



Independent Pricing and Regulatory Tribunal

# **Review of rental arrangements for communication towers on Crown land**

**Other Industries — Final Report**  
July 2013





Independent Pricing and Regulatory Tribunal

# **Review of rental arrangements for communication towers on Crown land**

**Other Industries — Final Report**  
July 2013

© Independent Pricing and Regulatory Tribunal of New South Wales 2013

This work is copyright. The *Copyright Act 1968* permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

ISBN 978-1-925032-23-9

S9-85

The Tribunal members for this review are:

Dr Peter J Boxall AO, Chairman

Mr James Cox PSM, Chief Executive Officer and Full Time Member

Mr Simon Draper, Part Time Member

Inquiries regarding this document should be directed to a staff member:

Chen Chou (02) 9290 8428

Binyomin Smith (02) 9290 8446

Matthew Mansell (02) 9113 7770

Independent Pricing and Regulatory Tribunal of New South Wales

PO Box Q290, QVB Post Office NSW 1230

Level 8, 1 Market Street, Sydney NSW 2000

T (02) 9290 8400 F (02) 9290 2061

[www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)

# Contents

<b>1</b>	<b>Executive summary</b>	<b>1</b>
1.1	IPART's task	2
1.2	Our approach to the task	2
1.3	Changes from the Draft Report	3
1.4	Our findings	3
1.5	The structure of this report	7
1.6	Recommendations	8
<b>2</b>	<b>Review context</b>	<b>12</b>
2.1	Land management agencies	12
2.2	Users	13
2.3	Legislation	14
2.4	Key findings from the 2005 Review	15
<b>3</b>	<b>IPART's approach to the review</b>	<b>18</b>
3.1	Principles for the review	18
<b>4</b>	<b>High value sites</b>	<b>20</b>
4.1	Recommendations	20
4.2	Definition and treatment of high value sites	21
4.3	Honouring existing tenure arrangements	24
4.4	Head licence arrangement	26
<b>5</b>	<b>Standard sites</b>	<b>28</b>
5.1	Recommendations	28
5.2	Definition of location categories	30
5.3	User categories	32
5.4	Rebate schedule	34
5.5	Fee schedule	37
5.6	Small country automatic exchange (SCAX) sites	38
5.7	User impacts and transitional arrangements	40
5.8	Impact of our recommendations on land management agencies	46
5.9	Process for resolving disputes	46
5.10	Ongoing review of rental arrangements	47

<b>6</b>	<b>Treatment of different occupancies</b>	<b>49</b>
6.1	Recommendations	49
6.2	Treatment of co-users	50
6.3	Treatment of infrastructure providers	51
6.4	Multiple users sharing equipment	53
	<b>Appendices</b>	<b>55</b>
A	Terms of Reference	57
B	Definitions	59
C	List of medium locations	60
D	List of local council areas within Sydney location	62

# 1 Executive summary

In October 2012, the NSW Government asked IPART to conduct a review and make recommendations on rental arrangements administered by 3 land management agencies for communication infrastructure and equipment located on Crown land. The communication infrastructure and equipment are used to transmit voice, television and data. IPART had previously conducted the initial review into rental arrangements in 2005 (the 2005 Review).

We released an Issues Paper in December 2012, seeking stakeholders' views on various aspects of the rental arrangement. A roundtable was held in March 2013 before we released our Draft Report in April 2013. Due to requests from stakeholders we then held a second roundtable on 17 June 2013.

IPART's task is to form a view on a rental arrangement that is market reflective, administratively efficient and transparent. In the Draft Report, we outlined our recommendation for a rental arrangement that combines a published fee schedule for the majority of sites and a negotiation process for a limited number of high value sites.

This report outlines our final recommendations, taking into account the market evidence on rentals for communication towers, stakeholders' views and our own analysis. We maintain our recommendation on the overall rental arrangement. However, we have made some changes to our final recommendations on certain aspects of the rental arrangement, taking into account feedback from stakeholders and our own analysis.

## 1.1 IPART's task

The Terms of Reference (Appendix A) ask us to update the fee schedule for communication tower sites on Crown land to ensure the fees reflect fair, market-based commercial returns for the government.

In updating the fee schedule, the Terms of Reference ask us to have regard to:

- ▼ current market rental fees
- ▼ land valuations
- ▼ legislative requirements.

In reviewing the structure of the fee schedule, we are asked to look at location and user categories, and whether to include the National Broadband Network infrastructure as a new user category. Appendix B defines the terms used in this review.

The Terms of Reference also ask us to recommend principles to guide the setting of rental rates for high value sites. This will include reviewing the current definition of a high value site.

## 1.2 Our approach to the task

The principles that guided our decision-making in this review include market-based returns, administrative efficiency, transparency and consistency. Our findings in this review take into account the market evidence and practice on rentals for communication towers presented by BEM Property Consultants (BEM). BEM's report is publicly available on IPART's website.<sup>1</sup> We are not able to publish the specific market evidence gathered by BEM as this information is commercial-in-confidence.

We have considered stakeholders' submissions on using assessed land values as the sole determinant of site rentals. Assessed land valuations are generic and applicable to much larger sites than those typical for communication towers. Generic land valuations would not reflect the value of a communication tower site – the value of its highest value use. Further, land valuations are only useful as a proxy for the rental value where there is no market evidence available.

---

<sup>1</sup>

[http://www.ipart.nsw.gov.au/Home/Industries/Other/Reviews/Tower\\_Sites/Review\\_of\\_rental\\_arrangements\\_for\\_communication\\_towers\\_on\\_Crown\\_Lands/30\\_Apr\\_2013\\_-\\_Draft\\_Consultants\\_Report\\_-\\_BEM\\_Property\\_Consultants\\_Pty\\_Ltd/IPART\\_Review\\_of\\_Telecommunications\\_Site\\_Rental\\_Schedule\\_-\\_Prepared\\_by\\_BEM\\_Property\\_Consultants](http://www.ipart.nsw.gov.au/Home/Industries/Other/Reviews/Tower_Sites/Review_of_rental_arrangements_for_communication_towers_on_Crown_Lands/30_Apr_2013_-_Draft_Consultants_Report_-_BEM_Property_Consultants_Pty_Ltd/IPART_Review_of_Telecommunications_Site_Rental_Schedule_-_Prepared_by_BEM_Property_Consultants)



As required by the Terms of Reference, we assessed the merits of rental arrangements for transparency and administrative efficiency. We have taken into account stakeholders' comments and have considered, to the extent possible, any external benefits from the services carried out by site users in our recommendations.

### 1.3 Changes from the Draft Report

In this Final Report, we have made some changes to our draft recommendations, taking into account feedback from stakeholders:

- ▼ negotiation of high value sites is limited to instances where negotiation is cost effective, the land management agencies can demonstrate to users how the site meets the high value characteristics, and the agencies provide adequate notice to users
- ▼ the definition of the Sydney area has been confined as local council areas that are more densely populated in inner Sydney
- ▼ the definition of local service providers has been expanded to include those providing services in low and/or medium locations
- ▼ users eligible for rebates from the fee schedule, at the relevant Minister's discretion, has been expanded to include providers of telephony services in low locations, specifically for small country automatic exchange sites.

### 1.4 Our findings

The rental value of any property or site is driven by supply, demand, the value of the site to potential occupants, and opportunity cost of the site owner. In some areas, for example in metropolitan areas, a higher rental reflects the higher opportunity cost for the site owner and the scarcity of land supply. Where there is an active rental market for competitive bids, the site owner will only enter a rental agreement with the highest bidder.

The site owner may seek expressions of interest for the best rental offer and the arrangement. Both parties may consider the option of a head lease/licence during the negotiations. Under a head lease/licence arrangement, the site owner negotiates rent with the primary user, taking into account the additional value the primary user will gain from sub-letting the site.

The difference with the rental market for communication tower sites is that it is not active or transparent. Usually the party wishing to construct a tower for transmission purposes will make the first approach to a site owner.

Since 2005, the land management agencies (Catchments and Lands, Forestry Corporation and NSW National Parks and Wildlife) have gradually converted existing site users to licences/leases with rent as per a published fee schedule.

Licences are issued to primary users, infrastructure providers and co-users and rent is charged for all 3 types of users. Currently, land management agencies have negotiated some head licence arrangements with infrastructure providers.

Outlined below are our recommended rental arrangements. We consider that a rental arrangement that combines a published fee schedule for the majority of sites (standard sites) and a negotiation process for high value sites, where cost effective, is more efficient and transparent. A negotiation process for a small number of sites allows market rents to be derived.

### High value sites

Market evidence obtained by BEM shows that sites with characteristics such as good elevation, access and line of sight could obtain a premium of up to 50% in metropolitan areas compared to standard sites.

Stakeholders have expressed the view that negotiation could be costly and time consuming. We therefore recommend that land management agencies consider negotiating high value sites only if:

- ▼ it is allowed under the relevant instrument
- ▼ it is cost effective to do so
- ▼ agencies can clearly demonstrate in writing to users that sites meet the characteristics outlined in Section 4.2.3
- ▼ adequate notice is provided to users at least 6 months before the rent review date on classifying an existing site as high value.

