



Australian Government
**Australian Communications
and Media Authority**

Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

www.acma.gov.au

ACMA submission to Australia's Future Tax System Review

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KEY POINTS

- The ACMA raises more than \$700 million per annum in revenue for the Commonwealth via a disparate range of taxes, levies and charges.
- There is considerable scope for simplification, from both an economic and administrative efficiency perspective.
- Many of the existing taxes are sectorally based, and essentially represent hypothecated payments and /or transfer payments between industry participants. There may be an efficiency case for considering whether such sectoral taxes are the most economically efficient method of funding relevant policy objectives.
- To the extent that such sectoral taxes are based on some kind of ‘market share’ proxy as a matter of policy, it may be more efficient to change the base on which the market share proxy is calculated from one based on revenue to one based to the use of resource (e.g. telephone numbers).
- Where revenue-based taxes are necessary, broadly-based taxes on revenue (such as company tax) will generally be less distortionary and more efficient than sectorally-based taxes on revenue (such as the licence fees paid by commercial broadcasters).
- That said, sectoral taxes offer potential for promoting economic efficiency if they allow industry regulators such as ACMA to create price signals that facilitate and enable the efficient allocation and use of the resources that they are responsible for managing (for example, through the setting of spectrum charges).
- Many of the existing taxes in communications have developed over time in a disparate way that has resulted in inefficiencies and inconsistent approaches to similar issues. In turn, this results in a higher than necessary cost to both ACMA and industry.
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Introduction

On 19 August 2008, the Commonwealth Government's Tax System Review Panel called for submissions, to be received by 17 October 2008, on the most effective way to improve and reform Australia's tax system. This submission from the Australian Communications and Media Authority (ACMA) is based on its experience with industry-specific taxes and charges.

This submission notes the significance of the size of the revenue raised by ACMA, and sets out ACMA's disposition towards its revenue-raising function.

The Australian Communications and Media Authority

The ACMA is a Commonwealth statutory authority in the Broadband, Communications and the Digital Economy portfolio. ACMA is responsible for the regulation of broadcasting, the internet, radiocommunications and telecommunications. This includes regulating and allocating public resources such as telephone numbers and the radiofrequency spectrum. These public resources are indispensable inputs to industry in innovative, dynamic, wealth-producing sectors of the economy.

The ACMA collects revenue on an annual basis through broadcasting, radiocommunications and telecommunications licence fees, and charges for telecommunications numbers. ACMA also collects large amounts of revenue on an irregular basis from the allocation of radiocommunications licences with lengthy licence terms (over \$3 billion between 1997 and 2001¹).

ACMA is a significant raiser of revenue

Based on the Portfolio Budget Statements for 2008-09, in 2007-08, the ACMA was the third-largest collector of Commonwealth taxes and levies (and the seventh-largest collector of Commonwealth revenue). Only the Australian Taxation Office (ATO) and the Australian Customs Service collect more revenue on behalf of the Commonwealth from taxes and levies. ACMA collected about \$700 million in taxes and levies in 2007-08. A list of taxes and levies administered by ACMA is at Attachment A.

¹ Details of spectrum auctions results are available from the ACMA website at http://www.acma.gov.au/WEB/STANDARD/pc=PC_364

ACMA's disposition towards revenue raising

For reasons of economic and administrative efficiency, ACMA considers that the 'normal' approach to meeting the Commonwealth's revenue requirements should be via broadly based taxes such as company tax.

Industry specific taxes administered by regulators such as ACMA are best confined to situations when there are compelling public policy reasons that more than offset the administrative and economic costs of narrowly focused industry taxes.

It is also important to allow accurate price signals to emerge for the valuable resources managed by ACMA, to ensure they are allocated to their best possible use. Overall economic efficiency (and thus overall wealth) will be maximised if the price signals for those resources are not distorted by government revenue requirements.²

An example of a charge imposed on a resource that is set to meet a revenue goal rather than to reflect the resource value, is the Annual Numbering Charge (ANC). The amount of the ANC is determined such that a pre-specified amount of revenue is collected. The Universal Service Obligation (USO) and National Relay Service (NRS) levies are examples of levies that raise revenue to support specific social welfare goals³. These hypothecated levies are revenue-based rather than resource-based.

