

# **Review of the *Commercial Broadcasting (Tax) Act 2017***

Report to the Minister for Communications,  
Urban Infrastructure, Cities and the Arts

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# Executive summary

The *Commercial Broadcasting (Tax) Act 2017* (CBTA) commenced on 1 July 2017 and gives effect to the commercial broadcasting tax (CBT) arrangements. Section 216AA of the *Broadcasting Services Act 1992* (BSA) requires the Australian Communications and Media Authority (ACMA) to conduct a review on whether the CBTA should be repealed or amended on or before 1 July 2022.

This report contains our final review of and recommendations for the CBT arrangements following public consultation. Subsection 216AA(6) of the BSA provides that this report must be given to the Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister) before 1 July 2021.<sup>1</sup>

The primary function of the CBTA is to impose CBT in relation to transmitter licences issued to commercial broadcasting licensees (commercial broadcasters) for their commercial broadcasting services.

The CBTA sets a formula for the amount of tax payable in relation to a transmitter licence. This formula involves totalling the 'individual transmitter amounts' for all the transmitters authorised by the licence. The CBTA sets out how the 'individual transmitter amounts' are calculated for individual transmitters, but the Minister may determine a lower individual transmitter amount by legislative instrument. The Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017 (the CBT Determination) sets the individual transmitter amount for transmitters, based on frequency band (AM, FM, UHF or VHF), the maximum power at which the transmitter may be operated, and the population density of a location.

In considering the review, we have focused on the primary function of the CBTA in enabling the government to impose a tax on transmitter licences held by commercial broadcasters, and also to reflect spectrum use in transmitting commercial broadcasting services. While some submitters to the consultation stressed that the public benefit generated by commercial broadcasting services should be taken into account in any tax rate imposed, we consider that any assessment of the public interest value of spectrum is matter appropriately determined by the government. Similarly, matters such as whether transitional support payment (TSP) arrangements and the Commercial Broadcasting (Tax) (Transmitter Licence Tax Rebate) Rules 2020 (Rebate Rules) should continue are matters for government and are outside the scope of the ACMA's review.<sup>23</sup>

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<sup>1</sup> The Minister requested that the ACMA provide this report by 30 March 2021.

<sup>2</sup> CBT imposed under the CBTA was subject to the [Rebate Rules](#) for part of the year in 2020–21. Taxes were imposed but payment was not required for a substantial portion of these licences during this financial year.

<sup>3</sup> TSP arrangements enabled commercial broadcasters to be 'no worse off' compared with previous taxation arrangements. The TSP arrangements are outlined in Part 3 of Schedule 6 to the [Broadcasting Legislation Amendment \(Broadcasting Reform\) Act 2017](#) (the Broadcasting Reform Act). The Secretary of the Department of Infrastructure, Transport, Regional Development and Communications (the Department) administers the TSP arrangements.

## Scope of the review

Section 216AA of the BSA requires the ACMA to review whether the CBTA 'should be repealed or amended on or before 1 July 2022', and any such matters specified by the Minister in a notifiable instrument, provided those matters relate to commercial broadcasters and their use of spectrum.

The Minister did not make such a notifiable instrument. However, there are matters integral to the CBT arrangements that are outlined in other primary legislation and legal instruments. These matters, which include administrative process requirements in Part 14AA of the BSA and pricing methodology in the CBT Determination, have been included in the review.

### Media reform

On 27 November 2020, the Australian Government issued its [Media Reform Green Paper](#) (the Green Paper), which proposes for comment the option of a new commercial television broadcasting licence. The reforms set out in the Green Paper provide 2 paths for commercial television broadcasters:

1. Licence holders will have the ability to make a one-time, irrevocable transition from their 'traditional licence' to a 'new licence', for which they would no longer be required to pay a tax for the use of spectrum on the condition that they transition to using less radiofrequency spectrum under a multi-year process to be initiated by the government when certain conditions are met; or
2. Licence holders may choose to continue operating under the existing or traditional licensing arrangements, in which case the commercial broadcasting tax arrangements will continue to apply.

If the proposals in the Green Paper are adopted, the matters discussed in this review are relevant to the traditional licensing arrangements for commercial radio and remain relevant to television broadcasting in the scenarios where some or all television broadcasters elect not to transition to the new licence.

## What we proposed in our consultation

Consistent with subsection 216AA(5) of the BSA, the ACMA made provision for public consultation in conducting the review.

As part of that consultation, we proposed that the CBTA should not be repealed. We proposed that spectrum pricing arrangements should be retained for commercial broadcasters, noting that spectrum is a valuable public resource that may have alternative uses, and that it should be priced to reflect that commercial broadcasters receive planned access to spectrum. Where appropriate, spectrum pricing can also reflect benefits derived by commercial broadcasters from our spectrum management functions, and from regulation and licensing arrangements that promote the efficient use of spectrum.

While we proposed that spectrum pricing arrangements for commercial broadcasters should continue, we acknowledged in the consultation paper that there are some issues with the CBT arrangements that have been observed by the ACMA and the broadcasting sector. These issues, largely related to pricing methodology and administrative processes, are likely to require amendments to the CBT Determination, the CBTA and the BSA.

The proposals for change outlined in the consultation paper were:

- > Adopting a \$/MHz/pop<sup>4</sup> pricing methodology to determine the individual tax amounts for transmitters. This may require amendments to the CBTA to move away from tax being calculated by reference to individual transmitters. If this methodology were adopted, that may also require a review of the tax caps in the CBTA.
- > Adopting a single annual date for CBT assessments. This will help avoid inefficiencies in issuing assessments and has broad support from industry. It will allow commercial broadcasters to better plan for their review of the tax assessments and cash flows for the payments of CBT. This may require amendments to the CBTA with regard to the timing of CBT being imposed.

## Feedback received from submitters

We received 3 submissions as part of the consultation process, from the following stakeholders:

- > Commercial Radio Australia (CRA)
- > Free TV Australia (Free TV)
- > Rebel Media.

CRA and Free TV are the peak bodies for the commercial radio and television sectors, respectively. Rebel Media operates the 4BRZ (Breeze) and 4RBL (Rebel) regional commercial radio stations.

The submissions from CRA and Free TV largely related to issues concerning the value of the spectrum and accounting for the public benefit of broadcasting services, while Rebel Media responded more specifically to the proposals in the consultation paper, particularly pricing methodologies.

The key themes of these submissions are detailed in the *Summary of submissions* chapter of this report. The submissions have been considered in the preparation of this final report.

## Options for pricing structures

We considered various options for the structure of pricing to reflect the value of spectrum and the recovery of the indirect costs of spectrum management.

Spectrum licensees pay a spectrum access charge on issue of the spectrum licence, and an annual spectrum licence tax. Apparatus licensees (other than commercial broadcasters) pay an annual apparatus licence tax (though they may elect to pay the annual amounts upfront on issue of the licence). Both approaches allow for spectrum to be priced to reflect its value and facilitate contributions towards the indirect costs of spectrum management. Spectrum and apparatus licence licensees also pay fees for services provided by the ACMA and the Commonwealth.

Like the apparatus licence tax and the current CBT regimes, a simple one-price regime is likely to be consistent with the industry's preference for simplicity in pricing arrangements. In addition, it would provide the government with the flexibility to impose a price that reflects both the value of spectrum and that recovers the indirect

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<sup>4</sup> \$/MHz/pop is a pricing methodology where a unit price (the \$/MHz/pop amount) is multiplied by an amount of spectrum (in MHz) used to provide a transmission, and by the population (the pop) that is reached by the transmission (or is in the area where the licensee has the right to make the transmission). Some simple examples of how to calculate the \$/MHz/Pop pricing construct can be found Appendix A.

costs of spectrum management. To aid in the transparency of the pricing arrangements, it is open to the government to provide explanatory material that explains how the different components of the tax have been calculated.

The ACMA concludes that a tax should be imposed to recover the value of the spectrum used by commercial broadcasters, and to recover indirect costs of spectrum management. As the CBTA already exists, it may be the appropriate legislation to impose this tax. For commercial broadcasters, it will simplify payment arrangements compared with paying separate amounts for the value of the spectrum and the indirect cost recovery contributions.

## Recommendations

Given our conclusion that a tax should be imposed to recover the value of the spectrum used by commercial broadcasters, and to recover indirect costs of spectrum management, we make the following recommendations:

- > **Recommendation 1: The CBTA should not be repealed.** We consider that it is appropriate that there is legislation in place so that taxes can be imposed in relation to commercial broadcasting services, and the CBTA fulfils this role. A tax provides the government with the flexibility to impose a price on spectrum that represents its value and provides opportunities for the recovery of the indirect costs of spectrum management. For commercial broadcasters, a single tax will simplify payment arrangements rather than paying separate amounts for the value of the spectrum and the indirect cost recovery contributions.
- > **Recommendation 2: The CBTA should be amended.** We recommend Parliament consider amending the CBTA, as there are several improvements that can be made to the CBT arrangements to create a more efficient pricing methodology and simplify administrative arrangements.

We recommend adoption of a \$/MHz/pop pricing methodology to improve the simplicity, transparency and flexibility of pricing arrangements for commercial broadcasters' use of the spectrum. In our view, there are significant benefits in adopting a \$/MHz/pop method over the current pricing methodology, noting that this is a simple tax formula that is applied to many other licensees. It is less complex than the formula contained in the CBTA and the CBT Determination as it would relate to single licence areas rather than each individual transmitter (although the tax may still be imposed on individual transmitter licences).<sup>5</sup> It provides better incentives to maximise public benefit derived from the spectrum and allows for pricing that more transparently and accurately reflects spectrum value.

- > We also recommend a review of the tax caps in the CBTA if a \$/MHz/pop approach is adopted.
- > We also propose adoption of a single annual date for making CBT assessments. This will help avoid inefficiencies and has broad support from industry. It will allow commercial broadcasters to better plan for their review of the tax assessments and cash flows for the payments of CBT. This may require the CBTA to be amended with regard to the timing of CBT being imposed.

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<sup>5</sup> The current CBT arrangements impose the tax in relation to the transmitter licences. Conceptually, it is possible to apply the \$/MHz/pop taxation approach to each transmitter. For example, the tax in relation to each transmitter could then be calculated as the single price for the BSL, divided by the number of transmitters used by the commercial broadcaster to provide the service under the BSL. This approach could also be refined to facilitate pricing where different service bands are being utilised (for example, AM and FM) in the same licence area.



- > Implementation of this recommendation may also require amendments to the BSA and the CBT Determination.

# Introduction

The *Commercial Broadcasting (Tax) Act 2017* (CBTA) commenced on 1 July 2017 and gives effect to the commercial broadcasting tax (CBT) arrangements. This report contains our final review of and recommendations for the CBT arrangements following public consultation. Under subsection 216AA(6) of the *Broadcasting Services Act 1992* (BSA), this report must be given to the Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister) before 1 July 2021.<sup>6</sup>

## Review requirement and scope

Section 216AA of the BSA requires the ACMA to review whether the CBTA 'should be repealed or amended on or before 1 July 2022', and any such matters specified by the Minister in a notifiable instrument provided those matters relate to commercial broadcasters and their use of spectrum. The Minister did not make such a notifiable instrument.

In addition to matters required to be reviewed under section 216AA of the BSA, we have included additional matters that are integral to the operation of the CBT arrangements but are not contained within the CBTA. The additional matters considered in this report include:

- > **Pricing methodology.** The Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017 (the CBT Determination) contains the current pricing methodology for CBT. The pricing methodology is fundamental to the CBT arrangements and three pricing options have been considered as part of this review.<sup>7</sup>
- > **Administrative processes.** Part 14AA of the BSA outlines the administrative processes that the ACMA is required to undertake when processing CBT assessments, including when assessments are required to be given to commercial broadcasters. We have included these issues as part of the review, as both the ACMA and commercial broadcasters have demonstrated an interest in simplifying the arrangements.

We released a CBT review consultation paper (the consultation paper) on 10 December 2020, consistent with subsection 216AA(5) of the BSA.<sup>8</sup> The consultation paper focused on whether to repeal or amend the CBTA, and additional matters such as pricing methodology and simplification of administrative arrangements. The content of the consultation paper is summarised in the *Consultation paper overview* chapter of this report.

We received 3 submissions from Commercial Radio Australia (CRA), Free TV Australia (Free TV) and Rebel Media. CRA and Free TV are the peak bodies for the

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<sup>6</sup> The Minister requested that the ACMA provide our report by 30 March 2021.

<sup>7</sup> The CBTA sets out how the amount of CBT is to be calculated, and does so by reference to an amount assessed for each transmitter operated under a transmitter licence held by a commercial broadcaster. The CBTA allows the Minister to set lower amounts to be assessed for each such transmitter. The review does not consider the overall amount of CBT imposed on commercial broadcasters, which is currently in the order of \$41 million annually after accounting for transitional support payments. Rather, the review only considers the methodology by which CBT is calculated.

<sup>8</sup> The consultation paper is available at Appendix B. It is also available on the [ACMA website](#).

commercial radio and television sectors, respectively. Rebel Media is an operator of regional commercial radio stations.

The key themes of these submissions are detailed in the *Summary of submissions* chapter of this report. All submissions have been considered in the preparation of this final report.

## CBT background

In 2017, the CBTA and the [Broadcasting Legislation Amendment \(Broadcasting Reform\) Act 2017](#) (Broadcasting Reform Act) commenced, which implemented the policy proposals outlined in the government's [Broadcast and Content Reform Package](#). The *Broadcast and Content Reform Package* included broadcast pricing reforms, resulting in the CBT arrangements that are the subject of this review.

Prior to the Broadcasting Reform Act being enacted, commercial broadcasters were subject to the broadcasting licensing fee (BLF)<sup>9</sup> regime, while each transmitter authorised under transmitter licences held by commercial broadcasters was subject to minimum tax under the [Radiocommunications \(Transmitter Licence Tax\) Act 1983](#) (TLT Act). The broadcast pricing reforms included in the Broadcasting Reform Act resulted in these prior arrangements being repealed and replaced with the new CBT arrangements. The reforms also included provisions for transitional support payments, under Part 3 of Schedule 6 to the Broadcasting Reform Act.<sup>10</sup>

The CBT arrangements are intended to be more reflective of spectrum use when compared with the BLF regime. Section 7 of the CBTA imposes CBT on the issue of transmitter licences to commercial broadcasters for transmitting commercial broadcasting services, and on the anniversary of each such licence coming into force. The amount of CBT imposed in each case is calculated by reference to an amount for each individual transmitter authorised by the licence (individual transmitter amount). An individual transmitter amount is set in the CBTA; however, the Minister may set a lower individual transmitter amount, and has done so in the CBT Determination. The individual transmitter amount in the CBT Determination varies, depending on frequency band (AM, FM, UHF or VHF), maximum power and density area location relevant to the individual transmitter.

## Legislative and policy environment

### Media Reform Green Paper

On 27 November 2020, the Australian Government issued a [Media Reform Green Paper](#) (the Green Paper), which proposes for comment the option for commercial television broadcasting licensees to operate under a new commercial television broadcasting licence. The reforms set out in the Green Paper provide 2 paths for commercial television broadcasting licensees:

1. Licensees will have the ability to make a one-time, irrevocable transition from their 'traditional licence' to a 'new licence', for which they would no longer be required to pay a tax for the use of spectrum, on the condition that they transition to using less radiofrequency spectrum under a multi-year process to be initiated by the government when certain conditions are met; or

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<sup>9</sup> Imposed under the *Television Licence Fees Act 1964* and the *Radio Licence Fees Act 1964*. These Acts were repealed by the Broadcasting Reform Act.

<sup>10</sup> Transitional support payments have not been considered as part of this review.

- Licensees may choose to continue operating under the existing or traditional licensing arrangements, in which case the CBT arrangements will continue to apply.

The matters discussed in this report relate to the traditional licensing arrangements for all commercial broadcasters. If the proposals in the Green Paper are adopted, the matters discussed in this report would relate to commercial radio broadcasting services, and to commercial television broadcasting services where a commercial television broadcasting licensee elected not to transition to the new licence.

The submission period for the Green Paper is scheduled to close on 23 May 2021.

### **Spectrum Pricing Review**

As noted in the Explanatory Memorandum for the Broadcasting Reform Act, the ACMA review under s 216AA: 'will help ensure that taxation arrangements (and any future replacement spectrum use charging pricing arrangement) remain appropriate and consistent with the broader review of spectrum pricing currently underway by Government'.

As we noted in the consultation paper, in February 2018 the Australian Government endorsed 11 recommendations of the [Spectrum Pricing Review \(SPR\)](#).<sup>11</sup> While the recommendations relate to apparatus licence taxes and the prices for spectrum licences, we consider there are some useful parallels to the CBT arrangements. In particular, we note the following recommendations from the SPR:

**Recommendation 2:** To ensure efficient use of spectrum, the Government and the ACMA should endeavour to charge users of similar spectrum at the same rate.

**Recommendation 3:** Bespoke pricing arrangements will sometimes be necessary. Where spectrum fees are determined other than by auction or by the administered pricing formula, the ACMA, or the Government where it directs the ACMA on pricing, should publish the reasons for this decision.

While recognising the important contribution that commercial radio and television broadcasting services bring to Australian society, it is also important to recognise that the fundamentals of spectrum management (including promoting the efficient use of spectrum) still apply to broadcasting services' use of spectrum. Tools used to manage spectrum include spectrum planning, licensing and pricing. SPR Recommendation 2 promotes the use of appropriate pricing signals to users of spectrum. SPR Recommendation 3 recognises that it may be appropriate to have particular or bespoke pricing, such as the CBT arrangements.

In addition, we note that the SPR's principles endorsed cost recovery. In particular, the SPR noted that '[t]he ACMA incurs costs for spectrum regulatory activities such as planning, interference management and coordination, and these costs should be recovered from those using spectrum'.<sup>12</sup>

We are in the process of implementing the recommendations of the SPR, to the extent we are able. Part of that implementation requires a review of the transmitter licence tax formula (administrative pricing formula), set out in the Radiocommunications (Transmitter Licence Tax) Determination 2015 (TLT Determination) as per Recommendation 7 of the SPR:

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<sup>11</sup> The paper outlining the recommendations can be found on the [Department of Infrastructure, Transport, Regional Development and Communications website](#).

<sup>12</sup> [Spectrum Pricing Review](#), p. 6.

The ACMA should undertake a detailed review of the administrative pricing formula's parameters including density areas, the number of pricing bands and the number of power categories. The ACMA should implement regular updates to the location and band weightings to reflect changes in density, demography and demand.

The administrative pricing formula sets tax amounts by reference to a number of factors in relation to transmitter licences, including whether they are located in a 'high density area', a 'medium density area', a 'low density area' or a 'remote density area'. The greater the density of an area, the higher the rate of tax that applies.

In previous years, and in CRA's submission to the consultation paper, commercial broadcasters, most notably commercial radio broadcasters, have raised concerns about the use of the density areas used in the administrative pricing formula and used in the CBT Determination.<sup>13</sup> Over time, commercial broadcasters have highlighted examples where transmitters may be in different density areas to the population centres a broadcaster is serving, to provide adequate coverage to those population centres. In cases where the transmitters are located in high density areas, but transmitting into low density areas, commercial broadcasters argue that they are paying a higher tax rate than should be the case.

Over the course of 2021, we will also consider our approach to density areas in the TLT Determination. As noted in our [Implementation of the SPR](#), in some instances, a different pricing construct such as \$/MHz/pop may be a more accurate measure of the value and demand for the spectrum than applying the density areas. In this report, we recommend that CBT be based on a \$/MHz/Pop pricing construct. Any further consideration of the approach to density areas would be confined to transmitter types not covered by the CBTA arrangements.

Another issue mentioned by the Australia Narrowcast Radio Association in feedback to our consultation on the SPR, was the disparity in pricing arrangements between CBT and the apparatus licence taxes that apply to transmitter licences for the provision of narrowcasting services. We have noted in our workplan for implementing the SPR that we will consider this issue further.

