



## AMTA Submission on behalf of the Mobile Carriers Forum

In response to IPART Draft Report 'Review of rents for communication sites on certain Crown land, July 2024'

12 August 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](http://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 second submission to IPART on behalf of the Mobile Carriers Forum (MCF) in response to IPART's **'Draft report - Review of rents for communication sites on certain Crown land - July 2024'**.

This submission provides additional information on several matters contained in AMTA's first submission to the "Issues Paper – Review of rental arrangements for communications towers on Crown land" released by IPART in February 2024 (Issues Paper).

That Issues Paper contained eight broad questions on key issues. Responses by AMTA and its members were partially based upon assumptions that several points of contention with the current NSW Crown Land rental arrangements (based upon IPART's 2013 review) had been reconsidered in IPART's 2019 review.

A case in point is 'co-user' fees, where in its 2019 Report IPART unequivocally resolved that 'co-users wholly within the primary user's site would pay no annual rent'. Before the release of the Draft Report, the Industry's reasonable assumption was that this would be carried forward even though the NSW Government decided to not accept the recommendations of IPART's 2019 review because the dataset pre-dated Covid and was out of date. It is AMTA's view that there is no link between the age of the dataset and the reasoning of the 2019 decision by IPART to recommend that 'co-users wholly within the primary user's site pay no annual rent'. And so it is that AMTA and its members were surprised (to say the least) when IPART's Draft Report recommended the restoration of 'co-user' fees. This is further discussed below but is raised from the outset as an example of the Industry's concern at the uncertainty presented in IPART's response to the Terms of Reference.

The outcomes of IPART's review in 2013 was the last reference point used by the NSW Government to set rental rates and terms for use of Crown land. It is unacceptable that this continues to be considered the default position when IPART 'draws blanks' due to inconclusive data – as it has raised several times in the Draft Report. For example, IPART attempted to estimate the current market discount for co-users using statistical analysis of its data set of private market leases. This effort has not yielded statistically reliable results, so IPART is simply recommending maintaining the existing 50% co-user fee.

In the Draft Report, IPART invites stakeholders to comment on the draft recommendations. AMTA provides the following feedback on behalf of its members, and we note that all of our members with an interest in IPART's review will also be making detailed submissions.

## AMTA comment on draft recommendations

### **1. The existing density classifications continue to be used to minimise the costs of implementing the updated fee schedule.**

IPART proposed reviewing the density classifications in its Issues Paper by aligning them with the updated Australian Bureau of Statistics' (ABS') Australian Statistical Geography Standard. We note several observations from our members that there was considerable variation for rents within each area of the Australian Statistical Geography Standard. It was also noted that a review of the density classifications may impact a carrier's ability to forecast, plan for rental costs and accurately consider the viability of Crown land sites. AMTA will therefore defer to its members to comment on the merits of continuing to rely on existing density classifications.

### **2. That National Parks and Wildlife Service's approach of setting rental fees one category higher should continue.**

In its draft report, IPART has 'made draft decisions to continue the price uplift policy for sites in National Parks to reflect the opportunity costs of development occurring on environmentally sensitive land'.

Section 3.3 of the Draft Report explains 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'. The report explains 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 comment in the introduction, this is another example where in the absence of data, IPART simply defers to the default position.

The maintenance of the NPWS 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 in a simplistic way. We encourage IPART to not support such a manipulation which AMTA considers constitutes discrimination.

Whilst AMTA does not suggest it is unimportant, we do question whether it is the role of IPART to consider the social, cultural and environmental value of the land’ to, for example ‘incorporate the costs of protecting biodiversity’.

The question of whether certain land should be used for a communications facility and the impact of a development on the values of that 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. AMTA submits that there is no nexus between the ‘uplift’ component of an annual rental paid to National Parks and the ongoing protection against impacts from a communications facility.

AMTA does not agree with IPART’s suggestion that the uplift reflects the opportunity costs of development occurring on environmentally sensitive land, particularly given the very small parcels of land required for communications facilities. The opportunity cost to the Crown being “the loss of other alternatives when one alternative is chosen” is negligible. In the case of vacant Crown land which would not derive any other return apart from that provided by a telecommunications user, there is no lost opportunity and hence the value would be nominal for all locations.

In our first submission AMTA noted 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.

