

Television Licence Fees Amendment Regulations 2000 (No. 1) 2000 No. 277

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 277

Issued by the authority of the Minister for Communications, Information Technology and the Arts

Television Licence Fees Act 1964

Television Licence Fees Amendment Regulations 2000 (No. 1)

The *Television Licence Fees Act 1964* (the Act) provides for the payment of fees in respect of certain television broadcasting licences.

Section 8 of the Act allows the Governor-General to make regulations under the Act and subsection 5(2) provides that the regulations may make provision for rebates of fees payable by licensees.

The purpose of the accompanying regulations is to enable the holders of commercial television broadcasting licences for regional licence areas ("regional licensees") to claim a rebate on television licence fees for the costs associated with the conversion of their television services from analog to digital mode.

Under Part 2 of Schedule 4 to the *Broadcasting Services Act 1992* (BSA), regional licensees are required to commence transmitting their commercial television service in digital mode by a date determined by the Australian Broadcasting Authority (ABA) which will be between 1 January 2001 and 1 January 2004.

Part 11 of Schedule 4 to the BSA requires the Minister to formulate a plan (the *regional equalisation plan*) which specifies measures to facilitate the provision of commercial television broadcasting services and datacasting services transmitted in digital mode in regional licence areas.

On 9 May 2000 the Government announced assistance of up to \$260 million over 13 years to licensees under the proposed Regional Equalisation Plan commencing in 2000-2001. The Government recognises that regional licensees face higher per capita conversion costs to digital compared to their metropolitan counterparts.

Assistance is being provided through the amendment of the Television Licence Fees Regulations 1990 to provide for a rebate of licence fees payable by regional licensees for the purpose of facilitating the conversion to transmission in digital mode. The licence fee rebate arrangements are to commence in the 2000-2001 fiscal year and only apply to regional commercial television licences in existence as at 9 May 2000.

Assistance for each regional licensee is to commence in the financial year in which the licensee commences digital transmissions. This means that some regional licensees will be eligible to claim the rebate in advance of commencing their service in digital mode because licence fees are payable by 31 December in any year, and they may intend commencing their service in digital before 1 July in the following year.

The accompanying regulations require that regional licensees meet certain criteria before they are entitled to claim the rebate in a particular financial year. The regional licensee must have: commenced transmitting their service in digital mode in accordance with conditions set out in the Commercial Television Conversion scheme (CTC scheme); had an implementation plan approved by the ABA which would require them to commence broadcasting in digital mode in that financial year; or obtained approval by the ABA to commence transmitting their service in digital mode by a particular date in that financial year which is before the commencement of the simulcast period in which licensees must transmit in both digital and analog mode.

The maximum amount of the rebate to be claimed by each regional licensee is set out in the Schedule to the regulations and varies according to the estimated cost of conversion for each regional licensee. Where a regional licensee holds more than one licence in a particular area or where a number of regional licensees are controlled (within the meaning of Schedule 1 to the BSA) by the same person, the total rebate will be apportioned between the relevant licences.

The accompanying regulations provide that the rebate cannot exceed the amount of the licence fee in the relevant financial year, and any excess entitlement can be carried forward to the next financial year. A regional licensee is not entitled to any rebate after 31 December 2012. A change in licensee does not change the entitlement under the rebate scheme.

The accompanying regulations allow the ABA to suspend an entitlement to a rebate where a regional licensee does not start to transmit a digital service on the date determined or approved by the ABA. An application may be made to the Administrative Appeals Tribunal for review of a decision to suspend an entitlement.

In addition to establishing a rebate scheme for regional licensees to assist with the costs of conversion to transmission in digital mode, the accompanying regulations amend the rebate scheme currently in the Television Licence Fees Regulations 1990 which relates to the aggregation of licence areas. The regulations now permit a claimant under that scheme to use any unused credit amount as a rebate against licence fees in respect of any other licence held by the licensee in the same service or licence area. The regulations require that a licensee use any unused credit amounts before seeking a rebate under the new digital conversion rebate scheme.

Details of the regulations are set out in the Attachment.

The regulations commenced on gazettal.

ATTACHMENT

DETAILS OF THE REGULATIONS

Regulation 1 - Name of regulations

Regulation 1 provides that the name of the accompanying regulations is the *Television Licence Fees Amendment Regulations 2000 (No. 1)*.