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<sup>13</sup> A description of the density areas can be found in the ACMA's October 2020 Apparatus Licence Fee Schedule (page 47 to 58)

# Consultation paper overview

Subsection 216AA(5) of the BSA requires the ACMA to make provision for public consultation in conducting the review. We made several proposals for amendments to the CBT arrangements in our consultation paper, which are outlined in further detail in this chapter. The consultation paper was released on 10 December 2020, and is included at Appendix B.

## Consultation paper proposals

Based on the review scope, the consultation paper considered 3 matters:

1. whether to repeal or amend the CBTA
2. methods for pricing the spectrum used by commercial broadcasters
3. opportunities for improving the administration of pricing and revenue collection.

### Repeal or amend the CBTA

The initial step taken to determine whether to repeal or amend the CBTA was to consider the appropriateness of pricing arrangements for the use of spectrum by commercial broadcasters.

In the consultation paper, we outlined our view that spectrum pricing arrangements should continue to apply to commercial broadcasters, subject to any potential outcomes from the Green Paper.

Our view expressed in the consultation paper was that spectrum pricing arrangements should be retained for commercial broadcasters as spectrum is a valuable public resource that may have alternative uses, and spectrum pricing can reflect the benefit that commercial broadcasters receive from planned access to particular spectrum. Where appropriate, spectrum pricing can also reflect benefits derived by commercial broadcasters from our spectrum management functions, and from regulation and licensing arrangements that promote the efficient use of spectrum.

While the continuation of spectrum pricing arrangements for commercial broadcasters provides the reasoning behind our view that the CBTA should not be repealed, we acknowledge that there are some issues with the CBT arrangements that have been observed since commencement. These issues, largely related to pricing methodology (such as \$/MHz/Pop) and administrative processes (a single assessment date), could be addressed by amendments to the CBT Determination, the CBTA and the BSA.

### Pricing methodology

The CBT arrangements currently employ a pricing methodology where taxes are calculated by reference to the individual transmitters authorised under a transmitter licence used to provide commercial broadcasting services. The amount for each individual transmitter is based on the frequency band in which it operates, the area density level of the area in which it is located, and the maximum power at which it may make emissions. The way this pricing methodology works is further described in the consultation paper at Appendix B, and further detail can be found in the [Commercial broadcasting transmitter licence fee schedule](#).

We identified that the current pricing approach has the potential to lead to some inefficiencies and anomalies in spectrum pricing. For instance:

- > current density areas where a transmitter is located do not always accurately reflect the value of the spectrum for the coverage area in which the transmitter provides a service
- > commercial broadcasters may not be able to efficiently utilise spectrum within their coverage areas and maximise public benefit, as CBT imposed on individual transmitters acts as a disincentive to deploying additional transmitters.

In considering these issues, we looked at 3 alternative pricing methodologies in the consultation paper for ongoing CBT arrangements, which aimed to provide incentives for efficient use of the spectrum over time:

- > **Option 1: Maintaining the current formula and updating the approach to the density areas.** This option largely aligns with the status quo but could contain amendments to density areas to improve the effectiveness of the methodology.
- > **Option 2: \$/MHz/pop.** This option involves imposing CBT based on the amount of bandwidth required to provide a service (that is, 18 kHz for AM band, 200 kHz for FM band and 7 MHz for VHF/UHF bands) and the population of the licence area designated under section 29 of the BSA for the relevant commercial broadcasting licence.<sup>14</sup>
- > **Option 3: Fixed tax.** This option is similar to the \$/MHz/pop approach but involves a specified price for a tax imposed for each commercial broadcasting licence.

In the consultation paper, we proposed that a \$/MHz/pop pricing construct (Option 2) should be used for ongoing CBT arrangements for simplicity, transparency and flexibility:

- > **Simplicity:** there are significant benefits for \$/MHz/pop over updating the current pricing methodology. It is a less complex tax formula than the formula contained in the CBTA and the CBT Determination, as it would relate to single licence areas rather than each individual transmitter (although the tax may still be imposed on individual transmitter licences). It also provides better incentives to maximise the public benefit derived from the spectrum and should theoretically provide for prices that more accurately reflect spectrum value.
- > **Transparency:** bandwidth and geographic location are explicit features of the \$/MHz/pop formula and are also likely to be key drivers of the value of the spectrum.
- > **Flexibility:** commercial broadcasting licensees will see the amount of CBT vary over time in line with the population of the licence areas (a key driver in the value of the spectrum). It will also be possible to consider adjusting the pricing methodology to account for population density (that is, population per square kilometre in the licence area). This is important for licensees who serve geographically large licence areas with sparsely populated settlements. This method also provides a way of addressing a key concern raised by broadcasters in the application of density areas used in the current CBTA arrangements and separate apparatus licence transmitter tax arrangements about the incentives to efficiently locate transmitters and serve population centres in a licence area. Further, and as noted in the consultation paper, by imposing the tax on transmitters, this approach could also be refined to facilitate pricing where different service bands are being utilised (for example, AM and FM) in the same licence area.

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<sup>14</sup> Some simple examples of how to calculate the \$/MHz/Pop pricing construct can be found Appendix A.

Overall, we concluded in the consultation paper that a \$/MHz/pop approach would allow for prices that more accurately reflect the value of the spectrum and are less complex. We noted that this would cause changes to the distribution of CBT across individual commercial broadcasters. We also noted that there are many options for imposing prices (examples include but are not limited to a single \$/MHz/pop price, different \$/MHz/pop prices for television and radio, and different \$/MHz/pop prices for metropolitan and regional licence areas).

We outlined in the consultation paper that the tax caps in the CBTA should be reviewed by the government if the pricing methodology is changed. The current tax caps have been calculated with reference to the current pricing methodology, which means they may not reflect the amounts that could potentially be imposed under a new pricing methodology. It may also be prudent to approach tax caps in a way that would enable CBT to reflect changes in the value of the spectrum over time.

### **Opportunities to improve administrative processes**

Based on our analysis and feedback from stakeholders throughout the assessment process, there are some issues with the administration of CBT that could be mitigated with a new pricing methodology and simplified administrative arrangements. To support administrative improvements, amendments to the CBT Determination, the CBTA and the BSA would be required.

The key issue raised in the consultation paper related to assessment frequency. To fulfil the administrative requirements of the CBTA and the BSA, currently the ACMA sends a high number of CBT assessments to commercial broadcasters each year. This may be particularly onerous for networks that control many commercial broadcasting licences, where a parent company coordinates the responses and payments for the individual commercial broadcasters.

As noted in the consultation paper, condensing all CBT assessments to a single date each year is likely to simplify arrangements for commercial broadcasters and the ACMA, when compared with several assessments each year. It also provides for a clearer separation between assessments and invoices for CBT, and those for apparatus licence taxes imposed by the TLT Act.



# Summary of submissions

The consultation period ended on 4 February 2020. We received 3 submissions as part of the consultation process, from the following stakeholders:

- > Commercial Radio Australia (CRA)
- > Free TV Australia (Free TV)
- > Rebel Media.

These submissions are available at Appendix C. Each of these submissions provided insight into current circumstances for commercial broadcasters and suggestions regarding the views outlined in the consultation paper. This chapter of the report will outline the key themes of the 3 submissions and provide some analysis concerning these themes.

## Key themes

Submissions from CRA and Free TV largely related to issues concerning the value of the spectrum and accounting for the public benefit of broadcasting services, while Rebel Media responded to proposals in the consultation paper, particularly in relation to pricing methodologies.

### **Broader review of spectrum pricing for commercial broadcasters**

#### ***Summary of submissions***

The key theme beyond the consultation paper's scope was support for a more comprehensive review of ongoing pricing arrangements for commercial broadcasters, including a review of the overall amount of CBT.

CRA considered the review should be broadened to analyse whether current spectrum pricing arrangements are fair and sustainable for the commercial radio industry and should be one that recognises the social value of radio broadcasting. CRA suggests this could include considering the basis for charging for use of spectrum, financial modelling of the impact of proposals on a range of stakeholders, and the continuation of the COVID-19 tax relief package. CRA did not engage with the issue of whether the CBTA should be repealed or amended.

Free TV submitted that a full examination of the appropriateness of the CBT was required. Free TV considered that the current CBT arrangements represent a proxy tax on revenue or profitability, rather than directly reflecting the value of spectrum use, but did not support the concept of pricing directly reflecting spectrum value. Free TV outlined that a more thorough examination of the CBT arrangements, including a review of international approaches to the level of taxation on commercial broadcasters, would lead to a recommendation to repeal the CBTA.

#### ***ACMA response***

We consider the spectrum price or amount of the tax to be collected is a separate issue from the question of how the appropriate legislation should be framed to enable the government to impose that price/tax. Hence, in considering the review, we focused on the primary function of the CBTA in enabling the government to impose a tax on transmitter licences held by commercial broadcasters for transmitting commercial broadcasting services.

As noted in our analysis of the pricing structures, we consider it appropriate that there be a mechanism for the government to impose a price on spectrum used to provide commercial broadcasting services.

Our view is that spectrum pricing arrangements should be retained for commercial broadcasters because spectrum is a valuable public resource that may have alternative uses, and spectrum pricing can reflect the benefit that commercial broadcasters receive from planned access to particular spectrum. Where appropriate, spectrum pricing can also reflect benefits derived by commercial broadcasters from our spectrum management functions, and from regulation and licensing arrangements that promote the efficient use of spectrum.

The matters raised by CRA and Free TV are best considered in determining the amount of commercial broadcasting taxes. While they stressed that the public benefit generated by commercial broadcasting services should be taken into account in any tax rate imposed, we consider that any assessment of the public interest value of spectrum is a matter appropriately determined by the government, taking into account its public policy objectives for broadcasting. We can work closely with the government in considering the valuation approaches to the spectrum.

If the government accepts the recommendations in this report, it is likely that any implementation will be the subject of further consultation, including for the amount of tax to be imposed. We consider that this consultation would be important in informing the detailed implementation of any changed arrangements.

### **Opportunity cost should not be used as a valuation method**

#### ***Summary of submissions***

CRA and Free TV both expressed the view that, if there is a more thorough review of the overall CBT to be imposed on commercial broadcasters, opportunity cost should not be used to value the spectrum. In simple terms, opportunity cost pricing is about attempting to reflect the market price users would be prepared to pay for spectrum. Such pricing arrangements promote the efficient use of the spectrum by reflecting the prices that may be paid by a user that can maximise the use of spectrum. More information about the general concept of opportunity cost pricing is available in the *Further analysis* chapter of this report.

In general, the case outlined by CRA and Free TV against opportunity cost pricing has focused on the following argument: commercial broadcasters' use of spectrum maximises the public benefit derived from the broadcasting service bands (see paragraph 3(a) of the *Radiocommunications Act 1992* (the Radiocommunications Act)), particularly as they provide social value (and private external value) with their commercial broadcasting services.

Commercial broadcasting services can be considered a public good, which means the private value of spectrum to commercial broadcasters extends only so far as the advertisers' willingness to pay, as recipients of the services (listeners or viewers) do not pay for use. There may therefore be a greater difference between the value of the broadcasting service to society and the ability of commercial broadcasters to profit from using the spectrum. Free TV also notes a declining advertising market for commercial television broadcasting services.

Opportunity cost pricing should theoretically reflect different users' willingness to pay for use of the spectrum, which reflects competing private values. The general contention from CRA and Free TV is that commercial broadcasters should not have to pay spectrum prices based on alternative uses that may actually place higher private values on the spectrum but are likely to provide for less social value, and therefore are less likely to maximise public benefit.

CRA added that there is likely to be no alternative use case for the AM and FM bands and that 'opportunity cost pricing should not be used when there is no excess demand'. CRA also notes that there would likely be 'significant disruption' for commercial radio broadcasting licensees and their listeners if they were forcibly moved out of the bands, considering there is no timetable for a digital radio switchover.

CRA and Free TV each supported pricing arrangements and an overall CBT amount that reflects administrative cost recovery.

### **ACMA response**

The overall amount of CBT and the actual tax rates are the responsibility of the government rather than the ACMA, although we intend to work closely with the government on this issue.

We provide further detail responding to the industry argument on opportunity cost pricing and cost recovery charges in the *Spectrum valuation methods* section in the following *Further analysis* chapter of this report.

### **Pricing methodology – \$/MHz/pop improvements**

#### **Summary of submissions**

CRA and Free TV did not comment on whether they supported a \$/MHz/pop pricing methodology but were consistent in their view that any new pricing methodology should not leave any commercial broadcaster worse off. CRA and Rebel Media outlined issues with the current pricing methodology that were largely consistent with the issues outlined in the consultation paper.

Rebel Media provided broad support for a \$/MHz/pop pricing methodology but outlined a range of implementation issues and proposed mitigations. The main issue outlined by Rebel Media, which was identified briefly in the consultation paper, is that for licence areas of equal population, large regional/remote broadcast licence areas are likely to be less valuable than smaller licence areas with greater population density, due to:

- > higher infrastructure, operational and distributional costs to service a larger geographic area (general examples of these costs are outlined in Rebel Media's submission) or inability to provide service to the entire area
- > reduced ability to generate targeted advertising revenue.

Under a \$/MHz/pop approach, the same total price would be applied to both areas despite their discrepancy in value. Rebel Media provided suggestions to allow for differential pricing for commercial broadcasters in licence areas with very low population density. These suggestions included:

- > exempting the 3 largest regional licence areas (in terms of geographic area) from CBT; or
- > applying CBT to the broadcast reach within the geographic licence area rather than the whole licence area<sup>15</sup>; or
- > adding a component to the \$/MHz/pop formula that provides a discount for remote areas under a particular level of population density.

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<sup>15</sup> Broadcasting services for a licence area frequently do not cover every part of the licence area, for a variety of reasons.

### ***ACMA response***

The consultation paper outlined potential risks with the \$/MHz/pop methodology that may need to be mitigated. One of those risks was that the \$/MHz/pop methodology measures the total population in a licence area but not the population density, which may disadvantage commercial broadcasters in regional and remote areas that have a higher cost base to serve the whole licence area and more limited revenue opportunities compared with serving an equivalent size population over a smaller geographic area.

We note Rebel Media's description of its own circumstances and suggestions concerning the \$/MHz/pop methodology. Should the government accept the recommendation to adopt a \$/MHz/pop methodology, we envisage that approaches to refine the methodology, including those identified in the Rebel Media submission, will be considered when determining tax rates. In considering the suggestions, we propose that the government take into account:

- > the materiality in the differences in taxes to be paid under different population adjustments in the methodology, compared with the potential added complexity in calculating CBT. We are mindful of the feedback we have received from commercial broadcasters throughout the assessment processes that some commercial broadcasters had difficulty understanding how CBT has been calculated
- > the potential disincentives to provide broadcasting services to the whole of a licence area if the pricing formula relates to actual coverage or broadcast reach, compared to the population of the whole geographic licence area
- > whether there are other funding mechanisms available to support regional and remote broadcasting that may provide an alternative to adding complexity to the pricing formula.

### **Support for administrative process changes**

#### ***Summary of submissions***

CRA and Free TV provided broad support for changing the assessment process so that it is all performed on a single date each year. Rebel Media did not comment on administrative process matters.

### ***ACMA response***

We note the support from stakeholders on this issue.

# Further analysis

## Spectrum valuation methods

The submissions from CRA and Free TV explored the value of spectrum with respect to commercial broadcasting. CRA and Free TV each suggest that the current pricing methodology should be removed and replaced with cost recovery pricing arrangements, and that opportunity cost pricing should not be employed. While it is a matter for government to determine the overall amount of CBT, the following analysis briefly outlines matters for consideration in determining the overall value of spectrum to commercial broadcasters.

### Opportunity cost pricing

In February 2018, the Australian Government endorsed the recommendations of the [SPR](#). Recommendation 8 of the SPR was for the ACMA to expand its use of opportunity cost pricing to more spectrum bands where market-based allocation of spectrum is impractical. The SPR described opportunity cost pricing as:

Opportunity cost is a more sophisticated form of administered pricing. It reflects that in using spectrum, users deny spectrum for others, and that alternative use has value. Opportunity cost approaches set the price at that foregone value. This generally mimics the price a market would have reached, as it means the company who purchases the spectrum likely values it somewhat more than the opportunity cost (leading to profits), and the person who misses out would prefer to put their dollars to another use.<sup>16</sup>

The opportunity cost of a part of the radiofrequency spectrum is the value of the spectrum in the highest value alternative use that is denied by granting access to one party rather than to the alternative. Efficient prices should be set in such a way that they create the right incentives for high-value spectrum users to provide their services at least cost. When the market sets spectrum prices (as in allocation by auction), this occurs automatically. A regulator or government setting spectrum prices (as in administrative allocation) should mimic the efficient and incentive effects of market-based pricing. Such market-mimicking prices are based on the economic principle of opportunity cost.

Depending on the frequency bands and services provided, opportunity cost pricing can apply to individual users, or can apply to a broader use case and be apportioned among the individual users. For instance, due to potential interest for mobile broadband use, the 600 MHz band (UHF band, which is used for commercial television broadcasting services) is currently under 'Monitoring' status in our [Five-year spectrum outlook 2020–24](#) and is the subject of the government's Green Paper. Mobile broadband is a possible alternative use of the spectrum of the UHF band, and is a potential opportunity cost price point. Another example of an alternative use is digital radio in the VHF band.

However, even in cases where there is not a potential alternative use of the spectrum, a competitive market for the spectrum can exist for providing the commercial broadcasting services. We observe that there is a secondary market by broadcasters to purchase other commercial broadcasting services and seek access to additional spectrum to add or change transmitters to adapt to changing audiences. This secondary market implies ongoing demand for the spectrum. In a market allocation of the spectrum, this demand suggests that prices above zero are likely. A regulator or government setting spectrum prices (as in administrative allocation) should mimic the

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<sup>16</sup> [Spectrum Pricing Review](#), p. 9.

efficient and incentive effects of market-based pricing. This implies that pricing for CBT should also be above zero.

### ***Public interest discount***

The concept of a 'public interest discount' refers to discounting the price of spectrum below the opportunity cost price in acknowledgment of the positive externalities generated by the spectrum use of a particular user or group of users. This would recognise that commercial broadcasters provide a public good that generates positive externalities (such as social value) beyond the private value they can generate from their spectrum use, which was noted in the submissions from CRA and Free TV. The result would be to avoid spectrum pricing for commercial broadcasters that exceeds the value they place on the spectrum due to relatively high opportunity cost.

### **Cost recovery pricing**

Cost recovery pricing refers to collecting the ACMA's costs of regulating and managing broadcast spectrum. Cost recovery typically has 2 elements:

- > Recovery for services provided directly to licensees. These fees for services are calculated using cost recovery principles and currently set in the [Radiocommunications \(Charges\) Determination 2017](#) and the [Broadcasting \(Charges\) Determination 2017](#). Each commercial broadcaster will continue to pay the appropriate fees for services.
- > Recovery from the sector or industry of the indirect costs of the spectrum management associated with broadcasting.

We consider that the CBT is an appropriate vehicle for licensees to contribute to the indirect costs of spectrum management.

### **Observations about the different pricing approaches**

While the amount of tax to be collected is matter for government, considering each of the different pricing approaches provides a more holistic view of the value of the spectrum and, services provided on that spectrum, than considering the approaches in isolation. This will, in turn, provide for a more informed view of the potential CBT to be collected.

# Pricing structure

We proposed in the consultation paper that the CBTA should be amended rather than repealed, on the basis that commercial broadcasting should remain subject to a form of spectrum pricing, but that improvements to the legal framework for CBT arrangements could be made.

## Should there be a price imposed on spectrum used to provide commercial broadcasting services?

Spectrum is a valuable public resource that may have alternative uses, and spectrum pricing can reflect the benefit that commercial broadcasters receive from planned access to particular spectrum. Where appropriate, spectrum pricing can also reflect benefits derived by commercial broadcasters from our spectrum management functions, and from regulation and licensing arrangements that promote the efficient use of spectrum.

