

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Spectrum Licence Tax) Act 1997*

***Radiocommunications (Spectrum Licence Tax) Amendment Determination 2022 (No. 1)***

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2022 (No. 1)* (**the Amendment Determination**) under subsection 7(1) of the *Radiocommunications (Spectrum Licence Tax) Act 1997* (**the SLT Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 7(1) of the SLT 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 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 (Spectrum Licence Tax) Determination 2021* (**the Determination**). The Determination determines the amount of tax imposed by the SLT Act on the initial holding date for a spectrum licence, and on each anniversary of that date. The Determination determines different rates of tax in relation to different classes of spectrum licence based on the bandwidth of the licence, and the population coverage of the licence relative to the Australian population. The only effect of the Amendment Determination is to change 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 spectrum licence tax.

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](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.

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 (Transmitter Licence Tax) Determination 2015* 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 figure would increase its 2100 MHz Public Telecommunications Service licences taxes and its 26 GHz area-wide licence taxes by.

## **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.

## **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 Determination is compatible with human rights and freedoms as it does not raise any human rights issues.

**Notes to the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2022 (No. 1)***

**Section 1 Name**

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2022 (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 SLT 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 defines the Australian population to be 25,362,351. 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 2021 Census, updated from the 2016 Census.

The Main Component of the spectrum licence taxes is different for licences in different frequency bands, and by reference to populations covered by a spectrum licence, based on Census data. 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 is used to calculate the Main Component of the spectrum licence tax. The population coverage of the licence as a proportion of the Australian population helps to determine the Main Component for that licence. The HCIS population data document sets out population data for areas in the HCIS levels 00 to 4, which are set out in the Australian Spectrum Map Grid 2012. The population figures used to determine these tax rates are kept up to date to ensure that the tax charged appropriately reflects the value of the spectrum. 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)).

**Items 2 and 3**

Items 2 and 3 clarify that the population document relevant to this Amendment Determination is the version that is derived using the population data reported in the 2021 Census and existing at the time the Amendment Determination commenced.