

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications (Transmitter Licence Tax) Act 1983*

## ***Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 3)***

### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 3)* (the **instrument**) under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 7(1) of the Act provides that the ACMA may determine the amount of tax in respect of:

- the issue of a transmitter licence; and
- the anniversary of a transmitter licence coming into force; and
- the holding of a transmitter licence.

Subsection 33(3) of the AIA relevantly provides that when an Act confers a power to make a legislative instrument, that power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend, or vary any such instrument.

Section 28C of the *Radiocommunications Act 1992* requires the ACMA to have regard to any relevant Ministerial policy statements when performing its spectrum management functions, which includes its functions under the Act. The instrument determines the amount of tax in respect of transmitter licences that authorise the operation of radiocommunications transmitters in frequencies including the 3.4 GHz to 4.0 GHz frequency band. In determining these amounts, the ACMA has had regard to the *Radiocommunications (Ministerial Policy Statement – 3.4-4.0 GHz) Instrument 2022*.

### **Purpose and operation of the instrument**

The instrument amends the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (the **Determination**), which sets the amounts of the tax imposed by the Act in relation to transmitter licences.

The tax imposed 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. These measures are intended to provide incentives for efficient use of spectrum. The ACMA seeks to adopt tax rates that promote the best use of spectrum.

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

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*Explanatory Statement to the Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 3)*

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 Determination sets the different amounts of transmitter licence tax that the ACMA has determined are payable by licensees of particular transmitter licences. The amount of tax for many of these licences is calculated by reference to rates specified in ‘weightings tables’, which apply different rates to licences depending on where they authorise the operation of radiocommunications transmitters, both geographically and in the radiofrequency spectrum.

The instrument varies the weightings tables to reflect changes in population in the specified geographic areas (the **density areas**) between 2021 and 2022, as measured by the Australian Bureau of Statistics (the **ABS**) dataset ‘Estimated resident population, Significant Urban Areas’. To determine the population changes for a density area, the significant urban area populations within that density area are aggregated for each of 2021 and 2022, the two values are compared, and the percentage change from 2021 to 2022 is applied to the tax rates in the weighting tables for each density area.

These changes are the first changes to rates of transmitter licence tax using this population-based methodology, which replaces the previous methodology that updated tax rates based on inflation as measured by the Consumer Price Index (**CPI**). The new methodology is intended to better approximate increases in spectrum demand, as a function of population growth.

For each density area, the changes are based on the following increases in population:

Density area	Percentage increase
Australia-wide	1.19%
High density	1.23%
Medium density	1.38%
Low density	1.09%
Remote density	0.93%

For licences where the tax rate does not depend on density areas, the rate has either been increased by the same percentage as the increase in Australia’s population (1.19%), or increased in a manner that reflects the increase in population of a particular geographic area.

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

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

### **Documents incorporated by reference**

The instrument inserts transitional provisions into the Determination that refer to the Determination as in force at a particular time, namely, immediately before the commencement of the instrument, as permitted by section 14 of the LA. That version of the Determination is available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://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.

On 21 August 2023 the ACMA published a consultation paper that invited stakeholders to provide feedback to the proposed update to transmitter licence tax rates. The ACMA received 4 submissions on the proposed transmitter licence tax rate updates in the consultation. The 3 submitters that commented specifically on the proposal to update apparatus licence taxes by population were in favour of the approach.

## **Regulatory impact assessment**

The ACMA's decision to change its method of varying tax rates, from a method based on CPI to a method based on ABS population changes, is consistent with the recommendations of the Spectrum Pricing Review, given in 2018, and forms part of the ACMA's implementation of the 'second tranche' of the Spectrum Pricing Review. The Office of Impact Analysis (OIA) considered the implementation of the second tranche of the Spectrum Pricing Review, and recommended that a regulatory impact analysis be completed. A Regulation Impact Statement was prepared for, and accepted by, the OIA. The OIA reference number is OBPR21-01227, and a copy of the Regulation Impact Statement is available, free of charge, from the OIA's website at <https://oia.pmc.gov.au/published-impact-analyses-and-reports/spectrum-pricing-review-2<sup>nd</sup>-tranche-reform-options>.

## **Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the 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.

The statement of compatibility with human rights set out below has been prepared to meet that requirement.

## **Overview of the instrument**

The Determination sets the different amounts of transmitter licence tax that the ACMA has determined are payable by licensees of particular transmitter licences. The amount of tax for many of these licences is calculated by reference to rates specified in 'weightings tables', which apply different rates to licences depending on where they authorise the operation of radiocommunications transmitters, both geographically and in the radiofrequency spectrum.

The instrument varies the weightings tables to reflect changes in population in the specified density areas between 2021 and 2022, as measured by the ABS dataset 'Estimated resident population, Significant Urban Areas'. To determine the population changes for a density area, the significant urban area populations within that density area were aggregated for each of 2021 and 2022, the two values were compared, and the percentage change from 2021 to 2022 was applied to the tax rates in the weighting tables for each density area.

For licences where the tax rate does not depend on density areas, the rate has either been increased by the same percentage as the increase in Australia's population (1.19%), or increased in a manner that reflects the increase in population of a particular geographic area.

These changes are the first changes to rates of transmitter licence tax using this population-based methodology, and replace the previous methodology that updated tax rates based on inflation as measured by the CPI. The new methodology is intended to better approximate increases in spectrum demand, as a function of population growth.

