

8 February 2021

Ms Carmel Donnelly PSM
Chair
Independent Pricing and Regulatory Tribunal
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Dear Ms Donnelly

REVIEW OF FIRE AND RESCUE NSW'S FEES AND CHARGES

Thank you for the opportunity to submit our feedback and recommendations on the Independent Pricing and Regulatory Tribunal's (IPART) Draft Report on its Review of Fire and Rescue NSW's (FRNSW) fees and charges (the Review).

As described in our meeting with IPART staff (14 October 2021), our previous submission (22 October 2021), and at the Public Hearing (31 January 2022), fire alarm systems in shopping centres are highly sophisticated and sensitive, which is prescribed by the National Construction Code (NCC) [formerly the Building Code of Australia] and Australian Standards. Typically, environmental factors trigger these systems; for instance, bushfire smoke, pollution blown in from the surrounding streetscape, or other atmospheric changes. This is the primary contributing factor to approximately 95 percent of callouts being for false fire alarms; a rate of 1-2 per month in a sample of regional-sized shopping centres.

The SCCA understands that FRNSW reports will generally conclude 'no fault found', while obscuration readings taken immediately after a call out typically indicate that fire safety systems were operating within required tolerances/parameters. We understand that FRNSW can exercise discretion in such instances, however this is not always the case and is not a requirement.

Our strong view is that charging for false alarms that are a consequence of compliance with the NCC and Australian Standards is inherently flawed, inequitable and imbalanced. Further, that this can be done as a result of a discretionary approach raises legitimate questions about how such discretion is exercised and decisions are made. Our members have no rights or fair recourse in such situations.

In short, our industry can be penalised by one part of government for complying with another part of that government's policy.

In our previous submission and meeting with IPART staff we requested that IPART consider applying the principle of circumstances 'beyond the control of the owner' to such instances as described above. We also note that the Draft Report recommends the continuation of a waiver policy where 'adequate steps are taken to prevent future false alarms'.

It is reasonable to ask what additional controls shopping centres could exercise in these circumstances, and what 'adequate [preventative] steps' should be taken by landlords when the fire safety systems they employ are operating as prescribed by other areas of government. In the absence of a clear path or advice from government, it is unfair to charge for what is a result of competing regulatory requirements, particularly as the NSW and Commonwealth Governments are not actively trying to reconcile these circumstances.

This is why we also suggested to IPART officials that IPART and the NSW Government should liaise with FRNSW and other government agencies to reconcile the requirement for highly sophisticated and sensitive fire safety systems with the significantly increased likelihood of resulting call outs for false alarms.

The Draft Report fails to take into consideration or provide clarity on the issues we have raised with IPART, which is incredibly disappointing particularly as we have highlighted a glaring issue with FRNSW's fees and charging model. Prior to the Public Hearing, IPART staff could not reasonably explain to us why, suggesting the issues were 'operational matters for FRNSW'.

I disagree with assurances offered by IPART staff at the Public Hearing that our circumstances were considered when drafting the Draft Report. I note that at the Public Hearing, ACT Fire and Rescue lent support to, and FRNSW acknowledged, our sectors' circumstances. I am grateful that IPART has undertaken to examine our evidence more closely before a Final Report and Recommendations are submitted to the NSW Government.

The SCCA recommends that Draft Recommendation 15 should apply where fire alarm systems are shown to be operating within required tolerances/parameters as these circumstances are 'beyond the control of the owner'. We ask that IPART is explicit in its advice to the NSW Government that this should not continue to be a discretionary charge, or deemed an 'operational matter for FRNSW', rather the charge should not be made and a waiver applied. Our sector should not be penalised on account of competing regulatory requirements; allowing for its continuance offends any standard policy and good governance principles.

If our recommendation is not incorporated, we would expect an explanation that responds to this known issue and regulatory overlap. We should also not be left with a half-way measure, whereby the burden is on our industry to try and reconcile competing government policies.

We expect that FRNSW will be well positioned to provide IPART with data that will highlight callout rates for shopping centres across the state where no fault is detected.

Subsequently, the SCCA submits that IPART should recommend that the NSW Government direct FRNSW to take steps to reconcile fire safety systems requirements with the resulting increased rate of callouts and need to cross subsidise this inefficiency. We are unaware of any ongoing work to address this across government(s) and note that FRNSW is aware of the complexity and ongoing nature of this issue. Noting Draft Recommendation 19, with respect to design issues with buildings, we trust that this would be within IPART's scope to recommend to Government.

Thank you again for your consideration. The SCCA would welcome the opportunity to provide any further information or clarification to staff and may contact me on [REDACTED] or at [REDACTED] if or as required.

Yours sincerely,

[REDACTED]

James Newton

Manager – Policy and Regulatory Affairs