On the other hand, the apparatus licence taxes set by ACMA are intended (with few exceptions) to reflect the value of the scarce resource (the radiofrequency spectrum) that is made available through those licences and are determined by the market where practical. One exception to this approach is the amount of tax charged for apparatus licences used in support of public mobile telephone services in the 900 MHz band. In 2001 the Minister for Communications, Information Technology and the Arts directed the Australian Communications Authority to increase by a factor of 2.5 the annual

² The Productivity Commission, in its 2002 inquiry report into radiocommunications, suggested that "[Spectrum] charges should not be aimed at raising government revenue or providing a return to the community." (Recommendation 8.4). The report is available on the PC's website at <http://www.pc.gov.au/projects/inquiry/radiocomms/docs/finalreport>

³ The USO levy supports the provision by the universal service provider of reasonable and equitable access to standard telephone services and payphones. The NRS levy supports the National Relay Service – which allows people who are Deaf or who have a hearing or speech impediment to use the standard telephone service.

apparatus licence fees for spectrum in the 900 MHz band that is used by Telstra, Optus and Vodafone to provide mobile telephony services.⁴

The ACMA has managed sectorally based taxes on an industry basis for many years because of its broader communications regulatory responsibilities. Other models of revenue collection for the communications industry may also be worth considering. For example, specialist agencies such as the ATO may have some advantages such as: scale and scope; broader expertise in revenue matters; and the ability to cross-check returns.

The ACMA collects revenue in accordance with a wide variety of legislation, much of which has been created some time ago. The creation of ACMA in 2005 brought to light the disparate nature of the procedures and processes required by a number of different Acts of Parliament. For example, the process of calculating the 'gross earnings' of a commercial broadcaster and assess liability for television broadcasting licence fees in accordance with the *Television Licence Fees Act 1964* is quite different from the process of assessing the 'eligible revenue' of a telecommunications carrier in accordance with the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. A carrier's eligible revenue provides the basis for calculating a number of levies and charges imposed on carriers. ACMA is required to administer several special accounts as a result of some, but not all, of these arrangements.

ACMA believes that the complexity of its current revenue-raising processes and the associated compliance burden on industry:

- should be significantly reduced; and
- could be significantly reduced with little or no impact on overall Commonwealth revenue.

The issue of efficiency distortions

All taxes impose economic costs over and above the amount of revenue collected. In addition to the costs associated with administration, collection, avoidance and anti-avoidance measures and lobbying, taxes create efficiency costs by introducing wedges between the prices of goods and services and the resource costs of those goods and services. ACMA's experience is useful in highlighting the practical impact of these costs.

The USO levy is an example of a tax with large efficiency costs. The USO levy raises revenue to subsidise the cost incurred by the universal service provider (currently Telstra) in meeting its obligation to make standard telephone services and payphones reasonably accessible to everyone in Australia.

In its 2007 submission to the USO Review conducted by the Department of Broadband, Communications and the Digital Economy, ACMA expressed its views about the economic impact of the USO levy. ACMA also identified options available to government that could minimise the distortionary impact on the industry and improve the welfare of downstream consumers of telecommunications services.⁵

⁴ Australian Communications Authority (*PTS-PMTS Class B Transmitter Licences*) Direction No. 1 of 2001 (www.acma.gov.au/webwr/aca_home/legislation/radcomm/acts/register/btransmitlic.pdf).

⁵ See the Executive Summary and section 3.2 of the ACMA submission to the USO Review. Information about the Review is available at <http://www.dbcde.gov.au/uso>. The ACMA submission is available from http://www.dbcde.gov.au/_data/assets/pdf_file/0020/81533/ACMA.pdf

Industry-specific taxation (as opposed to general taxation) often leads to efficiency costs greater than administrative costs, and can be greater than the amount of revenue collected for a disproportionate number of participants. For example, of the 182 carriers who were required to lodge eligible revenue returns in 2007-08, only 32 or 18% were required to make a NRS levy payment and only 58 or 32% were required to make a USO levy payment greater than \$10,000. For many small to medium enterprises, the cost of preparing and lodging a return would have been greater than the consequential tax liabilities.