During the Public Hearing, IPART requested that we provide details of an example of the government funded site at ‘Cottage Point’ a small community of approximately 58 properties (or approx. 96 people<sup>1</sup>) surrounded by the Ku-ring-gai Chase National Park. This was provided in our first submission and for IPART’s convenience is out lined again as follows. In providing this example, we note that there is no alternative in this instance but to locate in the National Park. Locating in

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1 [2021 Cottage Point, Census All persons QuickStats | Australian Bureau of Statistics \(abs.gov.au\)](https://abs.gov.au/quickstats/2021/cottage-point)

National Parks is a last resort as the National Parks and Wildlife Act 1974 (NSW) prevents the use of national parks for broadcasting and telecommunications facilities if there are feasible alternative sites available.

The facility is owned by Amplitel who paid a rent of \$42,131.92 per annum in 2023, and co-users Telstra and Optus each paid a rent of \$21,065.96 per annum in 2023 to provide service to this community for a total charge that is in excess of approximately \$84K per annum. This rent will increase 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 to provide mobile coverage for a very small portion of NPWS land is exorbitant, and the carriers have no prospect of generating any type of commercial 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 (including the 'uplift' component of the rental) simply discourages Carriers from providing wireless telecommunications services in this type of locality.

### **3. Co-users continue to pay a co-user fee that is set at 50% of the primary user's rental fee.**

A review of Chapter 8 'Co-user rents and small cell technology from IPART's 2019 Final Report' demonstrates that the arguments of stakeholders have not materially changed since IPART resolved in 2019 that co-users wholly within the primary user's site should pay no annual rent. IPART has resolved to ensure sites receive a 'fair, market-based commercial return', whilst disregarding evidence that private market sites largely do not levy co-user fees.

At IPART's Public Hearing on Tuesday 30th July 2024, AMTA and several of its members expressed concern at IPART's recommendation in its Draft Report 'to continue the 50% discount for co-users'.

IPART has 'observed an increase in co-users since our 2019 review' and that "it is likely there will be a further increase as the new infrastructure owners deploy more sites". AMTA submits that in theory such an increase is a positive reflecting the policy objectives of all levels of Government to maximise co-location and choice of provider. It is unfortunate then that IPART's draft recommendations undermine co-location of 'co-users' and therefore the network end user's choice of provider in areas that are often underserved and/or have a marginal business case.

IPART notes that 'A licence to use Crown land is non-exclusive and co-users are unable to sublet from the primary user. As such, co-user fees ensure that the rental received by the land

management agencies reflect the intensity of land use by all land-users'. AMTA submits that this 'intensity' of land argument does not hold up to any reasonable scrutiny. Any cost to Crown Land agencies of administering a more 'intense' use of the land is no justification for exorbitant and often multiple co-user rental payments, where the rental for the ground is effectively doubled when there are just two mobile network operators on a host tower. This was the case with the 'Cottage Point' example outlined in the response above.

AMTA submits that IPART has not demonstrated why any co-user fee should be levied, apart from a one-off application fee to cover administration costs.

IPART has seemingly defaulted to the status quo of recommending no changes to the co-user charge. This is despite being unable to find statistically significant evidence of co-user discounts, or even of the existence of co-user fees at all on freehold sites.

#### **4. Co-user fee be extended to primary users deploying small cell and other similar technology in recognition of their similar land use.**

In its 2019 review IPART recommended a different treatment for users deploying small cell technology. IPART's Draft Report explains that 'In our 2019 review, we recommended a different treatment for users deploying small cell technology. At that time, we recommended a minimum charge for these users, with the primary aim of allowing the rollout of 5G communications networks to proceed expeditiously. Further, we said that deployments that involved no additional land footprint should have a zero charge'.

Again, we have seen IPART perform a 'U-turn' between 2019 and 2024 without reconciling these two polar-opposite positions. IPART says: 'This time we have proposed a different approach, which is designed for administrative simplicity, aligning the small cell charge to the co-user fee'. AMTA submits that there is absolutely no nexus between charging for a small cell and a co-user fee.

Whilst IPART's Terms of Reference refer to the need for the fee schedule to be simple and easily administered by the responsible land management agencies, AMTA submits that this should not be without due regard for the purpose of small cells. Small cells typically serve a small geographic area such as a street intersection and its immediate surrounds, and it follows that they do not play a 'standalone' role in income generation, but rather support 'macro' facilities by enhancing depth and quality of coverage within the area serviced by a macro base station.

