



Telco
Authority

**Submission to IPART Draft Report:
*Review of rental arrangements for
communication towers on Crown land –
July 2019***

September 2019



NSW Telco Authority's Submission

The NSW Government Telecommunications Authority (NSW Telco Authority) is pleased to make this submission to the Independent Pricing and Regulatory Tribunal (IPART) on the *Review of rental arrangements for communication towers on Crown land - Draft Report*, released in July 2019.

The NSW Telco Authority is constituted by, and functions under, the *Government Telecommunications Act 2018*. The Authority's primary purpose is to operate and maintain a telecommunications network to support the delivery of services by government agencies to their customers across NSW. Crucially, this network provides a mission-critical, operational communications service to support the vital, frontline work of emergency services organisations and law enforcement agencies as they save lives and protect property.

Commonwealth regulation governs the telecommunications sector and includes special consideration of radiofrequency spectrum for use by law enforcement and emergency services. The related public interest principles should be considered by IPART in regard to the Crown land which hosts infrastructure delivering those telecommunications services for the safety and security of the NSW community.

The NSW Telco Authority's network has communication towers located on Crown land sites as well as and on private property to provide the necessary radio coverage for both business-as-usual public safety activities and for critical, event-based operational communications purposes under the NSW State Emergency Management Plan. The Authority is currently expanding the network's coverage further across NSW through its Critical Communications Enhancement Program (CCEP), which will result in an increase in the number of sites required to be located on Crown land.

The network is managed and maintained on a cost recovery basis, with charges being passed-on directly to its users, primarily to the emergency services organisations. The current budget-funded sector rebate has contributed to limiting these costs in the public interest. Noting that IPART's rental fee schedule is referenced as a benchmark in establishing private rental arrangements, this has also contributed to IPART-equivalent fees for private rental sites, keeping the consolidated rental costs generally consistent.

This being so, the net cost increase of rental fees for Crown land resulting from the proposed removal of the budget-funded sector rebate will, through its influence on private site fees as a benchmark, have whole-of-government effects that defy IPART's suggestion that there would be no net change to the NSW budget. While it is correct that cost increases will be passed-on to network users, notably the emergency services

organisations, the economic impact on the NSW budget of increased 'benchmark' private fees requires further consideration by IPART.

IPART Draft Report

The Authority is generally supportive of the recommendations within the Draft Report. The principles IPART has applied in seeking to establish rents that reflect fair, market-based commercial returns are sound and consistent with the terms-of-reference.

There are some issues within the Draft Report on which the Authority makes comment, including how these principles were applied. These are raised below against the relevant recommendations for further consideration in the context of the review.

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 prices.

The Authority notes the method of calculation applied by IPART in establishing the draft fee schedule, but questions whether the level of rental fees proposed is consistent with true market values. For example, the proposed 'low' category fee (\$9,900 or \$124/m²) is significantly higher than what the Authority currently pays for private leases under tested, commercial market conditions. This includes for sites with footprints much larger than the suggested average size for this category.

There are factors of difference between private and Crown land rentals that confound direct comparison of their respective fees and are likely to contribute to such discrepancies, such as the characteristics of their land use agreements. Private leases often provide a right of exclusive use of the land to the lessee, for which these rentals incorporate a premium. This allows the lessee to make independent arrangements for any co-use, for which the private lessor makes no further financial benefit. Conversely, the land management agencies do not provide exclusive use of the Crown land and are able to re-licence the same land for additional fees.

Therefore, with Crown land fees directly linked to the private market, but without the potentially superior private market lease conditions, the land management agencies could be accruing income based on a fee schedule structured on 'artificially-high' comparison rates. This premium rate may then be further augmented by additional income from multiple co-users (minimum annual charges), not always available to private land owners under their agreements. In this regard, the proposed fee schedule could inflate fees beyond those consistent with fair, market-based commercial returns sought by the review's terms of reference. The disparity between these two types of lease/licence could be considered further when calculating the final Crown land rental fees schedule.

