

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACMA Consultation Paper

**Spectrum licence tax:
updating the EME
component for 2024-25**

Public Version

August 2024

OPTUS FEEDBACK

1. Optus welcomes the opportunity to respond to the Australian Communications and Media Authority's (ACMA) August 2024 consultation paper "*Spectrum licence tax: Updating the EME Component for 2024-25*" (the Consultation Paper).
2. 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). The Direction was introduced at a time when it was identified that "carriers commercial deployments of new and emerging technologies are causing the need for Government to respond to community concerns about 5G and EME".¹
3. The ACMA is required to increase the EME Component prior to the finalisation of the spectrum licence tax amount before its annual holding date. The EME Component is to be increased annually by a factor that "must not exceed" the Consumer Price Index (CPI) for the reference period.²
4. The Consultation Paper sets out the proposed EME Component for 2024-25 to be \$2,090,532 (rounded to the nearest dollar). The proposed EME levy to be recovered in 2024-25 is calculated based on the CPI for the June period (that is, 3.8%).³ Optus notes that the EME Component constitutes the majority of the annual spectrum licence tax amount levied on spectrum licensees.

Greater transparency and accountability for EME Component expenditure is required

5. Based on the information available, Optus understands that the EME Component is used to fund the Government's EME Program, which provides for research international engagement and public information concerning EME from telecommunications facilities.⁴ While we accept that the EME Component may be necessary to support the EME Program and to enable the Government to recover costs of administrative activities relating to EME compliance, it remains unclear exactly what these activities are.
6. Industry has no visibility of how the annual EME component is being spent and therefore whether the tax remains justified as a reasonable cost recovery mechanism. Optus submits that greater transparency over the use of and deliverables from the annual EME Component should be provided. Optus suggests that the ACMA and/or the Government should produce an annual itemised account of EME Component expenditure. Ideally, this should accompany the ACMA's annual consultation on EME adjustments.
7. While an annual CPI adjustment to the tax amount may be justified, it is unclear why the ACMA should not also have discretion to lower the amount of the EME Component, or to make no change to the amount. It also remains unclear to Optus why aspects of the EME Program, such as public awareness related activities, require a fixed annual budget. Optus considers that the EME Component should more logically be based on the actual costs to deliver the EME Program and related activities, which could also allow for the amount to be adjusted for any underspend in a prior year.

¹ ACMA (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020, Explanatory Statement

² Section 6, the Direction

³ See: <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/jun-quarter-2024>

⁴ ACMA (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020, Explanatory Statement

8. Optus recommends that the regulatory arrangements governing the levying of the EME Component be amended to empower the ACMA to adjust the total amount of the EME Component to be recovered in any one year to reflect actual cost. Further, any increase to the EME Component should only be to cover an increase in the administrative cost of delivering the EME Program rather than to raise revenue for Government.
9. Without reporting and accountability mechanisms in place, it remains unclear whether and how the EME Component continues to support the EME related activities of Government for which the Direction was originally intended. It is also unclear whether the mandatory annual CPI adjustment is in fact allocated proportionately to all activities.

Spectrum licensees should not be solely responsible for funding the EME program

10. 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.⁵ Further, apparatus licence holders that otherwise may have been subject to EME tax in the past, are also exempt following the Minister’s Direction.⁶ 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.⁷
11. 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. As 5G devices continue to proliferate, including potentially via new apparatus licensing and class licensing arrangements, 5G is no longer confined to spectrum licensed networks. As a result, Optus suggests that the ACMA consider revisiting the range of licence holders responsible for cost recovery of the EME Component.
12. Optus also refer the ACMA to submission from the Australian Mobile Telecommunications Association (AMTA) for further information.

⁵ Section 4, the Direction

⁶ Section 5, the Direction

⁷ ACMA (Modifications to Apparatus and Spectrum Licences Taxes) Direction 2020, Explanatory Statement