

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Taxes Collection (Unpaid Tax Penalty) Determination 2024

Radiocommunications Taxes Collection Act 1983

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications Taxes Collection (Unpaid Tax Penalty) Determination 2024* (the **Determination**), under section 7A of the *Radiocommunications Taxes Collection Act 1983* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Section 7A of the Act provides that the ACMA may make determinations for and in relation to the penalty payable by:

- the holder of an instrument to the Commonwealth in relation to apparatus licence tax that remains unpaid after the due day; and
- the licensee for a spectrum licence in relation to spectrum licence tax that remains unpaid after the due day.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the 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.

Purpose and operation of the Determination

The Determination sets out the penalty amounts for unpaid apparatus or spectrum licence tax that is payable by apparatus licence holders and spectrum licensees.

The Determination repeals the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015* (the **2015 instrument**). The 2015 instrument was a legislative instrument for the purposes of the *Legislation Act 2003 (LA)* and was due to sunset on 1 April 2025.

Following review, and consultation as described below, the ACMA formed the view that the 2015 instrument was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 2015 instrument, with two changes as set out below in order to preserve the on-going effect of the 2015 instrument.

The two changes are:

- Removal of remission provisions – The 2015 instrument contained detailed provisions which enabled the ACMA to remit amounts of penalty imposed under that instrument. Under the *Public Governance, Performance and Accountability Act 2013* (the **PGPA Act**), the Finance Minister has the power to waive or otherwise deal with amounts owed to the Commonwealth, which includes unpaid amounts of apparatus licence tax and spectrum licence tax. The most appropriate process for a licensee seeking a waiver of a penalty imposed on unpaid amounts of apparatus licence tax or spectrum licence tax is to apply to the Finance Minister in accordance with section 63 of the PGPA Act. Accordingly, the Determination does not include any provisions that purport to enable the ACMA to remit amounts of penalty imposed for unpaid amounts of apparatus licence tax or spectrum licence tax.
- Provisions that relate to unpaid spectrum licence tax – Subsection 7A(1A) of the Act allows the ACMA to make determinations for the penalty payable by a licensee in respect of spectrum licence tax that remains unpaid after the due date. The 2015 instrument only determines penalty in relation

to unpaid apparatus licence tax. The Determination has been expanded to also apply a late payment penalty in relation to an amount of unpaid spectrum licence tax.

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

The 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 Determination incorporates (including by adoption of definitions) or otherwise refers to the following Acts, as in force from time to time, in accordance with subsection 14(1) of the LA:

- the Act;
- the AIA;
- the LA;
- the *Radiocommunications Act 1992*;
- the *Taxation Administration Act 1953*.

The 2015 instrument is also incorporated, as in force immediately before the commencement of the Determination, in accordance with subsection 14(1) of the LA.

The Acts and the 2015 instrument may be accessed, free of charge, on the Federal Register of Legislation (www.legislation.com.au).

Consultation

Before the 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.

The ACMA consulted publicly between 22 July 2024 and 2 September 2024 by means of a consultation paper and a draft of the Determination published on its website. The consultation paper explained the sunset process, the two proposed changes to the 2015 instrument, and the ACMA's preliminary view that the existing arrangements remained relevant. Interested parties were invited to comment.

The ACMA received no submissions in response to the consultation paper.

Regulatory Impact Assessment

The ACMA determined that the existing instrument was fit for purpose, and should be remade without any significant changes. Accordingly, the ACMA has certified those matters to the Office of Impact Analysis (OIA), and no Impact Analysis is required. The OIA reference number is OIA24-07673.

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 of the LA applies (disallowance) to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

This statement has been prepared to meet that requirement.

Overview of the Determination

The Determination, made under section 7A of the Act, sets out the penalty amounts for unpaid amounts of apparatus and spectrum licence tax that the ACMA has determined is payable by apparatus and

spectrum licence holders. It will only apply where a person has failed to meet their obligations to pay apparatus or spectrum licence tax.

Human rights implications

The ACMA has assessed whether the 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 Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Determination does not engage any of those rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.