To promote the efficient use of spectrum, we consider that it is appropriate that the government have arrangements in place to recover amounts that:

- > reflect the value of the spectrum to the licensee and the broader community to provide incentives for the efficient use of spectrum
- > contribute to the indirect costs of managing spectrum
- > pay for regulatory services provided by the ACMA and the Commonwealth.

## Options for pricing structures

While some submitters to the consultation paper noted issues like the public benefit generated by commercial broadcasting services, the amount to be collected is a matter for government rather than the ACMA.

However, there is some potential optionality in the pricing structure to reflect the value of spectrum.

### Reflecting the value of spectrum

The pricing structure for the broader radiocommunications industry provides 2 examples of how amounts reflecting the value of spectrum can be charged:

1. For spectrum licences, spectrum access charges are determined under section 294 of the Radiocommunications Act. While many of the spectrum access charges determined are winning bids in an auction for spectrum licences, the ACMA also determines spectrum access charges for renewals of spectrum licences.
2. For apparatus licences, apparatus licence taxes are imposed under the TLT Act. The ACMA determines the amount of apparatus licence taxes for radiocommunications transmitters in the TLT Determination. As noted in our [Apparatus Licence Fee Schedule](#), the intent of the tax is 'to recover the indirect costs of spectrum management and provide incentives for efficient spectrum use'.<sup>17</sup>

Both examples have their merits in establishing a price reflecting the value of spectrum used for commercial broadcasting services. We examine those merits in light of the approach to cost recovery immediately below.

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<sup>17</sup> Page 2 of the [Apparatus Licence Fee Schedule](#).

## **Recovery of costs**

The recovery of costs – either the indirect costs of spectrum management or fees for services – should be consistent with the Australian Government Charging Framework.

Fees for service charges are currently determined under section 60 of the *Australian Communications and Media Authority Act 2005*. The spectrum planning and licensing of commercial broadcasting services are specialised services provided by the ACMA and commercial broadcasters should continue to be charged for these services.

Notional contributions to the indirect costs of spectrum management for apparatus licensees (other than those providing commercial broadcasting services) and spectrum licensees are imposed via apparatus licence taxes and spectrum licence taxes. The continuation of some form of taxation arrangements associated with spectrum used for commercial broadcasting services for the recovery of indirect costs of spectrum management would provide a consistent approach with these licensees.

In our view, these indirect costs should continue to be recovered from commercial broadcasters.

## **Observations about the pricing structure for commercial broadcasters**

Spectrum licensees pay a spectrum access charge on issue of the spectrum licence, and an annual spectrum licence tax. Apparatus licensees (other than commercial broadcasters) pay an annual apparatus licence tax (though they may elect to pay the annual amounts upfront on issue of the licence). Both approaches allow for spectrum to be priced to reflect its value and facilitate contributions towards the indirect costs of spectrum management. Spectrum and apparatus licences licensees also pay fees for services provided by the ACMA and the Commonwealth.

Using these examples, we make observations about possible pricing structures for the commercial broadcasters:

- > A 2-part pricing regime akin to that applied to spectrum licensees would provide for the explicit calculation and imposition of a charge associated with the value of the spectrum used, and the imposition of a tax to recover the indirect costs of spectrum management. While this would aid in the transparency of the valuation of the spectrum and the indirect costs of spectrum management, it does imply a more complex pricing arrangement, with separate payments for each part of the pricing regime for each commercial broadcaster. The submissions received reflect a preference for simplicity.
- > A simple one-price regime, such as the CBT, is likely to be consistent with the industry's preference for simplicity in the pricing arrangements. In addition, it would provide the government with the flexibility to impose a price that reflects both the value of spectrum and recovers the indirect costs of spectrum management. To aid in the transparency of the pricing arrangements, it is open to the government to provide explanatory material that explains how the different components of the tax have been calculated.

On balance, we consider that the advantages of a 'one-price regime, such as the CBT, is the preferred pricing structure. We consider that, subject to some amendments proposed in this report and any other advice provided to the government, the CBTA can be the appropriate legislation to impose a tax.



## **Conclusion**

The ACMA concludes that a tax should be imposed to recover the value of the spectrum used by commercial broadcasters, and to recover indirect costs of spectrum management. As the CBTA already exists, it may be the appropriate legislation to impose this tax. For commercial broadcasters, it will simplify payment arrangements compared with paying separate amounts for the value of the spectrum and the indirect cost recovery contributions.

# Recommendations

Given our conclusion that a tax should be imposed to recover the value of the spectrum used by commercial broadcasters, and to recover indirect costs of spectrum management, we make the following recommendations:

- > **Recommendation 1: The CBTA should not be repealed.** We consider that it is appropriate that there is legislation in place so that taxes can be imposed in relation to commercial broadcasting services, and the CBTA fulfils this role. A tax provides the government with the flexibility to impose a price on spectrum that represents its value and provides opportunities for the recovery of the indirect costs of spectrum management. For commercial broadcasters, a single tax will simplify payment arrangements rather than paying separate amounts for the value of the spectrum and the indirect cost recovery contributions.
- > **Recommendation 2: The CBTA should be amended.** We recommend Parliament consider amending the CBTA, as there are several improvements that can be made to the CBT arrangements to create a more efficient pricing methodology and simplify administrative arrangements.

We recommend adoption of a \$/MHz/pop pricing methodology to improve the simplicity, transparency and flexibility of pricing arrangements for commercial broadcasters' use of the spectrum. In our view, there are significant benefits in adopting a \$/MHz/pop method over the current pricing methodology, noting that this is a simple tax formula that is applied to many other licensees. It is less complex than the formula contained in the CBTA and the CBT Determination as it would relate to single licence areas rather than each individual transmitter (although the tax may still be imposed on individual transmitter licences).<sup>18</sup> It provides better incentives to maximise public benefit derived from the spectrum and allows for pricing that more transparently and accurately reflects spectrum value.

- > We also recommend a review of the tax caps in the CBTA if a \$/MHz/pop approach is adopted.
- > We also propose adoption of a single annual date for making CBT assessments. This will help avoid inefficiencies and has broad support from industry. It will allow commercial broadcasters to better plan for their review of the tax assessments and cash flows for the payments of CBT. This may require the CBTA to be amended with regard to the timing of CBT being imposed.
- > Implementation of this recommendation may also require amendments to the BSA and the CBT Determination.

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<sup>18</sup> The current CBT arrangements impose the tax in relation to the transmitter licences. Conceptually, it is possible to apply the \$/MHz/pop taxation approach to each transmitter. For example, the tax in relation to each transmitter could then be calculated as the single price for the BSL, divided by the number of transmitters used by the commercial broadcaster to provide the service under the BSL. This approach could also be refined to facilitate pricing where different service bands are being utilised (for example, AM and FM) in the same licence area.

# Appendix A: Example of how to calculate the \$/MHz/pop

A \$/MHz/pop pricing methodology is used to price a range of other spectrum uses. However, its application to commercial broadcasting would represent a change from the current CBT arrangements. This form of pricing method is applied in the following way:

- > **Price (\$):** the \$/MHz/pop price would be multiplied by the population of the relevant licence area and the amount of bandwidth required by the commercial broadcaster to calculate the annual CBT. In the consultation paper, we provided a simple example using a price of \$0.077/MHz/pop.
- > **Bandwidth (MHz):** commercial broadcasters require a particular amount of spectrum to provide a broadcasting service – 18 kHz in the AM band, 200 kHz in the FM band for radio, and 7 MHz in the VHF and UHF bands (for commercial television broadcasters).<sup>19</sup>
- > **Population (pop):** all commercial broadcasting transmitter licences currently subject to the CBT arrangements are associated with a broadcasting services licence (BSL), which authorises provision of a broadcasting service in a single geographic licence area set out under a Licence Area Plan. In this simple example, the population of each geographic licence area is based on data made available by the Australian Bureau of Statistics. The entire population of a licence area is used as the population measure in this pricing methodology example. However, it is acknowledged that different measures of population may also be worth exploring, depending on the government's preferred approach to the \$/MHz/pop pricing construct.

## Examples

### FM radio – Geelong

The current FM radio BSLs operating in the Geelong RA1 licence area use one high-power transmitter each. Due to Geelong falling within the Melbourne high density area, the 2020–21 CBT amount for an FM radio BSL in Geelong is \$42,760.55, which is the price for a high density, high power, FM radio transmitter.

Under a \$/MHz/pop approach, the price for an FM radio BSL in Geelong would be equal to the following formula:

$$\text{\$/MHz/pop price} \times \text{bandwidth (MHz)} \times \text{population} = \text{tax amount}$$

In this example, assume a \$/MHz/pop price of \$0.077/MHz/pop (as per the single price approach in the consultation paper), bandwidth of 0.2 MHz (as FM radio uses 200 kHz), and a population of 518,840 (the Geelong RA1 population as at the 2016 Census). Multiplying these 3 inputs in this hypothetical example leads to a tax amount in the order of \$7,990.

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<sup>19</sup> For completeness, it is noted that VHF is also used for digital radio.

## **TV – Brisbane**

The commercial television broadcasters in the Brisbane TV1 licence area typically use the following transmitters, noting the licence area largely falls within the Brisbane high density area:

- > one high power, VHF band transmitter (\$1,968,668.97 CBT in 2020–21, plus a standby transmitter, which incurs \$42 CBT)
- > 4 medium-power UHF band transmitters (\$196,866.48 CBT per transmitter in 2020–21)
- > 2 low-power UHF band transmitters (these are outside the Brisbane high density area and therefore attract the low density price of \$178 CBT per transmitter in 2020–21).

The total amount of CBT for a typical commercial television broadcaster in Brisbane is therefore in the order of \$2.76 million.

We would only impose tax on 7 MHz of bandwidth under a \$/MHz/pop approach, so the broadcaster only has tax imposed on their required bandwidth once rather than on each transmitter. In this example, assume a \$/MHz/pop price of \$0.077/MHz/pop (again, as per the single price approach in the consultation paper), bandwidth of 7 MHz, and a population of 2,931,267 (the Brisbane TV1 population as at the 2016 Census). Multiplying these 3 inputs in this hypothetical example leads to a tax amount in the order of \$1.58 million.

# Appendix B: December 2020 consultation paper

# Commercial broadcast tax review

## Consultation paper

DECEMBER 2020

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# Executive summary

The *Commercial Broadcasting (Tax) Act 2017* (CBTA) commenced on 1 July 2017 and gives effect to the commercial broadcasting tax (CBT) arrangements, forming part of a suite of broadcasting reforms included in the government's *Broadcast and Content Reform Package*.

Section 216AA of the *Broadcasting Services Act 1992* (BSA) requires the ACMA to review whether the CBTA should be repealed or amended on or before 1 July 2022, with a report of the review due to the Minister for Communications, Cyber Safety and the Arts before 1 July 2021. However, the minister has requested that the ACMA provide our report by 30 March 2021. The BSA also requires us to publicly consult as part of undertaking this review.

We will use feedback provided on the suggested pricing methodologies in this paper to further refine our recommended approach in our report to the minister. This consultation paper identifies relevant issues to consider in repealing or amending the CBTA, suggestions concerning the pricing methodology used to determine CBT and approaches to improve the administration of CBT arrangements.

It should be noted that while the ACMA considers pricing methodologies as part of this consultation paper, the rate of CBT, which determines the amount of tax to be imposed, is determined by legislative instrument by the minister. The amount of tax imposed is a matter for government rather than the ACMA.

On 27 November 2020, the government issued its [Media Reform Green Paper](#), which proposes for comment the option of a new commercial television broadcasting licence. The reforms set out in the Green Paper provide 2 paths for commercial television broadcasters:

1. Licence holders will have the ability to make a one-time, irrevocable transition from their 'traditional licence' to a 'new licence', for which they would no longer be required to pay a tax for the use of spectrum on the condition that they transition to using less radiofrequency spectrum under a multi-year process to be initiated by the government when certain conditions are met; or
2. Licence holders may choose to continue operating under the existing or traditional licensing arrangements, in which case the commercial broadcasting tax arrangements will continue to apply.

The matters discussed in this paper are relevant to the traditional licensing arrangements for commercial radio and remain relevant to television broadcasting in the scenarios where some or all television broadcasters elect not to transition to the new licence.

It should also be noted that transitional support payments are not determined by the CBTA and are therefore not subject to this review.

## CBT arrangements

Under the BSA, a commercial broadcasting licence is required to provide a commercial broadcasting service. Under the *Radiocommunications Act 1992*, a commercial television or broadcasting licensee (commercial broadcaster) is entitled to be issued a transmitter licence to transmit their commercial broadcasting services.

The CBTA imposes a tax relating to transmitter licences that are associated with commercial broadcasting licences. In addition, the CBTA allows the minister to determine the rate of CBT by legislative instrument. Accordingly, the minister made the [Commercial Broadcasting \(Tax\) \(Individual Transmitter Amounts\) Determination 2017](#) (the CBT Determination). The CBTA limits the amount of tax to the individual transmitter amount cap (the ‘tax cap’). At July 2017, the tax caps ranged from \$40 to \$1,866,114 per transmitter, depending on the band the service operates (for example, AM, FM, UHF, or VHF) and the maximum power of the transmitter. Each year the tax caps are indexed for inflation.

Key aspects of the legislative framework for the CBT arrangements can be found in Part 14AA of the BSA, which outlines the processes by which CBT must be assessed and collected.

To assist licensees, we publish the [Commercial Broadcasting Tax Fee Schedule](#) and each financial year provide each licensee with estimates of the commercial broadcasting taxes for which it will be liable for that financial year.

## Repeal or amend the CBTA?

We consider that spectrum pricing arrangements should continue to apply to commercial broadcasting licences. Spectrum is a valuable public resource that may have alternative uses, and spectrum pricing can reflect that commercial broadcasters receive planned access to particular spectrum. Where appropriate, spectrum pricing can also reflect benefits derived by commercial broadcasters from our spectrum management functions, and from regulation and licensing arrangements that promote the efficient use of spectrum. This suggests that the CBTA should not be repealed.

However, based on our analysis and feedback from stakeholders throughout the assessment process, there are some issues with the administration of CBT that could be mitigated with a new pricing methodology and simplified administrative arrangements. To support administrative improvements, amendments to the CBT Determination, the CBTA and the BSA would be required.

## Pricing methodology

The current pricing methodology for CBT is similar to the way that many apparatus licence taxes are determined, where the CBT tax rates are based, in part, on the location of the transmitter, as defined by ‘density areas’. The high-, medium-, low- and remote-density areas were originally defined under the apparatus licence tax arrangements.

The current pricing approach has the potential to lead to some inefficiencies and inequities in spectrum pricing. The current density areas do not always accurately reflect the value of the spectrum relative to the coverage area. For example, while some commercial broadcasters have transmitters located in high-density areas, the coverage areas can be largely located in low-density areas. This can mean that some transmitters incur higher tax rates despite providing coverage into low-density areas.

Furthermore, the current pricing methodology causes commercial broadcasters to incur higher taxes when deploying additional transmitters, which may act as a disincentive to improve service provision in a licence area. That may be particularly inefficient if there are limited alternative uses of the spectrum.

In considering these issues, the ACMA has considered 3 pricing methodology options for ongoing CBT arrangements:

1. Maintaining the current formula and updating the approach to the density areas.
2. Applying a \$/MHz/pop pricing construct.
3. Applying a fixed tax approach.

The ACMA proposes that a \$/MHz/pop pricing construct (Option 2) should be selected for ongoing CBT arrangements. We expect that, compared with updating the current formula, a \$/MHz/pop would enable prices that more accurately reflect the value of the spectrum, while also being simpler and less administratively burdensome. It is also a more transparent methodology than a fixed tax approach, as it is based on well-known parameters (bandwidth and population) that affect spectrum value.

If the government decides to consider an alternative pricing methodology, the ACMA proposes a review of the tax caps. We note the role of the tax caps to provide licensees with guidance about the maximum amount of taxes, particularly in the initial years of the CBT arrangements. However, as the amount of the tax caps have been calculated with reference to the current pricing methodology, they should be reviewed so that CBT can reflect changes in the value of the spectrum over time.

## Administrative processes

We have noted some issues with the administrative processes associated with the CBT arrangements. The key issues raised by stakeholders include:

- > **Assessment frequency.** CBT is imposed on the issue, anniversary, or cessation of a transmitter licence. The vast majority of CBT is imposed on the anniversary date for a transmitter licence, which is typically aligned with the renewal of the associated commercial broadcast service licence (BSL). Making and sending assessments on each anniversary of a BSL coming into force leads to a high number of assessments being sent each year. This is particularly high for networks that control several BSLs. In addition, the ongoing nature of BSLs and the transmitter licences associated with them suggests that aligning assessments with an annual event related to the BSLs may not be necessary.
- > **Requirement to make written assessments.** The current legislation requires the ACMA to make written assessments. This requires an individual decision about each assessment, which can create confusion for stakeholders as it is inconsistent with how apparatus licence taxes are assessed and invoiced.

To rectify assessment frequency issues, we propose that all CBT assessments should occur on a single date each year to simplify arrangements for stakeholders. This is likely to ameliorate the issues about the written assessments as well as create a clearer separation between CBT assessments and invoices received for apparatus licence taxes imposed by the TLT Act.

## Proposals

The ACMA's proposals in this consultation paper can be summarised as:

- > We consider that spectrum pricing arrangements are appropriate for commercial broadcasting and the CBTA should not be repealed.
- > However, there are some issues with the CBT arrangements that could be mitigated with a new pricing methodology and simpler administrative arrangements, which would require amending the CBT Determination, the CBTA and/or the BSA. We propose adoption of:
  - > a \$/MHz/pop pricing methodology, which would require changes to the CBT Determination and a recommended review of the tax caps in the CBTA
  - > a single annual date for CBT assessments to avoid inefficiencies in issuing assessments.

## Consultation

We are seeking feedback on the matters raised in this consultation paper, including the current legislative framework, the potential pricing methodologies, and the potential administrative improvements to CBT arrangements. In addition, stakeholders are also invited to raise other matters that they believe are pertinent to considering whether to amend or repeal the CBTA. We will consider this feedback in reporting to the minister.

# Issues for comment

We invite comments on the issues set out in this consultation paper:

Question 1: Do you have comments on the legislative and policy environment that the ACMA should consider in making recommendations about repealing or amending the CBTA?

Question 2: Do you have comments on the ACMA's proposal that the CBTA should not be repealed, but that there is scope to improve the pricing methodology and the administrative arrangements?

Question 3: Do you have comments on pricing methodologies being considered by the ACMA and its preference for the \$/MHz/Pop?

Question 4: Do you have suggestions for other methodologies or improvements to the methodologies being considered by the ACMA?

Question 5: Do you have comments on the ACMA's proposal to recommend that all CBT taxes are assessed on one particular day per year?

In addition, stakeholders are also invited to raise any other matters that they believe pertinent to considering whether to amend or repeal the CBTA. We will consider this feedback in our review and in developing our report to the minister.

# Overview

The *Commercial Broadcasting (Tax) Act 2017* (CBTA), which commenced on 1 July 2017, imposes commercial broadcasting tax (CBT) on transmitter licences held by commercial broadcasters for transmitting commercial broadcasting services. These tax arrangements are a significant departure from the previous broadcast licence fee (BLF) arrangements for commercial broadcasters.

## Background

In 2017, the [Broadcasting Legislation Amendment \(Broadcasting Reform\) Act 2017](#) (Broadcasting Reform Act) was made, which implemented the policy proposals outlined in the government's *Broadcast and Content Reform Package*.<sup>1</sup> The *Broadcast and Content Reform Package* included broadcast pricing reforms, resulting in the CBT arrangements that are the subject of this review.

Prior to the Broadcasting Reform Act being made, commercial broadcasters were subject to the BLF regime, while each transmitter authorised under transmitter licences held by commercial broadcasters was subject to minimum tax under the [Radiocommunications \(Transmitter Licence Tax\) Act 1983](#) (TLT Act). The broadcast pricing reforms included in the Broadcasting Reform Act resulted in these prior arrangements being abolished and replaced by the new CBT arrangements imposed under the CBTA.

