

## **Explanatory Statement**

Issued by the Minister for Communications

*Commercial Broadcasting (Tax) Act 2017*

### ***Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024***

#### **Authority**

The *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024* (CBT Rebate Rules 2024) are made under section 14 of the *Commercial Broadcasting (Tax) Act 2017* (CBT Act).

#### **Purpose and operation**

The purpose of the CBT Rebate Rules 2024 is to provide rebates to eligible commercial radio and television broadcasters of tax imposed under the CBT Act. The effect of the rebates is to reduce the amount of Commercial Broadcasting Tax (CBT) that eligible broadcasters are liable to pay under the CBT Act. The CBT Act imposes a tax on commercial radio and television broadcasters for their use of the radiofrequency spectrum as it is a finite and valuable public resource.

The CBT Rebate Rules 2024 extend the rebates provided under the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022* (CBT Rebate Rules 2022) for a further four years from 2024-2025 with a one-off 12.5 per cent increase to the rebates. The broadcasters eligible to receive rebates under the CBT Rebate Rules 2024 are the same broadcasters that were eligible to receive rebates under the CBT Rebate Rules 2022. The eligible broadcasters are 19 regional broadcasters. The four-year extension of the rebates will provide certainty to broadcasters while the Australian Government considers the future of the CBT and the rebates in the context of the Government's media reform program. The one-off 12.5 per cent increase to the rebates will provide relief from the compound effect of Consumer Price Index (CPI) increases on the CBT liabilities of broadcasters in the 2022-2023 and 2023-2024 financial years.

The CBT Rebate Rules 2024 specify the companies that are entitled to a rebate and the amount of the rebate entitlement in each of four defined periods. The rebate is applied as an offset against the transmitter licence tax imposed under the CBT Act. If a company holds more than one transmitter licence, the rebate will be provided on the earliest transmitter licence tax imposed in the period. Should the amount of the first transmitter licence tax imposed be lower than the full rebate amount, the remainder of the rebate will carry onto the second transmitter licence tax imposed and so on onto any subsequent transmitter licence tax imposed until the full amount of the rebate is reached for the period. The CBT Rebate Rules 2024 also repeal the CBT Rebate Rules 2022.

## Background

As part of the 2017 Broadcast and Content Reform Package, the Australian Government abolished broadcasting licence fees and datacasting charges paid by commercial broadcasters and introduced a price in the form of a tax, known as the Commercial Broadcasting Tax, for the radiofrequency spectrum used by commercial broadcasters.

The 2017 Broadcasting and Content Reform Package included transitional support payments for those commercial broadcasters that would have been made worse off under the new CBT arrangements, for a period of five financial years from 2017-2018. The purpose of the transitional support payments was to allow these commercial broadcasters time to adjust to the new taxation arrangements and provide certainty for the commercial radio and television broadcasting industry while reforms to the *Radiocommunications Act 1992* (including transmitter licensing for commercial broadcasting) were completed. The transitional support payments were set out in the *Broadcasting Legislation (Broadcasting Reform) Act 2017* and were completed in financial year 2021-2022.

On 5 February 2022, the then-Minister for Communications, Urban Infrastructure, Cities and the Arts made the CBT Rebate Rules 2022. The CBT Rebate Rules 2022 provided rebates for two financial years from 2022-2023 to companies that were previously eligible to receive the former transitional support payments. The rebate amounts were fixed at the same amounts that each eligible company previously received as transitional support payments. The rebates were provided for two financial years while broader media reforms and the recommendations of a statutory review of the CBT Act by the Australian Communications and Media Authority (ACMA) were considered by the Australian Government.

## Summary of the CBT Rebate Rules 2024

The CBT Rebate Rules 2024 comprise the following provisions:

- The name of the instrument (section 1).
- Commencement of the instrument (section 2).
- Authority to make the instrument (section 3).
- Definitions used in the instrument (section 4).
- Repeal of the CBT Rebate Rules 2022 (section 5 and Schedule 1).
- Establishment of the entitlement to a rebate and how the rebate will apply to transmitter licence tax imposed under the CBT Act (section 6).
- The companies eligible to receive a rebate and the rebate amounts (section 7).

The CBT Rebate Rules 2024 are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to the default sunseting requirements and disallowance. Sections 1 to 7 of the CBT Rebate Rules 2024 commence the day after the rules are registered, and Schedule 1 commences immediately after 1 June 2024.

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

## **Consultation**

The CBT Rebate Rules 2024 have been developed taking into account representations made by the commercial broadcasting industry calling for the continuation of transitional support payments for regional broadcasters and a rebate of the CPI component of the CBT. In addition, the ACMA, which administers the CBT, was consulted in the development of the CBT Rebate Rules 2024.

The Office of Impact Analysis (OIA) has advised that while the proposal is regulatory in nature, the change to the rebate is minor and machinery in nature and therefore preparation of an Impact Analysis is not required (OIA reference number: OIA23-05573).