Recommendation 2

For existing sites, the land management agencies implement the schedule of rents for all primary users other than telephony service providers (SCAX) shown in Table 5.1, where rent per site varies by location.

The retention of a fee schedule based on location category and without being affected by footprint size is appropriate for existing sites. However, as the fee is calculated on a metre squared footprint basis, against the review's sample 'median' size, the Authority draws attention to its comments above regarding the calculation of appropriate, market-based fee levels.

The Authority also notes that while the proposed fees are described as reductions in the Sydney, High and Medium location categories, in real terms there will be significant cost increases across all location categories for the Authority with the removal of the current rebates.

As part of its CCEP, being rolled-out across the State, the Authority will take control of various existing sites currently operated by other NSW government agencies for inclusion in its communications network. Consideration is required as to whether these will constitute existing or new sites for fee calculation purposes.

Recommendation 3

Location definitions for High and Medium locations are refined. Locations are defined as:

- *Sydney: local council areas in metropolitan Sydney with a population density greater than 1,800 people per square kilometre (as listed in Appendix A)*
- *High: ABS significant urban areas of Sydney (excluding local council areas included in the Sydney category above), Newcastle – Maitland, Wollongong, Central Coast and Morrisset – Cooranbong.*
- *Medium: areas within 12.5 km of the centre of the urban centres and localities (UCLs) defined by the ABS as having a population of 10,000 or more based on the 2016 census (as listed in Appendix B).*

Supported.

Recommendation 4

The following services are included in the rents for new and existing primary users on Crown land:

- *All lessor costs of preparing and assessing lease applications*
- *Use of existing tracks at no additional cost. Where additional access roads are required the costs of building and maintaining should be set with reference to a benchmark rate.*

The Authority supports the draft recommendation to include all lessor costs of preparing and assessing lease applications, and the use of existing tracks at no additional cost. This would simplify arrangements and aligns with the principle of efficiency inherent in the fee schedule concept.

Recommendation 5

For new sites, the land management agencies implement the schedule of rents shown in Table 6.1, where rent per site varies by location and land size.

The calculation of fees based on the both the location and footprint of new sites is a reasonable approach to introduce and is an enhancement to the current practice of using location alone. This will encourage efficiency in site design and may encourage innovative co-user arrangements.

The Authority reiterates to its comments on recommendation 1 about current market conditions in establishing the fees per metre squared to be implemented in the final schedule.

Recommendation 6

That the rent for Small Country Automatic Exchange (SCAX) sites be set on a per metre squared basis as shown in Table 6.1.

No comment.

Recommendation 7

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

No comment.

Recommendation 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.

The Authority supports the implementation of co-users being charged for additional land on new sites, but again notes its market experience suggests rates lower than those proposed may be appropriate.

Recommendation 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.

Supported.

Recommendation 10

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

Supported. This would encourage co-use arrangements and may reduce the quantity of adjacent communication towers, as desired by Commonwealth telecommunications policy.

The minimum charge would provide cost reductions for the Authority for such sites however, due to the minor value of these fees and the future increase in the number of the Authority's primary user sites, the change is insignificant in the Authority's budget compared to the major increases resulting from the removal of rebates.

Recommendation 11

That the rent for small cell technology occupying additional Crown land be set on the per metre squared basis as shown in Table 7.1.

The Authority recognises IPART's intention to address the foreseeable increase in the proliferation of small cell technology in this review. Such technological advancements may increasingly feature in government operational communications networks in the future, hence are of interest to the Authority's functions.

Noting concerns raised by carriers who will be required to make significant investment in small cell infrastructure, the proposed fees require further consideration in regard to the 'implied benchmark' they may incidentally establish for non-Crown land sites.

Recommendation 12

That the minimum annual rent to occupy Crown land be payable for small cell technology installed on existing poles or structures with no additional footprint.

