

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications (Spectrum Licence Tax) Act 1997

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

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2024 (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 frequency range of the licence and the population coverage of the licence relative to the Australian population. The Determination determines spectrum licence tax by setting two components: the Main Component, payable in relation to all spectrum licences, and the Electromagnetic Energy Component (the **EME Component**), payable only in relation to some spectrum licences.

According to the explanatory memorandum to the *Radiocommunications (Spectrum Licence Tax) Bill 1997* (the **memorandum**), it is appropriate to allow the assessment of the cost of spectrum management, and resultant spectrum licence taxes, to be determined by the relevant regulatory authority. This authority would have close knowledge of the radiocommunications industry, the responsibility for managing spectrum and the responsibility for allocating radiocommunications licences. The memorandum also states that it is inappropriate to impose a limit on the amount of the spectrum licence tax determined, because of the nature of spectrum licensing and the possibility of a single licensee holding a large proportion of the spectrum in a given band, and therefore paying a proportionally larger amount than other licensees.

The memorandum also states that, given this power is legislative in nature, it is appropriate that Parliament be able to disallow an exercise of the power, and that, in accordance with what ultimately became the *Legislation Act 2003 (LA)*, there would be an obligation in relation to consultation before making or varying any instrument under this power.

Amount of tax to offset electromagnetic energy program

The Determination sets, as a part of spectrum licence tax payable by some licensees, the EME Component, as required by the *Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020* (the **Direction**). According to the Direction, the EME Component will be used to offset expenditure related to the Commonwealth's electromagnetic energy program (**EME program**).

The EME Component is added to the Main Component of spectrum licence tax, in relation to a specified class of spectrum licences. For annual spectrum licence tax imposed from the 2023-24 financial year, the Direction specifies a total EME Component of no more than \$1,900,000 (this is the sum of all the EME Components payable by spectrum licensees). However, that total EME Component must be indexed each financial year, from the 2023-24 financial year, by a factor that must not exceed the increase in consumer price index (CPI) for the reference period of June for that year. For the 2023-24 financial year, the ACMA set a total EME Component of \$2,014,000, being \$1,900,000 increased by CPI for June 2023 (6%).

The increase in CPI for the reference period of June 2024 was 3.8%. The Amendment Determination varies the Determination so that the total EME Component of the spectrum licence tax imposed in the 2024-25 financial year is \$2,090,532 (i.e. the 2023-24 EME Component of \$2,014,000 increased by 3.8%). This amount is apportioned between those spectrum licensees subject to the EME Component of spectrum licence tax, based on the frequency range of the licence and the population coverage of the licence relative to the Australian population.

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

The Amendment Determination is a legislative instrument for the purposes of the LA, and is disallowable. The Determination is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

The Amendment Determination does not amend the Determination to incorporate any additional documents.

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.

Following the release of the June 2024 CPI figures on 31 July 2024 by the Australian Bureau of Statistics, the ACMA published a consultation paper on 9 August 2024. The consultation paper set out the proposed amendments to the Determination concerning the change to the total annual EME Component for the 2024-25 financial year. The ACMA received 3 submissions to the consultation paper. Submissions acknowledged the need for the EME Program and did not object to the proposed change in the total annual EME component. Submissions raised additional comments about the EME program beyond the scope of the Amendment Determination, that the ACMA has provided to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

In making this Amendment Determination, the ACMA took into account these submissions, but did not change the proposal outlined in the consultation paper.

Regulatory impact assessment

The Office of Impact Assessment (OIA) provides a streamlined impact analysis process for regular minor or machinery updates which are referred to as ‘carve-outs’. The ACMA requested a carve-out for the changes to the Determination relating to indexing the total annual EME Component. As indexing the total annual EME Component in accordance with the Direction is a yearly routine process, the OIA has advised that the carve-out would not give rise to a regulatory change and therefore no regulatory impact analysis is required. The OIA granted the carve-out on 12 June 2024 (reference number OIA24-07581).

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 set the total annual EME Component of spectrum licence tax imposed in the 2024-25 financial year as \$2,090,532, consistent with the terms of the Direction.

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 Amendment 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 2024 (No. 1)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Spectrum Licence Tax) Amendment Determination 2024 (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.

Section 3 Authority

This section identifies the provision of the SLT Act that authorises the making of the Amendment Determination, namely, subsection 7(1).

Section 4 Amendment

This section provides that the instrument that is specified in Schedule 1 is amended as set out in that Schedule.

Schedule 1—Amendment

Item 1

Item 1 amends clause 1 of Schedule 2 to the Determination to specify the total EME Component for the 2024-2025 financial year to be \$2,090,532.