The issue of administrative costs and complexity

In addition to efficiency costs, charges can impose administrative costs on the organisation which levies them and on the entities which pay them. This is particularly the case when a number of charges are imposed on the same revenue base as is the case for the telecommunications industry.

ACMA levies the following charges on the broader telecommunications industry:

- The ANC is levied on telephone numbers held by Carriage Service Providers (CSPs) and has raised \$60 million per annum since 1999⁶;
- The USO levy is levied on the revenue of all licensed carriers and raised \$158 million in 2007/08⁷;
- the Annual Carrier Licence Charge (ACLCL) is levied on the revenue of licensed carriers and raised \$37 million in 2007/08⁸; and
- the NRS levy is levied on the revenue of licensed carriers and raised \$12 million in 2007/08⁹.

These levies and charges apply to an almost identical group of companies. As a result, ACMA staff are often asked why a company which has just paid an annual invoice has now received another annual invoice for an entirely different amount. On the principle of simplicity alone, it would make sense for these taxes and levies to be combined into one charge (leaving aside the broader question of whether it would not be better to raise this revenue from more broadly-based taxes that are less distortionary).

The USO levy is also a good example also of a charge which bears a high administrative cost. It is based on revenue (and allowable deductions), which creates an information asymmetry between ACMA and the companies paying the levy. This information asymmetry, and potential gaming, has resulted in ACMA having to apply a revenue assessment process that imposes significant administrative and compliance costs on industry and ACMA. To ensure probity in Commonwealth revenue collection, many companies are required to have their returns audited, imposing a further level of cost and delay.

⁶ The annual ANC revenue target is set by the budget process.

⁷ The amount to be raised by the USO levy (or Universal Service Subsidy) is set by the Minister for Broadband, Communications and the Digital Economy.

⁸ The ACLCL is determined by ACMA in accordance with the *Telecommunications (Carrier Licence Charges) Act 1997*. For each financial year, the ACLCL is based on the costs incurred by government in administering the carrier licensing regime during the previous financial year.

⁹ The NRS levy is calculated in accordance with the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. For each quarter, the NRS levy is based on the estimated costs incurred by NRS providers in that quarter, adjusted by actual costs incurred in previous quarters.

Additional challenges to the USO levy have emerged since the ACMA made its submission to the USO Review. For example, the introduction of in flight mobile phone services means that telephone calls are able to be made in Australian airspace from passengers on international airlines. This raises complex jurisdictional issues with the likelihood that companies that are not otherwise providing telecommunications services in Australia will incur USO levy obligations. In this case, prospective service providers have credibly indicated that the cost of compliance is likely to be greater than the revenue generated in Australia.

Other issues

Stamp duties imposed by state and territory governments on the sale of spectrum licences may act as a barrier to the transfer of spectrum to higher valued uses.¹⁰ ACMA is about to release a discussion paper about impediments to spectrum trading. Amongst other issues, the paper will seek submissions about the impact of stamp duties on spectrum trading. After that public consultation process and its own deliberations, ACMA may wish to raise the issue of stamp duties in a future submission to the Tax System Review.

¹⁰ Finding 7.5 of the Productivity Commission Report states (p158): “Given that stamp duties contribute to transaction costs, they may slow the transfer of radiocommunications licences and therefore of spectrum, to more efficient users and/or uses.” The report is available on the PC’s website at <http://www.pc.gov.au/projects/inquiry/radiocomms/docs/finalreport>