We recommend that land management agencies<sup>2</sup> consider the following when entering negotiations for licences<sup>3</sup> on high value sites:

- ▼ characteristics such as ease of access, topography, line of sight, proximity to major highways and availability of alternative sites
- ▼ recent market rentals agreed for similar sites
- ▼ any additional requirements that the land management agency should take into account under applicable legislation.

---

<sup>2</sup> Licences, leases and permits are granted by the relevant Minister under the *Crown Lands Act 1989* (NSW), *Forestry Act 2012* (NSW) and the *National Parks and Wildlife Act 1974* (NSW), but are managed by the relevant land management agency. For convenience, we refer to the licences, leases and permits being granted by either the Minister or a land management agency in this report.

<sup>3</sup> A user may be granted a "licence", "lease" or "permit" over Crown land under the *Crown Lands Act 1989* (NSW), *Forestry Act 2012* (NSW) or *National Parks and Wildlife Act 1974* (NSW). We refer to "licence" in this report to include any of these arrangements.

Some land management agencies currently have head licence arrangements in place, primarily with infrastructure providers. A head licence arrangement removes the need for individual agreements with co-users, but takes into account the value to the primary user from sub-letting the site. We recommend that land management agencies adopt a head licence arrangement for high value sites (or standard sites) if:

- ▼ it is cost effective
- ▼ land management agencies and site users both agree.

### Fee schedule

Under the fee schedule, the aim is to provide a commercial market return without the cost and time involved in negotiating every site. Particularly in rural areas, the cost of negotiation is likely to exceed the benefits. We also consider that any subsidies should be made explicit.

We recommend the fee schedule sets 1 level of rent for all users in 4 location categories, with an accompanying schedule of rebates for eligible users. The rent in the fee schedule is set at the level that the majority of market evidence suggests is current for commercial businesses, that is, the rent for telecommunication and data carriers.

Any rebates should be provided explicitly, to be granted at the relevant Minister's discretion, based on the individual circumstances of the particular user.

A rental fee schedule that covers the majority of sites needs to reflect that land and property values differ between metropolitan, regional and rural areas, as indicated by the evidence on market rentals collected by BEM. We recommend 4 location categories: Sydney, high, medium and low. The Sydney category has been separated from the high location category based on evidence of market rentals in Sydney being higher than the rest of the locations in the high category.

We have taken into account stakeholders' feedback on the definition of Sydney in respect to local council areas where population densities are lower than the inner city, and rents higher than high density may not be justified.

On this basis, we recommend restricting the Sydney category to inner Sydney, as defined by local council areas with a population density greater than 1,800 people per square kilometre. This means that Sydney is defined as bounded by Manly, Willoughby, Ryde and Parramatta in the north/north west; Holroyd and Fairfield to the west; and Bankstown, Hurstville, Kogarah, Rockdale, Botany Bay and Randwick in the south west/south. This narrower definition is consistent with the available market data for Sydney sites that attract rents of the amount that we recommended for Sydney in our Draft Report.

We recommend that the medium location category means within 12.5 km of the centre<sup>4</sup> of 37 Urban Centres and Localities (UCLs), defined by the Australian Bureau of Statistics (ABS) as having a population of 10,000 or more based on the 2011 census. Catchments and Lands and Telstra currently use a 12.5 km radius from the centre of agreed towns.

We recommend that the new fee schedule, incorporating revised location and user categories, and associated rebates (if applicable), be implemented over a 5-year period, taking into account the impact on users.

In relation to the form of rental arrangement, a head licence arrangement should be an option for standard sites where both parties agree.

### Occupancy issues

Currently, land management agencies mostly collect rental payments from co-users under separate agreements. Under this arrangement, the rent charged by land management agencies to primary users is based on the primary users' use of the land and does not reflect the ability of primary users to derive income from co-users, for instance, by requiring co-users to pay fees for co-locating on the site.

We consider co-user fees important to ensure that the total rent charged by land management agencies reflects the intensity of land use by all users. Stakeholders' claim that co-user fees represent 'double dipping' by the agencies but this is not supported by market evidence.

We recommend no change to the policy of charging co-users 50% of the rents as per the fee schedule. A discount for co-users encourages co-location.

A 30% discount for infrastructure providers is currently provided due to their different business operating model. In our recommended fee schedule we have set 1 rent for all primary users in each of the 4 location categories. We do not differentiate between users with different operations and business models. It would be inconsistent with this approach to allow a discount for infrastructure providers. Further, the 30% discount for infrastructure providers allows them to charge co-users a lower rent than primary users.

---

<sup>4</sup> The centre is defined as a main post office, or main council building if no main post office exists.

As infrastructure providers face a number of changes to the fee schedule, we recommend gradually removing the discount for infrastructure providers over 5 years starting from the end of the next rent review period. This means the discount for infrastructure providers will generally be removed over 10 years.

An option for infrastructure providers is to negotiate a head licence arrangement with land management agencies. An infrastructure provider's primary business is to attract co-users to a site and to profit from co-user fees. An infrastructure provider may be able to negotiate favourable terms with the land management agency which takes into account the risks that it takes on through a head licence arrangement.

### Regular reviews of the rental arrangement

Consistent with our recommendation in the 2005 Review, we recommend that the published fee schedule should be subject to an independent review every 5 years to ensure it continues to reflect fair market based commercial returns.

We also recommend that the implementation of the rental arrangement be reviewed by the Audit Office of NSW twice in every 5 years. The review by the Audit Office of NSW should report on whether rental arrangements have been implemented in accordance with the government's decisions in response to this review.

## 1.5 The structure of this report

This paper is structured as follows:

- ▼ Chapter 2 provides the context for this review
- ▼ Chapter 3 sets out IPART's approach to this review
- ▼ Chapter 4 outlines our findings and recommendations for high value sites
- ▼ Chapter 5 outlines our findings and recommendations for standard sites under a fee schedule
- ▼ Chapter 6 deals with occupancy issues such as the treatment of infrastructure providers, co-users, and multiple users sharing the same equipment.

## 1.6 Recommendations

### High value sites

- 1 Land management agencies should consider negotiating on high value sites if: 20
  - for existing sites, it is allowed under the rent redetermination provisions of the relevant instrument 20
  - it is cost effective to do so 20
  - land management agencies clearly demonstrate in writing to users how sites meet the characteristics of a high value site as outlined in recommendation 2 20
  - for existing sites, land management agencies provide at least 6 months notice to users prior to the rent review date that a site will be treated as high value. 20
- 2 Land management agencies should consider the following when deciding if a site is high value: 20
  - the characteristics of a site, such as ease of access, topography, line of sight, proximity to major highways and availability of alternative sites 20
  - recent market rentals for similar sites 20
  - any additional requirements that the land management agency should take into account under applicable legislation. 21
- 3 The floor price for negotiation of high value sites should be the rent applicable for the relevant location category of the fee schedule for standard sites, where permitted under the relevant instrument. 21
- 4 Land management agencies should consider negotiating high value sites either at rent review dates or once the existing instrument expires as allowed under the relevant instrument. The parties may seek an independent expert valuation to assist in negotiations. 21
- 5 In the event of disputes over the rent for high value sites, the matter should be referred to a third party independent valuer in the first instance as mentioned in recommendation 4. If the parties cannot agree on the rent following an independent valuation, then they should seek to resolve their dispute through mediation or arbitration (where appropriate). 21
- 6 Land management agencies should adopt a head licence arrangement for high value or standard sites if: 21
  - it is cost effective 21
  - land management agencies and site users both agree. 21

- 7 If the land management agencies choose to negotiate on high value sites, and a head licence is not adopted, agencies should either negotiate with individual co-users, or charge co-users 50% of the rent agreed between the land management agency and the primary user. 21
- 8 If a head licence arrangement is not adopted for high value sites, users eligible for a rebate from the standard site fee schedule should also be eligible for a rebate at high value sites. The rebate would be granted at the relevant Minister's discretion, based on the user's individual circumstances. The effect of the rebate should be that eligible users would pay the same rent as they would for a standard site in the same location. 21

### Standard sites

- 9 The following fee schedule should apply for standard sites, subject to recommendation 13 (\$2013/14): 28

**Table 1.1 Recommended fee schedule (\$2013/14, annual, ex GST)**

(\$2013/14)	Sydney	High	Medium	Low
Rent	32,607	27,172	15,095	7,245

**Note:** Rents are to be adjusted for inflation each year (beginning 1 July 2014).

- 10 Location categories are defined as: 28
- Sydney: local council areas in metropolitan Sydney with a population density of greater than 1,800 people per square kilometre (as listed in Appendix D of this report) 28
  - high: local council areas in metropolitan Sydney with a population density of less than or equal to 1,800 people per square kilometre, greater metropolitan area of the Central Coast, Newcastle and Wollongong 28
  - medium: areas within 12.5 kilometre of the centre of the 37 Urban Centres and Localities (UCLs) defined by the Australian Bureau of Statistics (ABS) as having a population of 10,000 or more based on the 2011 census (as listed in Appendix C of this report) 29
  - low: rest of NSW. 29
- 11 The following users are eligible to apply to the Minister for a rebate as outlined below: 29

**Table 1.2 Recommended rebate schedule (\$2013/14, annual, ex GST)**

(\$2013/14)	Sydney	High	Medium	Low
Community groups	32,162	26,728	14,651	6,801
Budget funded sector	26,085	21,738	12,076	5,796

