (OBPR22-03282).

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.

¹ PMTS Class B is a Public Mobile Telecommunications Service that consists of 2 or more land stations that are operated under a Public Telecommunication Service (PTS) apparatus licence.

² Sub-item 704A(3C) of the TLT Determination.

³ \$3,374,209 per MHz divided by 25,362,351 is \$0.133/MHz/pop.

Overview of the instrument

The purpose of the Amendment Determination is to update references to the 2016 Census and 2016 Census population figures in the Determination to instead refer to the 2021 Census and the 2021 Census population figures.

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 2022 (No. 3)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (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.

Section 3 Authority

Section 3 provides that the Amendment Determination is made under subsection 7(1) of the TLT Act.

Section 4 Amendments

Section 4 provides that the Determination is amended as set out in Schedule 1 to 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. New section 3.2 provides the transitional arrangements so that the new taxes do not take effect in relation to taxes imposed before the implementation day (50 days after the commencement of the Amendment Determination). In instances where the tax is imposed after the commencement of the Amendment Determination, but before the implementation day, 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

Transmitter licence taxes in Part 7A of the Determination are charged on a \$/MHz/pop basis. The *Hierarchical Cell Identification Scheme (HCIS) – List of Population Data* document (**the HCIS population data document**) sets out population data for areas in the Hierarchical Cell Identification Scheme levels 00 to 4, which are set out in the ASMG. The HCIS population data document is used to determine the population relevant to the transmitter licence tax in Part 7A. Item 2 updates the definition of the ‘population of an HCIS block’ and the accompanying note by stating that the relevant HCIS population data document for Part 7A taxes is the version existing at the time of commencement of the Amendment Determination, which is the version that is derived from 2021 Census data. The previous version used population data derived from the 2016 Census data.

Item 3

Item 3 updates the base tax rate for a PMTS Class B (850/900 MHz band) transmitter licence with 2021 Census population data. The PMTS Class B (850/900 MHz band) tax was put in place to promote early access to the spectrum won at auction in 2021, and to encourage the incumbent licensees to transition to their new spectrum arrangements. The original tax rate of \$0.1445/MHz/pop

was based on the national 900 MHz PMTS Class B tax of \$3,374,209 per MHz divided by the 2016 Census population of 23,347,848. With the release of the 2021 Census, the updated population for Australia within the ASMG is now 25,361,351 and this requires the new \$0.133/MHz/pop tax rate. This approach will ensure consistency in pricing and will continue to encourage the transition arrangements.

Item 4

Transmitter licence taxes in Part 7B of the Determination are charged on a \$/MHz/pop basis. The HCIS population data document sets out population data for areas in the Hierarchical Cell Identification Scheme levels 00 to 4, which are set out in the ASMG. The HCIS population data document is used to determine the population relevant to the transmitter licence tax in Part 7B. Item 4 updates the definition of the ‘population of HCIS block or HCIS cell’ and the accompanying note by stating that the relevant HCIS population data document for Part 7B taxes is the version existing at the time of commencement of the Amendment Determination, which is the version that is derived from 2021 Census data. The previous version used population data derived from the 2016 Census data.