Regulation 2 -Commencement

Regulation 2 provides that the accompanying regulations commence on gazettal.

Regulation 3 - Amendment of Television Licence Fee Regulations

Regulation 3 provides that Schedule 1 to the regulations amends the Television Licence Fees Regulations.

Schedule 1

Item 1

Item 1 updates the form of naming the regulations in regulation 1 to become the *Television Licence Fees Regulations 1990* in accordance with current practice.

Item 2

Item 2 inserts a commentary after subregulation 2(1) that examples in the regulations are provided to show how the substantive provisions are intended to operate, but they do not override those provisions.

Item 3

Item 3 inserts a new heading after regulation 2, "Part 2 Rebate schemes A and B", which establishes a separate Part in the regulations for the existing rebate scheme in the regulations from the rebate scheme in the accompanying regulations.

Item 4

Item 4 substitutes the reference to "These regulations make" with a reference to "This Part makes" in subregulation 2A(1).

Item 5

Item 5 omits subregulation 2A(4) which contained a commentary about the status of examples in the regulations as item 2 of the accompanying regulations will address the same issue.

Item 6

Item 6 omits the notes after examples 1, 2 and 3 in subregulation 6(6) which referred to a definition which has since been repealed.

Item 7

Item 7 inserts regulations (regulations 11 to 19) after existing regulation 10.

Regulation 11 - Acceleration of rebates through unused credit amounts

Regulation 11 allows licensees currently claiming licence fee rebates under Rebate schemes A and B to use an unused credit amount as a rebate against fees for any other licence that is held by the licensee in the same service area.

The Television Licence Fee Regulations 1990 currently provide for rebates for the whole or part of the television licence fees. In circumstances where the rebate entitlement exceeds the annual television licence fee, the unused credit relating to the licence can be offset against future licence fees. The regulation allows any rebate entitlement or 'unused credit amount' to be applied to the licence fee for another licence held by the licensee at the same time in the same area.

Part 3 Digital conversion rebate scheme

Regulation 12 - Purpose

Regulation 12 provides that Part 3 of the regulations establishes a rebate scheme to assist commercial television broadcasting licensees in regional areas (excluding remote licence areas and the remote parts of remote and regional licence areas) to convert their services from analog to digital mode.

Regulation 13 - Definitions

Regulation 13 sets out key definitions for the purposes of Part 3 (Digital, conversion rebate scheme) of the Television Licence Fees Amendment Regulations 2000 (No. 1).

Regulation 14 - When regional licensee becomes entitled to claim rebate

Regulation 14 sets out the criteria to be met before a regional licensee is entitled to claim a rebate under the scheme.

Subregulation 14(1) provides that a regional licensee is entitled to claim a rebate under the scheme in a financial year if the licensee commences transmitting their service in digital mode, in accordance with the Commercial Television Conversion scheme on a date between 1 July and 31 December (inclusive) in that financial year.

Subregulation 14(2) provides that a regional licensee is entitled to claim a rebate under the scheme in a financial year if the licensee has an implementation plan approved by the ABA to allow the licensee to commence broadcasting their service in digital mode on a date between 1 January and 30 June (inclusive) in that financial year.

Subregulation 14(3) provides that a regional licensee is entitled to claim a rebate under the scheme in a financial year if they have obtained approval from the ABA to commence broadcasting their service in digital mode by a particular date, before the start of the simulcast period for the regional licence area as provided for under Division 11 of Part A of the Commercial Television Conversion scheme. The approval must be in force and authorise transmission in that financial year.

Regulation 15 -Amount of rebate and carry forward

Subregulation 15(1) provides that the amount of rebate each regional licensee is entitled to claim under the scheme is set out in Schedule 1.

Subregulation 15(2) provides that a regional licensee cannot claim as a rebate an amount in excess of their annual licence fees payable on 31 December in the financial year but they may carry-over any excess rebate amount to future financial years.

Subregulation 15(3) provides that a regional licensee is not entitled to a rebate under the scheme after 31 December 2012.

Regulation 16 - Effect of change of licensee

Subregulation 16(1) provides that the rebate set out in Schedule 1 continues to apply on the same basis where there is a change of licensee.

Subregulation 16(2) provides that where a rebate is subject to the apportionment provisions under regulations 17 or 18, the rebate will continue to be apportioned between the same licences regardless of the licensees.