IPART has acknowledged that there is insufficient market data, and as was explained at IPART's Public Hearing on 30 July, this is because most small cells are deployed based upon rentals and terms contained in Facilities Access Agreements between an MNO and structure host e.g. an energy company. We heard from our members at the hearing that the fees were typically an order of magnitude lower than what was proposed by IPART in the Draft Report - being the co-user fee in each density category. The proposed fee schedule is vastly in excess of market rents for small cell sites, and cannot be considered to be a 'fair, market-based commercial return'.

AMTA does not disagree with IPART's suggestion that the arrangement is likely to lead to administrative simplicity because the proposed pricing approach in the Draft Report will mean that our members will be very reluctant to deploy small cells on Crown Land at all under this arrangement. If all other siting options are exhausted, they may have no option but to use their land access powers found in Schedule 3 to the Telecommunications Act in some instances, although this is not our members' preference.

We encourage IPART to return to what it proposed in the 2019 report - where small cell facilities with no additional land footprint (e.g. where small cells are installed on existing poles or structures), are not levied any annual rent. We note that the vast majority of small cells are deployed on electricity distribution and/or streetlighting poles. The electricity distributors do not pay rent for the land they occupy and IPART's Draft Report proposes to charge Carriers rent when they attach equipment to those poles.

**5. Communication sites located on a rooftop are to pay \$3,821 in addition to the fee for the relevant density classification.**

As we did in our first submission, 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 recommended 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.

Whilst rooftops were never intended to be included in the IPART regime, in its Draft Report IPART is now proposing that communication sites located on a rooftop are to pay (precisely) \$3,821 in addition to the fee for the relevant density classification due to their perceived value. We find this approach to be disappointing as it may preclude the use of well-positioned buildings on Crown Land due to price. We note that many rooftops have no alternative use.



Such an arrangement, when compounded with other parts of IPART's pricing regime, is highly unlikely to deliver (for example) the provision of a small cell being established by an MNO on a visitor centre rooftop in a National Park to improve the visitor experience. IPART's pricing simply makes such a proposal impossible to deliver. One of our members has advised that using IPART's proposed pricing the fees associated with such a proposal would equate to approximately \$20,000 per annum, when the same proposal would be \$500 per annum at a National Park in South Australia.

It is important to also acknowledge that 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.

- 6. The following primary user fees be adopted for communication sites in each density classification: Sydney \$36,340, High \$30,156, Medium\$17,012, Low \$8,545**
- 7. The published fee schedule is to be independently reviewed every 5 years to ensure it continues to reflect market conditions.**
- 8. The rental fees set out in draft recommendation 6 are to be escalated by 3% per year in line with current private market practice.**

In relation to questions 6, 7 and 8, we note that IPART proposes to recommend that the existing fee schedule be updated to reflect the changes in the private market' and that 'This will ensure that the land management agencies continue to receive fair, market-based commercial returns for the use of their land for communication sites'. We note that the comparison with the private market stops short of considering the terms prevalent in the private market that almost always allows co-location without co-user fees.

As AMTA has consistently observed in this and previous IPART reviews, the Telecommunications Act, Schedule 3 cl.44 prohibits State and Territories from discriminating against carriers.

AMTA maintains that 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 remain 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 reiterate AMTA's feedback to the 2018 review and in the first submission to the 2023 review, that rentals should reflect a fair return for the value of the land, not the perceived value to the operator.

The Crown provides unimproved land, and carriers build the infrastructure and provide the service to consumers. Some sites on Crown land operate at a loss – take for example the case of 'Cottage Point' referred to in our first submission and several times in this submission.

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.

## Conclusion

AMTA welcomes the opportunity to participate in IPART's process including the provision of feedback on the Draft Report into Review of rents for communication sites.

We note the Terms of reference require IPART to have regard to consultations with communication tenure holders. AMTA's members include tenure holders including Mobile Network Infrastructure Providers and 'co-users' and small cell operators including Mobile Network Operators.

From what we have observed at last week's Public Hearing and after engaging with our members on IPART's draft report, there is a broad industry consensus that the Draft Recommendations when considered in totality would present a significant barrier to using Crown Land if adopted by Government. As IPART has done during the process in 2019, we respectfully request that IPART revisit and reconsider several of the issues we have raised in this submission.