12 February 2025

Andrew Nicholls PSM
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
Level 16, 2-24 Rawson Place
SYDNEY NSW 2000

By email: [redacted]

Australian Mobile Telecommunications Association

Dear Mr Nicholls,

AMTA submission - NSW IPART's Revised Draft Report - Review of rents for communication sites on Crown land

AMTA welcomes this opportunity to provide feedback on IPART's revised Draft Report, which sets out its revised draft recommendations on rents for communication sites on certain Crown land. IPART has proposed revised recommendations on co-user fees, small cell technology and rooftop sites, and has published additional information received from the land management agencies and industry stakeholders.

AMTA provides the following further feedback in relation to several sections and recommendations of the revised draft report.

Co-user fees

AMTA welcomes IPART's reconsideration of the application of co-user fees, and we support recommendation 5 that 'Co-users are no longer to pay a co-user fee where the land they licence is located wholly within the primary user's compound'. The revised draft recommendation creates stronger incentives for co-location.

AMTA notes data provided by the Mobile Network Operators (MNOs) to the inquiry confirming co-user fees are all-but unheard of on private sites. Furthermore, where MNOs are located on third-party towers on private sites, in the majority of cases the MNO has no ground lease of any kind with the landlord. Care should be taken to ensure this remains the case for communications infrastructure located on Crown Land.

Section 5.5.3 of the revised Draft Report notes that *'…Crown lands stated that IPART had not adequately considered the costs or complexity of reviewing current co-user agreements. They noted that, in their view, this does not comply with the terms of reference, which require recommendations that are straightforward to implement. The agencies noted that our revised draft co-user recommendation would be complex to implement given challenges with data availability. Specifically,*
- *the licence regime does not rely on a primary user compound definition*
- *historical records are not easily accessible*
- *the rapid advancements in the telecommunications industry are not fully captured in existing records*.'

Central to the LMA's argument for the retention of co-user fees was the need to fund the administrative cost of managing co-users. But Crown Land's explanation equates to an apparent admission that the significant revenue collected from primary rental and co-user fees over two decades has not been properly invested in appropriate record keeping by the LMAs.

Crown Lands estimate that the cost to implement the revised draft recommended co-user change would be $5.5m and that it would take 8+ years. We consider this to be an exaggeration that is akin to starting from scratch. Should the recommendation be adopted, AMTA is seeking the immediate removal of co-user fees. IPART must be clear in relation to the date from which the new rental arrangements are to be calculated, which we submit should be from 1 July 2023 in accordance with the tables in section 8.1 of the Revised Draft IPART Report.

Our members have expressed a willingness to assist Crown Lands and LMAs in filling any information gaps where possible, and where the LMAs' records are incomplete.

National Parks

Section 3.3 of the original Draft Report explained that IPART remains 'of the view that the private market does not necessarily adequately price the social, cultural and environmental value of the land. For example, private market rents do not necessarily incorporate the costs of protecting biodiversity'. That report explained that in 'the absence of sufficient market evidence, an administratively simple approach to setting rents is for NPWS to continue their current practice'. As per our feedback on the draft, it appears that IPART is maintaining its position in the revised draft report that the category uplift to the standard rental schedule imposed by NPWS is justified and should continue in National Parks. This is despite IPART flagging in its revised draft report that NPWS will need to provide quantitative analysis on the additional costs of hosting communication towers in national parks as part of the next review.

Section 3.6 of the revised draft states *'NPWS has also stated it considers our report should be a mechanism that deters and provides barriers to the installation of communication sites'*. This is an extraordinary statement from NPWS when considering the benefits derived from reliable telecommunications and emergency broadcast services from towers that have been established on NPWS land as a last resort. As we have noted in two of our previous submissions, these benefits are also realised by communities adjacent to National Parks at considerable expense to the industry (refer to AMTA's 'Cottage Point' example). Retention of the uplift would continue to represent a significant disincentive to establishing facilities on NPWS land and providing these benefits.

Section 3.7 of the revised draft claims "*…if the category uplift did not apply, then there would be a perverse incentive for communication firms to seek to locate their facilities in the National Park*", in the example of sites located along the Great Western Highway and in the Blue Mountains National Park. Section 153D of the *National Parks and Wildlife Act 1974* prohibits granting a lease for telecommunications facilities on NPWS land unless the Minister is satisfied that there is no feasible alternative site. If a site located along the Great Western Highway were a feasible alternative to one in the Blue Mountains National Park, it would not be legally possible to locate in the National Park. Whatever financial incentive may exist is thus a moot point.

Rooftops

Whilst rooftops were never intended to be included in the IPART regime, in its Revised Draft Report IPART has persisted with its proposal that communication sites located on a rooftop are to pay precisely $3,380 (down from $3,821) and that the rooftop premium would only apply to the Sydney density category – which we understand to be just a 'handful' of rooftops. We maintain that this approach is disappointing as it may preclude the use of these well-positioned buildings on Crown Land due to price. We note that many rooftops have no alternative use. There appears to be little clarity on rental pricing for co-users of the rooftop, with potentially exorbitant fees to apply for operators locating on third-party infrastructure.

