

Explanatory Statement

Issued by the Authority of the Minister for Communications

Commercial Broadcasting (Tax) Act 2017

Commercial Broadcasting (Tax) Amendment (Transmitter Licence Tax Rebate) Rules 2025

Purpose

The Government announced in the *Mid-Year Economic and Fiscal Outlook 2024-25* that it will invest a further \$335.6 million to support public interest journalism and media diversity in Australia. The Government announced that this investment includes a one-year suspension, from 9 June 2025 to 8 June 2026, of the commercial broadcasting tax (CBT) to provide temporary relief to the commercial television and radio broadcasting sector. The purpose of the *Commercial Broadcasting (Tax) Amendment (Transmitter Licence Tax Rebate Rules) 2025* (Amendment Rules) is to implement the Government's decision to suspend the CBT for one-year, from 9 June 2025 to 8 June 2026.

The simplest and most effective way of implementing the one-year suspension of the CBT is by means of a 100 per cent rebate from 9 June 2025 to 8 June 2026 for all commercial television and radio broadcasters. The effect of the one-year 100 per cent rebate will be to reduce the CBT liabilities of all commercial television and radio broadcasters to zero. The Amendment Rules will amend the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024* (CBT Rebate Rules 2024) to provide for a one-year, 100 per cent rebate of CBT for all commercial television and radio broadcasters, to be applied as an offset against the transmitter licence tax imposed by the *Commercial Broadcasting (Tax) Act 2017* (CBT Act).

The CBT Rebate Rules 2024 currently entitle specified companies to specified amounts of rebates applied as an offset to transmitter licence tax imposed by the CBT Act. The amendments will ensure those companies will be entitled to the 100 per cent rebate for the period 9 June 2025 to 8 June 2026, however they will not also be entitled to the rebates that were originally specified for those companies in the same rebate period. The rebate entitlements specified for those companies for all other periods covered by the CBT Rebate Rules 2024 will remain unchanged. The Australian Communications and Media Authority (ACMA) will continue to administer all rebate entitlements, including the one-year 100 per cent rebate.

Background

As spectrum is a finite natural resource, it is the policy of the Government to charge for spectrum in order to encourage its efficient allocation and use. As such, the Government imposes the CBT on commercial television and radio broadcasters for their use of spectrum. The CBT is imposed annually on commercial television and radio broadcasters under the CBT Act. The CBT is imposed on each individual transmitter associated with a commercial television or radio broadcasting licence. The amount of CBT payable on each individual transmitter is based on the frequency band of the transmitter, the power of the transmitter, and the population density of the location of the transmitter. The higher the frequency band of the transmitter, the higher the power of the transmitter, or the higher the population density of

the transmitter, the more in CBT that a broadcaster is liable to pay. The amount of CBT payable on each individual transmitter is capped. CBT is adjusted annually for changes in the Consumer Price Index (CPI).

On introduction of the CBT, transitional support payments were made to some regional commercial broadcasters under the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017* for five years from 2017-18 to 2021-22 to allow these broadcasters to adjust to the CBT and ensure no broadcaster was worse off under the CBT. Transitional support for the same broadcasters was continued under the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2022* (CBT Rebate Rules 2022) for two years in 2022-23 and 2023-24 in the form of a rebate equivalent to the previous support payments applied as an offset to their CBT liabilities. The rebate for the same broadcasters was then extended for an additional four years, from 2024-25 to 2027-28, and increased by 12.5 per cent under the CBT Rebate Rules 2024. Subject to the amendments made by the Amendment Rules to the CBT Rebate Rules 2024, the extended and increased rebate will continue for the broadcasters originally entitled to transitional support.

Authority

Section 14 of the CBT Act provides that the Minister may, by legislative instrument, make rules that make provision for rebates of the whole or a part of an amount of tax payable by a person.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Reliance is also made on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA) for the making of the Amendment Rules. Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make any instrument of a legislative character (including rules), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend the instrument.