Noting the issues above, the minimisation of fees for small cells reflects a sound approach.

Recommendation 13

That the rents for all communication sites on Crown land be set according to the rent schedule for the relevant location category, and negotiation of rent for high value sites not be permitted.

The Authority supports the continuation of rates being established by schedule. This has been effective and will continue to provide confidence for infrastructure investment.

The Authority also supports the removal of negotiated high-value sites, noting that this has been an unused, and therefore redundant, category since IPART's previous review. While National Parks and Wildlife Service (NPWS) had self-defined all of its sites as high-value, its valuations did not occur on the basis of individual site characteristics, as had been intended by IPART with the introduction of this category.

Recommendation 14

That the Office of Environment and Heritage continue to set the rent for sites in national parks one location category higher than the site's actual category.

The Authority notes the recommendation that NPWS continues to set the rent for sites in national parks one level higher than the site's actual category and understands that IPART considers this appropriate on the basis of social, environmental and cultural values. While there may be merit to this approach, which considers provisions of the *National Parks and Wildlife Act 1974*, it does not reflect the with fair, market-based commercial returns required by the terms-of-reference.

Recommendation 15

That infrastructure providers not receive a rental discount for communication sites on Crown land.

No comment

Recommendation 16

That the current rebates for Community Groups, Budget Funded Sector, Local Service Providers, and Telephony Service Providers be removed.

The Authority currently receives the budget-funded sector rebate for its communications sites in recognition of the public safety operational communications nature of its network and the fact that it cannot recoup the Crown land rental costs. The proposed removal of this rebate will significantly increase Crown land rental costs for the Authority and other government agencies.

The Authority is continuing to roll-out the CCEP, which is expanding to cover approximately 80 per cent of the State. As more communications sites are designed or become operational on the network, the substantial increase to Crown land fees on new primary sites will have major funding implications on this essential program.

While the proposed primary user fees are technically reduced in the Sydney, High and Medium categories, the actual effect of the proposed removal of the rebate is major cost increases across all categories for budget-funded sector entities on primary sites. IPART suggests that the introduction of the minimum fee for co-users on sites within the primary site's footprint will off-set increases for many users. This is not the case for the Authority which would face a large consolidated fee increase.

The IPART net fee increases from the proposed removal of the budget-funded sector rebate may also result in equivalent increases to agencies' private rental fees, as private land owners reference the IPART fee schedule as the benchmark. The additional costs of these increases on a whole-of-government basis may be considerable across the budget-funded sector agencies. While IPART has suggested that removing the rebate would not change the net NSW budget position (in relation to Crown land sites), this perspective does not consider any indirect private rental cost increases affecting the State budget.

The financial impact of this recommendation on the CCEP, which is increasing its number of primary sites, has not been forecasted in the budget outyears. Therefore, as noted in Draft Report, this recommendation would require the Government to re-prioritise funding for its communications infrastructure projects to accommodate the increases.

Recommendation 17

That the new rent schedule apply to all communication tower sites on Crown land from 1 July 2020.

The Authority supports the commencement of the fee schedule for FY2020-2021.

Recommendation 18

Those local service providers adversely impacted by our recommendations be able to apply for transitional financial and business advisory assistance from the NSW Small Business Commissioner for a period of three years.

No comment.

Recommendation 19

That the NSW Government provide on-going financial assistance to those Community groups adversely impacted by our recommendations.

No comment.

Recommendation 20

That the published rent schedule be updated annually by the change in the consumer price index (CPI).

Supported.

Recommendation 21

That the published rent schedule be subject to an independent review every five years to ensure it reflects fair market based rental returns.

Supported. A five-year review is an appropriate period, based on experience since the previous review.

Should you wish to discuss this submission, please contact Jourdan Di Leo, Infrastructure Manager, NSW Telco Authority, on 02 9219 3170 or email at jourdan.dileo@customerservice.nsw.gov.au.

Yours sincerely



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