Local service providers	-	-	9,057	4,347
Telephony service providers	-	-	-	4,347

**Note:** Rents are to be adjusted for inflation each year (beginning 1 July 2014).

- 12 Users eligible for rebates are defined as: 29
- Community groups: special community interest groups that are run on a not-for-profit basis. 29
  - Budget funded sector: government agencies or authorities that deliver core services to the public and typically cannot fully recover the value they create through user fees. 29
  - Local service providers: commercial entities which solely or predominantly service communities in a limited number of low and/or medium locations as defined in recommendation 10. Their business operations should be predominantly in these areas. The rebate is available only for sites in low and medium locations. 29
  - Telephony service providers: users required to provide telephony services under government direction or legislative requirements in low locations as defined in recommendation 10. Such users are eligible for a rebate for small country automatic exchange sites only. 29
- 13 The fee schedule and accompanying schedule of rebates should be adjusted annually on 1 July, by the change in the Consumer Price Index (All Group Index number) for Sydney as published by the Australia Bureau of Statistics for the year ending 31 March. 29
- 14 For users with existing licence agreements, the new fee schedule at recommendation 9 should be phased in over 5 years from the next rent review date. All existing licences should fully reflect the fee schedule as per recommendation 9 by the end of the phase-in period at 1 July 2018. The new fee schedule will apply immediately to any new licences. 29
- 15 Taking into account the impact of inflation, the transitional arrangement means that rents will increase by 20% of the difference between the inflation adjusted 2012/13 fee schedule and the new fee schedule each year, on a cumulative basis. 30
- 16 In the case of disputes between users and land management agencies on implementation of the fee schedule for standard sites, the latter should seek the services of a mediator or an arbitrator (where appropriate). 30
- 17 The published fee schedule should be subject to an independent review every 5 years to ensure it reflects fair market-based rental returns. 30
- 18 The implementation of the rental arrangement should be subject to a review by the Audit Office of NSW twice in every 5 years. The review by the Audit Office of NSW should report on whether the rental arrangements have been



implemented in accordance with the government's decisions in response to this review. 30

#### Treatment of different occupancies

- 19 For standard sites, land management agencies should continue to grant separate licences to primary users and co-users. 49
- 20 Co-users should continue to receive a discount of 50% from the fee schedule relative to primary users. 49
- 21 Infrastructure providers should pay the same rent under the fee schedule as primary users. For infrastructure providers with existing licence agreements, the current discount of 30% should be gradually removed over 5 years, starting after the end of the next rent review period. For instance, for infrastructure providers with licences with July 2013 as the next rent review date, the 30% discount will be gradually removed on a straight line basis from July 2018 to July 2023. 50
- 22 Where a joint venture operates as a single incorporated legal entity, it should be charged 1 rent. Where the joint venture is unincorporated, rent is payable by each party to the joint venture arrangement. 50
- 23 Where a user fully owns equipment on a tower and offers services using this equipment to other parties, only the equipment owner should be charged rent. 50

## 2 | Review context

This review is concerned with communication tower sites (defined in Appendix B) on Crown land that are administered by 3 NSW land management agencies. At present, there are 745 recorded communication tower sites and 2,209 associated leases and licences on land administered by the 3 NSW land management agencies.<sup>5</sup> These sites are occupied by a diverse mix of commercial, government and community organisations. Most Crown land telecommunications tower sites are located in regional or rural areas. The sites range from elevated locations with significant broadcasting and telecommunication infrastructure to locations on public land with small communication devices attached to third party infrastructure.

This chapter provides background information on the sites that are currently administered by the 3 agencies, the users of these sites, the relevant legislation and key recommendations from the 2005 Review.

### 2.1 | Land management agencies

For this review, we are concerned with communication tower sites on Crown land that are administered by the following 3 government agencies:

1. **Catchments and Lands** - a part of the Department of Primary Industries, a division of the Department of Trade and Investment, Regional Infrastructure and Services
2. **Forestry Corporation** - formerly a part of the Department of Primary Industries but now a state-owned corporation
3. **NSW National Parks and Wildlife Service (Parks & Wildlife)** - a part of the Office of the Environment and Heritage, a division of the Department of Premier and Cabinet.

---

<sup>5</sup> Based on data provided by the 3 NSW land management agencies.

The total number of licences administered by the 3 agencies has grown since 2005, as shown in Table 2.1. The increase is in large part due to the formalisation of arrangements since 2005 by the issue of licences to existing users.

**Table 2.1 Number of licences by land management agency**

NSW Government agency	No. of licences		
	2005	2012	Growth
Catchments and Lands	311	1,566	404%
Forestry Corporation (previously Forests NSW)	412	522	27%
Parks & Wildlife	60	121	102%
<b>Total</b>	<b>783</b>	<b>2,209</b>	<b>182%</b>

**Note:** Data is as at June 2005 and November 2012. Catchment and Lands reported 69 small country automatic exchange (SCAX) licences in 2005 and 74 in 2012 which are not included in this table. Parks & Wildlife reported 27 grandfathered sites (ie, sites which have not been incorporated into the current arrangements) in 2012 which are not included in this table.

**Source:** NSW Government agencies.

## 2.2 Users

Communication tower sites may be used by:

- ▼ state budget agencies (for example, NSW Police Force)
- ▼ state-owned corporations (for example, TransGrid)
- ▼ broadcasters (including public and commercial television and radio broadcasters)
- ▼ telecommunications carriers (for example, Telstra, Optus and Vodafone)
- ▼ private network providers (for example, Motorola Solutions, Gencom)
- ▼ commercial tower owners (for example, Broadcast Australia and Crown Castle)
- ▼ National Broadband Network (NBN Co - a Commonwealth Government business enterprise).

Across a communications network, some of the users listed above may be primary users. These primary users are commonly above-ground infrastructure owners. They may use public land for some sites and privately lease or own other sites. The users listed above may also be co-users, where their equipment is co-located on towers managed by primary users or infrastructure providers.

## 2.3 Legislation

### 2.3.1 NSW legislation

There are 4 main pieces of legislation relevant to Crown land in NSW:

- ▼ *Crown Lands Act 1989* (NSW): provides for the NSW Government to manage Crown land, including to lease and license Crown land, to manage the benefits of this resource for the people of NSW.<sup>6</sup>
- ▼ *Western Lands Act 1901* (NSW): governs the use and disposal of interests in Crown land in the western division of NSW.<sup>7</sup>
- ▼ *Forestry Act 2012* (NSW): governs the use and disposal of Crown land within State forests, and provides for the grant of licences, permits and leases.<sup>8</sup>
- ▼ *National Parks and Wildlife Act 1974* (NSW): provides for the Minister for the Environment to grant leases, licences or easements for erection, use or maintenance of broadcasting or telecommunication facilities on national parks in NSW subject to certain environmental conditions.<sup>9</sup>

### 2.3.2 Communications sector specific legislation

In addition, there are 2 Commonwealth Acts that are relevant to particular users. The *Telecommunications Act 1997* (Cth) is relevant to telecommunications carriers, while the *Broadcasting Services Act 1992* (Cth) is relevant to broadcasters.

1. The *Telecommunications Act 1997* (Cth):
  - prohibits discrimination against telecommunications carriers by providing:
    - i) State law has no effect to the extent that it discriminates, or would have the direct or indirect effect of discriminating, against a particular carrier, a class of carriers or carriers generally
    - ii) a person must not exercise a power under such a law<sup>10</sup>
  - seeks to provide a regulatory framework that promotes the long-term interests of end-users of carriage services or of services provided by means of carriage services, the efficiency and international competitiveness of the Australian telecommunications industry, and the availability of accessible and affordable carriage services that enhance the welfare of Australians<sup>11</sup>
  - exempts telecommunications carriers and their contractors from the requirements to obtain landowners' consent and planning and environmental approval from state, territory or local government authorities in certain circumstances for specified authorised activities

<sup>6</sup> *Crown Lands Act 1989* (NSW), Section 10 and Part 4, Division 3 and 4.

<sup>7</sup> *Western Lands Act 1901* (NSW), Section 2 and Part 5 to 7.

<sup>8</sup> *Forestry Act 2012* (NSW), Section 60.

<sup>9</sup> *National Parks and Wildlife Act 1974* (NSW), Sections 2A, 153D and Part 12.

<sup>10</sup> *Telecommunications Act 1997* (Cth), schedule 3, clause 44.

<sup>11</sup> *Telecommunications Act 1997* (Cth), Section 3.