Summary of the Amendment Rules

Schedule 1 to the Amendment Rules contains amendments to the CBT Rebate Rules 2024. The amendments consist of:

- the insertion of new section 6A to establish the entitlement to the 100 per cent rebate for the period beginning 9 June 2025 and ending at the end of 8 June 2026 (defined as ‘rebate period 2’), and how the rebate will be applied (Item 1, Schedule 1);
- several changes to section 6, including the heading to section 6 and accompanying examples, as a consequence of the introduction of the new rebate provision at section 6A (Items 2 – 7, Schedule 1); and
- amendment of the heading to column 3 in the table in section 7, to clarify that the rebate amounts listed in the table only apply to period 1, rebate period 3, and rebate period 4 (Item 8, Schedule 1).

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to the default sunseting requirements and disallowance. The Amendment Rules commence the day after they are registered on the Federal Register of Legislation.

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

Consultation

As stated in the Purpose section to this Explanatory Statement, the Amendment Rules implement the Government's decision announced in *Mid-Year Economic and Fiscal Outlook 2024-25* to suspend the CBT for one year to provide temporary relief for commercial television and radio broadcasters, and the simplest and most effective way of implementing this decision is by means of a one year, 100 per cent rebate for all commercial television and radio broadcasters. There is precedent for the provision of CBT relief by means of a rebate applied as an offset to CBT liability under the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2020* (which provided temporary tax relief in light of the significant decline in advertising revenue as a result of the COVID-19 pandemic), the CBT Rebate Rules 2022, and the CBT Rebate Rules 2024. Noting that the Amendment Rules are implementing a MYEFO decision, and in light of the precedent for providing rebates to provide CBT relief, no consultation with commercial television and radio broadcasters on the Amendment Rules was considered necessary.

The ACMA, as administrator of the CBT and CBT rebates, was consulted in the development of the Amendment Rules.

The Office of Impact Analysis (OIA) has determined that an Impact Analysis is not required given the proposal consists of a tax relief/revenue decision for Government and is out of scope under the Australian Government Guide to Policy Impact Analysis (OIA reference: OIA24-08624).

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) Amendment (Transmitter Licence Tax Rebate) Rules 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Commercial Broadcasting (Tax) Amendment (Transmitter Licence Tax Rebate) Rules 2025* (Amendment Rules).

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered on the Federal Register of Legislation.

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 – Schedules

This section has the effect that the *Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2024* (CBT Rebate Rules 2024) are amended by the terms specified in Schedule 1 to the Amendment Rules.

Schedule 1 – Amendments

Schedule 1 makes amendments to the CBT Rebate Rules 2024. The purpose of the amendments is to insert new rules for a 100 per cent rebate which apply only to rebate period 2, and to limit the existing partial rebate rules under section 6 to rebate period 1, rebate period 3, and rebate period 4.

Item 1 – At the end of Section 5

This item inserts new section 6A to establish the entitlement of commercial television and radio broadcasters to a 100 per cent rebate for rebate period 2 and how the rebate will be applied.

New subsection 6A(1) provides that, for the purpose of section 14 of the CBT Act, a person, (including a company specified in an item in column 2 of the table in section 7), is entitled to a rebate of 100 per cent of the amount of any transmitter licence tax imposed during rebate period 2. Under section 14 of the CBT Act, the Minister may, by legislative instrument, make rules that make provision for rebates for the whole or a part of an amount of tax imposed by the CBT Act payable by a person. The term ‘transmitter licence tax’ is defined in section 4 of the CBT Rebate Rules 2024 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.

Rebate period 2 is defined in existing section 4 of the CBT Rebate Rules 2024 to mean ‘the period beginning at the start of 9 June 2025 and ending on 8 June 2026’, and will not be amended as it aligns with the Government’s decision to suspend the CBT from 9 June 2025 to 8 June 2026 and ensures continuity with the end date of rebate period 1 and the beginning date of rebate period 3.

