



9 August 2019

Mr Ed Willett and Ms Deborah Cope
Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Mr Willett and Ms Cope

Second submission in relation to IPART Issues Paper on rental arrangements for communication towers on Crown land

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations, comprising 99% of the Australian commercial radio industry.

CRA welcomes this opportunity to respond to the Draft Report released by the Independent Pricing and Regulatory Tribunal (**IPART**) in July 2019 in relation to the Review of rental arrangements for communication towers on Crown land (**Issues Paper**).

The comments in this submission are made in addition to those made in our initial submission of 15 April 2019. We suggest that IPART refers to our first submission for additional detail on the points made below.

Our members frequently use Crown land to support the installation and operation of radio transmission infrastructure and the provision of free-to-air commercial radio broadcasts. While we appreciate the efforts made by IPART to take CRA's previous comments into account, our members remain concerned regarding elements of the proposed approach.

We set out below our comments in relation to key IPART recommendations. CRA's preferred approach is detailed at the end of each section.

1. IPART Draft Recommendation 1

That the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market – that is rents paid by commercial users of communication tower sites on private land are the best available indicator of efficient price.

CRA has concerns regarding the use of private rents as a base for setting Crown rents:

- CRA notes that the imposition of a 'private land rental' comparator as a basis for setting fees has resulted in an increase of 19% in the lowest category of primary user

fees.¹ This is not acceptable, particularly when many of the smallest broadcasters operate in regional and rural areas.

- As a matter of principle, CRA remains unconvinced that private land rents provide a fair basis for assessing Crown land rentals. There are numerous reasons as to why a private landlord may be charging an excessive rent. For example:
 - A private landowner may be able to charge a rental value that exceeds the land's fair value due to a shortage of alternative sites in an area.
 - It may not be commercially viable for a broadcaster to leave a site, as a result of capital investment into infrastructure at that location. This results in a skewed balance of power in ongoing rental negotiations and a correspondingly high rental charge.
 - The landowner may use the Crown fee schedule as a base for setting the private rents, thereby creating a circular valuation exercise, which adds little, if any, objectivity to the valuation process currently used.
- The volume and diverse nature of the rental sites make it impossible accurately to set value using private rents as a comparator. It is impossible to use a small number of private rents to assess the value of thousands of disparate sites, particularly where these costs are then aggregated into a single unit price for a geographic area.
- The value of each site will vary depending on the site and location in question. In addition to the physical site characteristics, the appropriate rent will also be influenced by a range of other factors, such as the extent of a user's regulatory obligations, the availability of alternative sites and costs of decommissioning and relocation.

CRA's preferred approach

CRA supports a simpler approach where the rental value represents a percentage of land value, calculated on a geographically averaged for each relevant location category. In particular, the geographically averaged rental charge can be determined by reference to the relevant local council area or a broader geographic banding where there are similarities in land values between comparable local council areas.

2. IPART Draft Recommendation 2

Location definitions for High and Medium locations are refined.

CRA does not agree that the slight changes to the High and Medium categories adequately address the concerns raised in CRA's first submission. CRA maintains that the use of population density in an isolated way as per the current approach is fundamentally flawed, resulting in banding of highly disparate geographic areas into a single category.

More specifically, CRA does not consider that these location categories are appropriate but

¹ Page 25, Draft Report.

are flawed on a range of grounds:

- The “Sydney” location category is excessively wide, picking up very large parts of the Sydney area despite the very wide variations in land values in the various local council areas covered by this category. The implication of this approach is rental amounts in the Sydney CBD (City of Sydney Council area) should be equivalent to what is payable in suburban and other less densely populated areas in Western Sydney and beyond, such as Fairfield City Council, City of Parramatta Council and Cumberland Council areas). This shows that the “Sydney” category is not fit for purpose and needs to be reduced to limited sub-set of genuinely high-value areas.
- The rental amounts for “Medium” location category is still excessive. These areas are often country towns and regional centres with very low levels of population density. It is simply not credible to suggest that the annual rental amounts that are currently used represent an appropriate proxy for these areas.
- The increased rental amounts for the “Low” location category is highly inequitable. These represent some of the most remote and sparsely populated areas in Australia. It is hard to see how rents of \$9,900 in these areas can be justified. CRA submits that this is further evidence of the unfair outcomes reached by the application of private rental values to Crown land.

CRA's preferred approach

CRA maintains its position that IPART should consider an alternative approach to how IPART “zones” geographic areas within NSW for the purposes of determining rental fees.

One approach which IPART may wish to consider is the banding methodology that was historically used by the ACCC for regulating Telstra’s fixed line network. For example, the ACCC has historically used a deaveraged pricing approach for access to fixed network elements, such as unconditioned local loops, which were broken down as follows:

Band	Description	Coverage
Band 1	CBD areas	CBD areas
Band 2	Non-CBD metropolitan areas	Urban areas of capital cities, metropolitan regions and large provincial centres
Band 3	Regional areas	Semi-urban areas including outer metropolitan and smaller provincial towns
Band 4	Remote areas	Rural and remote areas

While this is only one example, the obvious benefit with such an approach is that this type of banding provides a better grouping for the purpose of assessing and determining land values. When applied to the current schedule of rental fees, it would result in only a small number of local council areas that are currently categorised as being in “Sydney” being in Band 1, with the bulk of metropolitan areas being shifted into Band 2.

This approach would avoid the main issue with IPART’s current approach, notably the non-credible attribution of the same level of rental fees for what are otherwise highly disparate geographic areas within the State. Where there are wide variations of land values within a band, then IPART would be able to use sub-bands to group logically similar geographic

areas when determining rental charges.

CRA submits that if such an approach were adopted, the current "Sydney" and "High" location categories, could be reformed to better align the actual geographic area with the land values associated with those areas.

IPART Draft Recommendations 8, 9 and 10

8. That co-users on existing and new sites be charged for any additional land they occupy outside the perimeter of the primary user's communication tower site on the per metre squared basis as shown in Table 7.1.

9. That the co-user rent be capped at the flat rent per site for primary users on existing sites in the same location category.

10. That the minimum annual rent to occupy Crown land be payable for co-users wholly located within the primary user's site.

The commercial radio industry appreciates IPART's attempts to reduce the "double dipping" elements of the previous co-user rental structure.

The existing co-user charge effectively results in double and triple dipping for multi-user sites, such as transmission towers. For example, a site with two additional co-users would effectively double the rental income payable to the NSW Government and four co-users would triple that amount. That is excessive and unreasonable, particularly when regard is had to the initial level of rents which have been set, and which inevitability get passed through to co-users in any event.

CRA's preferred approach

CRA welcomes IPART's proposal to restrict any co-user charges by ensuring that co-users only pay rent for any additional land that they occupy outside the primary user's site.

However, in relation to co-users located wholly within the primary user's site, CRA does not agree that a minimum annual rent should be paid to the Crown.² The primary user already pays the Crown the full rent and no additional rent should be charged to co-users, who are in effect sub-lessees of the primary user.

While CRA appreciates that the *Crown Land Management Act 2016*³ requires that annual rent cannot be less than the minimum rent, CRA's view is that this requirement is met by the provision of rent to the Crown by the primary user and therefore no additional rent is needed from co-users.

CRA would appreciate IPART's further consideration of the relevant parts of the *Crown Land Management Act 2016* to assess whether the proposal to charge a minimum rent to co-users might be waived.

² \$508 for 2020-21. Footnote 68 of the Draft Report.

³ Part 6, Division 6.2, Section 6.4.

Please contact Joan Warner on 02 9281 6577 for clarification on any aspect of this submission.

