



AMTA Submission on behalf of the Mobile Carriers Forum

IPART Review of rents for communication sites on certain Crown land

11 April 2024



About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak national body representing Australia's mobile telecommunications industry. It aims to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia. Please see www.amta.org.au

This submission is made for the Mobile Carriers Forum (MCF), a division of AMTA representing the three mobile phone carriers deploying mobile networks in Australia, namely Telstra, Optus and TPG Telecom.



Introduction

The Australian Mobile Telecommunications Association (AMTA) welcomes the opportunity to provide this submission to IPART on behalf of the Mobile Carriers Forum (MCF) in response to IPART's 2024 'Review of rents for communication sites on certain Crown land'.

The MCF's members are Telstra, Optus and TPG Telecom and collectively referred to as the 'Mobile Network Operators' (MNOs). AMTA has previously made submissions on behalf of the MCF to IPART's 2005, 2013 and 2018 reviews of rental arrangements for communications towers on Crown land.

The outcomes of IPART's review in 2013 was the last time that the NSW Government set rental rates and arrangements on Crown land. Since then, mobile networks have become increasingly ubiquitous and have grown to now amount to over 8000 mobile network sites across the State¹.

In addition to maintaining existing networks, the MNOs are each currently undertaking a significant deployment program of new and upgraded mobile network facilities across Australia to cater for the expanded network coverage required to deliver advanced mobile telecommunication services including 5G. This deployment program also includes new sites funded by the MNOs and others via co-funding with Government in mobile blackspots and in areas subject to higher risks of natural disaster.

This submission seeks to address issues raised in IPART's Issues Paper *Review of rents for Communication sites on certain Crown Land*, issued on 26 February 2024. AMTA contends that the previous and current rental arrangements are and have always been discriminatory, and over the past 10 years the breadth of this discrimination has widened.

AMTA considers that the recommendations in IPART's 2019 report made some progress towards establishing non-discriminatory pricing for the use of crown land – although the industry remains

¹ According to the ACCC [Mobile Infrastructure Report](#), 27 November 2023 and ABS, the mobile network operators collectively operate 8,178 sites across NSW. Of these, 5246 are 'co-located' sites¹. There were 39.6 million mobile services in Australia in December 2022. Australia's population was 26,268,000 and NSW's population was 8,238,000 people on 31 December 2022¹. Extrapolated for NSW, this means that there are approximately 12,357,000 mobile services in NSW (or 1.5 per person). Note: A new site means the addition of radio equipment to a new or existing structure that may have been built or is owned by a Mobile Network Operator (MNO) or a third party.

concerned that pricing may still be inconsistent with what is being paid by other users of crown land in NSW. We understand that IPART's 2019 recommendations were not accepted by the NSW Government on the basis the dataset, which pre-dated COVID-19, did not reflect current market conditions at the time. This reasoning neglects the fact that instead of implementing the 2019 recommendations based upon the 2019 dataset, there is a continued reliance on even older data that contributed to the 2013 recommendations.

Notwithstanding, AMTA is not privy to any significant data set of rental prices for communications sites on private land and AMTA members may provide separate submissions on these matters.

IPART has requested feedback from key stakeholders on eight questions. These are outlined below together with AMTA's response on behalf of the MCF.

1. Whether there are any additional sources of data on rental prices for private land. For example, we previously relied upon data from the NSW Land Registry Services.

AMTA is not privy to any significant data set of rental prices for communications sites on private land.

However, AMTA has pointed out in submissions to IPART in previous reviews (2013 and 2018) that in our opinion the rentals charged annually on Crown land would equate to or exceed the freehold value of the land in some cases, considering the very small lease areas. It is unreasonable to expect any tenant to effectively buy the land every year, and this arrangement is clearly unsustainable.

As is pointed out in the 2019 IPART Report, the Federal Court of Australia decision in *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213 found that Land Regulation 2009 discriminated (as per clause 44 of Schedule 3 to the Telecommunications Act) by imposing higher rents for commercial carriers that lease Crown land for "provision, relay or transmission of telephonic television, radio or other electronic communication services" than when using the land for a business, commercial or industrial purpose. This FCA judgement makes it clear that such consideration of events in the private market where discrimination is not prohibited cannot be applied in the State and Territories sector where this discrimination is prohibited. We therefore question the relevance of data on rental prices on private land for IPART's deliberations.

2. Details of current rental arrangements for communication sites on private land.

As AMTA has consistently observed in previous IPART reviews, the Telecommunications Act, Schedule 3 cl.44 prohibits State and Territories from discriminating against carriers. It does not prohibit private individuals and companies from such discrimination.

