

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Receiver Licence Tax) Act 1983

Radiocommunications (Receiver Licence Tax) Amendment Determination 2023 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2023 (No. 1)* (the **instrument**) under subsection 7(1) of the *Radiocommunications (Receiver 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 receiver licence;
- the anniversary of a receiver licence coming into force; and
- the holding of a receiver 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 receiver licences that authorise the operation of radiocommunications receivers 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 (Receiver Licence Tax) Determination 2015* (the **Determination**), which sets the amounts of tax imposed in relation to receiver licences.

The tax imposed on receiver 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 (Receiver 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, while also ensuring that accountability to the Parliament remains, as the Determination is subject to Parliamentary disallowance.

The Determination sets the different amounts of receiver licence tax that the ACMA has determined are payable by licensees of particular receiver licences. The amount of tax for 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 receivers, 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 both 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 receiver 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% |

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.

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 receiver licence tax rates. 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-2nd-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 receiver licence tax that the ACMA has determined are payable by licensees of particular receiver licences. The amount of tax for 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 receivers, 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 both 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.

These changes are the first changes to rates of receiver licence tax using this population-based methodology, which replaces 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 (Receiver Licence Tax) Amendment Determination 2023 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2023 (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 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 varies the definition of *minimum annual amount* in section 3 of the Determination, increasing it to \$41.86, based on the Australia-wide population growth of 1.19%.

Item 2

Item 2 substitutes Part 3 of the Determination to introduce new transitional arrangements relating to the changes made by the instrument. New section 7 of the Determination sets out the relevant definitions for Part 3. New section 8 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 3

Item 3 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 (defence receive licences and major coast receive 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 4

Item 4 substitutes table 302, which sets out the rates of tax for each kHz of bandwidth for the licences specified in in Part 3 of Schedule 2 (fixed receive 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 402, which sets out the rates of tax for each kHz of bandwidth for the licences specified in in Part 4 of Schedule 2 (earth receive licences and space receive 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.