

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 141

Issued by the Authority of the Minister for Broadband, Communications
and the Digital Economy

Television Licence Fees Act 1964

Television Licence Fees Amendment Regulations 2010 (No. 1)

The *Television Licence Fees Act 1964* (the Act) requires commercial television broadcasting licensees to pay licence fees in relation to their gross earnings from the televising of advertisements or other matter by the services provided under their licences.

Section 8 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed in carrying out or giving effect to the Act.

Subsection 5(2) of the Act provides that the regulations may make provisions for rebates of fees payable by licensees.

Part 3 of the *Television Licence Fees Regulations 1990* (the Principal Regulations) already contains a rebate scheme for regional and remote commercial television broadcasting licensees (the ‘digital conversion rebate scheme’), which assists these licensees with the conversion of their commercial television broadcasting services from analog to digital. The Principal Regulations stipulate the amount of licence fees rebates that may be claimed annually by each licensee in specific licence areas over a particular period of time. The assistance provided through the licence fees rebates is supplemented by grants in a small number of cases where the rebate is less than the agreed level of assistance.

On 7 February 2010, the Minister for Broadband, Communications and the Digital Economy (the Minister) announced that television licence fees rebates of 33 per cent for the 2010 calendar year and 50 per cent for the 2011 calendar year would be provided to commercial television broadcasting licensees. These rebates are designed to protect Australian content on commercial free-to-air television as well as recognise the commercial challenges facing the sector, including the switch to digital television.

The purpose of the Regulations is to amend the Principal Regulations to introduce a new Part 4 into the Principal Regulations, which would set out a rebate scheme to implement rebates consistently with the Minister’s announcement of 7 February 2010.

Specifically, new Part 4:

- sets out which licensees will be eligible to claim the rebates;
- specifies the ‘accounting periods’ to which the rebate scheme in Part 4 applies to. These are: the accounting period ending on a day in 2010, the accounting period ending on a day in 2011 and the accounting period ending on a day in

2012. These would in effect include the 2009-2010, 2010-2011 and 2011-2012 financial years or such other corresponding 12-month accounting periods adopted by licensees;

- specifies that to be able to claim the rebate in the accounting periods ending on a day in 2011 and 2012, licensees must have complied with the requirements of the *Broadcasting Services (Australian Content) Standard 2005* for the 2010 and 2011 calendar years respectively;
- specifies the amount of the rebate for each relevant accounting period (the amount being a percentage of licence fees payable for the applicable accounting period) and the deadline for claiming the rebate. In the event an eligible licensee claims a digital conversion scheme under Part 3, the eligible licensee must deduct the amount of the digital conversion scheme before calculating the amount of the rebate under new Part 4; and
- provides that a change to the holder of a licence does not affect the entitlement of an eligible licensee to claim the licence fee rebate.

Regulation Impact Statement

A Regulation Impact Statement is not required for the Regulations on the basis that a preliminary assessment revealed that the proposal would be likely to have no or low impact on businesses, individuals or the economy.

Consultation

The Regulations were prepared in consultation with the Australian Communications and Media Authority and eligible licensees.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

ATTACHMENT**Details of the Television Licence Fees Amendment Regulations 2010 (No. 1)****Regulation 1 – Name of Regulations**

Regulation 1 provides that the title of the Regulations is the *Television Licence Fees Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 sets out the date on which the Regulations commence. It provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Television Licence Fees Regulations 1990*

Regulation 3 provides that Schedule 1 amends the *Television Licence Fees Regulations 1990* (the Principal Regulations).

Schedule 1 – Amendment**Item 1 – After Part 3, Part 4 – Licence fee rebate scheme**

Item 1 of Schedule 1 to the Regulations inserts a new Part 4 after Part 3 of the Principal Regulations. New Part 4, which includes new regulations 20 to 25, sets out a television licence fee rebate scheme for certain commercial television broadcasting licensees.

Regulation 20 - Definitions

Regulation 20 sets out definitions of terms used in new Part 4 of the Principal Regulations.

The term ‘accounting period’ for a ‘licensee’ means:

- (a) a financial year; or
- (b) a 12-month period adopted by a licensee under subsection 205B(2) of the *Broadcasting Services Act 1992* (the BSA).

This reflects the fact that, under the BSA and the *Television Licence Fees Act 1964* (the Act), the default position is for both account keeping and television licence fees administration to occur on a financial year basis. However, both the BSA and the Act include provisions for licensees that may adopt a different accounting period (see section 205B of the BSA and section 6 of the Act).

The term ‘Australian Content Standard’ means the *Broadcasting Services (Australian Content) Standard 2005*.

The term ‘commercial television broadcasting licence’ is defined by reference to section 6 of the BSA.

The term ‘digital conversion rebate’ means a rebate under Part 3 of the Principal Regulations. This rebate assists regional and remote commercial television broadcasting licensees to convert their commercial television broadcasting services from analog to digital. The rebate scheme in Part 3 of the Principal Regulations implements one of the components of the Regional Equalisation Plan (REP), which was made by the Minister pursuant to subclause 64(1) of Schedule 4 to the BSA.

The term ‘eligible licensee’ means a licensee who holds a commercial television broadcasting licence:

- (a) allocated under section 36, section 38A or section 38B of the BSA and in force before the end of 7 February 2010; or
- (b) allocated under section 38B of the BSA and in force during the period starting on 7 February 2010 and ending at the end of 31 December 2010.

The intention is to make the rebates available to particular licensees whose licences were in force at the time of the Minister’s announcement and to any licences that may be allocated under section 38B of the BSA in the period between the Minister’s announcement and 31 December 2010.