IPART's collection of information in relation to current rental arrangements for communication sites on private land suggests that it is seeking to determine the carriers' "willingness to pay", and we are concerned that it may have regard to excessive rentals charged in the private market, notwithstanding they would be considered discriminatory in the public sector.

We would reiterate our feedback to the 2018 review, that rentals should reflect a fair return for the value of the land, not the perceived value to the operator. Carriers build "networks" not "sites".

The Crown provides unimproved land, and carriers build the infrastructure and provide the service to consumers. There is no argument that the Crown is entitled to a land rental that reflects the Crown's perceived view of the value of the installation.

Some sites on Crown land operate at a loss, but they are critical to providing the depth, breadth and continuity of service that carriers' customers demand. Taking this view, for those sites, carriers should pay near zero rent, as the installation in and of itself does not generate revenue.

3. Whether rooftop communication sites should be treated differently to other Crown land sites.

We note that in IPART's 2019 report (section 9.2.4), it resolved to not recommend rents for rooftop sites, as there were very few rooftop sites on Crown land administered by the three land management agencies subject to the review. IPART recommend that the rents for rooftop sites be set by negotiation. AMTA considers that negotiations around rents should be based around land values and not perceived value to the carrier or income.

AMTA notes that rooftop facilities often have no alternative use. Rooftop rents that are in addition to the base rent of a communications site should be charged at a zero to minimum rate.

Use of rooftop sites will often provide service benefits for building users in terms of good mobile connectivity in and surrounding the building, so these solutions should be encouraged.

Whilst carriers have powers (Telecommunications Act Schedule 3) available to them on rooftop sites - as the facility can often meet the requirements of the Telecommunications (Low impact Facilities

Determination), these powers are seldom used as reasonable rental arrangements can be negotiated.

4. Whether recent changes in ownership arrangements for mobile network towers have influenced rents.

This is not a matter that AMTA can comment upon as AMTA is not privy to any significant data set on rental prices for communications sites.

We note that since the previous inquiry, Optus, Telstra and TPG Telecom have all divested or diluted their interests in mobile telecommunications tower infrastructure.

We note that IPART's 2019 Final Report 'Review of rental arrangements for communication tower sites on Crown land' states that *'Under our approach, all lessees who use Crown land as a communication tower site will pay the same rent. Because our recommended rents are the same for all users of such sites, both carriers and non-carriers, they do not discriminate against carriers'* (Page 4 – emphasis added).

AMTA agrees with this principle, but only on the basis that all lessees who use Crown land as a communication tower site are also charged the same as other tenants on Crown land. Whether or not the sites are of higher value when used as a communication tower site than to other users of Crown lands, we note that Clause 44 of Schedule 3 requires that the NSW government charge no more for the use of such land than it does to any other user of Crown lands for any other type of use.

5. What effect the phasing out of the 3G network may have on rental arrangements.

We note that similar network closures have happened before when all Australian mobile providers switched off their 2G networks when they upgraded with the addition of 4G.

The towers continue to be used for wireless telecommunications and a change in technology standards, e.g. the expanded provision of 5G services and the shutdown of 3G services has no impact on the real estate occupied at any given site. Therefore, there should be no impact on rental arrangements.

6. How best to incorporate the social, cultural and environmental value of national park land in recommending rents for communication towers in national parks. Currently National Parks set the price of their sites one category higher than other land agencies. The *National Parks and Wildlife Act 1974* states that national park land cannot be used for communication facilities if there is a feasible alternative site available.

In its 2019 report, IPART noted in section 9.2.4 that *'We maintain our recommendation that NPWS be able to continue their practice of setting rent for communication towers in national parks one location category higher than the site's actual category. We consider this is appropriate to reflect the social, environmental and cultural values of national park land, noting that our recommended rent schedule has been based on recent market rents for similar sites on private land, and does not necessarily reflect these values. Further, we do not consider that our recommendation discriminates against carriers, because it applies equally to all users of Crown land for communications towers. See Chapter 4 for more detail'*.

AMTA strongly disagrees with this recommendation. It is worth noting that the NPWS only developed this category step increase in rentals after the previous IPART review and that there was no nexus with the increase and the social and cultural values of the land.

The maintenance of the category step increase – which was not recommended by IPART in the last review, is indicative of the land agencies' willingness to manipulate the IPART recommendations. We encourage IPART to not support such a manipulation which AMTA considers constitutes discrimination.