As we've previously noted, IPART pricing such as in this rooftop category can and has influenced the pricing of NSW government agencies, other States agencies and local government authorities - taking the IPART regime well beyond its intended application to free standing sites administered by the three land agencies.

Small cells

Whilst we note that it is unusual for our members to locate small cells on NSW Crown Land, we have reviewed the changes in the revised draft report and partially support recommendation 8.that '*Primary users deploying small cell and other similar technology on existing, non-communication infrastructure are to pay rent of $2,000 per annum where:*

a. the infrastructure is owned by the land management agencies; or
b. the small cell is deployed on another entity's infrastructure, but a small amount of additional land (not more than 7.5 square meters) is required.

AMTA is concerned at the inclusion of 'or other similar technology', as this may cause confusion about the application of this requirement. We'd prefer clarity on this rather than it being left vague and would point to

definitions that could help define a small cell found in Items 8 & 9 in Part 1 of the Schedule to the Telecommunications (low-impact facilities) Determination 2021.

AMTA supports IPART's approach which reflects industry submissions that rent is typically paid to access or use an asset. We note that if implemented, the arrangement in recommendation 8 would not attract a rental if the carrier just established a small cell on a pole not owned by an LMA (without ground-based equipment), even if the pole was on LMA land.

But we also note that condition b. is fundamentally discriminatory because LMAs do not charge other utilities such as electricity providers to locate on and use Crown land – a point that we have made in previous submissions to IPART[1].

Method of rental escalation

AMTA and its members partially support recommendation 13, which states *'The rental fees set out in recommendation 10 are to be escalated by 3% per year in line with current private market practice. Existing licences are to adopt the escalator as they are renegotiated'.*

Whilst we agree with PART's reasoning for using a fixed rate 3% escalator rather than CPI we question the new inclusion in IPART's revised draft that the escalator be adopted as licences are renegotiated. Our members have pointed out that they may have long term arrangements in place with LMAs – even up to 20 years. It seems unreasonable that any of IPART's recommendations would take up to 20 years to be implemented. We see no good reason why all existing agreements should not be varied as soon as possible to apply the new escalation rate rather than CPI, and we understand that this could be achieved by varying the relevant head licence.

Future reviews

AMTA acknowledges that this has been a complex review, which was not aided by the framing of the terms of reference, nor the record keeping of the LMAs. AMTA therefore supports recommendation 12:

'If IPART is to be provided a future referral to recommend rents for communication towers on crown land the referral should:

- *Explicitly state the reason for referring the review to IPART.*
- *Be under s12A of the IPART Act so that our information gathering powers are available.*
- *Broaden the scope to include investigating the range of fees and charges imposed by the land management agencies*
- *That the 3 land management agencies improve their records, so they have information on whether co-users rent additional land, and the additional costs associated with telecommunications towers in national parks'.*

AMTA submits that the Terms of Reference for any future review should seek to understand the methods for pricing that works well in other States – for example, how pricing in National Parks in other States has contributed to making provision of additional coverage and service economical in underserved areas and adjacent communities.

Concerns about process

We note IPART's commitment to following a fair and transparent process, and that its determinations and recommendations are not subject to the control or direction of the NSW Government. However, our members have expressed concern at the engagement between IPART and the Department of Planning, Housing and Infrastructure Crown Land and Public Spaces ('Crown Lands') outside of the process for submissions.

[1] In 2004, in Bayside City Council & Ors v Telstra Corporation Limited & Ors, the High Court of Australia found that that New South Wales and Victorian laws allowing councils to collect rates and charges from carriers for installing and maintaining cables for pay television and high-speed internet access were contrary to Federal legislation (Federal Telecommunications Act. Section 44(1)(a)) preventing discrimination against telecommunications carriers and were invalid.

Section ‘5.5.3 Implementation issues’ of the draft revised report refers to an 11 November 2024 letter from Crown Lands responding to a request for ‘fact-checking’. Crown Lands’ letter has been published on IPART’s website and refers to the 'embargoed final report' that it has reviewed, and in doing so it has obtained feedback from the LMAs. We surmise from this that IPART requested Crown lands to validate some facts in the draft report. But clearly Crown Lands has used this opportunity to attempt to persuade IPART to change its recommendations. For example, the response claims that IPART had not adequately considered the costs or complexity of reviewing current co-user agreements, and over 4 pages it attempts to persuade IPART to alter or maintain a position for the benefit of the LMAs. This is not ‘fact checking’. In addition to Crown Lands doing the LMAs’ bidding, it then offers to assist IPART in seeking an extension for submission of the final report.

AMTA and its members note that such an opportunity to review the ‘embargoed’ report was not afforded to the industry. We respectfully request that IPART does not provide an ‘embargoed’ copy of its report to Crown Lands at the end of this most recent round of engagement, and that the final phase of this review is fair and transparent.

If you wish to discuss any aspect of this submission, I can be contacted on [redacted]

Yours sincerely,

[redacted]

Louise Hyland
Chief Executive Officer
Australian Mobile Telecommunications Association Ltd