Regulation 17 - Amount of rebate - apportionment for certain licences in regional Victoria

Regulation 17 provides that in regional Victoria, where one person holds two licences, the rebate and total entitlement must be apportioned between the two licences on the basis of the annual gross earnings of each licence for the most recent financial period.

Regulation 18 - Amount of rebate - apportionment for certain licences in Western Australia

Regulation 18 provides that in regional Western Australia where three licences are held by three licensees that are controlled by the same person (within the meaning of Schedule 1 to the Broadcasting Services Act 1992), each of the three licensees is entitled to a portion of the rebate apportioned between the three licences on the basis of their gross earnings for the most recent financial period.

Regulation 19 - Suspension of rebate

Regulation 19 provides that where a licensee is entitled to a rebate but does not start to transmit a digital service on the date determined or approved by the ABA, the ABA may suspend the entitlement of a licensee to the rebate for a financial year. In deciding whether to suspend a rebate, the ABA must consider the reasons provided by the licensee and any other matters that the ABA considers relevant. A decision to suspend a rebate may be reviewed by the Administrative Appeals Tribunal.

Schedule 1 - Digital conversion rebates

Schedule 1 provides for the amount of rebate entitlement per licensee.

Licensees in Northern NSW, Southern NSW, Regional Victoria and Regional Queensland are entitled to claim up to \$1.70 million per annum per licensee up to a total entitlement of \$13.60 million per licensee. In Regional Victoria, where two of the licences are held by the same person, the maximum rebate entitlement per financial year and total rebate entitlement this licensee is entitled to must be apportioned between the two licences on the basis of the annual gross earnings of each licence (in accordance with regulation 16).

Licensees in Mildura/Sunraysia, Tasmania, Darwin and the Griffith and Murrumbidgee Irrigation Area are entitled to claim their annual rebate entitlement each year up to their total rebate entitlement, with the value of the rebate differing between licence areas as set out in Schedule 1. In regional Western Australia where three of the licences are held by three licensees that are controlled by the same person, the maximum rebate entitlement per financial year and the total rebate entitlement must be apportioned between the three licences on the basis of the annual gross earnings of each licence.

Licensees in Mt Gambier/South East, Riverland, Broken Hill and Spencer Gulf will be eligible to claim the annual licence fee rebate up to their respective total rebate entitlements as set out in column 6 in Schedule 1.

REGULATION IMPACT STATEMENT

A. BACKGROUND

1. The Government is committed to ensuring that Australians living in regional and remote areas share the benefits of digital broadcasting. Digital television will allow the broadcast of widescreen, cinema quality programs with CD quality surround sound. Digital broadcasting will also allow the development of new kinds of electronic information services such as datacasting.
2. The *Broadcasting Services Act 1992 (BSA)* requires the Minister for Communications, Information Technology and the Arts to formulate a Regional Equalisation Plan to provide assistance to regional and remote commercial television broadcasters (RBs) in order to facilitate the roll-out of digital commercial television broadcasting and datacasting services in those areas.
3. The BSA requires each holder of a regional commercial television licence (other than in remote areas) to commence transmitting their digital service by a date between 1 January 2001 and 1 January 2004 under the Commercial Television Conversion Scheme. The Act provides for a simulcast period (during which the same service is to be transmitted in both analog and digital mode) of at least 8 years. As soon as practicable after the commencement date, digital services are required to reach the same level of coverage and potential reception quality as the analog services they replace. To achieve this, digital services may be rolled out progressively within the licence area over a number of years from the commencement date.

B. PROBLEM IDENTIFICATION

4. It is recognised that RBs will face relatively higher digital conversion costs than their metropolitan counterparts, as they have smaller and more scattered audiences and require more transmitters per capita. In Queensland for example, while each commercial broadcaster in metropolitan areas will install an average of 5 transmitters, a RB will install an average of 68 transmitters.
5. RBs are classified as:
 - (a) aggregated markets, four markets each with three commercial broadcasters; Northern NSW, Southern NSW, regional Victoria (one of the three services is provided under two broadcasting licences Eastern Victoria and Western Victoria) and regional Queensland (total 12 broadcasters);
 - (b) two-service markets, five markets each with two commercial services: Tasmania, Mildura/Sunraysia, Griffith and Murray Irrigation Area (MIA), Darwin and regional WA (South West and Great Southern, Geraldton, and Kalgoorlie are treated as one broadcaster; and Remote and Regional WA) (total 10 broadcasters);
 - (c) solus markets ' four markets each with one commercial service: Mt Gambier/South East, Riverland, Broken Hill and Spencer Gulf (total 4 broadcasters); and
 - (d) the remote satellite-delivered markets comprising Remote Central and Eastern Australia (including Mt Isa), Western Zone, and Remote and Regional Western Australia (total 5 broadcasters).
6. RBs have lower levels of profitability than their metropolitan counterparts, and relatively higher conversion costs. In 1997-98, the 15 metropolitan commercial television licensees in the five mainland capital cities dominated financial performance in the commercial television sector. Metropolitan broadcasters earned 79 per cent of industry revenue and 76 per cent of industry