The CBT arrangements are intended to be more reflective of spectrum use when compared with prior arrangements for commercial broadcasters. Further detail on how the arrangements work can be found in Appendix A.

## Review requirement

The Broadcasting Reform Act amended the BSA and introduced, among other provisions, section 216AA, under which the ACMA must conduct a review on whether the CBTA should be repealed or amended on or before 1 July 2022. The review may also include other matters relevant to the tax arrangements as specified by the Minister for Communications, Cyber Safety and the Arts. At this time, the minister has not specified any other matters. The ACMA is required to publicly consult on this review.

The ACMA must give the minister a report of this review before 1 July 2021. However, the minister has requested that the report be provided by the earlier date of 30 March 2021.

In addition to the requirements of section 216AA of the BSA, as part of this consultation process, we are examining other provisions related to the assessment and collection of the tax imposed by the CBTA.

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<sup>1</sup> The [Broadcast and Content Reform Package](#) outlined several policy proposals for commercial broadcasting. The policy basis for the broadcast pricing reforms can be found in the document *Broadcasting—moving to more efficient broadcasting fees*, now available on the [DITRDC website](#).

# Legislative and policy environment

The policy environment for CBT is outlined in the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) [Broadcasting—moving to more efficient broadcasting fees policy paper](#). This paper outlines the reasoning behind changes in the Broadcasting Reform Act that resulted in taxes under the CBTA replacing the previous BLF and TLT Act tax arrangements for commercial broadcasters.

The policy paper also outlines the transitional support payment (TSP) arrangements, which enable commercial broadcasters to be ‘no worse off’ compared with the old BLF arrangements and are outlined in Part 3 of the Broadcasting Reform Act. The Secretary of DITRDC administers the TSP arrangements.

The government’s [Media Reform Green Paper](#), released on 27 November 2020, proposes reforms to the planning, licensing and spectrum pricing arrangements for commercial television broadcasting. If a commercial television licence holder chooses to transition to a new licence under the government’s proposed model, the holder of a new licence will no longer be required to pay a tax for the use of spectrum. The holder of a new licence would be required to transition to a multiplex using less radiofrequency spectrum.

Alternatively, if a licence holder chooses to continue operating under the existing planning and traditional licensing arrangements, the commercial broadcasting tax arrangements will continue to apply.

The matters discussed in this paper are relevant to the traditional licensing arrangements for commercial radio and remain relevant to television broadcasters should some or all of them elect not to transition to the new arrangements proposed by the Government in its Green Paper.

## BSA and the CBTA

Under the BSA, a commercial broadcasting licence is required to provide a commercial broadcasting service. Under the *Radiocommunications Act 1992*, a commercial television or broadcasting licensee (commercial broadcaster) is entitled to be issued a transmitter licence to transmit their commercial broadcasting services.

The CBTA imposes a tax relating to transmitter licences that are associated with commercial broadcasting licences.

Key aspects of the legislative framework for the CBT arrangements can be found in Part 14AA of the BSA, which outlines the processes by which CBT must be assessed and collected. Evaluating the implementation of these processes is important in assessing the CBT arrangements as a whole, so these aspects of the BSA have been included in this review.



## Determining the CBT tax rates

The arrangements involve CBT being imposed under the CBTA, with the applicable tax rates determined by the minister. The current determination is the [Commercial Broadcasting \(Tax\) \(Individual Transmitter Amounts\) Determination 2017](#) (CBT Determination). The CBTA limits the amount of tax to the individual transmitter amount cap (the 'tax cap'). At July 2017, the tax caps ranged from \$40 to \$1,866,114, depending on the band the service operates (for example, AM, FM, UHF, or VHF) and the maximum power of the transmitter. Each year the tax caps are indexed for inflation.

The CBT arrangements are separate to the tax arrangements for non-commercial broadcasting transmitter licences, which have tax imposed under the [Radiocommunications \(Transmitter Licence Tax\) Act 1983](#) (TLT Act) and tax amounts determined by the [Radiocommunications \(Transmitter Licence Tax\) Determination 2015](#) (TLT Determination).

## COVID-19 impact

Due to the COVID-19 pandemic, the minister made the [Commercial Broadcasting \(Tax\) \(Transmitter Licence Tax Rebate\) Rules 2020](#) (Rebate Rules), which apply for a 12-month period from 14 February 2020. Commercial broadcasters are entitled to a rebate for the majority of commercial broadcasting transmitter licence taxes imposed from 14 February 2020, up to and including 13 February 2021. The Rebate Rules were one measure outlined in the government's [Relief for Australian media during COVID-19](#) package.

Matters such as whether TSP or the Rebate Rules should continue are matters for government and are outside the scope of this consultation process.

## Spectrum Pricing Review

In February 2018, the Australian Government endorsed 11 recommendations of the [Spectrum Pricing Review \(SPR\)](#).<sup>2</sup> While the recommendations relate to apparatus licence taxes and the prices for spectrum licences, we consider there are some useful parallels to the CBT arrangements. In particular, we note the following recommendations from the Spectrum Pricing Review:

**Recommendation 2:** To ensure efficient use of spectrum, the Government and the ACMA should endeavour to charge users of similar spectrum at the same rate.

**Recommendation 3:** Bespoke pricing arrangements will sometimes be necessary. Where spectrum fees are determined other than by auction or by the administered pricing formula, the ACMA, or the Government where it directs the ACMA on pricing, should publish the reasons for this decision.

While recognising the important contribution that commercial radio and television broadcasting services bring to Australian society, it is also important to recognise that the fundamentals of spectrum management (including promoting the efficient use of spectrum) still apply to broadcasting services' use of spectrum. Tools used to manage spectrum include spectrum planning, licensing and pricing. SPR Recommendation 2 promotes the use of appropriate pricing signals to users of spectrum. SPR Recommendation 3 recognises that it may be appropriate to have particular or bespoke pricing, such as the CBT arrangements.

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<sup>2</sup> The paper outlining the recommendations can be found on the [Department of Infrastructure, Transport, Regional Development and Communications' website](#).

In addition, we note that the SPR's principles endorsed cost recovery. In particular, the SPR noted that '[t]he ACMA incurs costs for spectrum regulatory activities such as planning, interference management and coordination, and these costs should be recovered from those using spectrum'.<sup>3</sup>

**Question 1**

Do you have comments on the legislative and policy environment that the ACMA should consider in making recommendations about repealing or amending the CBTA?

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<sup>3</sup> [Spectrum Pricing Review](#), p. 6.

# Repeal or amend the CBTA?

We consider that spectrum pricing arrangements should continue to apply to commercial broadcasting licences. Spectrum is a valuable public resource that may have alternative uses, and spectrum pricing can reflect that commercial broadcasters receive planned access to particular spectrum. Where appropriate, spectrum pricing can also reflect benefits derived by commercial broadcasters from our spectrum management, and from regulation and licensing arrangements that promote the efficient use of spectrum. This suggests that the CBTA should not be repealed.

This approach to spectrum pricing is consistent with the intent of the *Broadcasting—moving to more efficient broadcasting fees* policy paper and the relevant recommendations of the Spectrum Pricing Review. It should be noted that while our view is that spectrum pricing arrangements for commercial broadcasters are appropriate, the amount of tax to be collected is a matter for government rather than the ACMA.

There are some issues with the CBT arrangements, as we have observed, and as included in feedback from stakeholders during the assessment process. These issues could be mitigated with a new pricing methodology and simpler administrative improvements, which would require amending the CBT Determination, the CBTA and/or the BSA.

## Improvements to the CBT arrangements

For licensee stakeholders, the key issue that has been raised about pricing methodology has been the way density areas work, while the key issue raised about administrative processes has been the large volume of assessments that some commercial broadcasting networks have received.

The *Pricing methodology* and *Administrative processes* chapters in this consultation paper outline the issues raised in further detail and provide proposals to mitigate these issues.

### Question 2

Do you have comments on the ACMA's proposal that the CBTA should not be repealed but that there is scope to improve the pricing methodology and the administrative arrangements?

# Pricing methodology

The CBT arrangements currently employ a pricing methodology where taxes are calculated for individual transmitters authorised under a commercial broadcasting transmitter licence. The amount of tax for each individual transmitter is based on its frequency band, area density level and power emissions. The way this pricing methodology works is outlined in Appendix A and further detail can be found in the [Commercial broadcasting transmitter licence fee schedule](#).

The analysis of potential alternative pricing methodologies assumes that the net costs to commercial broadcasters (that is, after accounting for transitional support payments (TSPs)) will be equivalent to the current CBT arrangements, as changes to the overall amount of tax to be collected is a matter for government rather than the ACMA. Indicative prices for alternative pricing methodologies are based on an annual net total cost to commercial broadcasters of \$41.3 million, the calculations for which are detailed in Appendix B.<sup>4</sup> Further adjustments to this analysis may be required to account for the government's November 2020 media reform proposals but this analysis remains relevant to the traditional licensing models for commercial radio and television broadcasting.

The following discussion outlines noted issues with the current CBT pricing methodology, and then steps through potential pricing methodology options for future CBT arrangements. These include (but are not limited to) the following broad options:

- > maintaining the current formula and updating the approach to the density areas
- > dollars per MHz per population (\$/MHz/pop)
- > fixed tax per licence.

The discussion under each broad option includes a high-level description and summation of its advantages and disadvantages. We note there are several ways that each option could be implemented, particularly for licensing arrangements and how taxes are distributed across different categories of commercial broadcasters (for example, differences between television and radio, and between metropolitan and regional broadcasters). We consider that each pricing methodology outlined in detail in this chapter may be imposed on commercial broadcasters' individual transmitters.

## Issues with current pricing methodology

The following key issues have been raised by stakeholders and/or identified by the ACMA.

### Density areas

Tax rates are currently categorised into different density areas to reflect that higher prices should be imposed in geographic areas where demand for the spectrum is likely to be greater. While the CBTA relies on the widely understood area density levels outlined in the TLT Determination, these area density levels can lead to some inequalities in the taxes imposed.

In some cases, transmitters are located in high-density areas and have high-density tax rates imposed despite the actual licence area for the commercial broadcaster being a low-density area. For example, many commercial television transmitters

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<sup>4</sup> These figures are based on the amount of CBT that would be imposed in 2020–21 (excluding any effect of the Rebate Rules) based on the commercial broadcasters' transmitter licences existing as at 16 July 2020.

located at Knights Hill (outside Wollongong) are technically located in the Sydney high-density area and, therefore, have high-density tax rates imposed. However, these transmitters at Knights Hill broadcast into the Southern New South Wales TV1 licence area, which is primarily located in the east Australia low-density area outlined in the TLT Determination and has a much smaller population than the Sydney TV1 licence area.

While the high-density tax rates are partially offset by the TSP arrangements, we consider a pricing methodology that avoids these density area issues would be preferable.

### **Incentives for efficient spectrum use**

The current pricing methodology may not provide incentives for commercial broadcasters to maximise the public benefit derived from the spectrum within the broadcasting service bands. Each commercial broadcaster has access to spectrum to broadcast to a geographic licence area by virtue of holding a broadcast service licence (BSL), but they have to incur higher overall CBT if they want to deploy additional transmitters (that is, 'translators') to improve coverage within the licence area. In this case, commercial broadcasters would incur higher taxes, even though they may not be causing any additional spectrum denial as there may be limited alternative uses of the spectrum within the licence area.

### **Complexity of calculating individual transmitter amounts under current CBT arrangements**

The current tax formula is complex and not necessarily intuitive, particularly as both the regular tax amount under the tax formula in the CBT Determination and the applicable tax cap in the CBTA have to be calculated to determine the actual amount of CBT to be imposed on a transmitter. This has become more complicated each year with annual indexation.

We have sought to address these issues by outlining the calculation process in the *Commercial broadcasting transmitter licence fee schedule*.

## **Option 1: Maintaining the current formula and updating the approach to the density areas**

This option refers to a continuation of the current pricing methodology. The pricing methodology would continue to be applied to individual transmitters and would be based on \$/kHz rates determined by frequency band and area density level, multiplied by a maximum power factor depending on power emissions. See the 'Fee calculation' section of Appendix A for further information on the current pricing methodology.

However, amendments could be considered to improve the effectiveness of the methodology. For example, the actual tax rates within this methodology could be changed, and consideration could be given to a new approach to density areas (for example, density areas could be focused on the geographic area where broadcasting services are being received rather than the actual location of transmitters).

### **Option 1 – advantages**

The key advantages of maintaining the status quo include:

- > **Incumbency.** Commercial broadcasters have gained experience with the current pricing methodology and, under this option, there is no requirement to adjust to a different methodology.
- > **Alignment with apparatus licence taxes.** Despite being in separate legislation, the current methodology is similar to the methodology for most apparatus licence

taxes, which are generally based on a \$/kHz rate that depends on frequency band and area density level, with some users receiving a low-power discount. There may be some advantage in consistency if transmitters held by a licensee (for both broadcasting and non-broadcasting purposes) are taxed alike.

### Option 1 – disadvantages

The key disadvantages of Option 1 include:

- > complexity of calculating individual transmitter amounts
- > lack of incentives for efficient spectrum use
- > ongoing issues with density areas (although we note that incremental improvements could be made to the methodology if the current density area boundaries were reviewed).

### Option 1 – summary

Maintaining the current methodology has the benefit of incumbency and is likely to be more effective if there are administrative changes that streamline the assessment process (as suggested in the *Administrative processes* section of this consultation paper).

However, we consider that the disadvantages of Option 1 outweigh the advantages.

## Option 2: \$/MHz/pop

Spectrum prices are often denoted in \$/MHz/pop terms to help compare the value of spectrum between holdings of different amounts of bandwidth (MHz) and different population sizes. A \$/MHz/pop approach may therefore allow for a similar \$/MHz/pop price to be imposed on commercial broadcasters with differing circumstances, as the parameters of the pricing approach mean that commercial broadcasters will pay differing total amounts of tax commensurate with their bandwidth use and population coverage.

The \$/MHz/pop approach is constructed with the following features:

- > **Price (\$).** The price component is multiplied by the population of the relevant licence area and the amount of bandwidth required by the commercial broadcaster to calculate the annual CBT.
- > **Bandwidth (MHz).** Commercial broadcasters still require a particular amount of spectrum to provide a broadcast service – 18 kHz in the AM band, 200 kHz in the FM band, and 7 MHz in the VHF and UHF bands (for commercial television broadcasting services).
- > **Population (pop).** All transmitter licences currently subject to the CBT arrangements are associated with a BSL. A BSL confers a right to provide a broadcasting service in a single licence area.<sup>5</sup> The population of a geographic licence area is based on data from the Australian Bureau of Statistics (ABS) and broadly represents the size of the potential audience available to the particular commercial broadcaster. Under this approach, the CBT would be imposed in reference to the population of the entire licence area.

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<sup>5</sup> The ACMA plans the number and kinds of broadcasting services available in Australia. Those plans, known as licence area plans (LAPs) or television licence area plans (TLAPs), include the geographic licence areas within which particular BSLs can provide broadcast services. Further information on LAPs can be found on the [ACMA website](#).

Based on the existing makeup of BSLs and licence area populations, and assuming a net total cost to commercial broadcasters of \$41.3 million, example \$/MHz/pop prices could include (but are not limited to):

- > a single price imposed in relation to all BSLs: **\$0.077/MHz/pop**
- > Separate television and radio prices, where the radio price is 25% lower than the television price (as is approximately the case in the current CBT arrangements):
  - > **\$0.078/MHz/pop for commercial television**
  - > **\$0.058/MHz/pop for commercial radio.**

Further detail regarding these prices and the way that a \$/MHz/pop approach could work is in Appendix B. We note that there are many different ways that a \$/MHz/pop approach could be implemented for the actual prices being set.

Another matter in considering this approach is whether to impose the tax in relation to the transmitters, the transmitter licences or the BSL. The current CBT arrangements impose the tax in relation to the transmitter licences. Conceptually, it is possible to apply the \$/MHz/pop taxation approach to each transmitter. For example, after taking the calculations outlined above, the tax in relation each transmitter could then be calculated as the single price for the BSL, divided by the number of transmitters used by the commercial broadcaster to provide the service under the BSL. This approach could also be refined to facilitate pricing where different service bands are being utilised (for example, AM and FM) in the same licence area.

## **Option 2 – advantages**

The key advantages of a \$/MHz/pop approach include:

- > **Simplicity and transparency.** The methodology is relatively simple to understand when compared with the current CBT arrangements. CBT amounts under this option would be based on well-understood and transparent parameters – that is, the \$/MHz/pop price, the publicly available licence area population determined under section 30 of the BSA, and the required bandwidth associated with the relevant frequency band.
- > **Incentives to maximise the public benefit derived from the spectrum.** When commercial broadcasters add transmitters to improve coverage within a licence area, they improve the public benefit. The \$/MHz/pop approach should reduce any CBT disincentives to deploying additional transmitters.
- > **More accurate reflection of population coverage and spectrum value.** Under this option, prices more accurately reflect the potential audience within a licence area, while specific issues regarding density area borders can also be resolved.
  - > Taxes are based on the population of the licence area served by the commercial broadcaster and, therefore, can be expected to reflect population density more accurately than the current density area levels, which are designed for transmitter licences under the TLT Determination. For example, the 3 high-density areas in the TLT Determination are Sydney, Melbourne and Brisbane, so commercial broadcasting transmitters in each of these cities have the same CBT rates imposed under the current CBT arrangements. Under a \$/MHz/pop approach, lower tax rates would be imposed in Brisbane, reflecting its considerably lower population compared with Sydney and Melbourne.
  - > It avoids the density area issues in the current CBT arrangements, where transmitters located in high-density areas but broadcasting into low-density areas are incurring costs not commensurate with the density of the relevant licence area. For example, transmitters located at Knights Hill would no longer be subject to Sydney high-density prices but would instead be subject to tax rates based on the population of the licence area associated with the

BSL (for example, commercial television broadcasting into the Southern New South Wales TV1 licence area with a population of 1.4 million rather than the Sydney TV1 licence area with a population of 4.8 million).

### Option 2 – disadvantages

The key disadvantages of a \$/MHz/pop approach include:

- > **The absence of a population density factor.** The \$/MHz/pop approach considers absolute population rather than population density and therefore, potentially overlooks the actual value of the spectrum. For instance, in licence areas with identical populations, the value of spectrum per head of population is likely to be greater in high-density metropolitan areas due to lower infrastructure costs to cover the entire area and greater opportunities for relevant, targeted advertising on their broadcast platform.
- > **New approach.** Transitioning to a \$/MHz/pop approach means that commercial broadcasters have to become familiar with a new pricing methodology. While the new approach offers benefits as it is relatively simple, the requirement to adjust to a new pricing methodology introduces an administrative impost on commercial broadcasters.

### Option 2 – summary

We consider that a \$/MHz/pop approach represents the best broad pricing methodology for continuing CBT arrangements. There will be some costs involved in moving to a new approach, but we consider those costs to be more than offset by the potential advantages of a relatively simple tax formula and tax amounts that are more reflective of spectrum value.

## Option 3: Fixed tax

The fixed-tax pricing methodology is similar to the \$/MHz/pop approach but involves a specified price for a tax imposed for each BSL that provides access to provide a broadcasting service. Under this option, different prices for different frequency bands and geographic locations would apply, but those prices would not be linked to the parameters of bandwidth (MHz) and population. We expect that this approach has the potential to be implemented at the individual transmitter level.

### Option 3 – advantages

The key advantages of a fixed tax approach include:

- > **Simplicity.** No complex calculations are required by licensees to verify their prices.
- > **Incentives to maximise the public benefit derived from the spectrum.** This is the same as Option 2.

### Option 3 – disadvantages

The key disadvantages of a fixed tax approach include:

- > **Lack of granularity in pricing.** The overall simplicity of this option comes at the expense of a simple mechanism to differentiate prices for different circumstances (for example, different geographic areas) and differential spectrum value. The simplest parameters used to calibrate prices for different geographic areas and different frequency bands are population and bandwidth. Without these factors being utilised, prices set may be insufficiently differentiated between spectrum of different value.
- > **Lack of transparency in setting prices.** If different prices are being imposed for different circumstances but are not based solely on objective parameters (such as those featuring in the \$/MHz/pop approach), there is a risk that prices may be, or may appear to be, set at arbitrary levels.



