



Submission in response to
ACMA Consultation Paper

**Spectrum licence taxes:
indexing the EME
component and other
charges**

Public Version

August 2023

OPTUS FEEDBACK

1. Optus welcomes the opportunity to respond to the Australian Communications and Media Authority (ACMA) consultation paper on *Spectrum licence taxes: indexing the EME component and other changes*.
2. The Consultation Paper sets out proposals to amend the Radiocommunications (Spectrum Licence Tax) Determination 2021 (the Determination) to:
 - (a) Apply the 2023–24 indexation of the EME component to the nominal \$1.9 million amount. This was previously capped at \$2.6 million during each of the first three years of introduction; and
 - (b) Introduce proposed changes to the base amounts for the 3700-3800 MHz band ahead of the 3.4/3.7 GHz band auction.
3. These proposed changes relate to the recovery of the indirect costs of spectrum management activities and the costs of the electromagnetic energy (EME) programme from spectrum licensees under the Determination. Notably, Optus acknowledges the proposed EME levy to be recovered in 2023-24 is calculated based on the CPI for the June period (that is, 6.0%).¹
4. There is no proposed change to the methodology used to apportion the EME Component of the Spectrum Licence tax. The proposed EME levy to be recovered in 2023-24 is therefore \$2.014 million.
5. Optus similarly acknowledges the extension of the Determination to include the new spectrum-licensed bands that have been (or will soon be) issued. The effect of this change enables the same spectrum licence tax formula to be applied consistently across all bands for the calculation of the Main Component of the SL tax.
6. Spectrum licence taxes are only imposed on spectrum licences that have been issued. Where spectrum frequency ranges have been merged into a combined band, the Base Amount for that revised band remains largely equivalent on a per MHz basis. Therefore this should not result in any material changes to the Main Component amounts of spectrum licence tax levied under the Determination to be recovered in 2022-23.
7. The EME component of the annual spectrum licence tax was introduced pursuant to the ACMA (*Modifications to Apparatus and Spectrum Licence Taxes*) Direction 2020 (the Direction) issued by the then Minister for Communications, Cyber Safety and the Arts. It was noted that the changes to the Determination made as a result of the Direction are intended to be ongoing, but may be amended or revoked in the future depending on future decisions by the Government concerning funding for the Enhanced Electromagnetic Energy Program.²
8. Optus accepts that the EME component remains necessary to support the activities of the Government's EME Program and to enable the ACMA to recover the costs of its spectrum management activities relating to EME compliance. Optus supports the general approach to calculating the quantum of the EME and notes that any increases should only be proportionate to any increase in the administrative costs to be recovered

¹ See: <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/jun-quarter-2023>

² Australian Communications and Media Authority (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020, Explanatory Statement, p.1

rather than designed to raise revenue. In line with industry best practice, transparency over any increase in the cost of the program to be recovered should be encouraged.

9. Certain Designated Spectrum Licences remain exempt from EME component on the basis that they are not used for commercial purposes or are used for the provision of a television outside broadcast service. Further, apparatus licence holders that otherwise may have been subject to EME tax in the past, are also exempt following the Minister's Direction. Optus notes that feedback to the draft Direction indicated that some stakeholders expressed a preference for the proposed new EME component of the spectrum licence tax to be paid by a broader group of licence holders.³
10. Optus accepts that recovery of the EME Component from spectrum licence holders may have been deemed administratively efficient at the time of its introduction in 2020, on the basis that "Carriers' commercial deployments of new and emerging technologies are causing the need for the Government to respond to community concerns about 5G and EME".⁴
11. However, as 5G devices continue to proliferate, including potentially via new apparatus licensing and class licensing arrangements, usage is no longer confined to spectrum licensed networks. As a result, Optus suggest that the ACMA consider revisiting the range of licence holders responsible for cost recovery of the EME component of the spectrum licence tax.

³ Ibid, p.4

⁴ Ibid, pp.1-2. A number of defined entities who hold spectrum licences are also exempt from contributing to the EME component, where they are not using the licence to provide a PTS for commercial services.