## **Statement of compatibility with human rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

**Details of the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024***

Section 1 – Name

This section provides that the name of the instrument is the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024*.

Section 2 – Commencement

This section provides that sections 1 to 7 commence the day after the instrument is registered on the Federal Register of Legislation, and Schedule 1 commences immediately after 1 June 2024. Schedule 1 commences immediately after 1 June 2024 because the rebates provided for under *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022* (CBT Rebate Rules 2022) end on 1 June 2024.

Section 3 – Authority

This section provides that the instrument is made under section 14 of the *Commercial Broadcasting (Tax) Act 2017* (CBT Act).

Section 4 – Definitions

This section sets out a number of definitions for the purposes of the instrument. This section also notes that some terms, such as ‘associated with a commercial broadcasting licence’ and ‘tax’, are defined in the CBT Act.

The term ‘Act’ is defined to mean the *Commercial Broadcasting (Tax) Act 2017*.

The term ‘rebate period 1’ is defined to mean the period beginning at the start of 9 June 2024 and ending on 8 June 2025.

The term ‘rebate period 2’ is defined to mean the period beginning at the start of 9 June 2025 and ending on 8 June 2026.

The term ‘rebate period 3’ is defined to mean the period beginning at the start of 9 June 2026 and ending on 8 June 2027.

The term ‘rebate period 4’ is defined to mean the period beginning at the start of 9 June 2027 and ending on 8 June 2028.

The commencement dates for the rebate periods have been chosen so that those companies with transmitter licence tax due close to the end of the financial year will receive the benefit of the rebate early in the following financial year. This avoids the scenario where some

companies would not receive the benefit of a rebate until a later financial year which could occur if the rebate periods were aligned to financial years.

Certain companies that will receive a rebate on a transmitter licence tax imposed on dates occurring between 9 June and 30 June are likely to pay their transmitter licence tax in the following financial year, due to the effect of section 205AC of the *Broadcasting Services Act 1992*, which provides that commercial broadcasting tax becomes due and payable on the 28<sup>th</sup> day after the Australian Communications and Media Authority (ACMA) gives the assessment to the company. Regardless of the date when transmitter licence tax is imposed, all companies will only be entitled to the rebate amount specified in column 3 of the table in section 7 in each of the four rebate periods.

The term ‘transmitter licence’ is defined to mean a transmitter licence associated with a commercial broadcasting licence.

The term ‘transmitter licence tax’ is defined to mean tax imposed each financial year under section 6 of the CBT Act and calculated in accordance with section 7 of the CBT Act.

#### Section 5 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

#### Section 6 – Rebate of transmitter licence tax

This section establishes the entitlement to a rebate and how the rebate will apply to transmitter licence tax imposed under the CBT Act.

Subsection 6(1) provides that for the purpose of section 14 of the CBT Act, the companies specified in an item in column 2 of the table in section 7 are entitled to a rebate of the amount specified for the item in column 3 of transmitter licence tax imposed during each of rebate period 1, rebate period 2, rebate period 3, and rebate period 4.

Subsection 6(2) provides that a rebate under subsection 6(1) is applied as an offset against transmitter licence tax imposed.

Subsection 6(3) provides that a rebate under subsection 6(1) is applied:

- (a) if the company holds only one transmitter licence – at the time that transmitter licence tax is imposed during each of rebate period 1, rebate period 2, rebate period 3, and rebate period 4; or
- (b) if the company holds more than one transmitter licence:

- (i) at the time of the first imposition of transmitter licence tax on the transmitter licence tax imposed during each of the four rebate periods; and
- (ii) only to the extent the amount of the rebate is equal to or less than the transmitter licence tax imposed; and
- (iii) if due to subparagraph (ii) rebate remains to be applied – on each subsequent occasion that tax is imposed on the other transmitter licences held by the company within each of rebate period 1, rebate period 2, rebate period 3, and rebate period 4, until the rebate amount in column 3 of the table in section 7 in respect of the company is reached for that period.

Examples are provided to clarify how the arrangements in section 6 will operate.

Rebates are to be applied by the ACMA as a deduction from the amount of transmitter licence tax assessed by the ACMA. At no time will a company receive more in rebates than it has paid in transmitter licence tax. As the rebates are applied as a deduction at the time the transmitter licence tax is assessed, a company will not be required to pay their transmitter licence tax until their full rebate has been applied.

#### Section 7 – Table

This section sets out a table listing each eligible company and the corresponding rebate amount. This is the table mentioned in subsection 6(1) which establishes the entitlement to a rebate amount.

The companies eligible for the rebate are listed under column 2 of the table. The companies are the same companies listed in the table at item 40 of schedule 6 of the *Broadcasting Legislation (Broadcasting Reform) Act 2017* and the table at section 7 of the CBT Rebate Rules 2022.

The amount of rebate in respect of which each eligible company is entitled is listed under column 3 of the table. The rebate amount in column 3 of the table is what is applied as an offset to the transmitter licence tax imposed on each company in each rebate period in accordance with section 6. The rebate amount in column 3 of the table is fixed for each rebate period and is not indexed according to any other value such as the Consumer Price Index (CPI).