(inspecting, installing and maintaining certain telecommunications facilities)<sup>12</sup>

- provides carriers with a right of access to other carriers' telecommunications transmission towers for installing a facility for radio communications.<sup>13</sup>

The High Court considered the above provisions in the *Bayside* case.<sup>14</sup> McHugh J in that case noted that “the wide and unconditional language of cl 44(1) suggests that the Commonwealth Parliament intended to protect carriers from special burdens without regard to any policy objective of a State or Territory law which imposed that burden”.<sup>15</sup>

2. The *Broadcasting Services Act 1992* (Cth):

- regulates broadcasting facilities used for providing broadcasting (television and radio) services<sup>16</sup>
- requires owners and operators of broadcasting transmission towers to give digital broadcasters and datacasters access to the towers for installing or maintaining digital transmitters.<sup>17</sup>

## 2.4 Key findings from the 2005 Review

Our recommended fee arrangements in 2005 were designed to reflect a conservative view of recent market prices.<sup>18</sup> The approach distinguished between:<sup>19</sup>

- ▼ Strategic or high value sites, for which rentals should be negotiated (not including greenfield sites).<sup>20</sup>
- ▼ Low value sites, for which a published fee schedule was recommended, taking into account the uses of the site and its location. The fee schedule was intended to avoid the high administration costs involved in determining rentals for these sites since negotiation could erode the net benefits that both agencies and users gain from the rental of low value sites.

<sup>12</sup> *Telecommunications Act 1997* (Cth), Schedule 3, Clause 37. In practice, it is common for carriers to enter into an occupancy instrument with the landowner to determine the rental, terms and conditions for installing and maintaining telecommunications facilities on the landowner's land.

<sup>13</sup> *Telecommunications Act 1997* (Cth), Schedule 1, Clause 33.

<sup>14</sup> *Bayside City Council v Telstra Corp Ltd* [2004] HCA 19. The High Court considered that a claim of discrimination under these provisions may require a court to examine “the relevance, appropriateness, or permissibility of some distinction by reference to which such treatment occurs, or by reference to which it is sought to be explained or justified” at [40] per Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ.

<sup>15</sup> *Bayside City Council v Telstra Corp Ltd* [2004] HCA 19 at [71] per McHugh J.

<sup>16</sup> *Broadcasting Services Act 1992* (Cth), Section 3.

<sup>17</sup> *Broadcasting Services Act 1992* (Cth), Schedule 4.

<sup>18</sup> IPART, *Review of Rental Arrangements for Crown Land Communication Tower Sites - Final Report*, October 2005, p 3.

<sup>19</sup> *Ibid*, pp 3-4.

<sup>20</sup> The government did not endorse our recommendations on strategic sites.

The current fee schedule was introduced in 2006<sup>21</sup> and has been indexed to the Consumer Price Index (CPI) since then.

#### 2.4.1 High value sites (strategic sites)

The 2005 Review<sup>22</sup> defined strategic sites (high value sites in this review) as:

- ▼ sites that have 8 or more users, or
- ▼ sites that generate a total aggregate rent which exceeds the highest rent published in the schedule for low value sites (that is, \$35,243 in 2012/13).<sup>23</sup>

The review recommended that the terms and conditions of the occupancy of strategic sites should continue to be determined through site-by-site negotiations between the land management agencies and primary users.<sup>24</sup> IPART also recommended that negotiations on strategic sites should take into account factors such as location, recent market rentals, potential for co-use, relevant land valuations and relevant legislation.<sup>25</sup>

The 2005 recommendations on strategic sites were not endorsed by the NSW Government and have not been implemented. We understand that land management agencies have not actively negotiated for strategic sites since the 2005 Review and have instead focused on implementing the fee schedule.

#### 2.4.2 Low value sites

The fees for low value sites (standard sites in this review), were based on market prices at the time. In the 2005 Review, we recognised that location is a determinant of site value<sup>26</sup> and that rentals for all sites should reflect a conservative view of recent market prices.<sup>27</sup> Our recommended fee schedule included:

- ▼ 3 location classifications (high, medium and low population density regions of NSW)
- ▼ 9 user categories (ranging from local community, volunteer and rescue organisations to commercial television broadcasters).<sup>28</sup>

---

<sup>21</sup> NSW Trade & Investment, Crown Lands Fact Sheet, *Rental Table for Communication Organisations Occupying Crown Land*:

[www.lpma.nsw.gov.au/crown\\_land/leases/licences/telecommunication\\_licences](http://www.lpma.nsw.gov.au/crown_land/leases/licences/telecommunication_licences)

<sup>22</sup> IPART, *Review of Rental Arrangements for Crown Land Communication Tower Sites - Final Report*, October 2005, p 3.

<sup>23</sup> Ibid, p 3. Value in the 2005 Review was \$30,000. Value in the 2005 Review has been indexed by the change in the March quarter CPI each year.

<sup>24</sup> Ibid, p 3.

<sup>25</sup> Ibid, pp 3-4.

<sup>26</sup> Ibid, p 29.

<sup>27</sup> Ibid, p 2.

<sup>28</sup> Ibid, p 4.

In addition, we recommended that, where a secondary transmitter is attached to a 'primary' tower, the co-user should pay the relevant land management agency 50% of the schedule fee.<sup>29</sup> An infrastructure provider, who owns and operates towers to host other users only, should pay the land management agency 70% of the schedule fee.<sup>30</sup>

Table 2.2 shows the 2012 fee schedule (which is the 2006 schedule indexed to the CPI).<sup>31</sup> Indexation has increased fees by 17.5% over the 6-year period from 2006/07 to 2012/13 (equivalent to an annual growth rate of 2.7%).

**Table 2.2 2012/13 fee schedule (\$ per site, annual, ex GST)**

Use category	High	Medium	Low
Community based organisations	432 <sup>a</sup>	432 <sup>a</sup>	432 <sup>a</sup>
Budget funded sector	5,287	3,524	1,762
Government radio broadcasters	7,048	4,699	2,349
Local service providers	8,222	5,873	2,937
Government business units /other	12,335	8,222	4,112
Commercial radio broadcasters	14,098	9,398	4,699
Government television broadcasters	17,622	11,748	5,873
Telecommunication and data carriers	26,432	14,684	8,810
Commercial television broadcasters	35,243	23,496	11,748

<sup>a</sup> This is the statutory minimum rent prescribed by the *Crown Lands Act 1989* (NSW).

<sup>29</sup> Ibid, p 5.

<sup>30</sup> Ibid, p 4.

<sup>31</sup> NSW Trade & Investment, Crown Lands Fact Sheet, *Rental Table for Communication Organisations Occupying Crown Land*: [www.lpma.nsw.gov.au/crown\\_land/leases/licences/telecommunication\\_licences](http://www.lpma.nsw.gov.au/crown_land/leases/licences/telecommunication_licences)

## 3 IPART's approach to the review

The Terms of Reference of this review ask us to advise on a fee schedule for the rental of sites for communication towers on Crown land. Specifically the Terms of Reference ask us to:

- ▼ ensure the fee schedule reflects fair market-based commercial returns
- ▼ consider the government's preference for a fee schedule that is as simple, transparent and cost reflective as practicable.

In this chapter, we outline the principles that guided our decision-making for this review, taking into account the Terms of Reference and comments from stakeholders.

### 3.1 Principles for the review

The following principles guided our decision making for this review:

- ▼ **market return:** rentals should be based on the market's willingness to pay for the site or facility
- ▼ **administrative efficiency:** arrangements for determining rentals should be simple to administer and cost effective
- ▼ **transparency:** rentals should be calculated in a manner that is clear and easily understood
- ▼ **consistency:** arrangements for determining rentals should be applied consistently across different land management agencies
- ▼ **external benefits:** to the extent possible, rentals should take into account any social benefits from services provided by site users.

Taking into account stakeholder submissions and comments made at the roundtable in March 2013, we have added the principle of external benefits. In more remote, less populated regional areas, there may be a lack of economical communication technologies on offer. To the extent that site users are offering services in these areas, the site rental should recognise the social and economic benefits that are currently not being captured by the user in the fees they are able to charge their customers.



In practice, not all principles will align with each other. For example, arrangements for determining rentals for standard sites need to provide for market returns, which may not align with an arrangement that is easy to administer. We exercised judgement in our decision-making and made recommendations which balance the guiding principles outlined here.

As required by the Terms of Reference, we have also had regard to the requirements that the land management agencies, on behalf of the relevant Minister, are required to take into account under relevant legislation (including the principles in s 143(1) of the *Crown Lands Act 1989* (NSW) (CL Act)).

Some stakeholders<sup>32</sup> submitted that our recommendations must apply the rent setting principles in s 143(1). We do not consider that such submissions correctly reflect the Terms of Reference or the requirements of s 143 of the CL Act. The Terms of Reference require us to have regard to the principles specified in s 143(1) in making our recommendations.

Where the Minister elects to apply our recommendation in relation to rent under s 143(2) of the CL Act, s 143(1) of the CL Act will not apply.

---

<sup>32</sup> Broadcast Australia submission, June 2013, pp 3-4, 6-7, 13; Crown Castle submission, June 2013, pp 1, 3-5.

## 4 High value sites

In our Draft Report,<sup>33</sup> we recommended a rental arrangement that combines a published fee schedule for the majority of sites (standard sites) and a negotiation process for a small number of high values sites. We considered this provides for a cost effective, efficient and more transparent rental arrangement. Negotiation for a small number of sites allows market rents to be derived cost effectively.

As part of the Draft Report, we consulted on the definition of high value sites and the list of high value sites proposed by the land management agencies. This chapter outlines our views on the treatment of high value sites, taking into account feedback from stakeholders. Our recommendation is that land management agencies should consider negotiating on high value sites if certain criteria are met.

