

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Receiver Licence Tax) Act 1983

Radiocommunications (Receiver Licence Tax) Amendment Determination 2024 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2024 (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 3.75 GHz to 4.0 GHz frequency band (the **3.8 GHz 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 ACMA expects to allocate area wide licences (**AWL**) and area-wide receive licences (**AWL rx**s) in the 3.8 GHz band in 2024. The instrument introduces an annual tax measured per megahertz (**MHz**) per population (**pop**) of \$0.0041/MHz/pop for AWL rxs in the 3.8 GHz band. This tax rate is the same as the tax rate for AWLs, which is already included in the *Radiocommunications (Transmitter Licence Tax) Determination 2015*.

The instrument also reduces the annual amount of tax for an earth receive licence or space receive licence authorising the licensee to operate a radiocommunications receiver in the 4.0 to 4.2 GHz frequency band (the **4.0–4.2 GHz band**) to the minimum annual amount (currently, \$41.86).

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.

The instrument also incorporates the following documents published by the ACMA, as existing at the time the instrument commenced, as permitted by section 14 of the LA:

- the Australian Spectrum Map Grid 2012;
- the Hierarchical Cell Identification Scheme (HCIS) – List of Population Data.

These documents are available, free of charge, from the ACMA website at www.acma.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 20 June 2023, the ACMA published a consultation paper indicating its intention to introduce apparatus licencing arrangements authorising access to spectrum in the 3.8 GHz band in regional and metropolitan (and immediate surrounding) areas. The consultation paper invited stakeholders to provide feedback to the proposal to introduce AWL rxs in the 3.8 GHz band and to reduce the annual amount of tax for an earth receive licence or a space receive licence authorising the licensee to operate a radiocommunications receiver in the 4.0–4.2 GHz band. The ACMA received 12 submissions in response to the consultation paper and 8 of those commented on the proposed changes to the Determination. Except for 2 submitters, there was general support for the proposed AWL rxs tax arrangements in the 3.8 GHz band. The 2 submitters' concerns were largely a function of the AWL licensing arrangements and their associated pricing methodology. Two other submitters were concerned with the use of population-based taxes and noted not all services to be provided would be driven by the population in the

immediate area. There were no comments that related directly to the tax changes proposed for earth receive licences and space receiver licences in the 4.0 to 4.2 GHz frequency band. The ACMA took all submissions into account in making the instrument but did not make any changes to its proposals. The ACMA considers the licensing arrangements and pricing methodology should be consistent for AWL and AWL rxs in the 3.8 GHz band.

Regulatory impact assessment

The ACMA considered whether a regulatory impact analysis process was required by undertaking a preliminary assessment. On 9 August 2023, based on this preliminary assessment, the Office of Impact Analysis (**OIA**) determined that the proposed regulatory change is minor or machinery in nature and verified that no further regulatory impact analysis was required. The OIA reference number is OIA23-05294.

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 purpose of the instrument is to determine an amount of tax for AWL rxs in the 3.8 GHz band, by setting an annual tax rate of \$0.0041/MHz/pop. The ACMA intends to allocate AWL rxs in the 3.8 GHz band in 2024. The instrument also reduces the annual amount of tax for an earth receive licence or a space receive licence authorising the licensee to operate a radiocommunications receiver in the 4.0 to 4.2 GHz band to the minimum annual amount.

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 2024 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Receiver Licence Tax) Amendment Determination 2024 (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 inserts the term ‘area-wide receive licence’ into the list of terms that have the same meanings as in the *Radiocommunications (Interpretation) Determination 2015*. The list of terms is in a note to section 3 of the Determination.

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.

Items 3 and 4

Items 3 and 4 amend item 405 of Schedule 2 to the Determination. These changes reduce the annual amount of tax for an earth receive licence or a space receive licence authorising the licensee to operate a radiocommunications receiver in the 4.0 to 4.2 GHz frequency band to the minimum annual amount.

Item 5

Item 5 inserts a new Part 5 into Schedule 2 to the Determination. New Part 5 determines the amount of tax imposed in relation to AWL rx's issued in the 3.8 GHz band. These licences are subject to a population-based annual tax.

New item 501 of Schedule 2 applies new Part 5 to AWL rx's in the 3.8 GHz band.

New item 502 of Schedule 2 defines several relevant terms for the purposes of new Part 5. These terms primarily provide guidance about the identification of 'blocks' and 'cells', forming part of the Hierarchical Cell Identification Scheme, which is a central feature in calculating the tax payable for AWL rx's.

New item 503 of Schedule 2 sets out the tax calculation method for AWL rx's in the 3.8 GHz band, using a \$/MHz/pop rate. AWL rx's are subject to a population-based tax, whereby the base rate (\$0.0041) is multiplied by the total bandwidth (in MHz) and aggregated population across specified locations.

New item 504 of Schedule 2 provides for a minimum annual amount of tax to be imposed on AWL rx's. The minimum annual tax amount is consistent with the rate applicable to all receiver licences under the Determination. The rate at the time of making the instrument is \$41.86.