

## **Explanatory Statement**

### **Issued by the authority of the Minister for Communications**

*Radiocommunications Taxes Collection Act 1983*

### ***Radiocommunications Taxes Collection Regulations 2023***

#### **Purpose**

The purpose of the *Radiocommunications Taxes Collection Regulations 2023* (the Regulations) is to remake and update the *Radiocommunications Taxes Collection Regulations 1985* (the 1985 Regulations) that are scheduled to be repealed as a result of the sunset provisions in the *Legislation Act 2003*.

#### **Authority**

The *Radiocommunications Taxes Collection Act 1983* (the Act) provides for certain matters relating to the payment and collection of taxes imposed in relation to apparatus and spectrum licences issued under the *Radiocommunications Act 1992*. Apparatus licences (which include transmitter and receiver apparatus licences) and spectrum licences are issued by the Australian Communications and Media Authority (ACMA).

Section 11 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The matters that the regulations may make provision for include the manner of payment of tax and the remission or refund of tax in specified circumstances.

The 2023 Regulations are a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

#### **Background**

The Regulations replace the 1985 Regulations that are scheduled to sunset on 1 April 2023. The Regulations introduce minor amendments to update and clarify the 1985 Regulations.

The Regulations remake the provisions of the current regulations and, additionally, make the following changes. The Regulations consolidate separate regulations dealing with the refund of tax where a licence is surrendered versus where it is cancelled – this distinction is no longer required because the refund formula is the same. The Regulations clarify the scenarios in which a licence could be cancelled and a refund would not be available. The Regulations allow for the refund of tax when it is paid annually – at present, refunds are only available if the tax for the term of the licence (typically several years) is paid at the time the licence is issued. The Regulations replace references to the Spectrum Manager (a position which no longer exists) with the ACMA. Finally, the Regulations remove several spent regulations.

### **Impact Analysis**

The department wrote to the Office of Impact Analysis certifying that an Impact Analysis is not necessary as the 1985 Regulations are operating effectively and efficiently, with only minor updates required (ref:04092).

### **Consultation**

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) consulted publicly on the remake of the regulations for four weeks from September to October in 2022. The department notified relevant stakeholders of the consultation process and a consultation paper was placed on the department's website. A single submission was received from Telstra. Telstra proposed changes to clarify tax refund eligibility. The department took Telstra's proposals into account in making the Regulations. The ACMA, the government body with administrative responsibility for implementing the Regulations, was consulted in the development of the consultation paper and the design of the regulations.

### **Statement of Compatibility with Human Rights**

The *Radiocommunications Taxes Collection Regulations 2023* (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Regulations remake the provisions of the current regulations and:

- consolidate the separate regulations dealing with the refund of tax where a licence is surrendered versus where it is cancelled – this distinction is no longer required because the refund formula is the same
- clarify the scenarios in which a licence could be cancelled and a refund would not be available
- allow for the refund of tax when it is paid annually – at present, refunds are only available if the tax for the term of the licence (typically several years) is paid at the time the licence is issued
- replace references to the Spectrum Manager (a position which no longer exists) with the Australian Communications and Media Authority, and
- remove several spent regulations.

The Regulations do not engage any of the applicable rights or freedoms. Therefore, the Regulations are compatible with human rights as they do not raise any human rights issues.

## **Notes on Regulations**

### **Section 1 – Name**

This section provides that the title of the instrument is the *Radiocommunications Taxes Collection Regulations 2023* (the Regulations).

### **Section 2 – Commencement**

This section provides that the Regulations commence the day after this instrument is registered.

### **Section 3 – Authority**

This section provides that the instrument is made under the *Radiocommunications Taxes Collection Act 1983* (the Act).

In addition, subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make an instrument of a legislative character (including regulations) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument.

### **Section 4 – Schedules**

This section amends or repeals each instrument specified in a Schedule to the instrument as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### **Section 5 – Definitions**

This section defines the term ‘Act’ to mean the *Radiocommunications Taxes Collection Act 1983*. The section notes that some terms, such as ‘ACMA’, ‘apparatus licence’, ‘initial holding date’, ‘spectrum licence’, ‘tax’ and ‘transmitter licence’ are defined in the Act.

### **Section 6 – Refund of tax on cancellation of licence**

This section amends the refund formula to account for apparatus licences where tax is paid annually following amendments to the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications (Receiver Licence Tax) Act 1983* which enabled licensees to elect to have licence tax imposed annually.

Subsection 6(2) specifies the refund formula as days in the post-cancellation period divided by the days in the reference period multiplied by the tax paid.

Subsection 6(3) provides exemptions where a refund is not applied because the licence has been cancelled.

Subsection 6(4) provides that the minimum refund amount is \$41. This is the current minimum tax amount at the time the Regulations were remade (see the Apparatus licence fee schedule October 2022 published on the ACMA website).

Subsection 6(5) specifies the reference period for payment of tax imposed in respect of various licences.

Subsection 6(6) provides that for the purposes of subsection 5, the licence period is the period specified in the licence for which the licence is to remain in force.

This section does not explicitly refer to surrendered apparatus licences or spectrum licences because these licences are taken to be cancelled upon the ACMA's acceptance of the surrender (see section 307 of the *Radiocommunications Act 1992*).

### **Section 7 – Exemption from tax**

This section provides for exemptions for members of diplomatic or consular missions established in Australia with the consent of the Commonwealth and for certain emergency services organisations and organisations whose principal purpose is the safeguarding of human life from radiocommunications licence taxes imposed under the Act. The exemptions relate to transmitter and receiver licences issued to individuals or bodies corporate.

Subsection 7(2) of the Regulations sets out requirements that must be satisfied for the purposes of the tax exemption for organisations with the principal purpose of providing emergency services or services for the safeguarding of human life.

Subsection 7(3) of the Regulations provides for exemptions for bodies with the principal purpose of providing surf life saving services or ambulance services.

### **Schedule 1 – Repeals**

#### ***Radiocommunication Taxes Collection Regulations 1985***

##### **1 – The whole of the instrument**

This item repeals the entirety of the *Radiocommunications Taxes Collection Regulations 1985*.