- > **New approach.** This is the same as Option 2, although likely to be less of a disadvantage owing to the simplicity of this pricing methodology.

### **Option 3 – summary**

We consider that a fixed tax approach represents the simplest pricing methodology for stakeholders to work out and verify their own taxes, as no calculations would be required. However, there is a risk that using the flexibility of this approach to generate prices for different BSLs that accurately reflect differing circumstances or characteristics (for example large city versus small town, AM radio versus television, etc.) will have to rely on bandwidth and population parameters. In this case, it may therefore be a less transparent version of the \$/MHz/pop approach.

## **Proposal**

We propose to recommend Option 2 – a \$/MHz/pop approach – as the pricing methodology for continued spectrum pricing arrangements for commercial broadcasters. In summary:

- > There are significant benefits for \$/MHz/pop over updating the current pricing methodology. It is a less complex tax formula than the formula contained in the CBTA and the CBT Determination as it would relate to single licence areas rather than each individual transmitter (noting that the tax could still be imposed on individual transmitters). It also provides better incentives to maximise public benefit derived from the spectrum and should theoretically provide for prices that more accurately reflect spectrum value.
- > There is a potential disadvantage under a simple \$/MHz/pop approach as there is a lack of consideration of population density. However, there is scope to add population density to the calculations, such as adjusting the tax rates for simple population per square kilometre in the licence area. We are interested in the views of stakeholders on approaches to measuring population density.
- > There is the potential for a fixed tax approach to become a proxy version of a \$/MHz/pop approach, but with less transparency in pricing. For fixed taxes, parameters are needed to generate different prices for different spectrum values – the simplest parameters are bandwidth and geographic location, which are already the inputs for the \$/MHz/pop formula. As such, there are few additional benefits to the fixed tax approach when compared with \$/MHz/pop.

Irrespective of the preferred pricing methodology, we also propose to recommend that the individual transmitter amount caps in section 9 of the CBTA be reviewed and amended. These caps were based on the high-density tax rates in the current pricing methodology, as determined in 2017. The amount of CBT revenue collected is a matter for government, but the current structure of the caps fixes the maximum amount of annual tax per transmitter, which may limit the potential effectiveness of any new pricing methodology that the government chooses to implement. Amendments to the indexation factor for individual transmitter amount caps in section 12 of the CBTA, may also be considered depending on whether a new approach to caps is taken.

### **Question 3**

Do you have comments on pricing methodologies being considered by the ACMA and its preference for the \$/MHz/Pop?

### **Question 4**

Do you have suggestions for other methodologies or improvements to the methodologies being considered by the ACMA?

# Administrative processes

This chapter outlines issues with current processes and potential solutions to rectify them.<sup>6</sup> Unless they are addressed, these issues will wholly or largely persist, regardless of the pricing methodology chosen for future CBT arrangements.

## Issues with current administrative processes

### Assessment frequency

CBT is imposed on the issue and cessation of a transmitter licence, and the anniversary of the licence coming into force. As there are very few new commercial broadcasting transmitter licences issued, the vast majority of CBT is imposed on the anniversaries of transmitter licences coming into force. Each transmitter licence typically has an anniversary date that aligns with the expiry date of its associated BSL, so all transmitter licences that relate to a single BSL should theoretically have the same anniversary date.

Commercial broadcasting networks often comprise a high number of individual commercial broadcasting licensees, each of which might hold one or more BSLs and one or more related transmitter licences.<sup>7</sup> This means that broadcasting networks are effectively receiving a CBT assessment each time the transmitter licences for a particular BSL reach their anniversary date, which can and usually will occur at multiple different times throughout the year. This leads to a very high frequency and volume of assessments being received by networks throughout each year and creates difficulty in planning for and tracking CBT obligations over the year. It could also be considered unnecessary to base the timing of assessments on events related to BSLs or transmitter licences when these licences are largely held on an ongoing basis.

### Requirement to make written assessments

The ACMA is required to make written assessments, which means that each assessment has to be manually approved and signed. When compared with the transmitter licence tax arrangements under the TLT Act, this is highly resource-intensive. It also adds complexity to the arrangements for commercial broadcasters, as they receive different assessments and/or invoices depending on whether they are for CBT or for the transmitter licence tax imposed on other transmitter licences, such as point-to-point licences (tax imposed by the TLT Act, which is the legislation most licensees have been familiar with historically).

## Proposals – administrative improvements

The following potential administrative improvements address the administrative issues highlighted above and could be considered in the event of the CBTA being repealed or amended. The proposals also include potential amendments for associated legislation that is relevant to the CBT arrangements, such as Part 14AA of the BSA and the CBT Determination.

### Single date for annual tax assessments

The high frequency of assessments is considered a key issue with the existing CBT arrangements – it adds complexity to the arrangements and is administratively burdensome for industry and the ACMA. We have received feedback from commercial

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<sup>6</sup> How the current processes work is outlined in Appendix A.

<sup>7</sup> As at 9 July 2020, there are 27 commercial broadcasting networks comprising 219 individual commercial broadcasters, which in turn hold a combined 327 BSLs.

broadcasters about the complicated process arising from frequent assessments in managing cash flows and understanding and paying the assessments.

The administrative burden could be substantially reduced if all assessments were completed on one common date each year. This is especially the case for larger broadcasting networks that typically receive many assessments throughout each financial year. The assessment frequency will remain high (albeit less complex) even under a \$/MHz/pop approach, so changing to a single date for annual tax assessments would create important efficiencies, regardless of pricing methodology.

The key part of the current legislative framework for CBT arrangements that requires written assessments to be made 'as soon as practicable' following tax being imposed by the CBTA and requires the ACMA to give the written assessment to the intended recipient 'as soon as practicable' following the assessment being made.

#### **Question 5**

Do you have comments on the ACMA's proposal to recommend that all CBT is assessed on one particular day per year?

# Invitation to comment

## Making a submission

We invite comments on the issues set out in this consultation paper.

- > [Online submissions](#) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.
- > Submissions by post can be sent to:  
The Manager  
Economics Advisory Section  
Australian Communications and Media Authority  
PO Box 78  
Belconnen ACT 2616

The closing date for submissions is COB, **Thursday 4 February 2021**.

Consultation enquiries can be emailed to [spectrumpricing@acma.gov.au](mailto:spectrumpricing@acma.gov.au).

### **Publication of submissions**

The ACMA publishes submissions on our website, including personal information (such as names and contact details), except for information that you have claimed (and we have accepted) is confidential.

Confidential information will not be published or otherwise released unless required or authorised by law.

### **Privacy**

View information about our policy on the [publication of submissions](#), including collection of personal information during consultation and how we handle that information.

Information on the *Privacy Act 1988*, how to access or correct personal information, how to make a privacy complaint and how we will deal with the complaint, is available in our [privacy policy](#).

# Appendix A: How the current CBT arrangements work

This appendix provides an overview of the current CBT arrangements, including:

- > the amount of tax collected under the current arrangements and how that compares with prior arrangements
- > how the tax component for each individual transmitter is calculated
- > the process for making and sending tax assessments
- > matters identified during the implementation of the arrangements.

## Amount of tax collected

The CBT arrangements have been in place since 1 July 2017, and following indexation each financial year, the aggregate tax imposed on commercial broadcasters is expected to be around \$46 million in 2020–21, although the total amount payable by commercial broadcasters will vary due to the Rebate Rules.<sup>8</sup>

Under the previous BLF arrangements, approximately \$127 million was collected in 2015–16 (the final year of BLF collections). Annual tax collections of around \$45 million annually under the CBT arrangements represent a substantial reduction in the aggregate annual amount of portfolio tax paid by commercial broadcasters compared with the BLF. Transitional support payments (TSPs) totalling \$4.76 million annually are also received by eligible commercial broadcasters. TSPs are administered by DITRDC and are intended to offset part of these tax collections.

## Tax calculation

The CBT arrangements involve taxes calculated for individual transmitters authorised by a transmitter licence, and are based on 3 main criteria:

- > the frequency band in which the transmitter operates (AM, FM, VHF or UHF)
- > the area density level of the transmitter's geographic location (high, medium, low or remote)
- > the transmitter's level of power emissions (high, medium or low).

The calculation method is outlined in section 6 of the CBT Determination. In summary, there are separate \$/kHz rates for each combination of frequency band and area density level. The particular \$/kHz rate is multiplied by the bandwidth used by the transmitter and then adjusted for its power category to find the individual transmitter amount.<sup>9</sup>

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<sup>8</sup> Commercial broadcasting taxes imposed under the CBTA will be subject to the [Rebate Rules](#) for part of the year in 2020–21. Taxes will be imposed but payment will not be required for a substantial portion of these taxes during this financial year.

<sup>9</sup> The bandwidth used by an individual transmitter depends on the frequency band being used, as per subsection 6(7) of the CBT Determination. Subsection 6(8) of the CBT Determination provides that the calculated amounts are multiplied by 0.1, 1 or 10 depending on whether the transmitter is in the low-, medium- or high-power category, respectively. The parameters for determining the power category are in subsection 9(4) of the CBTA.

There is a further element in the calculation, as the amount for an individual transmitter is ultimately the lesser of the amount calculated by the aforementioned method and the individual transmitter amount cap in subsection 9(1) of the CBTA.

The calculation method (with examples) is illustrated in further detail in our [Commercial broadcasting transmitter licence fee schedule](#).

## Assessment process

### Legislative requirements

Taxes under the CBTA are imposed upon the issue and cessation of a transmitter licence, and each anniversary of the day the transmitter licence came into force.<sup>10</sup> While tax is imposed by the CBTA, assessment requirements are outlined under section 205AB of the BSA. The key facets of the BSA regarding tax imposed by the CBTA are:

- > the ACMA is required to make a written assessment setting out the amount of CBT payable by the commercial broadcaster
- > as soon as practicable after making the assessment, the ACMA must give a copy of the assessment to its intended recipient.

The combined legislative requirements of the CBTA and BSA mean that once a transmitter licence reaches its anniversary date:

- > taxes are imposed automatically under the CBTA
- > the ACMA is required to make a written assessment
- > the written assessment must be sent as soon as practicable.

Payment of CBT is due and payable within 28 days of a written assessment being given to its recipient.

### ACMA process

To meet the legislative requirements, our process to make and send assessments incorporates the following:

- > We do not consider it practicable to make and send a written assessment on each day when CBT is imposed under the CBTA.<sup>11</sup> To allow for practicability, our approach has been to send a 'round' of assessments every second Thursday, although there have been occasional delays in the process. Each day that a round of assessments is made and sent is referred to as an *assessment date*.
- > Each assessment date is planned in advance. One week prior to making and sending assessments, we send an 'estimate' document to each commercial broadcaster outlining the taxes expected to be imposed on the assessment date. This provides additional notice to commercial broadcasters that they have upcoming tax obligations.
- > We subsequently verify, make and send all the applicable assessments on the assessment date.

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<sup>10</sup> The CBTA also imposes taxes on transmitter licences being held on 1 July 2017, which is when the CBTA commenced. These taxes were referred to as 'transitional' taxes and were pro rata amounts for the part-year period from 1 July 2017 to the anniversary date of the licence during 2017–18.

<sup>11</sup> There are 153 unique anniversary dates across all relevant transmitter licences, as at 8 July 2020.

# Appendix B: Analysis of \$/MHz/pop pricing methodology

A \$/MHz/pop pricing methodology would represent a considerable change from the CBT arrangements. As outlined in the body of the paper, the way this type of pricing approach would work is:

- > **Price (\$).** The \$/MHz/pop price would be multiplied by the population of the relevant licence area and the amount of bandwidth required by the commercial broadcaster to calculate the annual CBT.
- > **Bandwidth (MHz).** Commercial broadcasters require a particular amount of spectrum to provide a broadcasting service – 18 kHz in the AM band, 200 kHz in the FM band, and 7 MHz in the VHF and UHF bands (for commercial television broadcasters).
- > **Population (pop).** All commercial broadcasting transmitter licences currently subject to the CBT arrangements are associated with a BSL, which authorises provision of a broadcasting service in a single geographic licence area set out under a licence area plan (LAP).<sup>12</sup> The population of each geographic licence area is based on data made available by the ABS. The entire population of a licence area is used as the population measure in this pricing methodology.

## Revenue equivalence

We are not considering any change to the annual tax revenue collected by CBT arrangements, as this is a matter for government. The \$/MHz/pop analysis is therefore based on achieving equivalent CBT revenue of \$41.3 million when imposing taxes on the current catalogue of transmitter licences held by commercial broadcasters. Further adjustments to this analysis may be required to account for the government's November 2020 media reform proposals.

The amount of \$41.3 million represents the net CBT projected to be imposed on commercial broadcasters (excluding any impact resulting from the Rebate Rules) after taking the CBT projected to be imposed in 2020–21 (\$46.1 million) and subtracting annual TSPs (\$4.76 million).<sup>13</sup>

The reason TSPs have been considered when determining the target for revenue equivalence is that the net amount represents the real impact of CBT imposed on commercial broadcasters. As such, we consider it appropriate to use the figure of \$41.3 million as the basis for the following analysis.

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<sup>12</sup> The ACMA plans the number and kinds of broadcasting services available in Australia. Those plans, known as LAPs or television licence area plans (TLAPs), include the geographic licence areas within which particular BSLs can provide broadcast services. Read [further information on LAPs](#).

<sup>13</sup> These figures are based on CBT that would be imposed on the collection of commercial broadcasting transmitter licences as at 16 July 2020 on the [Register of Radiocommunications Licences](#) (the ACMA's database of radiocommunications licences). Total CBT to be imposed in 2020–21 does not account for the Rebate Rules, which provide for a 100% rebate for all CBT imposed between 14 February 2020 and 13 February 2021, except for the TSP amounts.

## Price proposals

There are several alternative options for how a \$/MHz/pop approach can be implemented. The following analysis represents a small subset of these options, intended to illustrate how a \$/MHz/pop approach could work. Each option takes into account the total number of commercial broadcasting transmitter licences held by commercial broadcasters as at 16 July 2020 when determining particular prices that would enable collective CBT revenue to total \$41.3 million annually.

### Single price

The proposal for a single price assumes all commercial broadcasters would pay the same \$/MHz/pop price, with variations in the CBT imposed therefore depending on the bandwidth required and the licence area population. The single \$/MHz/pop price required to achieve CBT revenue of \$41.3 million is **\$0.0770/MHz/pop**.

Commercial broadcasters use different amounts of bandwidth depending on the service they are providing. Commercial radio broadcasters use 18 kHz in the AM band and 200 kHz in the FM band, while commercial television broadcasters use 7 MHz in either the VHF or UHF band. Commercial television broadcasters would therefore have significantly more CBT imposed on them than commercial radio broadcasters, assuming a similar population, as they use far more spectrum. Table outlines the breakdown by broadcast type according to the current number of relevant transmitter licences.

**Table 1: Single \$/MHz/pop price – breakdown by broadcast type**

Broadcast type	\$/MHz/pop price	Annual CBT
Commercial television	\$0.0770	\$39.7 million
Commercial radio		\$1.6 million
Total	n/a	\$41.3 million

The following represents some specific examples of how CBT would be imposed under a single \$/MHz/pop price approach in different types of geographic areas and for different types of broadcasting. The metropolitan example used is Melbourne and the regional example used is Mildura:

- > Melbourne: commercial radio broadcasters are able to broadcast into the Melbourne RA1 licence area (total estimated population of 4,446,730), while commercial television broadcasters are able to broadcast into the slightly different Melbourne TV1 licence area (total estimated population of 4,819,457) (see Table 2).
- > Mildura: commercial radio broadcasters are able to broadcast into the Mildura RA1 licence area (total estimated population of 60,865), while commercial television broadcasters are able to broadcast into the Mildura/Sunraysia TV1 licence area (total estimated population of 63,612) (see Table 3).

**Table 2: Prices under single \$/MHz/pop price approach in Melbourne**

Frequency band	Bandwidth (MHz)	Population	Price
AM radio	0.018	4,446,730	\$6,167
FM radio	0.2	4,446,730	\$68,523
VHF/UHF TV	7	4,819,457	\$2,599,323



**Table 3: Prices under single \$/MHz/pop price approach in Mildura**

Frequency band	Bandwidth (MHz)	Population	Price
AM radio	0.018	60,865	\$84
FM radio	0.2	60,865	\$938
VHF/UHF TV	7	63,612	\$34,308

A single \$/MHz/pop price would be the simplest solution to calculating prices. However, it may not be appropriate as it does not reflect potential differing values derived from the spectrum between television and radio, and between metropolitan and regional areas.

#### Different prices for television and radio

In the current CBT arrangements, the \$/kHz rates for a given density area are generally lower for AM and FM than they are for VHF or UHF. Our analysis indicates that the aggregate annual CBT imposed on commercial radio transmitter licences is around 25% lower than if AM and FM transmitter licences were subject to VHF/UHF \$/kHz rates. The \$/MHz/pop approach in Table 4 therefore specifies a commercial radio \$/MHz/pop price that is 25% lower than the commercial television \$/MHz/pop price.

**Table 4: Different \$/MHz/pop prices for commercial television and commercial radio – breakdown by broadcast type**

Broadcast type	\$/MHz/pop price	Annual CBT
Commercial television	\$0.0778	\$40.1 million
Commercial radio	\$0.0584	\$1.2 million
Total	n/a	\$41.3 million

*Note: The commercial radio price is exactly 25% lower than the commercial television price.*

This approach would be consistent with the current CBT arrangements, but the far lower taxes already imposed on commercial radio broadcasters because of the smaller bandwidths used may mean a discount for commercial radio is not necessary (see Table 1 to demonstrate the difference with the outcome under a single \$/MHz/pop price). The examples of Melbourne and Mildura in tables 5 and 6 illustrate this, provided they are compared with the single price examples for the same areas.

**Table 5: Prices under the different television and radio \$/MHz/pop price approach in Melbourne**

Frequency band	Bandwidth (MHz)	Population	Price
AM radio	0.018	4,446,730	\$4,671
FM radio	0.2	4,446,730	\$51,902
VHF/UHF TV	7	4,819,457	\$2,625,128

**Table 6: Prices under the different television and radio \$/MHz/pop price approach in Mildura**

Frequency band	Bandwidth (MHz)	Population	Price
AM radio	0.018	60,865	\$64
FM radio	0.2	60,865	\$710
VHF/UHF TV	7	63,612	\$34,649

## Further pricing proposals

The above proposals of a single price or applying different prices for television and radio licences have the benefit of being simple and transparent but may not work to apportion CBT appropriately across commercial broadcasters. For example, it may be appropriate to consider adjusting the tax rates to account for different population densities. In addition, this approach could also be refined to facilitate pricing where different service bands are being utilised (for example, AM and FM) in the same licence area.

## Distributional changes

There will be changes to the distribution of CBT among commercial broadcasters if a \$/MHz/pop approach is applied. While any decisions taken to mitigate these changes will not be the responsibility of the ACMA, they have been highlighted for completeness. The relevant comparisons are with the previous BLF regime and the current CBT arrangements.

### Comparison with BLF regime

A feature of the [Broadcast and Content Reform Package](#), which formed the basis of moving to the CBT arrangements, was that no broadcasters would be 'worse off' under the new arrangements.<sup>14</sup> Commercial broadcasters that became worse off as a result of the move to CBT arrangements have been eligible for TSPs to offset this difference. The TSPs are payable each year for a 5-year period from the 2017–18 financial year up to and including the 2021–22 financial year, but are not payable thereafter, as per item 38 of the Broadcasting Reform Act.

Table 7 provides comparisons between a future \$/MHz/pop approach (single price and differential commercial television and commercial radio prices) and the previous BLF regime, although it should be noted that no indexation has been applied to BLF figures from 2015–16.

