BAI Communication's submission to IPART
Review of rental arrangements for communication towers on Crown land
Issues Paper February 2024

Background

BAI Communications owns and operates the most extensive terrestrial broadcast transmission network in Australia, we deliver fully managed television and radio services covering 99% of the population. In times of crisis, such as natural disasters, national broadcasters rely on BAI to maintain their communications with Australians, and emergency services trust us to keep them connected and informed. BAI also acts as a "neutral host" for a range of customers across a range of technologies throughout NSW.

General comments

BAI fundamentally disagrees with the rents set out in IPART's 2013 report. It's BAI's view that the rents charged to broadcast and communications companies should be fair and consistent with other users of Crown Land. Determining communications and broadcast rents on a different basis to rents for other businesses is discriminatory and was found to be so by the Federal Court of Australia (Telstra Corporation Ltd v State of Queensland [2016]). In this regard we suggest that any rent should be based on the unimproved value of the land rather than on any assessment of communications rents on private land through the lens of generic remoteness categories.

With this in mind BAI recommends that the approach used in Queensland is adopted for NSW, i.e. that the rent for all Crown Land be set at 6% of the unimproved value of occupied area.

BAI also fundamentally disagrees with the concept of co-user fees particularly for users that operate within a compound or building that is controlled and maintained by the primary user. In this respect BAI welcomed the determination in the 2019 IPART report that no annual rent be payable for co-users wholly located within the primary user's site. This is consistent with how other entities throughout Australia treat parties that share infrastructure.

To illustrate the unfairness of the current IPART rates and co-user fees, we can advise that if the adopted IPART rates were applied to BAI's 400+ sites that are leased or licenced nationally it's likely that BAI's business would not be commercially viable.

Addressing the queries raised in the Issues Paper

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.
As set out above BAI don't consider rental prices for private land to be applicable to the use of Crown Land. We strongly feel that the rentals should be based on the unimproved capital value of the land.

Details of current rental arrangements for communication sites on private land.
As above we don't consider this information to be relevant when determining a fair rent for the use of Crown Land. However, if rents for communications sites on private land are considered, only rents agreed recently (preferably within 3 years) for new sites should be taken into account. Basing a rent on older agreements or renewals would not give an accurate reflection of the current market and is not in line with the Valuation Standards adopted by the Australian Property Institute.

Whether rooftop communication sites should be treated differently to other Crown land sites.
A universal approach would be best.

Whether recent changes in ownership arrangements for mobile network towers has influenced rents.
By virtue of separating the tower owner and antenna owner there has been no change to the physical equipment that's installed on site but if the 2013 IPART co-user rates are applied the commercial return for the government agency has increased significantly. This speaks to the inherent specious nature of co-user rates. We do not see co-user rates in any tenure arrangements with private entities and see no reason why they should be a concept that forms part of this review.

What effect the phasing out of the 3G network may have on rental arrangements
No comment

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 sets 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.
By virtue of their location and topography National Parks are required to be utilised for broadcast and communications sites. If a fair rent is to be established for other Crown Land that is consistent with other users of Crown Land there is no reason why the same approach cannot be implemented for National Parks land. As with rooftop sites it's best that a consistent approach is adopted to ensure determining rents is a simple process that is easily implemented.

The market approach to setting rents and fees for co-users and small cell technology on communication sites on private land.
In general, there is no fee for co-users on private land where that user does not occupy space outside of the site footprint.

Fees for Small Cell and other similar technology that are installed on structures owned by private or government entities are established based on the size and nature of the equipment (in a similar way to collocation fees are calculated). Typically, no fee is payable to

the owner of the land under that structure if the Small Cell equipment is located solely on the structure. If there is ground based equipment that's required to be installed as part of the Small Cell design the fee for that equipment should calculated in the same way as other users of Crown Land. The fee should be based on the unimproved value of the land occupied by the Small Cell ground equipment.

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.

Using remoteness categories to set rents is inherently flawed given its arbitrary nature. As stated above it is far better to base the rent on the unimproved value of the land as valued by the Valuer General in a similar way to how it's calculated in Queensland. The work in establishing the specific value of a given portion of Crown Land has been painstakingly done, this information should be utilised rather than disregarding it to apply an arbitrary remoteness category.