### 4.1 Recommendations

We recommend that:

- 1 Land management agencies should consider negotiating on high value sites if:
  - for existing sites, it is allowed under the rent redetermination provisions of the relevant instrument
  - it is cost effective to do so
  - land management agencies clearly demonstrate in writing to users how sites meet the characteristics of a high value site as outlined in recommendation 2
  - for existing sites, land management agencies provide at least 6 months notice to users prior to the rent review date that a site will be treated as high value.
- 2 Land management agencies should consider the following when deciding if a site is high value:
  - the characteristics of a site, such as ease of access, topography, line of sight, proximity to major highways and availability of alternative sites
  - recent market rentals for similar sites

---

<sup>33</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, pp 7-9.

- any additional requirements that the land management agency should take into account under applicable legislation.
- 3 The floor price for negotiation of high value sites should be the rent applicable for the relevant location category of the fee schedule for standard sites, where permitted under the relevant instrument.
  - 4 Land management agencies should consider negotiating high value sites either at rent review dates or once the existing instrument expires as allowed under the relevant instrument. The parties may seek an independent expert valuation to assist in negotiations.
  - 5 In the event of disputes over the rent for high value sites, the matter should be referred to a third party independent valuer in the first instance as mentioned in recommendation 4. If the parties cannot agree on the rent following an independent valuation, then they should seek to resolve their dispute through mediation or arbitration (where appropriate).
  - 6 Land management agencies should adopt a head licence arrangement for high value or standard sites if:
    - it is cost effective
    - land management agencies and site users both agree.
  - 7 If the land management agencies choose to negotiate on high value sites, and a head licence is not adopted, agencies should either negotiate with individual co-users, or charge co-users 50% of the rent agreed between the land management agency and the primary user.
  - 8 If a head licence arrangement is not adopted for high value sites, users eligible for a rebate from the standard site fee schedule should also be eligible for a rebate at high value sites. The rebate would be granted at the relevant Minister's discretion, based on the user's individual circumstances. The effect of the rebate should be that eligible users would pay the same rent as they would for a standard site in the same location.

## 4.2 Definition and treatment of high value sites

Our Draft Report<sup>34</sup> recommended land management agencies should consider the following characteristics when entering negotiations for high value sites: ease of access, topography, line of sight, proximity to major highways and availability of alternative sites.

We also published a list of sites which the land management agencies nominated as 'high value sites'.<sup>35</sup>

---

<sup>34</sup> Ibid, p 21.

<sup>35</sup> Ibid, pp 62-63.

### 4.2.1 Stakeholder submissions

Many site users claimed that the concept of high value sites is flawed and should be abolished.<sup>36</sup> Some users claimed that excluding certain sites from the fee schedule and opening them to negotiation is unfair to those who have invested in infrastructure and have contracts based on the current fee schedule.<sup>37</sup> They claimed this may also discourage future investment.<sup>38</sup>

Land management agencies supported the concept of high value sites, but did not support negotiating rents.<sup>39</sup> They claimed that, in most cases, the extra costs of negotiation exceeded the benefits. They instead proposed to put a ‘floor price’ on high value sites, namely the fee schedule rent for the next highest location category. For example, the floor for low density sites would be the medium density fee. The agencies want to maintain the option of negotiating high value sites. Parks & Wildlife contend agencies should negotiate only if it is cost effective to do so.

Broadcast Australia analysed the list of high value sites nominated by land management agencies and claimed that the sites did not have the qualities of high value sites as described in the Draft Report. Rather, the sites appear to have been nominated based on the number of co-users.<sup>40</sup>

For new sites, site users and land management agencies all opposed tendering. Both sides agreed there has been no evidence of competition between prospective users for sites.<sup>41</sup> In fact, if more than 1 user is interested in a particular site, they tend to co-operate and co-locate.<sup>42</sup> Further, Parks & Wildlife cited legislative constraints in the *National Parks and Wildlife Act 1974* (NSW), which discourage the installation of communication sites on their reserve system. Parks & Wildlife are therefore “not in a position to proactively market or promote the availability of sites for tender”.<sup>43</sup>

### 4.2.2 IPART’s findings and recommendations

Market evidence suggests that some sites obtain higher rents than other in the same location category. Further, the market value of such a site is best obtained through negotiation.

<sup>36</sup> Telstra submission, June 2013, pp 5-7; Sky Sports Radio submission, June 2013, p 5; Broadcast Australia submission, p 4; MCF submission, June 2013, p 3; NBNCo submission, June 2013, p 2.

<sup>37</sup> NSW Telco Authority submission, June 2013, p 6.

<sup>38</sup> Mastercom submission, June 2013, p 2.

<sup>39</sup> Parks & Wildlife submission, June 2013, p 2; Catchments and Lands submission, June 2013, p 2; Forestry Corporation submission, June 2013, pp 2-3.

<sup>40</sup> Broadcast Australia submission, June 2013, pp 4-6.

<sup>41</sup> Forestry Corporation submission, June 2013, p 3; Telstra submission, June 2013, pp 6-7.

<sup>42</sup> Telstra submission, June 2013, pp 6-7.

<sup>43</sup> Parks & Wildlife submission, June 2013, p 3.

Stakeholders raised difficulties with identifying and negotiating high value sites:

- ▼ land management agencies and site users both argue the cost of negotiating high value sites may outweigh the benefits
- ▼ detailed definition of the characteristics of high value sites is difficult as sites valuable to 1 user may not be valuable to other users.

The Terms of Reference of the review ask the Tribunal to recommend principles to guide rental rates for sites considered strategic or high value.

On balance, we recommend maintaining the **option** of negotiating high value sites with the characteristics described in the Draft Report. Agencies should consider negotiating high value sites if:

- ▼ for existing sites, it is allowed under the rent redetermination provisions of the relevant instrument
- ▼ it is cost effective to do so
- ▼ they can demonstrate to users sites meet the characteristics outlined in Section 4.2.3
- ▼ at least 6 months notice is provided to users prior to rent review dates on classifying an existing site as high value.

The agencies can choose to set a floor price for negotiation based on the applicable location category of the fee schedule. This means, if the location is in the low category, the floor price should be the applicable rent for low location in the fee schedule.

We also decided not to maintain the Draft Report's explicit recommendation on an open tender process for new sites. An open tender process would be onerous for Parks & Wildlife, given the requirements of their Act.

### 4.2.3 Principles to guide negotiations

BEM found that market evidence shows some sites derive higher rentals for land owners than other sites in the same location category.<sup>44</sup> There is evidence to suggest that characteristics of the site contribute significantly to the value of a site where the site qualities include:<sup>45</sup>

- ▼ good accessibility
- ▼ good topography
- ▼ good line of sight (for example, to the user's customer base)
- ▼ close proximity to major highways
- ▼ lack of alternative sites.

We recommend that land management agencies consider the following when entering negotiations for licences for high value sites:

- ▼ the characteristics that could indicate if a site is a high value site, such as ease of access, topography, line of sight, proximity to major highways and availability of alternative sites
- ▼ recent market rentals for similar sites
- ▼ any additional requirements that the land management agency should take into account under applicable legislation.

If disputes occur over the value of the site and the rent, the matter should be referred to a third party independent valuer in the first instance as discussed in Section 4.3. If the parties cannot agree on the rent following an independent valuation, then they should seek to resolve their dispute through mediation or arbitration (if applicable). Section 5.9 discusses arbitration and mediation more generally.

## 4.3 Honouring existing tenure arrangements

In our Draft Report,<sup>46</sup> we proposed that high value site rents could replace existing rents by a Ministerial review at rent review dates (which typically occurs every 5 years).

---

<sup>44</sup> BEM Property Consultants, *A Review of Current Schedule of Rentals for Telecommunication Sites Located in NSW*, March 2013, pp 37-38.

<sup>45</sup> BEM Property Consultants, *A Review of Current Schedule of Rentals for Telecommunication Sites Located in NSW*, March 2013, p 37.

<sup>46</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, pp 24-25.

### 4.3.1 Stakeholders' views

The NSW Telco Authority recommended that introduction of the list of high value sites should be delayed 5 years. The periodic (5-year) review of the list of such sites should be open to consultation. If a site is reclassified from standard to high value, there should be a transition period.<sup>47</sup>

The Authority also sought clarification on how the Minister could intervene to set a fee above the standard site fee schedule consistently and transparently, claiming it could lead to significant uncertainty.<sup>48</sup>

Crown Castle questioned the possibility of reclassifying land that is the subject of existing long-term licences as high value sites, given that it invested on the basis of the existing licence.<sup>49</sup>

In an observation relating to the fee schedule, but also relevant to high value sites, ATI observed that “most co-users have fixed term contractual arrangements with primary users (tower owners) to rent tower spaces and may not be able to quit the towers due to their inability to pay high Crown Lands fees”.<sup>50</sup>

Broadcast Australia had “serious concerns related to how the concept of strategic sites will be implemented with respect to existing agreements under the Crown Lands Act”.<sup>51</sup>

### 4.3.2 IPART's findings and recommendations

We maintain that, where provisions exist for rent redeterminations within a licence, there is no obstacle to having a reasonable market-based fee nominated by the Minister, subject to any relevant licence terms.<sup>52</sup>

However, we understand that users – infrastructure providers, primary users and co-users, have made investments on the basis of the existing schedule, and to significantly increase the fees they are charged could adversely impact their businesses.

