

15 November 2024

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



By email: [REDACTED]

Dear Mr Nicholls,

### **Supplementary Submission - NSW IPART Review of rents for communication sites on Crown land**

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry ('industry'). AMTA members include mobile network operators and mobile network infrastructure providers. Several of our members have tenure arrangements for towers on NSW Crown Land and have essential network equipment on these towers.

I write to you in relation to the current NSW Independent Pricing and Regulatory Tribunal (IPART) Review of rents for communication sites on certain Crown land (the 'review'). On behalf of its members, AMTA has made two submissions to the review in response to the issues paper and then the draft final report.

Our members have recently drawn our attention to supplementary information supplied to IPART by the NSW Department of Planning, Housing and Infrastructure ('The Department'), including:

- (1) A letter to IPART from the Department dated 16 October 2024 on behalf of the Land Management Agencies ('LMAs') enclosing a 'market intelligence report' that reviews co-user agreements in the private communications market' (the 'sitexcell report'); and,
- (2) A letter to IPART from the NSW National Parks and Wildlife Service ('NPWS') dated 15 October 2024 outlining NPWS response to the potential recommendation to not allow NPWS to charge one category higher or co-user fees.

#### **1. Response to letter from the Department (16 October 2024) and the 'Intelligence Report'**

We encourage IPART to carefully consider the weight it gives to the findings of the 'Intelligence Report' prepared by Total Site Solutions Pty Ltd (trading as siteXcell) on behalf of the LMAs. Our members have highlighted that siteXcell is owned by Everest Infrastructure ANZ Pty Ltd., and they are very concerned about the insufficient disclosure in siteXcell's report about its' activities as a lease aggregator and market participant.

In addition, several of AMTA's members have raised concerns in relation to IPART's process of allowing the Department and LMAs to lodge a late submission with substantial data purporting to justify increasing rents and continuing the current co-user regime. We understand that IPART has met with the LMA representatives, and the industry has not been afforded that opportunity and sufficient time for a right of reply.

In relation to the substance of the LMA's additional information, we preface our response by emphasising that the terms of reference of IPART's inquiry require it to have regard to "*updating current rents to reflect fair, market-based commercial returns*" and "*recent and representative market rentals agreed for similar communication sites, reflective of different site conditions and locations across the State*". We understand that in the private market the vast majority of sites on private land do not have any sort of co-user fee or ground lease, and in accordance with the Terms of Reference, we submit that a rental regime reflecting a 'market-based commercial return' and a 'market rental' must have regard for this.

The Intelligence Report's approach of equating co-user fees with ground/sliver leases is not a valid comparison, and not representative of the vast majority of leases on private land. The industry agrees that land management agencies are entitled to be compensated when our members lease additional land for an equipment shelter. But this is not the same as a co-user fee, as these do not provide the general benefits and protections of a lease arrangement found in a sliver lease or ground lease for an equipment shelter. To claim either are representative of co-user fees is inaccurate.

AMTA welcomed IPART's sensible finding in its Draft Report that rents for communications sites in the private market have decreased compared to Crown rents, and IPART recommended rent reductions as a result. It is clear in the private market that the inclusion of co-users is priced in, and there is no dispute that there is a right to co-locate without additional charge in the private market. So, the industry has rightfully questioned siteXcell's claims that removal of co-user fees would result in a shortfall in fair compensation to the Crown land agencies.

AMTA has been advised that several of our members will be providing further information to address several unsubstantiated claims in the siteXcell report and shortfalls in their valuation methodology, to the extent possible in the time available.

**(2) Recommendation that NPWS can charge one category higher**

We have reviewed the letter to IPART from the NPWS (15 October 2024) outlining its response to a potential recommendation from IPART to discontinue the NPWS decision to charge one category higher in IPART's scale.

As we've previously noted in AMTA's submissions, the impact of a telecommunications development on the values of NPWS land is considered through various assessment pathways including the planning application process, a review of environmental factors, conservation risk assessments and other processes. These assessments would reasonably identify social, cultural and environmental significance and strategies to mitigate minor impacts if a proposal was deemed to be acceptable. If the impacts were not acceptable and unreasonably compromised the values of the land then we cannot envisage a reason why approval would be granted. Despite NPWS' latest submission, AMTA submits that there is no nexus between the 'uplift' component of an annual rental paid to National Parks and the ongoing protection against purported impacts from a communications facility.

As we've noted in our previous submissions, such an arrangement, when compounded with other parts of IPART's proposed pricing regime, is highly unlikely to deliver improved services in National Parks and the visitor experience. This is unfortunate because NPWS personnel also benefit from improved connectivity provided by communication sites on National Park land. Improved mobile connectivity additionally improves public safety during emergency situations.

NPWS latest submission does not negate the reality that continuing to charge higher rentals for communications sites in National Parks will diminish the investment in telecommunications services for park users and adjacent communities of National Parks.

Thank you for considering AMTA's supplementary submission. I can be contacted on [REDACTED]  
[REDACTED]  
[REDACTED]

Yours sincerely,

[REDACTED]

Louise Hyland  
Chief Executive Officer  
Australian Mobile Telecommunications Association Ltd