**Table 7: Comparison of \$/MHz/pop approach and 2015–16 BLF**

Outcome	Item	Single price	Different prices for television and radio
Better off than BLF	Number of BSLs	264	270
	Percent of BSLs	84%	85%
	Average amount	\$327,598	\$320,489
Worse off than BLF	Number of BSLs	52	46
	Percent of BSLs	16%	15%
	Average amount	\$37,348	\$43,189

Note: BLF was imposed on 316 broadcasting service licences in 2015–16, and the aggregate BLF collected was around \$126 million.

The number of BSLs that are better off under a \$/MHz/pop approach is to be expected, considering the substantial reduction in tax compared with the BLF. In contrast, BSLs that are worse off are typically in this position due to their low 2015–16 broadcasting revenue (upon which the BLF was calculated) relative to their licence area population. The worst affected commercial broadcasters are regional commercial television broadcasters, as a \$/MHz/pop approach imposes taxes commensurate with their far greater bandwidth requirements compared with commercial radio, and the

<sup>14</sup> See the DITRDC document [Broadcasting—moving to more efficient broadcasting fees](#).

total population of some regional television licence areas is relatively high despite low population density.

### Comparison with CBT arrangements

The CBT revenue equivalence proposed in this paper, where CBT revenue would remain at \$41.3 million, means there is no change to the aggregate annual tax imposed in this comparison. The consideration of any commercial broadcaster as being better or worse off is in comparison with their current CBT arrangements, less any TSPs for which they are eligible.

**Table 8: Comparison of \$/MHz/pop approach and CBT arrangements (net of transitional support payments)**

Outcome	Item	Single price	Different prices for television and radio
Better off than CBT arrangements	Number of BSLs	67	75
	Per cent of BSLs	20%	23%
	Average amount	\$131,549	\$108,677
Worse off than CBT arrangements	Number of BSLs	260	252
	Per cent of BSLs	80%	77%
	Average amount	\$32,148	\$33,176

Note: There are currently 327 BSLs that hold transmitter licences subject to the CBT arrangements.

The most notable part of these distributional changes is that the commercial broadcasters that are better off are better off by a substantial average amount, even after accounting for any TSPs for which they may be eligible. Commercial broadcasters that are better off are primarily operating in licence areas with a low population relative to their area density category – these commercial broadcasters are typically located in high- or medium-density areas (as per current definitions).

For instance, tax rates under the CBT arrangements are equal for all high-density areas – Brisbane, Melbourne and Sydney. The relatively lower population in Brisbane compared with the other 2 high-density areas would be accounted for under a \$/MHz/pop approach, leading to considerable CBT reductions for commercial broadcasters in Brisbane. A \$/MHz/pop approach would also present benefits to commercial radio broadcasters that operate in a smaller licence area on the fringe of a high-density area (for example, Gosford in the Sydney high-density area or Geelong in the Melbourne high-density area). Rather than having high-density tax rates used for their transmitters, they would have CBT imposed relative to the much smaller populations of their licence areas.

In contrast, there are many regional commercial broadcasters that are worse off by smaller average amounts under a \$/MHz/pop approach. This is because many of these commercial broadcasters only have the minimum amount of CBT imposed on their transmitter licences under the current CBT arrangements, but their CBT would be scaled up under a \$/MHz/pop approach, depending on their licence area population. For example, the tax rate for a medium-power FM radio transmitter in Bundaberg (a low-density area) is \$44 in 2020–21, whereas a price of \$0.0770/MHz/pop for the Bundaberg RA1 licence area, with a population of 82,420, leads to CBT of \$1,270. A similar impact occurs for many regional commercial broadcasters.

It should also be noted that the distributional changes are similar for the 2 different pricing approaches. There are only 8 commercial radio broadcasters that would be marginally worse off under a single price approach, that would be marginally better off with a lower commercial radio price. The result was that these commercial

broadcasters moved from having relatively low 'worse off' amounts to relatively low 'better off' amounts. This is reflected in the different average amounts in Table 8, as a subset of low-value amounts being removed from (or added to) a larger set of amounts will increase (or decrease) the average amount.

# Appendix C: Submissions to December 2020 consultation paper

**COMMERCIAL BROADCAST TAX REVIEW CONSULTATION**

**ACMA CONSULTATION PAPER**

**SUBMISSION BY COMMERCIAL RADIO AUSTRALIA**

**February 2021**

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 261 member stations and represents the entire commercial radio industry in Australia.

The *Commercial Broadcasting (Tax) Act 2019* (**CBTA**) imposes a commercial broadcast tax (**CBT**) on transmitter licences that are associated with commercial broadcasting services.

The CBTA was originally intended to be a five year interim arrangement, pending a comprehensive spectrum review. It was accompanied by transitional arrangements to ensure that broadcasters were no worse off during this interim phase.

CRA would like to see a comprehensive review of spectrum pricing rather than a narrow review that may embed the CBT without adequate analysis of the broader framework or the social benefits of radio broadcasting. The ACMA must assess whether the current spectrum pricing arrangements are fair and capable of supporting the radio broadcast industry sustainably into the future.

CRA's key points are:

- The review of the CBTA should be broadened to look at whether the current spectrum pricing arrangements are fair and sustainable for the commercial radio industry. This includes consideration of the basis on which the ACMA is charging for use of spectrum, financial modelling of the impact of particular proposals on a diverse range of stakeholders (with relief where necessary) and the continuation of the Covid19 broadcast tax relief package.
- Any proposed pricing model must contain provisions to ensure that no commercial radio broadcaster is worse off than under the previous scheme. This will include, at a minimum, the continuation of the transitional relief provisions that were introduced in 2017.
- CRA has significant concerns regarding the application of opportunity cost pricing (best alternative use) to commercial radio broadcast licences. Any proposal for opportunity cost based pricing for broadcast spectrum should be rejected for

commercial radio broadcasting and other analogous broadcasting services as it will provide a value that does not reflect:

- the social nature of the services that it delivers, its public character and the external benefits it delivers; or
  - the significant and costly regulations that are imposed on commercial radio broadcasters by Government to deliver social and public policies.
- A fee based on the costs incurred by the ACMA in administering spectrum should be the default model for commercial radio broadcast spectrum.
  - The legislative objectives of the *Broadcasting Services Act 1992 (BSA)* include recognition of the social value benefits that are provided by the commercial radio sector.<sup>1</sup> Instead of focusing on the use that has the highest financial value, the pricing methodology should acknowledge that these broader social benefits exist, and, in doing so, require spectrum pricing decisions to take account of these additional considerations.
  - The legislative objectives of the *Radiocommunications Act 1992 (Radcoms Act)* should be recast to take greater account of other factors that are relevant to users of spectrum, including further identification of the public and social value benefits.
  - To the extent that the CBT is retained in close to its current form, the flaw in the per transmitter licence fee formula should be addressed by revising the density offset adjustment to reflect the density of the areas served by each broadcaster.
  - Licensees should not pay additional licence fees for secondary transmitters, either under the CBT or any other spectrum pricing scheme. This unfairly disadvantages broadcasters who make the best use of their spectrum by endeavouring to fully cover their licence area.
  - CRA is unable to comment on the three pricing methodology options set out by the ACMA in the Consultation Paper without further detail and the opportunity to conduct financial modelling across the range of commercial radio broadcasters. Any such proposals should also be part of a broader spectrum pricing review.
  - CRA supports the proposed administrative change to set a single date for annual tax assessments if the current CBT framework is continued.<sup>2</sup>

## **1. A broader review of the CBT is required**

The review of the CBTA required under section 216AA of the BSA was intended to be a broad review which would look at whether the CBT was appropriate and capable of sustaining broadcasting into the future. Any substantive review will necessarily involve

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<sup>1</sup> BSA, sections 3(1)(a), (e), (ea) and (g).

<sup>2</sup> Consultation Paper, page 19.

consideration of a range of pricing models – including one based on administrative costs – and must set out the impact of any changes on the amounts payable by the full range of commercial radio broadcasters.

The transitional support package that accompanied the interim arrangements under the CBTA is due to end next year and the 12 month waiver of spectrum relief following Covid 19 is scheduled to end in mid-February this year. CRA's recent requests that these packages be extended have been rejected on the basis that this Consultation provides an opportunity to remedy inequities in the broadcast tax system. If this is to be the case, the scope of the review must be broadened.

**CRA recommendations:**

- CRA would like to see a comprehensive review of the rationale and methodology for spectrum pricing rather than a narrow review that may embed the CBT without adequate analysis of the broader framework. The ACMA must assess whether the current spectrum pricing arrangements are fair and capable of supporting the radio broadcast industry sustainably into the future.
- Any proposed pricing model must contain provisions to ensure that no commercial radio broadcaster is worse off than under the previous scheme. This will include, at a minimum, the continuation of the transitional relief provisions that were introduced in 2017.

**2. Legislative and policy environment**

The 2018 Spectrum Pricing Review included the following recommendations:

Recommendation 2: To ensure efficient use of spectrum, the Government and the ACMA should endeavour to charge users of similar spectrum at the same rate.

Recommendation 3: Bespoke pricing arrangements will sometimes be necessary. Where spectrum fees are determined other than by auction or by the administered pricing formula, the ACMA, or the Government where it directs the ACMA on pricing, should publish reasons for this decision.

CRA urges the ACMA to follow recommendation 3 in continuing to provide bespoke arrangements for commercial radio broadcasters. There is a strong risk that commercial broadcasting business models would be unduly disadvantaged compared to user pay business models in scenarios where competition for spectrum emerges in the future.

The ACMA must take account of the social value benefits that are provided by the commercial broadcasting sector, along with the significant regulatory costs that are borne by commercial broadcasters under the BSA.

Accordingly, the legislative and policy environment must not expose spectrum users to a regulatory decision making bias that will always favour spectrum decisions that support the highest value use, even where this may disrupt established uses for that spectrum or otherwise devalue other public benefits that flow from that spectrum use.



The legislative objectives under the BSA include the social value benefits that are provided by the commercial radio sector<sup>3</sup>. These must be taken into account when determining the appropriate pricing framework for commercial radio broadcasters.

The Radcoms Act provides that spectrum management should:

maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum.

This objective does, by reference to 'overall public benefit', implicitly cover social value benefits provided by spectrum users. Nevertheless, in the context of the 2018 Spectrum Pricing Review's proposal '*to charge users of similar spectrum at the same rate*' (Recommendation 2), CRA would like to see an express recognition of the public benefit value of broadcasting spectrum use, in any revised legislative and policy framework.

Objects are particularly important given the discretion afforded to ACMA in spectrum planning and management.

Instead of focusing on the use which has the highest financial value, the legislative objectives need to be expanded to acknowledge that these broader social benefits exist, and in doing so, permit regulatory decisions (including spectrum pricing decisions) to take account of these additional considerations.

**CRA recommendations:**

- The legislative objectives of the Radcoms Act should be re-cast to take greater account of other factors that are relevant to users of spectrum, including further identification of the public and social value benefits.
- The legislative objectives should also recognise that certain users of spectrum have related obligations under the BSA that need to be considered.

**3. Opportunity cost valuation must not be used in any spectrum pricing model applicable to commercial radio broadcasters**

Recommendation 8 of the 2018 Spectrum Pricing Review stated:

The ACMA should apply opportunity cost pricing to a greater number of spectrum bands, especially where it is impractical to competitively allocate spectrum.

CRA has significant concerns regarding the application of opportunity cost pricing to commercial radio broadcast licences.

Opportunity cost pricing reflects the value of spectrum to the best alternative use or to alternative users. This is said to mimic the signal that would come from a competitive market allocation. If applied to broadcast spectrum this could see an increase in the spectrum fees to reflect the financial value from other uses.

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<sup>3</sup> BSA, sections 3(1)(a), (e), (ea) and (g).

Any proposal for opportunity cost based pricing for broadcast spectrum should be rejected for commercial radio broadcasting and other analogous broadcasting services as it will provide a value that does not reflect:

- the social nature of the services that it delivers, its public character and the external benefits it delivers; or
- the significant and costly regulations that are imposed on commercial radio broadcasters by Government to deliver social and public policies.

Even setting aside the social nature of spectrum and the cost of regulations, opportunity cost based pricing for broadcast spectrum would not lead to more efficient outcomes due to the lack of demand for this spectrum.

Opportunity cost based pricing of spectrum would be inconsistent with current broadcast policy under the Radcoms Act in that it would not promote '*the overall public benefit derived from using the radiofrequency spectrum*'.

Instead, CRA submits that a fee based on the costs incurred by the ACMA in administering spectrum should be the default model for commercial radio broadcast spectrum.

**CRA recommendations:**

- Commercial radio broadcast spectrum should be exempt from any opportunity cost based pricing framework, as it does not take account of the public benefit and social value of the spectrum use.
- A fee based on the costs incurred by the ACMA in administering spectrum should be the default model for commercial radio broadcast spectrum.

#### **4. Bespoke pricing for commercial radio broadcasters**

The Consultation Paper refers to Recommendation 2 of the 2018 Spectrum Pricing Review, which states that:

Bespoke pricing arrangements will sometimes be necessary

CRA submits that any application of opportunity cost pricing mechanisms must be accompanied by bespoke pricing arrangements for commercial radio broadcasters.

##### ***Public good and external factors***

Such bespoke arrangements will incentivise the production of a public good and may result in similar spectrum being charged at different rates, to take account of external and social value factors.

Without adequate bespoke pricing mechanisms – and pricing principles that reflect the importance of the public good – radio broadcast spectrum charges may end up based on the modelled efficient cost of alternative uses. This would not take into account the social benefit of using the spectrum for commercial broadcast radio nor the costly regulations imposed on commercial radio broadcasters.

It is of serious concern if external and social considerations are not considered in setting spectrum fees, as this will distort the efficient use of spectrum.

The need to account for service externalities when spectrum is allocated and priced is highlighted by Cave and Pratt as follows:<sup>4</sup>

Spectrum should be allocated among the various services which use it to maximise the aggregate incremental value (private and external) of those services minus the (nonspectrum) costs of supply. The external value of services such as broadcasting and mobile communications may be significant, yet we know that spectrum assignment by auction, for example, does not take them into account, because the successful bidder cannot monetise the value of the externality.

The delivery of commercial radio broadcasting has many public and social features that create additional benefits to consumers and third parties beyond the monetary value to commercial broadcasters. In economic terms, these effects are referred to as externalities. The commercial radio broadcasting model is beset by externalities. Radio is not paid for directly by listeners, but is funded by advertising time that is inserted within the programming that attracts listeners.

It is useful to set out some definitions in respect of the different types of value that spectrum may generate:

- Private value: this is the value that accrues to consumers or producers. It is typically quantified based on willingness to pay. A consumer will purchase something at a specific price if his private value is equal or exceeds the price of the product. Similarly, a producer will bid for spectrum up to a certain price that reflects the future revenues and costs of using that spectrum, suitably discounted in future to reflect time preferences and alternative uses of his money;
- External value: this is the additional benefit that accrues to consumers/producers or uninvolved third parties. These benefits are not reflected in the private value. External value may be further broken down into:
  - private external value: the net private value of the service to individuals and that do not use it but are affected by positive or negative externalities; and
  - broader social value: the value of the service to citizens from its impact on social goods such as social capital, political freedoms, national culture, security and inequality (not reflected in private use or private external value).

The components of the value to society from services using spectrum is illustrated in the following figure from Cave and Pratt:<sup>5</sup>

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<sup>4</sup> M Cave and N Pratt, Taking account of service externalities when spectrum is allocated and assigned, *Telecommunications Policy* (2016), see: <http://dx.doi.org/10.1016/j.telpol.2016.04.004i>

<sup>5</sup> Ibid.

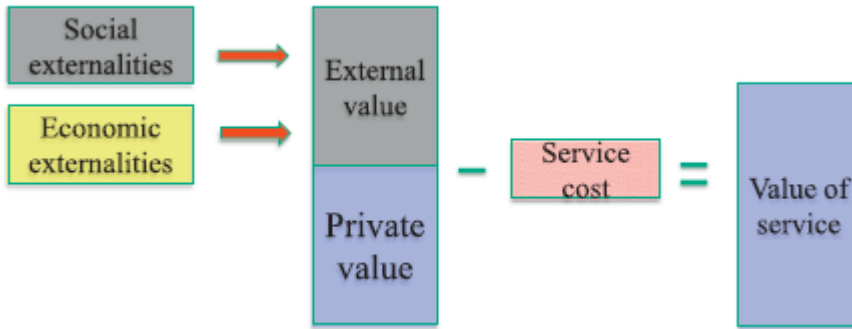


Figure 1: The value to society of spectrum-sharing services

Commercial radio broadcasting provides a service that is near to ubiquitous: in analogue format, commercial radio is nearly universally available across Australia. Radio is a highly appreciated source of entertainment for listeners, but also a key source of news, political dialogue, emergency and community information, educational material and cultural programming.

Ofcom has identified several elements of what it terms the “broader social value” of broadcasting spectrum to reflect the value derived from the service because of its broader contribution to society, including: access and inclusion, belonging to a community, educated citizens, cultural understanding, informed democracy – for example value from services which provide information which facilitates democratic debate, and social “bads”.

The broader social benefits delivered by the commercial radio sector include:

- all regional commercial radio stations must broadcast specified levels of material of local significance, being 3 hours per day of such content for most licensees;
- additional obligations to broadcast local news (12.5 minutes per day), local weather, community services announcements and emergency warnings, along with local presence requirements where there is consolidation or a change in control in the local market;
- emergency broadcast requirements; and
- Australian music requirements, which must be observed by all commercial radio stations. The applicable percentage of Australian music and new Australian music depends on the format of the station. For example, contemporary hit stations and top 40 stations must play 25% Australian music, of which not less than 25% must be new Australian performances.

In addition, commercial radio confers wider economic benefits that are important to the Australian creative sector by producing original Australian content which, in itself, is important. The industry employs and trains people in the creative sector.

Opportunity cost based pricing of radio broadcast spectrum would create a serious risk of weakening the public delivery of commercial radio broadcasting in Australia. It would also be inconsistent with the objective that broadcasting policy should facilitate the development of local and original content. Higher spectrum charges would also be inconsistent with maintaining the current level of regulation imposed on commercial radio broadcasters.

Because of the complexities of quantifying the social value of radio broadcast spectrum and the inherent bias in estimating non-monetary benefits, there is a significant risk the spectrum charge will be too high. This will likely:

- lead to valuable spectrum being returned and being idle until re-allocated, which could risk a reduction in competition if commercial radio broadcasters exit the market; or
- force commercial radio broadcasters to incur unnecessary and wasteful investments or reducing coverage within their licence areas to minimise use of spectrum.

The limited ability of commercial radio broadcasters to pass on higher spectrum charges through higher advertising rates in a very competitive environment would inevitably mean less investment in local and original content. This will also restrict the ability of CRA members to invest in talent, studio facilities and to further improve technology, such as on-channel repeaters to address coverage blackspots that impact digital radio services.

This will be detrimental to citizens and consumers. It will reduce the private value they accrue from listening and reduce the broader social benefits from commercial radio broadcasting, including less diverse content and the negative knock-on effects on the creative industry and on the wider economy.

Considering these difficulties, we consider that the better approach is for the pricing principles to recognise that broader social values are important and must be given due prominence in the pricing framework for commercial radio broadcasting services.

#### ***Value based pricing will not work for radio spectrum***

In addition to the social value issues, there are three conditions that suggest that value-based pricing does not even warrant investigation for radio broadcast spectrum:

- the absence of alternative demand for the radio broadcast spectrum from other uses – this means that the alternative-use value of the spectrum is zero; and
- the absence of a timetable and detailed plans for a digital switchover from analogue radio; and
- the existence of tradability in relation to excess digital radio capacity – this means that incentives and mechanisms already exist to transfer excess capacity rights to the highest value users. Value-based pricing would not increase incentives for efficiency in relation to the trading of spectrum between commercial radio broadcasting licensees.

These conditions are discussed below.