We recommend that agencies consider negotiating high value sites either at rent review dates (where the relevant instrument provides for the re-determination of rent) or once the existing arrangements expire. The parties may seek an independent expert valuation to assist with the negotiations.

<sup>47</sup> NSW Telco Authority submission, June 2013, p 7.

<sup>48</sup> NSW Telco Authority submission, June 2013, p 8.

<sup>49</sup> Crown Castle submission, June 2013, p 4.

<sup>50</sup> ATI submission, June 2013, p 2.

<sup>51</sup> Broadcast Australia submission, June 2013, pp 6-7.

<sup>52</sup> Permit fees for State forest land are subject to the maximum fee prescribed by the regulations: *Forestry Act 2012* (NSW), Section 60(2). Currently none are prescribed.

## 4.4 Head licence arrangement

In our Draft Report,<sup>53</sup> we recommended that, going forward, a head licence is the preferred option for a high value site unless the costs are excessive. Under such an arrangement, the agency grants a head licence to the primary user, who may in turn sub-license to co-users. The rent payable in this case would be higher than if the licence reflected only the primary user's use of the land.

In the case that a head licence arrangement is not cost effective, our draft recommendation was that the land management agencies either negotiate with individual co-users or charge co-users 50% of the rent agreed between the agency and the primary user.

### 4.4.1 Stakeholders' views

Telstra objected to high value sites having head licences which are "not equitable, would increase admin burden of carriers and create operational uncertainty".<sup>54</sup>

The land management agencies also did not consider head licences to be practical in all cases, and preferred to negotiate with individual parties.<sup>55</sup> However, they wanted to retain head licences as an option.<sup>56</sup>

The NSW Telco Authority was concerned about the costs that may be involved in entering head leases (and associated sub-tenancy arrangements). It also questioned how, if a high value site is negotiated through a head lease agreement, rebates can be applied to co-users (who will no longer have a direct relationship to land management agencies).<sup>57</sup>

Both Broadcast Australia and the Mobile Carriers Forum (MCF) supported head licences.<sup>58</sup> Broadcast Australia further claimed there would be significant problems with linking the co-user's fee to the negotiated outcome of the primary user, as both have different situations. It recommended that IPART ideally abandon co-user fees at high value sites and, if not, apply a discount based on the fee schedule.

---

<sup>53</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, pp 25-27.

<sup>54</sup> Telstra submission, June 2013, p 7.

<sup>55</sup> Catchments and Lands submission, June 2013, pp 4-5.

<sup>56</sup> Parks & Wildlife submission, June 2013, pp 4-5; Forestry Corporation submission, June 2013, p 4.

<sup>57</sup> NSW Telco Authority submission, June 2013, pp 11-12.

<sup>58</sup> Broadcast Australia submission, June 2013, p 8; MCF submission, June 2013, p 4.



#### 4.4.2 IPART's findings and recommendations

In the general rental market, the site owner may seek expressions of interest from the market for the best offer price on rent and the associated rental arrangement. A head licence arrangement can be an option considered by both parties during negotiations. The site owner negotiates rent with the primary user, taking into account the additional value the primary user will gain from sub-letting the site.

Some land management agencies currently have head licence arrangements in place, mainly with infrastructure providers whose primary business is to seek co-users for sites. We recognise that other primary users who use sites for other purposes do not have the same motive to seek co-users and a head licence arrangement creates additional risks.

However, we support a head licence arrangement which both the land management agency and the site user (whether primary or infrastructure provider) agree to enter for either a high value or standard site.

We recommend that land management agencies adopt a head licence arrangement for high value sites if:

- ▼ it is cost effective
- ▼ land management agencies and site users both agree.

If a head licence arrangement is adopted, co-users have no relationship with land management agencies, and rental fees will be negotiated between primary user and co-user.

A head licence arrangement allows the sharing of revenue risk between land management agencies and the primary user. The primary user can seek to negotiate rent with land management agencies that compensates it for the additional revenue risk, and seek to recoup costs or profit through charging fees to co-users.

If a head licence arrangement is not adopted, agencies should either negotiate with individual co-users, or charge co-users 50% of the rent agreed between the land management agency and the primary user. In these cases, users eligible for a rebate from the standard site fee schedule should also be eligible for a rebate at high value sites. The rebate would be granted at the relevant Minister's discretion, based on the individual user's circumstances. The effect of the rebate should be that eligible users pay the same rent as for a standard site in the same location.

## 5 Standard sites

In our Draft Report, we recommended a rental arrangement for communication sites on Crown land. Firstly, a rental fee schedule that can be applied to the majority of sites, referred to as “standard sites”. There would be an accompanying schedule of indicative rebates for eligible users to be granted at the relevant Minister’s discretion, based on the individual user’s circumstances. This arrangement provides for transparency and administrative efficiency. Secondly, negotiation of high value sites where cost effective as discussed in Chapter 4.

We sought comment from stakeholders on our draft recommendations for a fee schedule with the same rental for all users across 4 location categories.

In this chapter we discuss our recommendations for the fee schedule and rebate schedule, including the number of user categories, definition of location categories and the fee level. We maintain our recommendation on a single level of rent across 4 location categories and a separate schedule of rebates.

### 5.1 Recommendations

We recommend that:

9 The following fee schedule should apply for standard sites, subject to recommendation 13 (\$2013/14):

**Table 5.1 Recommended fee schedule (\$2013/14, annual, ex GST)**

(\$2013/14)	Sydney	High	Medium	Low
Rent	32,607	27,172	15,095	7,245

**Note:** Rents are to be adjusted for inflation each year (beginning 1 July 2014).

10 Location categories are defined as:

- Sydney: local council areas in metropolitan Sydney with a population density of greater than 1,800 people per square kilometre (as listed in Appendix D of this report)
- high: local council areas in metropolitan Sydney with a population density of less than or equal to 1,800 people per square kilometre, greater metropolitan area of the Central Coast, Newcastle and Wollongong

- medium: areas within 12.5 kilometre of the centre of the 37 Urban Centres and Localities (UCLs) defined by the Australian Bureau of Statistics (ABS) as having a population of 10,000 or more based on the 2011 census (as listed in Appendix C of this report)
  - low: rest of NSW.
- 11 The following users are eligible to apply to the Minister for a rebate as outlined below:

**Table 5.2 Recommended rebate schedule (\$2013/14, annual, ex GST)**

(\$2013/14)	Sydney	High	Medium	Low
Community groups	32,162	26,728	14,651	6,801
Budget funded sector	26,085	21,738	12,076	5,796
Local service providers	-	-	9,057	4,347
Telephony service providers	-	-	-	4,347

**Note:** Rents are to be adjusted for inflation each year (beginning 1 July 2014).

- 12 Users eligible for rebates are defined as:
- Community groups: special community interest groups that are run on a not-for-profit basis.
  - Budget funded sector: government agencies or authorities that deliver core services to the public and typically cannot fully recover the value they create through user fees.
  - Local service providers: commercial entities which solely or predominantly service communities in a limited number of low and/or medium locations as defined in recommendation 10. Their business operations should be predominantly in these areas. The rebate is available only for sites in low and medium locations.
  - Telephony service providers: users required to provide telephony services under government direction or legislative requirements in low locations as defined in recommendation 10. Such users are eligible for a rebate for small country automatic exchange sites only.
- 13 The fee schedule and accompanying schedule of rebates should be adjusted annually on 1 July, by the change in the Consumer Price Index (All Group Index number) for Sydney as published by the Australia Bureau of Statistics for the year ending 31 March.
- 14 For users with existing licence agreements, the new fee schedule at recommendation 9 should be phased in over 5 years from the next rent review date. All existing licences should fully reflect the fee schedule as per recommendation 9 by the end of the phase-in period at 1 July 2018. The new fee schedule will apply immediately to any new licences.

- 15 Taking into account the impact of inflation, the transitional arrangement means that rents will increase by 20% of the difference between the inflation adjusted 2012/13 fee schedule and the new fee schedule each year, on a cumulative basis.
- 16 In the case of disputes between users and land management agencies on implementation of the fee schedule for standard sites, the latter should seek the services of a mediator or an arbitrator (where appropriate).
- 17 The published fee schedule should be subject to an independent review every 5 years to ensure it reflects fair market-based rental returns.
- 18 The implementation of the rental arrangement should be subject to a review by the Audit Office of NSW twice in every 5 years. The review by the Audit Office of NSW should report on whether the rental arrangements have been implemented in accordance with the government's decisions in response to this review.

## 5.2 Definition of location categories

Our Draft Report<sup>59</sup> recommended 4 location categories:

- ▼ **Sydney:** greater metropolitan area of Sydney<sup>60</sup>
- ▼ **high:** greater metropolitan area of the Central Coast<sup>61</sup>, Newcastle<sup>62</sup> and Wollongong<sup>63</sup>
- ▼ **medium:** within 12.5 km of the centre<sup>64</sup> of the 37 UCLs defined by the ABS as having a population of 10,000 or more based on the 2011 census<sup>65</sup>
- ▼ **low:** rest of NSW.

---

<sup>59</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, p 33.

<sup>60</sup> Local council areas in the inner and outer Sydney area, which includes Penrith, Camden and Hawkesbury but excludes Blue Mountains.