The reference in new subsection 6A(1) to ‘a company specified in an item in column 2 of the table in section 7’ makes it clear that those companies listed in that table will also be entitled to the 100 per cent rebate in rebate period 2.

New subsection 6A(2) provides that the rebate is to be applied as an offset against transmitter licence tax imposed. As noted above, the term ‘transmitter licence tax’ is defined in section 4 of the CBT Rebate Rules 2024 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.

Item 2 – Section 6 (heading)

This item updates the heading of section 6 to distinguish the existing partial rebate rules under section 6 from the new rebate rules under new section 6A. New section 6A will apply to rebate period 2, and section 6 will apply to rebate period 1, rebate period 3, and rebate period 4.

Item 3 – Subsection 6(1)

This item removes the reference to ‘rebate period 2’. The reference to ‘rebate period 2’ in this subsection is no longer appropriate because new section 6A contains the rebate rules applying to the rebate period 2.

Item 4 – Paragraph 6(3)(a)

This item removes the reference to ‘rebate period 2’. The reference to rebate period 2 in this paragraph is no longer appropriate because new section 6A contains the rebate rules applying to the rebate period 2.

Item 5 – Subparagraphs 6(3)(b)(i) and 6(3)(b)(iii)

This item removes the references to ‘rebate period 2’. The references to rebate period 2 in these subparagraphs are no longer appropriate because new section 6A contains the rebate rules applying to rebate period 2.

Item 6 – At Example 1, accompanying Section 6

This item makes adjustments to Example 1 in section 6 to ensure that the example continues to make sense in light of the new rules for rebate period 2 in new section 6A. Amended Example 1 deals with the case of a company that holds one transmitter licence and how the rebate specified for that company would be applied in rebate period 1, rebate period 3 and rebate period 4.

Item 7 – At Example 2, accompanying Section 6

This item removes content from Example 2 in section 6 which is no longer correct in light of the new rules for rebate period 2 in new section 6A.

Amended Example 2 deals with the case of a company that holds three transmitter licences, each with different transmitter licence anniversary dates, and how the rebate specified for that company would be applied in rebate period 1. If that company continues to hold the same three transmitter licences in rebate period 2, then the new rebate rules for rebate period 2 in new section 6A will only apply. If that company continues to hold the same three transmitter licences in rebate period 3 and rebate period 4, then the rebate rules in section 6 will only

apply. Amended Example 2, which deals with rebate period 1, will also be correct as an example for rebate period 3 and rebate period 4 in the event that the transmitter licence tax imposed on each of the three transmitter licences held by the company referred to in the example is the same as rebate period 1.

Item 8 – Section 7 (table, heading to column 3)

This item updates the heading in column 3 of the table in section 7. The change helps emphasise to a reader that the rebate amounts listed in the table only apply in rebate period 1, rebate period 3, and rebate period 4.

Attachment B

Statement of Compatibility with Human Rights

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

Commercial Broadcasting (Tax) Amendment (Transmitter Licence Tax Rebate) Rules 2025

The *Commercial Broadcasting (Tax) Amendment (Transmitter Licence Tax Rebate) Rules 2025* (Amendment Rules) 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

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Human rights implications

The Amendment Rules engage the following rights and freedoms:

- 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 to freedom of opinion includes the right to hold opinions without interference,¹ and the right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds,² and may include commercial advertising. 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.³

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 Amendment Rules will support commercial radio and television broadcasters to provide commercial radio and television broadcasting services by reducing the amount of CBT they are liable to pay to zero for one year beginning on 9 June 2025 and ending on 8 June 2026. By supporting the continued provision of commercial radio and television broadcasting services, the Amendment Rules will promote the right to freedom of opinion and expression, and the right to enjoy and benefit from culture.

The Amendment Rules will not limit what broadcasting services may be provided, and therefore will not limit the rights to freedom of opinion and expression, or the right to enjoy and benefit from culture.

Conclusion

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

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

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

³ 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.