Section 36 of the BSA makes provision for the allocation of licences for commercial television broadcasting services that use the broadcasting services bands (BSB). This is ordinarily by way of a price-based system to be determined in writing by the Australian Communications and Media Authority (ACMA) in accordance with that section. Commercial television licences in force prior to the commencement of the BSA are deemed to have been allocated under Part 4 of the BSA. For a BSB licence this refers to section 36 of the BSA (see section 5 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*).

Section 38A relevantly provides for the allocation of an additional commercial television broadcasting licence to an existing commercial television broadcasting licensee in markets where there is only one commercial television service. Five licences have been allocated under section 38A by the ACMA.

Section 38B operates in the context of two station commercial television markets and it enables the allocation of a third commercial television broadcasting licence. The third licence may be allocated to either one of the incumbent licensees or a joint venture company jointly owned by both incumbents. Nine licences have been allocated under section 38B by the ACMA.

The term ‘licensee’ means a holder of a ‘commercial television broadcasting licence’ allocated under the BSA.

Regulation 21 – Application of scheme

Regulation 21 provides that the rebate scheme in new Part 4 of the Principal Regulations applies to eligible licensees in relation to the following accounting periods:

- (a) the accounting period ending on a day in 2010; and
- (b) the accounting period ending on a day in 2011; and
- (c) the accounting period ending on a day in 2012.

That is, eligible licensees will be able to claim a rebate under new Part 4 only in relation to fees payable for the accounting period specified in Regulation 21.

Regulation 22 – Compliance with content standard requirements

Subregulations 22(1) and 22(2) set out further requirements that an eligible licensee will be required to satisfy to be able to claim the rebate under new Part 4. These relate to compliance with the *Broadcasting Services (Australian Content) Standard 2005* (Australian Content Standard), which is made by the ACMA under section 122 of the BSA.

The Australian Content Standard sets out rules relating to minimum levels of Australian content to be broadcast by commercial television broadcasting licensees in any year. Specifically, the Australian Content Standard:

- sets minimum levels of Australian programming to be broadcast by commercial television broadcasting licensees;
- requires minimum amounts of first release Australian drama programs, documentary programs and children's programs (including children's drama, but excluding preschool programs) to be broadcast by commercial television broadcasting licensees; and
- requires preschool programs broadcast by commercial television broadcasting licensees to be Australian programs.

Subregulation 22(1) provides that to be eligible to claim the rebate for the accounting period mentioned in paragraph 21(b) (that is, for the accounting period ending on a day in 2011), eligible licensees must have complied with the Australian Content Standard for the calendar year 2010. Subregulation 22(2) provides that to be eligible to claim the rebate for the accounting period mentioned in paragraph 21(c) (that is, for the accounting period ending on a day in 2012), eligible licensees must have complied with the Australian Content Standard for the calendar year 2011.

Linking eligibility for the new licence fee rebates to compliance with the Australian Content Standard in the 2010 and 2011 calendar years is consistent with the time period set out in Minister's announcement of 7 February 2010.

Regulation 23 – How to claim rebate

Regulation 23 sets out how an eligible licensee can claim a rebate under new Part 4 and the amount of the rebate for each of the applicable accounting periods.

Subregulation 23(1) provides that to claim a licence fee rebate, an eligible licensee may deduct the amount of the rebate from the fees payable for the applicable accounting period (as set out in regulation 21) and calculated on the basis of the formulae mentioned in subsection 6(2A) and section 6A of the Act.

Subregulation 23(2) sets out the amount of the licence fee rebate for each applicable accounting period and the deadline for claiming the rebate for each of those periods. These are:

- 16.5 per cent for the accounting period ending on a day in 2010, to be claimed by 31 December 2010;
- 41.5 per cent for the for the accounting period ending on a day in 2011, to be claimed by 31 December 2011; and
- 25 per cent for the accounting period ending on a day in 2012, to be claimed by 31 December 2012.

This approach was adopted as licence fees are currently calculated and paid on financial year basis, with limited exception. It would provide for rebates that are equivalent to 33 per cent of licence fees payable for the 2010 calendar year and 50 per cent of licence fees payable for the 2011 calendar year as announced by the Minister on 7 February 2010.

Subregulation 23(3) makes it clear that a licence fee rebate for an accounting period cannot be carried over to any subsequent accounting period.

Regulation 24 – Eligible licensees who claim digital conversion rebate

Regulation 24 explains how a rebate under new Part 4 is to be claimed by an eligible licensee if the licensee is also eligible for a digital conversion rebate under Part 3 of the Principal Regulations.

Subregulation 24(1) provides that, if an eligible licensee claims a digital conversion rebate for any of the accounting periods to which the licence fees rebate under new Part 4 applies, the eligible licensee must deduct the amount of the digital conversion rebate before calculating the amount of the licence fee rebate under new Part 4. That is, the amount of the licence fee to which a percentage in subregulation 23(2) is applied is worked out by deducting the amount of the digital conversion rebate from the amount of the licence fees payable by an eligible licensee.

Subregulation 24(2) provides that if a digital conversion rebate is greater or equal to a licensee's licence fees for an accounting period, the eligible licensee may not claim the licence fee rebate under new Part 4 for that accounting period.

Regulation 25 – Effect of change of licensee

Regulation 25 provides that the licence fee rebate that may be claimed under new Part 4 of the Principal Regulations remains the same despite a change in the eligible licensee. This is to ensure that a new holder of a licence to which the rebate scheme in new Part 4 of the Principal Regulations applies is eligible to claim the rebate.