First, the International Telecommunication Union has allocated the frequency band between 535 KHz and 1606.5 KHz for the sole purpose of broadcasting across all three international regions. The 88 MHz to 108 MHz has also been designated for the sole purpose of broadcasting for the Africa, Americas and European regions. Only the Asian region has allocated the 87 MHz to 100 MHz band for both broadcasting and fixed mobile.

The requirement for international harmonisation means that there is little commercial interest in the manufacturing of equipment within these bands for uses other than broadcasting.

An evaluation of digital radio switchover in the UK concluded that there was no alternative demand for the use of analogue AM and FM spectrum. In an external report conducted on behalf of Ofcom, Analysys Mason concluded that the band occupied by commercial radio broadcasting was not a viable alternative for either local or national television.<sup>6</sup> This means there are no alternative uses for the spectrum currently occupied by commercial radio broadcasting licensees. As the Ofcom review indicates, opportunity cost pricing should not be used when there is no excess demand.

Ofcom stated:<sup>7</sup>

*Our Consultation set out the reasons why we believed AIP should not be levied on either DAB radio or local TV. We said an independently commissioned study had identified excess capacity in the spectrum assigned for DAB radio and that this showed there was no evidence of excess demand. AIP is therefore not applicable to DAB radio. Similarly, there is currently no excess demand for spectrum deployed for secondary, interleaved use by local TV. AIP is therefore not applicable for local TV broadcasting. We remain of this view.*

*However, we acknowledge that this may not always be the case in future, and that AIP may become an appropriate pricing mechanism at some time for either DAB radio and/or local TV. For the present though, we have seen no persuasive argument that anything other than cost-based fees should apply, for the reasons already stated in relation to DTT.*

Given the lack of excess demand for the AM and FM spectrum, Ofcom found it was inappropriate to use opportunity cost based pricing as there is no opportunity cost given the lack of alternative uses. Ofcom recommended “the fees reflecting the cost of spectrum management should apply instead i.e. cost-based fees.”

Second, there is no timetable for a digital switchover for radio in Australia. Digital radio in Australia is currently only available in nine licence areas. As a result, there would be significant disruption to listeners and the broadcasting sector from a digital switchover (i.e. analogue switch-off).

Any future digital switchover will require substantial lead time for consumers, equipment manufacturers and coordination amongst industry participants. In the meantime, spectrum charges levied on individual radio broadcasters would not serve to incentivise the switchover.

Third, in terms of spectrum used for digital radio, there are already incentives to use this spectrum efficiently. The ability for broadcasters to trade excess capacity provides incentives for broadcasters to use a proportion of existing spectrum efficiently, through trading of that capacity to users who value it more highly. Value-based pricing would not

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<sup>6</sup> Analysys Mason, Opportunity cost of spectrum used by digital terrestrial TV and digital audio broadcasting, Final report for Ofcom, 12 March 2013, Ref: 35200-95. See, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/33345/report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/33345/report.pdf)

<sup>7</sup> Ofcom, Spectrum pricing for terrestrial broadcasting, Statement, Publication date: 24 July 2013, p. 14. See, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/37320/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/37320/statement.pdf)

add to the incentives for efficiency in own-use of spectrum used for commercial radio broadcasting.

On this basis, CRA's very strong preference is to use an administrative cost recovery based approach to the pricing of radio broadcast spectrum for commercial radio services.

**CRA recommendation:**

- Considering the broader social value delivered by commercial radio broadcasters and the difficulties in quantifying those benefits for the purposes of determining any external subsidy, along with the limited alternative uses (and therefore limited alternative financial value from other uses) associated with radio broadcast spectrum, that:
  - (a) opportunity cost pricing should not be used to value radio broadcast spectrum; and
  - (b) an administrative cost recovery based approach to the pricing of radio broadcast spectrum should be used.

## **5. Flaws in the current pricing methodology**

The ACMA identifies that there are 2 key issues in the current pricing methodology, which must be avoided in any new spectrum pricing scheme:

- use of population density maps which reflect the area in which the transmitter is situated rather than the area it serves; and
- full fees for translators, which may not provide incentives for commercial broadcasters to maximise the public benefit derived from the spectrum.<sup>8</sup>

### *Density area maps*

A critical flaw arises because the reliance on the apparatus licence fee density maps creates a miss-match between the designated density of the site and the population density of the area being served from that site. This means that broadcasters serving lower density areas adjacent to higher density areas may have very high spectrum fees.

This outcome will not promote an efficient use of spectrum, as the spectrum fees that result do not reflect the value of the spectrum in providing services to end-users.

Recommendation 7 of the 2018 Spectrum Pricing Review was that the ACMA should undertake a detailed review of the administrative pricing formula's parameters including density areas, the number of pricing bands and number of power categories

The per transmitter fee formula has a number of elements that can be further improved to ensure that members are treated more fairly and can be better off in the future.

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<sup>8</sup> Consultation Paper, page 12.

### *Translators*

The per transmitter fee formula may also be further improved by applying a reduced licence fee for secondary transmitters, known as ‘translators’, in licence areas. In many regional licence areas, the licensee broadcasts from a number of different transmitters to serve the full licence area. Without such translators, there would be ‘blackspots’ in the licence area and people living within those blackspots would not be able to receive the licensee’s signal. A reduced fee should apply to these translators to enable licensees to continue to serve as much of their licence areas as possible, to the benefit of the local community.

The flaw in the per transmitter licence fee formula can be addressed by revising the density offset adjustment to reflect the density of the areas served by each broadcaster.

#### **CRA recommendation:**

- The flaw in the per transmitter licence fee formula should be addressed by revising the density offset adjustment to reflect the density of the areas served by each broadcaster.
- Licensees should not pay full licence fees for secondary transmitters.

## **6. Administrative processes**

CRA supports the introduction of a single date for tax assessments.

Please contact Joan Warner, on 02 9281 6577, for clarification on any aspect of this submission.





# Submission by Free TV Australia

**Commercial broadcast tax  
review – consultation paper**

**Australian Communications  
and Media Authority**

February 2021

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## 1. Executive Summary

- The *Commercial Broadcasting (Tax) Act 2017* (CBTA) was introduced as a 5-year interim arrangement. It represents a major financial impost on an industry facing serious challenges to its business model. These challenges in turn pose serious public policy problems, well-summarised in the federal Government's recent Media Reform Green Paper.
- Commercial TV broadcasters have a legitimate expectation that ACMA or government will examine, properly and transparently, the CBT's appropriateness going forward. The review should be completed in good time within the 5-year period.
- Free TV is very concerned that without a genuine review of the taxation arrangements, as anticipated by the legislation and supporting materials, there is no clear pathway for the proper consideration of appropriate taxation arrangements going forward. Free TV submits that a full examination of the appropriateness of the CBT, including international approaches to the level of taxation, would lead to a recommendation to repeal the CBTA.
- Work undertaken by Venture Consulting has revealed that the CBT is 52 times higher than equivalent per capita charges in the USA. Consistent with international approaches, Free TV submits that the aggregate amount of any tax levied should not exceed the ACMA costs of managing the spectrum allocated to broadcasting.
- The relationship of the present CBT to spectrum value is at best opaque. Taken together, the proposals in the ACMA paper and in the government's Media Reform Green Paper would further obscure the relationship of the tax to spectrum value, while indefinitely postponing a proper examination of the rationale for and the continuing appropriateness of the CBT.
- The present CBT appears to function as a 'disguised' tax on revenue or profitability. To adjust it to reflect the actual value of TV spectrum for alternative uses would, however, be undesirable, as it would create perverse incentives:
  - A pricing structure based on the value for alternative uses of spectrum denied by TV transmissions would heavily penalise metropolitan and metro-adjacent TV broadcasters for continuing to provide services using 600 MHz, while falling more lightly than at present on other transmitters.
  - For broadcasters to reduce their tax burden by withdrawing or rationalising services in areas reliant on 600 MHz spectrum, in direct conflict with the public policy principles of providing a ubiquitous and locally relevant television service to as many Australians as possible.
- Spectrum value for other uses is the wrong basis for taxation of TV services using the broadcasting services bands. The widespread, free availability of TV to ubiquitous receivers is integral to the public benefits identified in the Media Reform Green Paper. Any review of the CBT should give appropriate weight to Object (a) of the *Broadcasting Services Act 1992*, which is to promote the availability to audiences throughout Australia of a diverse range of television services.
- The TV industry acknowledges the rising value of 600 MHz spectrum for alternative uses. We are keen to work constructively with government on a long-term spectrum management plan while ensuring that the policy objectives set out in the *Broadcasting Service Act 1992* continue to be achieved. To this end, we expect that government, commercial broadcasters and the wider community share a common interest in finding a sustainable pathway forward for free-to-air TV.
- The pressures that have emerged since 2017 on the profitability of TV, also the sustainability of some regional services, are well-documented in the government's Media Reform Green Paper. They should be at the heart of government's deliberations on the CBT.
- The TV industry also supports changes to simplify compliance with the CBT, including the administrative arrangements reforms set out by the ACMA in the consultation paper.

## 2. Introduction

### 2.1 About Free TV Australia

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Free TV Australia is the peak industry body for Australia’s commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia’s culture and economy.

Free TV Australia proudly represents all of Australia’s commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Australia’s commercial free-to-air broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

### 2.2 Context of the ACMA review of the interim broadcasting tax

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The current broadcasting taxation regime was included as an interim measure as part of a broader package of media industry reforms in 2017.

Section 216AA of the *Broadcasting Services Act 1992* (BSA Act) provides that:

*after 30 June 2019, the ACMA must conduct a review of whether the Commercial Broadcasting (Tax) Act 2017 should be repealed or amended on or before 1 July 2022. The ACMA is required to give the Minister a report of the review before 1 July 2021 and must also review “such matters (if any) as are specified” by the Minister.*

This section was introduced into the BSA by the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, which (amongst other things) abolished broadcasting licence fees. It was introduced alongside the *Commercial Broadcasting (Tax) Bill 2017*, which imposed a new interim tax on transmitter licences associated with commercial broadcasting licences (under which the industry pays about \$40m per annum).

As noted in the Explanatory Memorandum, the ACMA review under s 216AA:

*“will help ensure that taxation arrangements (and any future replacement spectrum use charging pricing arrangement) remain appropriate and consistent with the broader review of spectrum pricing currently underway by Government”.*

Similarly, in the second reading speech, Minister Paul Fletcher noted that:

*As a part of this package, the legislation will require the Australian Communications and Media Authority after 30 June 2019 to undertake a review and report on whether the new tax law should be repealed or amended on or before 1 July 2022. ACMA will consult on the review, enabling broadcasters to input into the development of future tax arrangements. The report would be tabled in parliament.*

*This review will be a valuable input into future spectrum taxing arrangements. In the meantime, the government's policy is that broadcast spectrum taxes remain stable for the next five years to provide certainty. The government acknowledges industry's desire for certainty beyond this period. While the*

*broader spectrum management framework may change, this government does not expect large increases in taxes for broadcast spectrum.*

From the outset Free TV notes its very strong concerns that the current ACMA review process does not undertake the scope of the review anticipated by the legislation and extrinsic material. In particular, as we expand on in the next section, the review does not adequately meet the legislative requirement to review whether the tax should be repealed or amended.

The interim nature of the tax is reinforced by the arrangements put in place to ensure that regional broadcasters were no worse off as a result of the 2017 changes. With the change to a per transmitter rather than revenue-based tax, a small number of broadcasters in regional areas faced an increase in fees compared to the previous licence fee. To address this issue, the interim tax was implemented alongside a transitional support package over five years. This package was to fully compensate these broadcasters for any additional fees incurred. However, this support package ends after five-years, clearly reinforcing that both the tax and the support package were interim measures pending a detailed examination by the ACMA and advice to Parliament on the appropriate taxation arrangements from 2022 onwards.

### 2.3 Implications of COVID-19 and soft advertising market

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The period since 2017 has seen a continuing decline in the financial position of commercial TV broadcasters as well as the extraordinary economic disruption of the COVID-19 pandemic. The challenges of digital disruption, the threats it poses to public interest journalism and local content, and the pressing need for regulatory relief for the commercial TV industry are well-documented in chapter 2 of the government's own Green Paper.

In response to the Covid-19 pandemic, on April 15 last year the government announced a 12-month waiver of the spectrum tax. The temporary (COVID-19 related) relief is scheduled to end later this year. The transitional support package for those regional broadcasters that would otherwise pay more tax than under the previous regime is scheduled to end in 2022 (see above).

In response to these unprecedented market conditions, the Government suspended the commercial broadcasting tax for 12 months from 14 February 2020. In addition, the Minister asked the ACMA to complete its legislatively required review of the tax by 30 March 2021. The industry understood that this review was brought forward to enable a consideration of the ongoing spectrum licence fees, to minimise disruption to the industry from the interim tax being suspended, then reapplied and then adjusted again from 2022. However, as it stands now, there is no clear pathway for the genuine consideration of appropriate taxation arrangements going forward. We address the inter-relationship with the Government's Green Paper process in the next section.

### 2.4 The Green Paper does not address the fundamental basis of charging for broadcast spectrum

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In a separate but related exercise, the Government in November 2020 released its Media Reform Green Paper inviting comments on a proposal to create a new TV broadcasting licence type that would be exempt from tax under the CBTA. TV broadcasters who do not elect to transition to the new licence type would continue to pay the CBT. If enough broadcasters elect to transition, the government may migrate the holders of new licences to shared multiplexes. All broadcasters (both new and old licence types) would then be required to retune out of the 600 MHz band, yielding a 'digital dividend' for the government.

Given there is consensus about the need for regulatory reform, it is disappointing to find the ACMA proposing to amend the CBTA, but only on the limited (and uncontentious) basis that there are some issues with its administration that could be mitigated with a new pricing methodology and simplified administrative arrangements. Three pricing options, designed to address these concerns, are canvassed in detail. Side-stepped is the pressing issue of the appropriateness of the current overall level of taxation. The ACMA proposes to review the tax caps only in the event the government agrees to modifying the method of calculating the CBT:

*... as the amount of the tax caps have been calculated with reference to the current pricing methodology, they should be reviewed so that CBT can reflect changes in the value of the spectrum over time.*

The implication of ACMA's proposals is that the promised review of the level of taxation faced by the commercial TV industry - the need for which is now pressing - will take place at some unspecified future date, if it takes place at all.

To enable the ACMA to review the CBT in the manner envisaged by the legislation and supporting material, Free TV sets out the relevant considerations in the following sections.

### 3. Should the CBTA be repealed or amended?

#### 3.1 The ACMA should not postpone a proper review of the CBT

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The relationship of the CBT to spectrum valuation was unclear from the outset, with government statements confirming that spectrum valuation was only one of several considerations. In the words of Minister Fletcher: ‘The bill balances industry concern about remaining competitive, the obligations placed on them by government, and the need to value spectrum appropriately.’<sup>1</sup>

As set out above, the CBTA was presented to parliament as a 5-year, interim arrangement, with the legislated expectation it would be properly reviewed after five years. Instead, by implication, government and the ACMA now propose to postpone a full and transparent review of the tax indefinitely. While ACMA’s reluctance to examine the spectrum value issue may be understandable in light of the Media Reform Green Paper, the latter’s proposals contradict the ACMA’s own expressed commitment to spectrum pricing.

In rejecting the option of repealing the CBTA, the ACMA argues:

- Spectrum pricing reflects that broadcasters have planned access to particular spectrum (which may have alternative uses); and
- Spectrum pricing, ‘where appropriate,’ can also reflect benefits derived by broadcasters from ACMA spectrum management functions, and from regulation and licensing arrangements that ‘promote the efficient use of spectrum’.

Under the government’s Green Paper proposals, by contrast, broadcasters electing to transition to new licences would be permanently exempted from the CBT, even though they would continue to use spectrum and derive benefits from the ACMA’s spectrum management functions. Any broadcasters that elect to remain with their existing licences would continue to pay the CBT, even though they could be required – along with ‘new’ licence-holders – to migrate out of the only part of the broadcasting services bands with substantial potential value for other uses (UHF TV Blocks D and E), and operate only in parts of the broadcasting services bands with little or no value for alternative uses (VHF Block A and UHF Blocks B and C).

The practical effect of these proposals on the CBT would be to exempt broadcasters who fall in with Government endeavours to re-farm 600 MHz spectrum from any obligation to pay for spectrum access, while any holdouts would continue to face the current, high, opaquely-derived CBT, even if they move to spectrum with little or no alternative value.

With the five-year interim period for which the CBT was designed approaching its end, the need for a transparent review of its rationale and continuing appropriateness is pressing. The ACMA, as an independent regulatory agency, should not seek to defer the issue.

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<sup>1</sup> CBT Bill 2017, Second Reading Speech, at: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/3219af20-da22-4762-b08e-ad4cf9b7009e/0017%22>

### 3.2 The CBT is not a real spectrum tax

The CBT appears to function as a ‘disguised’ tax on revenue or profitability. To adjust it to reflect the actual value of TV spectrum for alternative uses would, however, be counterproductive, as it may further increase the costs of TV transmission for some broadcasters and would be likely to create perverse incentives.

The CBT formula treats the spectrum TV broadcasters use uniformly, whereas the likely value of TV VHF (Block A), 500 MHz (Blocks B and C) and 600 MHz (Blocks D and E) spectrum for alternative uses varies considerably. Blocks A, B and C have little or no value for alternative uses.

- 600 MHz spectrum in Blocks D and E is rising in value for other uses under the influence of the North American 600 MHz wireless broadband allocation.
- Despite similar technical characteristics to 600 MHz spectrum, the 500 MHz spectrum comprising Blocks B and C is currently not used or planned for use by wireless broadband anywhere in the world and is required for terrestrial TV broadcasting for the foreseeable future.
- There is little current or foreseeable alternative demand for Block A (VHF) spectrum.

A CBT that was based on the value of spectrum for alternative uses would need to reflect the value of spectrum denied to that alternative use by TV operations. It would impose the highest charges on broadcasters using UHF Blocks D and E, to the extent this use denied spectrum for wireless broadband in major population centres. Use throughout the more populous areas of regional Australia could be expected to attract relatively high charges. By contrast, TV spectrum in VHF (Block A) would conceivably have no value for any alternative use. A broadcaster using VHF spectrum might expect to pay only for their share of any costs of relevant ACMA spectrum planning work.

- Such a tax would be likely to fall heavily on regional broadcasters making use of Blocks D or E, especially those that deny or limit use of the spectrum for wireless broadband in high or medium density areas.
- It would also affect a sub-set of metropolitan area TV services (notwithstanding these have their main channels on VHF) insofar as they also make use of Blocks D or E for infill transmitters. Thus, commercial broadcasters in Adelaide (VHF Block A, with low power translators using Block C) would pay very little.
  - Regional TV stations in large, aggregated licence areas surrounding capital cities would face amongst the highest taxes.
  - Most major city commercial broadcasters would need to pay for spectrum denial in Blocks D or E, but could reduce their tax by switching off one or more infill transmitters. (Commercial broadcasters in Melbourne, for example, each make use of 7MHz of the more ‘valuable’ block D, for a series of co-channelled infill transmitters at Ferntree Gully, Rosebud, Safety Beach and South Yarra).
- As broadcasters are legally at liberty to turn off one or more of their transmitters, surrender of these licences should have the corollary of reducing their tax accordingly.

The effect of such a pricing approach would be highly undesirable, with its disincentives for the continuation of wide-coverage terrestrial TV services in regional Australia and its incentives for metropolitan TV stations to axe low-power infill services. The CBT has only avoided these kinds of perverse outcomes by the unusual step of disregarding the differences in the value of each channel block for alternative uses, instead treating low-value VHF spectrum the same as it treats potentially very valuable 600 MHz spectrum. In this way, also by imposing differential taxes based on transmitter



power and the geographical location of transmitters, the tax appears to have been formulated to fall most heavily on the shoulders of those who previously paid most under the revenue tax: metropolitan TV services. Only lip service has been paid to the value of TV spectrum for potential alternative uses and the relevant spectrum denial characteristics of TV.