<sup>61</sup> Local council areas of Gosford and Wyong.

<sup>62</sup> Local council areas of Newcastle and Lake Macquarie.

<sup>63</sup> Local council area of Wollongong.

<sup>64</sup> The "centre" is defined as a main post office, or main council building if no main post office exists.

<sup>65</sup> ABS, 1270.0.55.004 - Australian Statistical Geography Standard (ASGS): Volume 4 - *Significant Urban Areas, Urban Centres and Localities, Section of State*, July 2011.

### 5.2.1 Stakeholders' views

Stakeholders raised the following concerns:

- ▼ Land management agencies argued the medium location category should be defined as within 30 km of specified towns rather than within 12.5 km.<sup>66</sup> Telstra proposed it be reduced to 5 km from the centre of towns with a population of 15,000 (rather than 10,000) due to population growth since 2005.<sup>67</sup>
- ▼ Parks & Wildlife contended that IPART has ignored evidence from them of agreements negotiated between willing parties that point to commercial rents not being based on arbitrary population and distance factors.<sup>68</sup>
- ▼ Land management agencies questioned the anomaly of our exclusion of the Blue Mountains local government area (LGA) from Sydney, yet inclusion of the Hawkesbury LGA as part of Sydney.<sup>69</sup>
- ▼ NBN Co proposed that the medium density classification be limited to UCL boundaries (that is, not a specified distance from the centre of the UCL).<sup>70</sup> This would severely limit the number of sites considered medium density.

### 5.2.2 IPART's findings and recommendations

We considered both arguments to reduce the scope of the medium density category and to increase it, and decided on balance to leave it at 12.5 km from the centre of the 37 UCLs. There is no evidence in population density data to suggest the boundary for medium density should be greater than 12.5 km. Further, we could find no justification in population growth data to support Telstra's request to increase the size of the urban centre definition from 10,000 to 15,000 people. The list of medium density locations is listed in Appendix C.

We recognise that our definition of Sydney includes the local council areas of Penrith, Blacktown, Baulkham Hills, Hornsby, Camden and Campbelltown, where population densities are lower than the inner parts of Sydney,<sup>71</sup> and rents higher than 'high density' may not be justified.

<sup>66</sup> Catchments and Lands submission, June 2013, p 7; Parks & Wildlife submission, June 2013, p 8; Forestry Corporation submission, June 2013, p 5.

<sup>67</sup> Telstra submission, June 2013, p 11.

<sup>68</sup> Parks & Wildlife submission, June 2013, p 8.

<sup>69</sup> Catchments and Lands submission, June 2013, p 7; Parks & Wildlife submission, June 2013, p 7; Forestry Corporation submission, June 2013, p 5.

<sup>70</sup> NBN Co submission, June 2013, pp 2-3.

<sup>71</sup> NSW Division of Local Government, Department of Premier and Cabinet, *Comparative Information on NSW Local Government Councils 2010/11, 2012*, Table A2, pp 14-16.

On this basis, we recommend restricting this category to inner Sydney, as defined by local council areas with a population density greater than 1,800 people per square kilometre. This means the area of Sydney will be bounded by Manly, Willoughby, Ryde and Parramatta in the north/north west; Holroyd and Fairfield to the west, and Bankstown; Hurstville, Kogarah, Rockdale, Botany Bay and Randwick in the south west/south. This narrower definition is consistent with the available market data for Sydney sites that attract rents of the amount that we recommended for Sydney in our Draft Report. Please refer to Appendix D for the list of Sydney local council areas that will be classified as Sydney.

In our Draft Report,<sup>72</sup> we recommended that the Hawkesbury city council area be considered part of Sydney. This was in recognition of the Richmond-Windsor region being similar to neighbouring areas of Sydney. However, the vast majority of the Hawkesbury region is sparsely populated. Consistent with the other non-coastal regions surrounding Sydney, Wollondilly and the Blue Mountains, we have decided that Hawkesbury City Council area should be considered part of the low location category.

### 5.3 User categories

In our Draft Report, we recommended replacing the existing 9 user categories with 1 user category. A fee schedule with a single user category is competitively neutral and administratively efficient.

#### 5.3.1 Stakeholders' views

NSW Telco Authority agreed with the concept of a single market for telecommunication tower sites and a single user category as presented in the Draft Report.<sup>73</sup> A number of other stakeholders were effectively in favour of a single user category – albeit a category that attracts a nominal fee based on a percentage of the unimproved land value of the site.<sup>74</sup>

Catchments and Lands<sup>75</sup> claimed that a single user category is inconsistent with the concept that fees should be based on the “permitted use” of the site as set out in Section 143 of the *Crown Lands Act 1989* (NSW) and Section 14I of the *Valuation of Land Act 1916* (NSW).

<sup>72</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, p 30.

<sup>73</sup> NSW Telco Authority submission, June 2013, p 13.

<sup>74</sup> MCF submission, June 2013, p 2; Telstra submission, June 2013, p 3; NBN Co submission, June 2013, p 1; Broadcast Australia submission, June 2013, p 1.

<sup>75</sup> Catchments and Lands submission, June 2013, p 6.

All 3 land management agencies<sup>76</sup> and a number of site users, including ATI<sup>77</sup> and Mastercom<sup>78</sup>, claimed that there are separate and distinct uses of telecommunication tower sites. Further, these stakeholders submitted that these different uses have fundamentally different purposes and methods of operation. These stakeholders contend that each distinct use of a telecommunication tower site should be treated as a separate market and incur a fee that is proportionate to the value generated through that particular use of the site.

A number of stakeholders expressed concerns that the proposed single user category would significantly increase in users' operating costs. This would in turn price them out of the market, resulting in damage to their businesses, loss of jobs and reduction of services to local communities.<sup>79</sup>

### 5.3.2 IPART's findings and recommendations

Based on views expressed in stakeholder submissions and during the second public roundtable, the Tribunal considered 2 options on user categories:

- ▼ option 1: maintain recommendation for a single user category
- ▼ option 2: recommend multiple use categories.

#### Option 1: Single user category

This option was put forward in our Draft Report – a single user category for all users of communication tower sites.

A fee schedule based on a single user category is competitively neutral and ensures that all telecommunication site users pay the same rent. No differentiation is made between ownership or users' business models. Option 1 is also simple to administer and takes into account technological convergence.

We recognise the concerns raised by stakeholders on the number of users that would be adversely affected by option 1. Stakeholders argued that this may lead to a reduction in use of some sites and may affect the land management agencies' revenue.

---

<sup>76</sup> Catchments and Lands submission, June 2013, p 6; Forestry Corporation submission, June 2013, p 1; Parks & Wildlife submission, June 2013, p 6.

<sup>77</sup> ATI submission, June 2013, p 1.

<sup>78</sup> Master Communications and Electronics submission, June 2013, p 1.

<sup>79</sup> National Parks & Wildlife submission, June 2013, p 7; Mastercom submission, June 2013, p 3; Northern Rivers Communications submission, June 2013, p 1; ATI submission, June 2013, p 2; Gencom submission, June 2013, p 1.

### Option 2: Multiple use categories

The Tribunal considered an alternative to the single user category that involves 4 separate use categories:

- ▼ television broadcasting
- ▼ telecommunication and data
- ▼ radio broadcasting/narrowcasting
- ▼ 2-way radio.

Option 2 takes account of arguments by stakeholders that there are clearly distinguishable markets within the broader telecommunication industry. Some stakeholders also argued that rent should reflect the value generated from the use of the site.

On the other hand, the telecommunications industry argued that a multiple user category fee schedule may be discriminatory under schedule 3, clause 44(1)(b) of the *Telecommunications Act 1997* (Cth).<sup>80</sup> Also, option 2 does not take account of technological convergence and is less administratively efficient than option 1.

### Recommendation

On balance, we consider that option 1 is more administratively efficient, reflects technological convergence and takes account of submissions made by stakeholders that rent based on different land use may be discriminatory.<sup>81</sup> We recommend that the move to a single user category fee schedule should be phased in over 5 years, taking into account the impact on users.

## 5.4 Rebate schedule

The Draft Report recommended a rebate schedule that would provide rebates, at the Minister's discretion, to community groups, the budget funded sector and local service providers in low density locations.

The rationale for rebates is that some users provide a social or community benefit in excess of their ability to generate revenue from the service provided. These 'externalities' should be addressed through an explicit rebate rather than being implicitly built into the fee schedule.

---

<sup>80</sup> Telstra submission, February 2013, p 2; MCF submission, February 2013, p 2.

<sup>81</sup> Ibid.



### 5.4.1 Stakeholders' views

The land management agencies did not support the introduction of a rebate schedule.<sup>82</sup> The agencies argued that managing a system of rebates would be administratively inefficient and may require changes to legislation. The agencies would prefer that rebates are built into the fee schedule.

Telstra argued that the rebate schedule is discriminatory under clause 44 of Schedule 3 to the *Telecommunications Act 1997* (Cth).<sup>83</sup> Telstra considers that any rebate to a non-commercial user is discriminatory.