profit. RBs, while serving 35 per cent of the population, earned 21 per cent of revenue and 24 per cent of profit. Profitability levels limit the RBs' capacity to meet conversion costs in a timeframe likely to be acceptable to regional viewers.

7. Based on the independent analysis, the estimated conversion cost for all RBs is \$518.8 million, comprising \$247 million in capital costs and \$272 million in operating costs (over an 8 year simulcast period).

8. RBs in aggregated markets have requested assistance by way of licence fee rebates at a level of 65 per cent of their total costs (estimated by the RBs at \$312 million over nine years).

C. POLICY OBJECTIVES

9. The Government's key objectives are:

- * to assist the RBs in the transition to digital as appropriate to ensure that viewers in regional and remote Australia share in the benefits of digital television;
- * to maximise the diversity in choice in television services provided in regional areas and to ensure a similar range of entertainment and information services as are available in metropolitan licence areas;
- * to ensure that assistance is provided on an equitable basis; and
- * to ensure that assistance is provided in a way which is consistent with the Government's broader budgetary objectives.

D. IDENTIFICATION OF OPTIONS

Option 1: Commonwealth assistance of 65 per cent of digital conversion costs to be provided without offsets, at a cost to the Budget of \$312 million over 9 years;

Option 2: No Commonwealth assistance - RBs to pay the full costs of conversion to digital;

Option 3: Commonwealth assistance of 50 per cent of digital conversion costs to be provided without offsets, at a cost to the Budget of \$260 million over 13 years; or

Option 4: Commonwealth assistance to be fully offset by an equivalent increase in licence fees for the metropolitan commercial television broadcasters and funding to be set at 25 per cent of digital conversion costs, with no net impact on the Budget.

10. Option 1 is the level of assistance that the RBs have asked the Government for, and is based on costs solely determined by the RBs. Meeting the majority of the RBs costs would appear unwarranted as broadcasters are likely to benefit in various ways from the introduction of digital television and datacasting.

11. Option 2 would not meet the Commonwealth's commitment in the Digital Conversion Act to provide assistance to the RBs toward the costs of digital conversion.

12. Option 3 is the preferred option. It is noted that there is scope to ameliorate this expenditure against future spectrum sales, in particular revenue expected to be raised from the sale of spectrum for datacasting services.

13. An assistance package for the RBs based on 50 per cent of estimated total digital transition costs would amount to \$260 million, excluding finance costs (over the proposed period of assistance this would represent assistance with a net present value of \$182 million). This amount is roughly equivalent to the RBs expected total capital costs over the simulcast period.

14. A Commonwealth contribution of 50 per cent to meeting these costs would allow for a more timely roll-out of digital television services in regional Australia. Profit figures for 1997-98 suggest that, on average, metropolitan operators could meet the total estimated costs of their digital conversion (capital and operating costs over the 8 year simulcast period) from profits in, on average, 1.75 years. However, it would take RBs, on average, 4.5 years to cover their total costs from profits. With the provision of Commonwealth assistance to meet 50 per cent of the RBs' total costs, the RBs would take on average 2.25 years (1.87 years in aggregated and major two-service markets and 4.8 years in other two-service, solus and remote markets) of profits to meet costs. This indicates that in, the absence of adequate Commonwealth assistance, the roll-out of digital broadcasting services in regional markets may fall behind, an outcome that is unlikely to be well received by regional viewers.

15. Option 4 is Budget neutral - recognising the significant assistance already provided to broadcasters with the free loan of the digital spectrum and the strong position the industry will be in with the introduction of the new technology - but allows relief to be directed at that part of the industry that is expected to have greater difficulty with meeting the costs of digital transition.