Notes to the *Radiocommunications Taxes Collection (Unpaid Tax Penalty) Determination 2024*

Section 1 Name

This section provides for the Determination to be cited as the *Radiocommunications Taxes Collection (Unpaid Tax Penalty) Determination 2024*.

Section 2 Commencement

Section 2 provides that the Determination commences 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

This section identifies the provisions of the Act that authorise the making of the Determination, namely section 7A.

Section 4 Repeal of the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015*

Section 4 provides that the *Radiocommunications Taxes Collection (Penalties on Unpaid Tax) Determination 2015* (F2015L00179) is repealed.

Section 5 Interpretation

Section 5 defines and interprets key terms used in the Determination.

Section 6 References to other instruments

This section provides that in the Determination, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as existing at the time the reference was included in the instrument.

Section 7 Penalty in relation to unpaid tax

Subsection 7(1) provides that section 7 determines the penalty payable by the holder of an instrument in relation to apparatus licence tax and the licensee for a spectrum licence tax in relation to apparatus licence tax or spectrum licence tax that remains unpaid after the due day.

Subsection 7(2) specifies the calculation of the penalty amount for each day that tax remains unpaid after the due day. The amount is to be calculated by multiplying the general interest charge rate, set under the *Taxation Administration Act 1953*, by the amount of tax that remained unpaid at the start of the day. That amount is then divided by the number of days in the year in which the penalty day falls.

Subsection 7(3) provides that the penalty determined by section 7 is payable to the ACMA on behalf of the Commonwealth and may be recovered as a debt due to the Commonwealth.

Subsection 7(4) provides that subsection (2) is subject to sections 10 to 13.

Section 8 When penalty is payable

Section 8 sets out that, for each day that the tax remains unpaid after the due day, the penalty is payable on the following day.

Section 9 Payments of unattributed amounts – penalty is paid first

Section 9 provides that where a person is liable to pay an amount of tax and an amount of penalty interest and an amount of money is paid to the ACMA without any attribution as to that payment, then the person's payment will be credited first to the penalty interest and, if all the penalty interest is paid, then to the amount of unpaid tax.

Section 10 Interest on judgment for payment of tax only – effect on penalty

Section 10 applies where judgment is given by a court for the payment of an amount of tax and the judgment carries interest (**judgment interest**). Under section 10, penalty interest does not cease to be payable because of the judgment. However (subject to subsection 10(4)) all the penalty interest that would be payable is reduced by the judgment interest. Subsection 10(4) provides that the penalty interest cannot be reduced below zero.

Section 11 Interest on judgment for payment of tax and other amounts – effect on penalty

Section 11 applies where judgment is given by a court for the payment by a person of an amount (the **total judgment amount**) that includes tax and the judgment carries interest (**judgment interest**). This differs from section 10, which concerns a judgment for the payment of an amount of tax only. Under section 11, penalty interest does not cease to be payable because of the judgment. However (subject to subsection 11(4)) the penalty interest amount payable is reduced by an amount proportionate to the amount of the judgment interest as the amount of tax is to the amount of the judgment debt. For example, if the amount of tax is one half of the amount of the judgment debt, then the penalty interest will be reduced by half of the amount of the judgment interest. Subsection 11(4) provides that the penalty interest cannot be reduced below zero.

Section 12 Penalty – rounding of amounts

Section 12 outlines how to round an amount of penalty, where a penalty amount includes part of a cent.

Section 13 Transition

Section 13 is a transitional provision that outlines how to calculate the penalty payable by a person if, immediately before the commencement of the Determination, the person was liable to pay penalty interest mentioned in subsection 6(2) of the 2015 instrument. Penalty interest that was payable under the 2015 instrument remains payable. Section 13 provides that on and from the commencement date of the Determination, and each day that tax remains unpaid after the commencement of the Determination, the amount of penalty is to be worked out in accordance with the Determination, as if the due date for the tax were the day before the Determination commenced. It also provides that sections 9 to 11 may apply when calculating the amount of penalty incurred under the 2015 instrument as well as the amount of penalty incurred under the Determination.