The rental should be determined based upon a percentage of the unimproved land value for all sites.

AMTA notes the very real benefits in terms of ensuring adequate mobile services in National Parks especially during emergency situations, and from an operational perspective for NPWS staff.

MCF members have provided an example of the government funded site at 'Cottage Point' a small community of approximately 58 properties surrounded by the Ku-ring-gai Chase National Park. The facility is owned by Amplitel who is paid a rent of \$42,131.92 per annum in 2023, and co-users Telstra and Optus each paid a rent of 21,065.96K per annum in 2023 to provide service, to this community for a total in excess of \$84K per annum. This rent will escalate in accordance with CPI rates. The catalyst for government funding and provision of service was the death of a resident where emergency services could not be contacted, plus the ongoing bushfire threat. Even with capital funding provided by Government, the ongoing rental for provision of a facility on a small

portion of NPWS land is exorbitant, and the carriers have no prospect of a return. MNIPs and MNOs would normally seek a site on freehold land but there is no alternative in this case.

An ongoing operational cost of this magnitude simply discourages Carriers from providing wireless telecommunications services in this type of locality.

7. The market approach to setting rents and fees for co-users and small cell technology on communication sites on private land.

Co-users should be charged only for the additional land occupied by their own infrastructure outside the existing compound. There is no justification for duplication of rental charges where the co-user is effectively charged a rental to occupy assets built by the primary user, who pays a rental for the occupation of these assets.

This approach is consistent with Recommendation 13 in the House of Representatives Standing Committee on Communications and the Arts's Inquiry into co-investment in multi-carrier regional mobile infrastructure, which formed the conclusion that *'The Committee recommends the Australian Government prohibit its agencies from charging additional co-user rental fees above the rent a principal tenant pays to lease Commonwealth crown land for the purpose of providing telecommunications services'*². AMTA recommends that IPART have regard to this when considering its recommendations.

As previously noted, telecommunications carriers are required to share infrastructure under federal legislation. This reflects the clear benefits of co-location in supporting the efficient use of infrastructure and reducing the costs of deployment. Under IPART's current rental regime, sharing comes at a significant cost to the co-user. The Crown should not assume that it can receive a financial benefit from carriers adhering to the law. Moreover, the objective of this planning requirement is to improve visual and other amenity outcomes for the community. The co-user fee structure imposes additional rents on co-users, frustrating this objective.

² Recommendation 13 at Paragraph 4.135 'Connecting the country: Mission critical - Inquiry into co-investment in multi-carrier regional mobile infrastructure, House of Representatives Standing Committee on Communications and the Arts

8. The practical implications of using the remoteness categories in the ABS' Australian Statistical Geography Standard to set location categories for fees for communication sites on Crown land.

In its 2019 report, IPART observed that 'Our analysis found that the number of location categories, location definitions and rent levels need to be updated to better reflect recent market evidence for sites on private land'. AMTA's previous submissions on behalf of the MCF has drawn the conclusion that the bands have been aligned with the perceived carrier revenues that each site band generates based on the population density they service.

Central to IPART's approach has been the division of all Crown lands into four rental bands. The three Crown land agencies manage some 53.5% of all land in NSW. This equates to some 43.3million hectares of land. We consider that it is not a feasible proposition that all this land can be simply categorised into four or more broad economic value bands for the telecommunications industry only.

The four rental bands are Sydney, High, Medium and Low and are assessed largely on population density. The exceptions being High Value (Previously Strategic value) and SCAX sites. The banding mechanism should have more closely followed the variations in land value within each band but AMTA's MCF members have drawn the conclusion that bands have been aligned with the perceived carrier revenues that each site band generates based on the population density they service.

AMTA remains of the view that there needs to be a single category with a single mechanism for determining rentals for all users based on recognised land valuation methods. There is no justification for a rent based upon perceived value to the Carriers.

The valuation of any parcel of land and the improvement on the land, in most instances, will be reflected in the capitalisation rate applied to the various use types. For example, premium commercial buildings in the Sydney CBD may reflect a rate of 5%, residential properties 3%, industrial properties 8%. The rate reflects the level of risk and the operating cost to the landowner.

In the case of vacant Crown land, the operating costs of that land occupied by a carrier are negligible, the risk is exceedingly low, and the likelihood of lease renewal is high (due to the longevity and expense of active mobile network infrastructure). The land value is readily determined by the NSW Valuer General.

AMTA therefore recommends a single category based on unimproved land value. All that remains is the determination of a suitable rate of return based on the assessment above.