Attachment A

| Taxes and Levies | Description | Amount collected in 2007-08 |
|---|---|-----------------------------|
| Annual Numbering Charge (ANC) | <p>Since 1999, ACMA has collected \$60M each year from carriage service providers (CSPs) that hold telephone numbers. ACMA collects this revenue through the ANC process to improve efficient use of numbers by CSPs.</p> <p>Under the numbering charges process, CSPs are liable for the charges they incur for the numbers they hold on the census date in April each year.</p> | \$60 million |
| Apparatus Licence Tax (ALT) | <p>Apparatus licences are issued to authorise radiocommunications devices. The ALT is applied to each chargeable spectrum access of an assigned licence and each licence for non-assigned licences.</p> <p>This tax is intended to promote efficient use of spectrum and recover the indirect costs of managing the spectrum.</p> | \$143 million |
| Indirect Cost Recovery/ Annual Carrier Licence Charge (ACLCL) | <p>The ACLCL is a component of the Telecommunications Carrier Licence Charge and aims to recover the costs of regulation from the telecommunications industry. The ACLCL is payable by all carriers who are listed as owning a licence on 1 July of each year, and has a fixed and variable component.</p> | \$37 million |
| Indirect Cost Recovery/ Spectrum Licence Tax (SLT) | <p>The annual SLT aims to recover the amount of indirect costs of regulating the radiocommunications industry caused by spectrum licences.</p> <p>This tax is paid by licensees who hold spectrum</p> | \$0.3 million |

| | | |
|--|--|---------------|
| | licences. | |
| National Relay Service Levy (NRS Levy) | <p>The National Relay Service (NRS) is an Australia-wide telephone access service provided for people who are deaf or have a hearing or speech impairment. The NRS ensures that such people have access to a standard telephone service (STS) on terms that are comparable to those on which other Australians have access to a STS. The NRS levy is intended to cover the costs incurred by NRS providers.</p> <p>Payment of the NRS levy is shared proportionally among eligible telecommunications carrier licence holders based on their eligible revenue assessments for the relevant year.</p> <p>If a carrier licence holder's most recent eligible revenue assessment is less than \$10 million, they are not liable to contribute towards the NRS levy.</p> | \$12 million |
| Universal Service Obligation Levy (USO Levy) | <p>The Universal Service Obligation (USO) ensures that STS, payphones and prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. The USO levy was created to help finance the fulfilment of this obligation.</p> <p>Payment of the USO levy is proportionally imposed on all telecommunications carrier licence holders based on their eligible revenue assessments for the relevant year.</p> <p>Unlike the NRS levy, there are currently no eligible revenue thresholds in place for the USO levy.</p> | \$158 million |
| Broadcasting Licence Fee (BLF) | <p>"These fees provide a method of recompensing the nation for access by broadcasters to the broadcasting service bands and for the benefits granted to licensees who operate in a closed market created by legislative restrictions on the number of licences made available."¹¹</p> | \$282 million |

¹¹ Senator Ian Campbell, second reading speech, Television Licence Fees Amendment Bill 1997, 15 May 1997.

| Other | Description | Amount collected in 2007-08 |
|--|---|------------------------------|
| Direct Cost Recovery/ Fee for Service | Direct Cost Recovery is revenue collected directly from the beneficiary of the service rendered. For the majority of ACMA's activities, the charges imposed are a fee for service to the direct beneficiary of the activity, with the calculation of the charge being based on the time taken and resources allocated in performing the activity. | \$0.17 million |
| Penalties | ACMA imposes a range of penalties, including infringement penalties, late payment fees and fines arising from court cases. The general purpose of imposing such penalties is to encourage proper use of resources, adherence to the relevant legislative provisions, or encouraging efficient payment of the relevant goods or services. | \$0.01 million ¹² |
| Indirect – Do Not Call Register Fees | Revenue is collected from telemarketers who pay subscription and excess usage charges in order to access and use the Do Not Call Register. | \$2.2 million |
| Numbering Sales | Numbering Sales is revenue collected from the sale of smartnumbers (numbers with prefixes such as 13 and 1800). These telephone numbers are auctioned. | \$4.5 million |
| Spectrum Sales | Spectrum Sales is revenue collected from the sale of spectrum licences. Spectrum auctions are an efficient way of pricing and allocating scarce spectrum. Spectrum licences are allocated for a 15 year time frame. | \$0.03 million ¹³ |

¹² Revenue collected from penalties is highly variable. For example, \$5.55 million was collected in penalties in 2006-07.

¹³ Revenue collected from the auction of spectrum licences is highly variable. Approximately \$3 billion was collected from the sale of spectrum licences between 1997 and 2001. Those spectrum licences will expire between 2012 and 2016.