16. An assistance package for the RBs based on 25 per cent of estimated total digital transition costs would amount to \$130 million, or around half the RBs' capital costs.

17. Offsetting the cost of providing assistance to the RBs recognises the higher profitability and therefore increased capacity of metropolitan broadcasters to cross-subsidise RBs. Affiliation agreements exist between the metropolitan broadcasters and the RBs, where the RBs pay their network affiliate for programming they obtain from them. The RBs paid affiliation fees in the order of \$90 million in 1997-98. In light of these strong financial links, metropolitan broadcasters would be expected to benefit from the successful transition to digital in regional areas through higher revenues recouped from RBs.

18. Fees for the metropolitan broadcasters would increase by around 5.5 per cent per year during the transition period. The additional levy on metropolitan broadcasters would raise their licence fees as a proportion of profits from around 46 per cent currently to projections of around 53 per cent under Option 4 (and to around 55.5 per cent if assistance were provided at the 50 per cent level).

E. IMPACT ANALYSIS

19. Option 1 would have the following impacts:

* Budget: result in a reduction in revenue of \$312 million over the estimated nine year period 2000-01 to 2008-2009.

* **Metropolitan broadcasters:** no impact.

* RBs: assistance of \$312 million or 65 per cent of costs would assist the RBs in achieving a more timely roll-out of digital television services in regional Australia.

* **Regional viewers:** would experience a smooth transition from analog to digital television in the timeframe set by the Government, and enjoy more diversity in choice in television

services, including a similar range of entertainment and information services as are available in metropolitan licence areas.

20. Option 2 would have the following impacts:

- * **Budget:** no impact.
- * **Metropolitan broadcasters:** no impact.
- * **RBs:** would be disadvantaged in comparison to metropolitan broadcasters as a result of the relatively higher cost of digital conversion in less densely populated areas.
- * **Regional viewers:** would be disadvantaged if the comparatively higher costs of conversion for RBs results in a slower transition to digital broadcasting.

21. Option 3 would have the following impacts:

- * **Budget:** result in a reduction in revenue of \$260 million over the estimated thirteen year period 2000-01 to 2012-2013.
- * **Metropolitan broadcasters:** no impact.
- * **RBs:** assistance of \$260 million or 50 per cent of costs roughly equates to capital costs and would assist the RBs in achieving a more timely roll-out of digital television services in regional Australia.
- * **Regional viewers:** would experience a smooth transition from analog to digital television in the timeframe set by the Government, and enjoy more diversity in choice in television services, including a similar range of entertainment and information services as are available in metropolitan licence areas.

22. Option 4 would have the following impacts:

- * **Budget:** Budget neutral, in recognition of the acute pressures on the Budget in 2000-01.
- * **Metropolitan broadcasters:** directly increase licence fees by approximately 5.5 per cent during the transition period. It is not expected that the increase in licence fees would impose any increased administrative burden as it is an increase in an existing fee.
- * **RBs:** a rebate set at 25 per cent of estimated conversion costs would provide a subsidy amounting to \$130 million, or around half the RBs' capital costs.
- * **Regional viewers:** would experience a smooth transition from analog to digital television in the timeframe set by the Government. However, the RBs could choose to extend the transition period in the light of the greater cost burden they would be expected to bear.

F. CONSULTATION

23. Independent consultants McKerlic Consulting and Ament Broadcasting Consulting Pty Ltd analysed the RBs' digital transition costs with extensive consultation with the RBs.

24. As is common practice with Budget measures, RBs were not consulted on the proposed measure prior to its announcement.

G. CONCLUSION AND RECOMMENDED OPTION

25. Option 3 is the preferred option in facilitating the more timely roll-out of digital television services in regional Australia. It recognises the additional costs which RBs will incur, as well as the likelihood that broadcasters will benefit in other ways from the introduction of digital and datacasting services. Option 3 shares the burden of digital conversion equally between the Government and the RBs.

H. IMPLEMENTATION AND REVIEW

26. Assistance will be provided to RBs in aggregated and two-service markets in the form of licence fee rebates - to be implemented by regulation and administered by the Australian Broadcasting Authority (ABA). Amendments to the Television Licence Fees Regulations are proposed. Assistance will be provided to RBs in solus markets in the form of licence fee rebates and grants made through Appropriations legislation. Arrangements for providing assistance to RBs in remote areas will be finalised once the ABA has completed a digital conversion scheme for remote licence areas.