### 3.3 Spectrum value is the wrong basis for broadcasting licence taxation

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Maximisation of terrestrial TV coverage is integral to the several public benefits free-to-air TV delivers and should be encouraged and safeguarded. Through its support of VAST, the government itself makes a large financial contribution to ensuring Australians living in regional and remote areas enjoy commercial TV services broadly comparable to those in the metropolitan markets. The expensive infrastructure regional commercial TV broadcasters use to provide services broadly equivalent to those in the largest cities results in large measure from government assistance during analogue TV closure. Government measures to extend commercial TV coverage, and to 'equalise' service offerings between city and country, are both public policy responses to the problem that many Australians live in areas where it would not otherwise be commercially feasible to provide commercial TV services, or commercial TV services of such variety and picture quality.

The 'public good' nature of universal TV coverage suggests that spectrum value is the wrong basis for taxation of broadcasting services using the 'broadcasting services bands'. Incentives for switching off infill transmitters, and regional broadcasters being priced out of being able to provide TV services equivalent to those in metropolitan markets, would both fail the 'sniff' test. It should come as no surprise, then, that neither outcome is supported by the legislative scheme. The 'broadcasting services bands' spectrum used by TV broadcasters in Australia has been designated as 'primarily for broadcasting purposes' and set aside for planning under Part 3 of the *Broadcasting Services Act 1992*. In exercising these planning powers, the ACMA is enjoined to 'promote the objects of the Act,' which relevantly include:

*(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; ...*

Changes in the highest value use of broadcasting bands spectrum may be addressed, as the need arises, by the ACMA and the Minister to the extent current law allows, also, where appropriate, by changes to primary legislation, as has already occurred in relation to the 700 MHz band. Government is also the largest user of TV broadcasting spectrum, currently using or warehousing 50% of it. The commercial television industry is open to dialogue with government about the rising value of 600 MHz for alternative uses and is engaging constructively with the Media Reform Green Paper. While spectrum remains part of the broadcasting services bands, however, application to commercial TV operators of spectrum pricing approaches that actively mitigate against the maximisation of free, terrestrial TV coverage to Australians, wherever they reside, cannot be reconciled with the objects of the Broadcasting Services Act.

### 3.4 Breaking with the past: the alternative to high, revenue-based taxation of broadcasting licences

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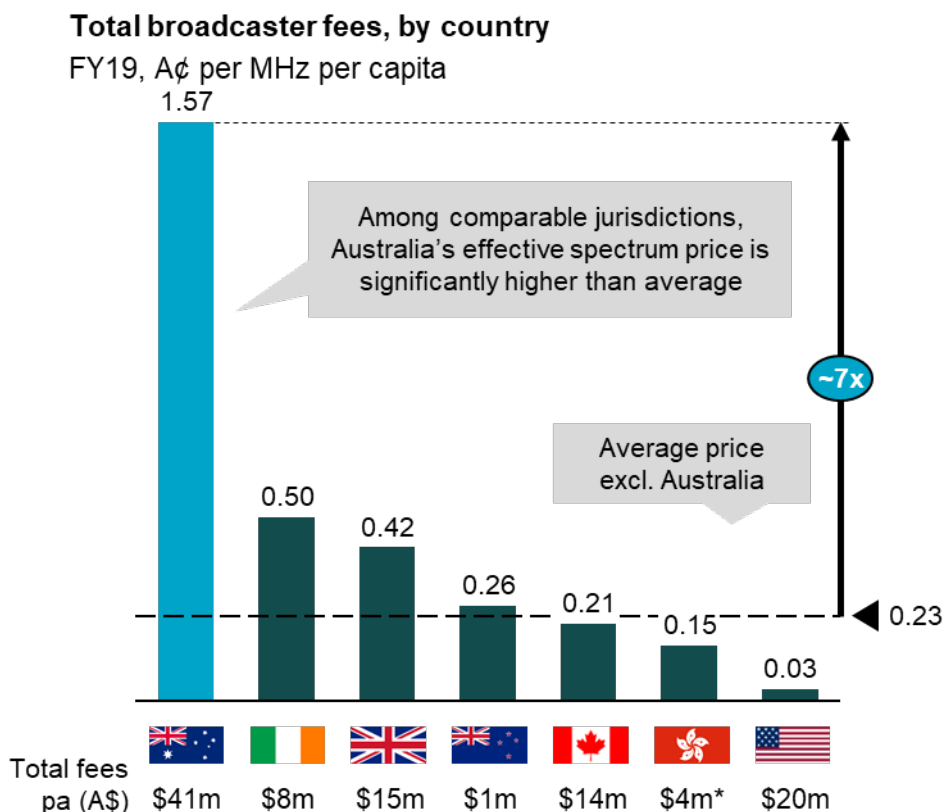
In the past, the unique revenue tax on TV broadcasters (along with other regulatory impositions) was regarded as a 'quid pro quo' for the market power conferred by control of scarce TV channels permitting delivery of television to a mass audience. There is no dispute that the time for quid pro quo taxation of TV revenues is past. Many of the changes since commencement of the CBTA, which have

adversely affected the profitability of commercial TV and the sustainability of some regional TV services, are documented in the Media Reform Green Paper. Advertising spend has continued to shift to digital media, while the increasing popularity of SVOD services has further reduced the audience for free-to-air TV. The Covid-19 pandemic has exacerbated these pressures, with linear TV advertising revenues shrinking by 14-16% in the year to June 2020. These changes are adversely affecting the ability of commercial broadcasters to deliver public policy objectives - including meeting the high, fixed costs of transmitting a comprehensive range of TV services to all but the most remote households.

At the same time, the local TV industry remains subject to extensive regulatory obligations, imposing significant additional costs. Some of these obligations include:

- Content obligations
  - 55% requirement of local content on all programming
  - 1,460 hours of Australian programming on non-primary channels
  - 250 points of Australian genre content in each calendar year, including commissioned Australian drama and documentaries, and acquired Australian films
- Additional obligations
  - Extensive closed captioning requirements
  - Political advertising licence conditions, including record-keeping requirements and election advertising blackout rules.

These obligations are onerous compared to international peers. As shown in the graph below, examination of other jurisdictions also reveals Australia is an outlier in exacting such high taxes in return for TV spectrum access.



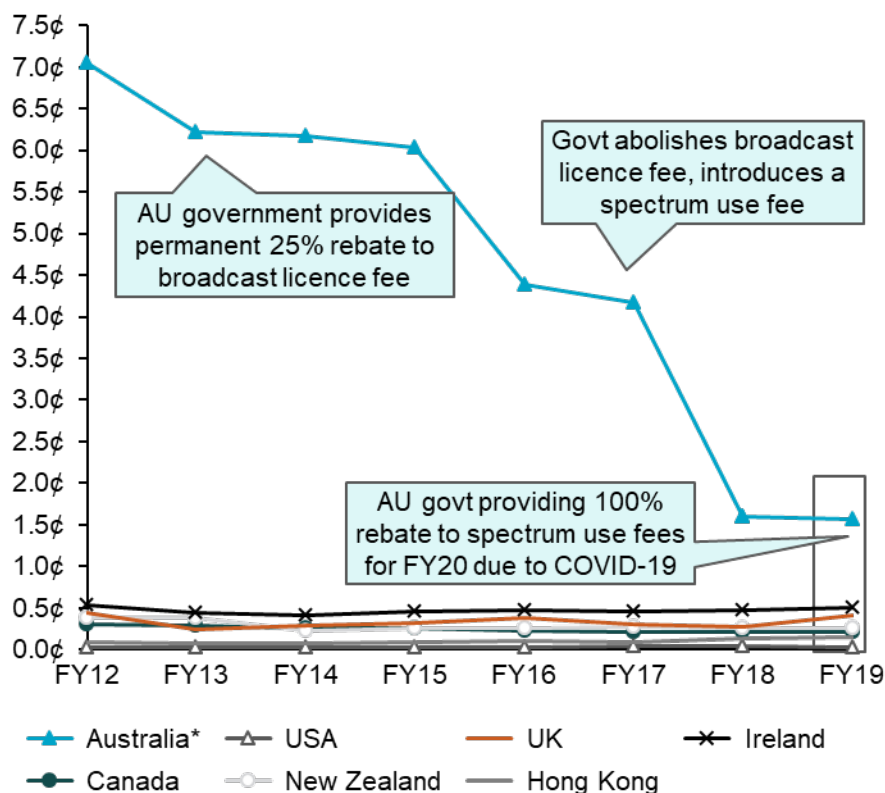
Source: Venture Consulting Analysis. \* HK license fee calculated by estimating program hours by broadcaster and adding annual fee.

Rather than a bona fide spectrum tax, the current ‘interim’ CBT is best viewed as the latest step in a progressive reduction over time in the bespoke, revenue-based taxation of commercial TV. International comparisons confirm that Australia still has some distance to go, to end the de facto revenue-based taxation of TV licences.

### Total broadcaster fees, by country

FY12-19, A¢ per MHz per capita

*Includes spectrum use fees and/or licence fees to enable broadest comparison over time*



Source: Venture Consulting Analysis. \* Due to delay in fee collection, ACMA consolidated both the FY18 and 19 licence fees into the FY19 statement. Used the FY20 licence fee (A\$41m) across FY18-FY19 as same methodology used for fee calculation

Transmission of a comprehensive range of commercial TV services to all Australians is a public good. Any taxation of broadcasting licences should not operate as a disincentive to maximise TV coverage. While the value of TV spectrum for alternative uses does not provide a sound basis for calculating broadcasting licence taxes, the practice in other, similar jurisdictions suggests some level of taxation is appropriate. This typically has regard to the value to industry of certain spectrum planning and other services provided by the regulator.

### 3.5 Industry supports changes to simplify compliance with the CBT

Free TV supports measures to simplify administration of the CBT. However, the appropriateness and the quantum of current taxes also needs urgent examination. Any tax in aggregate should not exceed the value of benefits derived by broadcasters from ACMA spectrum management functions. Nor should it create incentives for broadcasters to reduce the availability of free-to-air TV services.

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## 4. Specific comments in response to ACMA questions

### 4.1 The legislative and policy environment that the ACMA should consider in making recommendations about repealing or amending the CBTA

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For the reasons outlined above, the ACMA should consider and give weight to:

- The pressing need for regulatory relief for the TV industry, as documented in the Media Reform Green Paper.
- The TV industry's legitimate expectation that a proper review of the rationale and the continuing appropriateness of the CBTA should take place before the end of the five-year interim period for which the tax was designed;
- The relevance of the objects of the *Broadcasting Services Act 1992*, including the object of promoting the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information.

### 4.2 The ACMA preference not to repeal the CBTA, but to improve the pricing methodology and administrative arrangements

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For the reasons outlined above, the ACMA should undertake a proper review of the pricing methodology, including the implications, and the appropriateness, of charging TV broadcasters for the value of spectrum denied to alternative uses. The aggregate value of any tax should not exceed the ACMA's costs of managing the spectrum allocated to broadcasting services.

### 4.3 Any comments of pricing methodologies ACMA is considering and its preference for the \$/MHz/Pop

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As acknowledged by the ACMA, adopting a different charging framework will have a varied impact on different individual broadcasters. Accordingly, it is crucial that the proposed formula and the aggregate level of the tax are calibrated to ensure that no broadcaster is worse off as a result of any charging formula considered by the ACMA.

Individual broadcasters will need to be consulted directly by the ACMA on the impact of proposed taxation models on their businesses.

### 4.4 Any comments on the ACMA's proposal to recommend that all CBT taxes are assessed on one particular day of the year

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To the extent that the CBT continues to rely on an assessment of transmitter licences, Free TV supports the proposal to undertake this assessment once annually.

### 4.5 Any other matters pertinent to considering whether to amend or repeal the CBTA

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For the reasons outlined above, a full review of the rationale and continuing appropriateness of the CBTA should take place within 5 years of the commencement of the CBTA. It should not be conditional on acceptance by government of the fine-tuning proposals in the current ACMA paper.

Mark McGregor,  
Manager, Economics Advisory  
Australian Communications and Media Authority  
PO Box 13112 Law Courts,  
Melbourne Vic 8010

Wednesday 3 February 2021

### ACMA Commercial Broadcasting Tax Review Consultation Paper

Dear Mark

I refer to the ACMA December 2020 paper proposing changes to the *Commercial Broadcasting Tax* (CBT). Rebel Media [RM] operate the 4BRZ (Breeze) and 4RBL (Rebel) regional commercial radio stations that have 57 licenced FM transmitters. We appreciate the opportunity to make a submission.

#### Executive Summary

We broadly support the ACMA proposals and views. We commend the ACMA for its work to equitably accommodate all broadcasters while reflecting the community value provided by commercial radio services.

Adopting the ACMA  $\$/\text{MHz}/\text{pop}$  proposal will provide a welcome, more balanced outcome than the current methodology. We strongly encourage the ACMA to further fine tune its proposal by considering;

1. Exempting Australia's three regional *large area markets* (BSB licence areas >1 million km<sup>2</sup>) from CBT.
2. Estimating the transmitter population reach within the licence area of the three regional *large area markets* rather than basing it on the population of the entire licence area. Consideration should be given to excluding 'self help' rebroadcast sites from the count.
3. Adding a formula to the CBT calculations that lowers the CBT for licence areas with an overall 'low population per km<sup>2</sup>'

#### CBT Pricing Methodology

The current CBT introduced in 2017 delivered a dramatic drop of 94%+ in licence fees/tax payable by the Australia commercial radio industry. Our market was one of only a few, and commercially the smallest, that was levied a significant increase by the new tax.

There is no perfect solution for fairly determining the CBT contribution from different radio markets, but the current methodology is flawed and unjust.

Considering;

- Entire licence area population.
- Licence area population served by AM/FM transmitters (in the rare cases where this differs notably from the entire licence area population).

- The social desirability that broadcasters can viably add transmitters to serve black spot and low population areas.
- ACMA population density zone of individual transmitter siting.
- Population served by individual transmitters.
- Population density of the entire radio market, reflecting that smaller population centres typically have a low advertising revenue base, and that large/vast decentralised geographic areas are costly to service requiring high infrastructure/distribution investment and multiple transmitters.
- Station revenue
- Station profitability

A revenue based CBT approach sees markets deriving the highest income from the spectrum pay the most and is adaptive to changing market conditions. However, it has the disadvantage of not reflecting markets with high distribution and transmitter costs that generate less return from the spectrum, such as the three regional *large area markets* (BSB licence areas >1 million km<sup>2</sup>) served by 4BRZ, 4RBL, 6FMS, 6SAT & 8SAT. It also could potentiality undercharge stations whose return from the spectrum is not solely linked to the stations revenue, such as racing and religious stations.

We broadly support and prefer the ACMA's  $\$/\text{MHz}/\text{pop}$  proposal, with 'fine tuning' to better accommodate markets that produce a lower return from spectrum and have notably higher infrastructure, operational and distribution costs due to the remoteness or sheer size of markets and number of transmitters required.

### **The 4BRZ/4RBL Market**

Our market features;

1. numerous small population centres, limiting ability to generate local advertising income in the the one region.
2. a low population density.
3. is one of only three regional commercial *large area markets* (i.e. a BSB licence area size of >1 million km<sup>2</sup>). Our market is similar in geographic size to the entire state of Queensland.
4. is over 2,700 km in length spanning from the PNG coast to Sydney's Blue Mountains.

It requires many transmitters and partnerships with councils and mine operators to service a market this large. Distribution, operation, travel and staff costs are abnormally high for large markets that span multiple remote regions. Localism is also costly, requiring multiple split regional programming feeds to different sections within the market, to better service the localism needs of a number of diverse regions that have little community of interest with other parts of the licence area. We serve Queensland hottest and coldest town, while NSW's wettest and driest region are part of our market. We serve metropolitan, rural and remote areas via satellite, online streaming and FM.

Over half the FM transmitters currently broadcasting our services cumulatively generate <10% of our advertising revenue, and are typically unprofitable in what overall is a commercially marginal market.

The three commercial *large area markets* share many of these size related challenges and should be considered for exemption from the CBT to ensure they can continue to subsidise all the transmitters

within their market that generate negligible revenue, and whose real value is realised by the communities they serve.

Accordingly we suggest;

- Exempting the three commercial *large area markets* (markets with a licence area > 1 million km<sup>2</sup>), or factoring into the CBT  $\$/\text{MHz}/\text{pop}$  formula lowering the CBT for licence areas with a 'low population per km<sup>2</sup>'

For example, exempting or lowering CBT for markets with a licence area population density threshold ' $\leq 1$  person per 2 km<sup>2</sup>' easily captures the three regional commercial *large area markets* and the following regional commercial radio markets; *Charleville, Charters Towers, Esperance, Katanning, Longreach, Merredin, Mount Isa, Queenstown & Roma*. A lower threshold ' $\leq 1$  person per 1 km<sup>2</sup>' further adds the regional markets of *Alice Springs, Emerald, Kalgoorlie, Moree & Narrogin*.

#### **4BRZ/4RBL South East Queensland (SEQ) Market.**

50 km south of Brisbane CBD, each of our stations is licenced for four FM transmitters (50W - 2kW ea) all located within an unusually tiny 10 km radius, all within the ACMA high density spectrum zone. They cumulatively serve a licence area population of ~40,000 people.

For those transmitters, each of our stations inequitably incurs a CBT cost that is over double that incurred by the adjacent metro Brisbane commercial FM stations operating higher power single 12kW transmitters reaching over 2 million people - ironically including those served in a common overlap region with our stations. This reflects the current CBT being levied 'per transmitter' and unfortunately (and unnecessarily) we have four times as many licenced transmitters as a Brisbane commercial FM station located within the same ACMA high density zone.

While it is expected that a broadcaster may need to add FM additional transmitters to serve its market due to terrain or distance considerations, that's not the case here. This part of our market can alternatively be better served with one single 15 kW transmitter. Four smaller transmitters are not necessary.

The ABA (ACMA) chose to plan 4 smaller transmitters primarily to reduce the overspill compared to the option of licensing a traditional single high power, wider coverage FM solution that has been afforded to our adjacent market competitors. This has proven to be uncompetitive (4 different frequencies to re-tune within a 30 minute commute) while being far more costly for our stations to establish and operate compared to a typical single med/high power FM site solution.

Our clear preference was to operate a single higher power site solution, which has the additional benefit of freeing up scarce spectrum for potential use in neighbouring markets. As such, the allocations are not spectrally efficient, but this was the compromise the regulator chose to make and impose to minimise overspill, so it's unfair we've now been levied extra CBT costs as an additional burden and consequence of the regulators decision.

We therefore welcome the ACMA's proposed  $\$/\text{MHz}/\text{pop}$  solution that will remove any 'per transmitter' charging. We thank the ACMA for considering our unique SEQ situation in formulating its CBT proposal.

#### **Exempting Unserved Areas**

Whereas typically Australian commercial broadcasters AM/FM transmitters in-market signal

coverage reaches 90-100% of their licence area population, that's not true of the three commercial regional *large area markets*, primarily due to their sheer size and low population density that render it unviable and impractical to cover most of it via AM or FM.

Additionally, a number of the population centres of our market are immediately adjacent to an adjacent markets larger population centre. The ACMA's current approach to commercial FM service planning in low density unserved areas, prioritises the avoidance of signal overspill above allowing wide area adequate coverage within the market that used to be afforded to new market planning. So unfortunately, there remain multiple pockets in our market, each having thousands of people, that we don't serve. CBT should not be levied for these populated areas of our market we actively want to serve on FM, and that we could serve on FM, but where the ACMA won't licence viable solutions allowing us to provide a service.

Accordingly we suggest;

- For CBT purposes, the ACMA estimate the transmitter population reach within the licence area of the three regional *large area markets* rather than basing it on the population of the entire licence area. Consideration should be given to excluding 'self help' sites (including those where the broadcaster directly holds the apparatus licence) from the population count to ensure there is no financial penalty for broadcasters continuing to facilitate very small 'self help' transmitters that generate negligible net income.

Regards

A handwritten signature in black ink, appearing to read 'Aaron Jowitt', with a stylized flourish at the end.

Aaron Jowitt  
Director