Each rebate amount in column 3 is 12.5 per cent higher than the corresponding rebate amount in column 3 of the table in section 7 of the CBT Rebate Rules 2022. The 12.5 per cent increase recognises the compound effect of CPI increases on the CBT liabilities of broadcasters over the 2022-2023 and 2023-2024 financial years. The CPI increases applied to CBT were 5.1 per cent in the 2022-2023 financial year and 7.0 per cent in the 2023-2024 financial year.

## Schedule 1 – Repeals

Item 1 of the schedule repeals the CBT Rebate Rules 2022. The rebates provided by the CBT Rebate Rules 2022 applied from 9 June 2022 to 8 June 2023 and 9 June 2023 to 1 June 2024. As the CBT Rebate Rules 2022 do not provide for the application of any rebates after 1 June 2024, they have served the purpose for which they were made and can therefore be repealed. As the CBT Act contains no express authority permitting repeal of an instrument made under section 14 of the CBT Act, the instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* for its authority to repeal the CBT Rebate Rules 2022.

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024*

The *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024* (CBT Rebate Rules 2024) are compatible with the human rights and freedoms recognised in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the CBT Rebate Rules 2024

The CBT Rebate Rules 2024 provide rebates to eligible commercial radio and television broadcasters of tax imposed under the *Commercial Broadcasting (Tax) Act 2017* (CBT Act). The effect of the rebates is to reduce the amount of tax that eligible broadcasters are liable to pay under the CBT Act. The CBT Act imposes a tax on commercial radio and television broadcasters for their use of radiofrequency spectrum as it is a finite and valuable public resource.

The CBT Rebate Rules 2024 extend the rebates provided under the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022* (CBT Rebate Rules 2022) for a further four years from 2024-2025 with a one-off 12.5 per cent increase to the rebates. The broadcasters eligible to receive rebates under the CBT Rebate Rules 2024 are the same broadcasters that were eligible to receive rebates under the CBT Rebate Rules 2022. The eligible broadcasters are 19 regional broadcasters. The four-year extension of the rebates will provide certainty to broadcasters while the Australian Government considers the future of the CBT and the rebates in the context of the Government's media reform program. The one-off 12.5 per cent increase to the rebates will provide relief from the compound effect of Consumer Price Index (CPI) increases on the CBT liabilities of broadcasters in the 2022-2023 and 2023-2024 financial years.

#### Human rights implications

The CBT Rebate Rules 2024 engage the following rights:

- Freedom of opinion and expression (article 19 of the International Covenant on Civil and Political Rights).
- Right to enjoy and benefit from culture (article 15 of the International Covenant on Economic, Social and Cultural Rights).

The right of freedom of opinion includes the right to hold opinions without interference,<sup>1</sup> and the right of freedom of expression includes the right to seek, receive and impart information

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<sup>1</sup> Human Rights Committee, General Comment No 34: Freedoms of opinion and expression, 102<sup>nd</sup> session, UN Doc CCPR/C/GC/34 (12 September 2011), paragraph 9.



and ideas of all kinds,<sup>2</sup> and may include commercial advertising.<sup>3</sup> The concept of ‘culture’ for the purposes of the right to enjoy and benefit from culture, is a broad, inclusive concept encompassing all manifestations of human existence.<sup>4</sup>

Commercial radio and television broadcasting provides a diverse range of services including news, entertainment, education, and emergency communications, and develops and reflects a sense of Australian identity, character and cultural diversity. The CBT Rebate Rules 2024 will support eligible recipients to continue to provide commercial radio and television broadcasting services by reducing the amount of tax which the recipients are liable pay under the CBT Act for four years from 2024-2025. By supporting the continued provision of commercial radio and television broadcasting services, the CBT Rebate Rules 2024 will promote the right to freedom of opinion and expression, and the right to enjoy and benefit from culture.

The CBT Rebate Rules 2024 will not limit what broadcasting services eligible recipients may provide, and therefore will not limit the rights to freedom of opinion and expression, or the right to enjoy and benefit from culture.

## **Conclusion**

The CBT Rebate Rules 2024 are compatible with human rights because they promote the rights to freedom of opinion and expression and the right to enjoy and benefit from culture without limitation, and do not limit any other human rights.

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<sup>2</sup> Human Rights Committee, *General comment No 34: Freedoms of opinion and expression*, 102<sup>nd</sup> session, UN Doc CCPR/C/GC/34 (12 September 2011), paragraph 11.

<sup>3</sup> Human Rights Committee, *General comment No 34: Freedoms of opinion and expression*, 102<sup>nd</sup> session, UN Doc CCPR/C/GC/34 (12 September 2011), paragraph 11.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, *General comment No 21: Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights*, Forty-third session, UN Doc E/C.12/GC/21 (21 December 2009), paragraph 11.