### ***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 as it does not raise any human rights issues.

**Notes to the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 3)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2023 (No. 3)*.

**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](http://www.legislation.gov.au).

**Section 3 Authority**

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

**Section 4 Amendments**

Section 4 provides that the Determination is amended as set out in Schedule 1 to the instrument.

**Schedule 1—Amendments**

**Item 1**

Item 1 inserts Part 3 into the Determination to introduce transitional arrangements relating to the changes made by the instrument. New section 3.1 of the Determination sets out the relevant definitions for Part 3. New section 3.2 provides the transitional arrangements so that the new tax rates do not take effect in relation to taxes imposed before 5 April 2024. Where the tax is imposed after the commencement of the instrument, but before 5 April 2024, the amount of tax imposed will continue to be based on the Determination as in force immediately before the commencement of the instrument.

**Item 2**

Item 2 corrects an error in item 204 of Schedule 1 to the Determination, by replacing ‘earth station’ with ‘earth receive station’.

**Item 3**

Item 3 corrects an error in item 205 of Schedule 1 to the Determination, by replacing ‘earth station’ with ‘earth receive station’.

**Item 4**

Item 4 substitutes table 202, which sets out the rates of tax for each kHz of bandwidth for the licences specified in Part 2 of Schedule 2 (assigned licences) to the Determination. These tax rates, which are based on density areas, have been updated based on the ACMA’s new population-based methodology.

### Item 5

Item 5 substitutes table 206, which sets the rates of tax for each kHz of bandwidth for the licences specified in Part 2A of Schedule 2 (scientific licences) to the Determination. These tax rates, which are based on density areas, have been updated based on the ACMA’s new population-based methodology.

### Item 6

Item 6 substitutes table 302, which sets the rates of tax for each kHz of bandwidth for the licences specified in Part 3 of Schedule 2 (assigned licences in high demand frequency bands) to the Determination. These tax rates, which are based on density areas, have been updated based on the ACMA’s new population-based methodology.

### Item 7

Item 7 substitutes table 305A, which sets particular amounts (**base rates**) used in the calculation of tax for the licences specified in Part 3A of Schedule 2 (harmonised government spectrum area licences) to the Determination. The base rate for each State and Territory has been updated based on the ACMA’s new population-based methodology, and has been adjusted based on the following:

Area	Percentage increase
Australian Capital Territory	0.64%
New South Wales	0.78%
Northern Territory	0.60%
Queensland	2.07%
South Australia	1.02%
Tasmania	0.64%
Victoria	1.10%
Western Australia	1.38%

### Item 8

Item 8 substitutes table 402, which sets the rates of tax for each kHz of bandwidth for the licences specified in Part 4 of Schedule 2 (assigned fixed point to point licences) to the Determination. These tax rates, which are based on density areas, have been updated based on the ACMA’s new population-based methodology .

### Item 9

Item 9 substitutes table 502, which sets the rates of tax for each kHz of bandwidth for the licences specified in Part 5 of Schedule 2 (assigned fixed point to multipoint licences) to the Determination. These tax rates, which are based on density areas, have been updated based on the ACMA’s new population-based methodology.

### Item 10

Item 10 substitutes table 602, which sets rates of tax for each kHz of bandwidth for the licences specified in Part 6 of Schedule 2 (licences relating to fixed television outside broadcast stations) to the

Determination. These tax rates, which are based on density areas, have been updated based on the ACMA’s new population-based methodology.

**Item 11**

Item 11 substitutes table 702, which sets the amount of tax for the licences specified in Part 7 of Schedule 2 (assigned licences subject to a fixed annual amount) to the Determination. These amounts have been updated based on the ACMA’s new population-based methodology, and have all been adjusted based on the Australia-wide population growth of 1.19%.

**Item 12**

Item 12 substitutes table 802, which sets the amount of tax for the licences specified in Part 8 of Schedule 2 (high power open narrowcasting services – broadcasting licences) to the Determination. These amounts, which depend on the location of the licence, have been updated based on the ACMA’s new population-based methodology and have been adjusted based on the following factors:

Significant urban area	Percentage increase
Melbourne	1.10%
Sydney	0.73%
Brisbane	2.29%
Perth	1.48%
Adelaide	1.15%
Gold Coast – Tweed Heads	2.02%
Newcastle – Maitland	1.55%
Canberra – Queanbeyan	0.65%
Sunshine Coast	2.51%
Central Coast	0.15%
Wollongong	1.13%
Geelong	1.96%
Hobart	0.59%
Townsville	1.46%
Cairns	1.63%

**Item 13**

Item 13 substitutes table 802A, which sets rates of tax for the licences specified in Part 8A of Schedule 2 (space system licences) to the Determination. These tax rates, which depend on density areas, have been updated based on the ACMA’s new population-based methodology.

**Item 14**

Item 14 substitutes table 902, which sets rates of tax for the licences specified in Part 9 of Schedule 2 (non-assigned licences) to the Determination. These tax rates have been updated based on the ACMA’s new population-based methodology, and have all been adjusted based on the Australia-wide population growth of 1.19%.

## **Item 15**

Item 15 varies the definition of the *minimum annual amount* to be \$41.86, based on the Australia-wide population growth of 1.19%.