Some stakeholders requested that the Minister be given discretion to exempt some users from fees all together.<sup>84</sup> Other stakeholders were concerned that the rebates may be applied inconsistently.<sup>85</sup>

Some stakeholders disagreed with limiting the local service provider rebate to low density locations.<sup>86</sup> While some suggested the rebate should be extended to medium density sites, others advocated for the rebate to be provided across all location categories.

### 5.4.2 IPART's findings and recommendations

The introduction of a separate rebate schedule will add to the administration process for land management agencies and require legislative change (change to existing regulation). However, we maintain that equity considerations and externalities (if demonstrated) should be addressed explicitly through a rebate and should not be implicitly built into the fee schedule.

We recommend that community groups, budget funded sector and local service providers should be eligible for rebates at the relevant Minister's discretion. These groups are discussed below.

Community groups cater to special interests and are run on a not-for-profit basis. The services they deliver offer social and community benefits. We recommend that community groups be offered a rebate, paying rents that generally compensate the land management agencies for the administrative costs associated with the use of the site.

<sup>82</sup> Catchments and Lands submission, June 2013, p 6; Forestry Corporation submission, June 2013, p 1; Parks & Wildlife submission, June 2013, p 10.

<sup>83</sup> Telstra submission, June 2013, p 1.

<sup>84</sup> Submissions from: Bureau of Meteorology, June 2013, p 1; Australasian Narrowcast Radio Association, June 2013, pp 2-3.

<sup>85</sup> Submissions from: Forestry Corporation, June 2013, p 1; YLess4You, June 2013, p 5.

<sup>86</sup> Submissions from: Catchments and Lands, June 2013, p 6; Parks & Wildlife, June 2013, p 9; 2KY Sky Sports Radio, June 2013, p 7; YLess4You, June 2013, p 5.

Budget funded sector are government agencies or authorities that deliver core services to the public (for example NSW Police Force and local councils) and typically cannot fully capture the value they create through user fees. Therefore we recommend a rebate to compensate them (that is, 80% of the commercial fee).

We have recommended that a rebate of 60% of the rent in the fee schedule for low and medium locations, should be provided for local service providers, at the discretion of the relevant Minister. We have taken into account stakeholders' concern on the definition of local service providers and have decided to extend the definition of local service providers to those providing services in medium as well as low locations.

Local service providers should be defined as commercial entities which solely or predominantly service communities in a limited number of low and/or medium locations. Their business operations should be predominantly in these areas. The intent of the rebate is to take account of external benefits provided by commercial entities that provide services in regional communities, in excess of their ability to generate revenue. The rebate is available only for sites in low and medium locations.

As a guide, the following factors would indicate that a commercial entity is likely to be a local service provider:

- ▼ its customer base are mostly in 3 or 4 local council areas in low and/or medium locations
- ▼ its business premises are mostly located in low and/or medium locations
- ▼ it uses communication tower sites primarily in low and/or medium locations.

For example, a small business where the majority of its customers are in regional towns but maintains an office in the high location category would be considered to be a local service provider. However, a corporation whose customers are spread throughout most of NSW, or whose operations are part of a national or international business, would not be considered to be a local service provider.

The additional category of telephony service providers in the recommended rebate schedule is discussed under Section 5.6.

The recommended rebate schedule is provided in Table 5.3 below.

**Table 5.3 Recommended rebate schedule (ex GST)**

(\$2013/14)	Sydney	High	Medium	Low
Community groups	32,162	26,728	14,651	6,801
Budget funded sector	26,085	21,738	12,076	5,796
Local service providers	-	-	9,057	4,347
Telephony service providers	-	-	-	4,347

**Note:** Rebates are to be adjusted for inflation each year (beginning 1 July 2014).

## 5.5 Fee schedule

In the Draft Report, we recommended rent for Sydney sites that is 20% above the rent for sites in the high location category. This was based on market evidence which showed that sites in Sydney pay on average 20% above the current fee schedule.

We also recommended a 20% reduction in rent in the low location category. This was also based on market evidence which showed that users of low density sites typically pay rents that are about 20% below the current fee schedule.

### 5.5.1 Stakeholders' views

Submissions from telecommunication and data carriers claimed that the current and recommended rents were too high.<sup>87</sup> These stakeholders (along with a number of others)<sup>88</sup> instead called for rents based on a fixed percentage of unimproved land value.

Many stakeholders expressed concern that the proposed rents were excessive and would be likely to cause them to scale back their use of Crown land.<sup>89</sup>

Catchments and Lands supported the creation of a Sydney location category.<sup>90</sup> Forestry Corporation queried the recommended definition for Sydney.<sup>91</sup> Optus disagreed with the recommended fee level for Sydney.<sup>92</sup> Broadcast Australia submitted that if Sydney sites were to be reclassified from high density to Sydney and attract a premium rent, the rent for all other high density sites should be reduced.<sup>93</sup>

Land management agencies disagreed with the recommended 20% decrease in fees in low density locations.<sup>94</sup> Other stakeholders maintained that the proposed rent for low density sites is still too high.<sup>95</sup>

<sup>87</sup> Telstra submission, June 2013, pp 1-5; Vodafone submission, June 2013, pp 3-5; Crown Castle submission, June 2013, p 1; MCF submission, June 2013, pp 2-3.

<sup>88</sup> Broadcast Australia submission, June 2013, pp 1-3 and p 10; NBN Co submission, June 2013, p 1.

<sup>89</sup> Mastercom submission, June 2013, pp 1-3; Gencom submission, June 2013, p 1; ATI, June 2013, p 2; Crown Castle submission, June 2013, p 6; YLess4You submission, June 2013, p 4; T. Reece submission, June 2013, p 1; NBN Co submission, June 2013, p 1.

<sup>90</sup> Catchments and Lands submission, June 2013, p 6.

<sup>91</sup> Forestry Corporation submission, June 2013, p 5.

<sup>92</sup> Optus submission, June 2013, p 2.

<sup>93</sup> Broadcast Australia submission, June 2013, p 9.

<sup>94</sup> Catchments and Lands submission, June 2013, p 6; Forestry Corporation submission, June 2013, p 5; Parks & Wildlife submission, June 2013, p 6.

<sup>95</sup> Broadcast Australia submission, June 2013, p 10; Optus submission, June 2013, p 3; Mastercom submission, June 2013, pp 1-2.

### 5.5.2 IPART's findings and recommendations

As outlined in the Draft Report, we consider a rent based on unimproved land value would not reflect the fair market value of telecommunication tower sites. Rents in other markets such as land leased for renewable energy development or billboard hosting is likely to attract a market rent that reflects a combination of factors, such as supply, demand, value of the site to potential occupants and the opportunity cost to the site owner. Similarly, land value is not the sole determinant of market rent for telecommunication tower sites.

The Terms of Reference of this review require us to consider matters in Section 143(1) of the *Crown Lands Act 1989* (NSW) which refers to setting rent and disregarding improvements made by the holder. Analysis of market evidence by BEM was based on rent for the use of the land and not any infrastructure built on that land.

Taking into account stakeholders' feedback, we have reviewed the definition of Sydney (see Section 5.2). We maintain our recommendations on the rent levels for all location categories, as they are broadly consistent with market evidence.

**Table 5.4 Recommended fee schedule (\$2013/14, annual, ex GST)**

(\$2013/14)	Sydney	High	Medium	Low
Rent	32,607	27,172	15,095	7,245

**Note:** Rents are to be adjusted for inflation each year (beginning 1 July 2014).

### 5.6 Small country automatic exchange (SCAX) sites

SCAX sites are unmanned facilities located in small huts which deliver fixed wire telephony services to remote customers. Catchments and Lands currently charge Telstra an annual rent of \$1,080 per SCAX site.<sup>96</sup>

In our Draft Report, we recommended that all SCAX sites pay the same fees as other communications tower sites in a low density area, with no rebate. This is consistent with setting 1 level of rent for all users within each location category, regardless of the different operations and business models of the users.

<sup>96</sup> Personal correspondence from Catchments and Lands, 21 November 2012.

### 5.6.1 Stakeholders' views

Telstra objected to the proposed fee increase claiming:<sup>97</sup>

- ▼ SCAX sites fall outside IPART's Terms of Reference as they are not 'communication towers', so should not be included in this review
- ▼ even current rents exceed land value, and the proposal would increase the total SCAX site rental cost by 527%
- ▼ the increase would have a significant flow-on effect – the draft recommendations could distort the market nationally.

The NSW Telco Authority feared that increasing the fee for SCAX could discourage investment in such facilities and have a negative effect on the provision of telecommunication services to these remote locations.<sup>98</sup>

Land management agencies supported the recommended increase in fees but saw no justification for phasing in implementation over 5 years. They proposed the new fees should be implemented immediately.<sup>99</sup>

Yless4U observed the increasing complexity of services using SCAX facilities, where the SCAX building is increasingly being used to install infrastructure for providing ADSL services and transmit digital data.<sup>100</sup>

### 5.6.2 IPART's findings and recommendations

We do not support Telstra's claim that SCAX services fall outside the Terms of Reference of this review:

- ▼ The Terms of Reference (Appendix A) call for the Tribunal to consider "the policy objective of the New South Wales Government to achieve fair market-based commercial returns on publicly owned land occupied for the purpose of telecommunications, data transmission or broadcasting".
- ▼ Communication tower sites have been defined for this review (Appendix B) as land occupied by a primary user or infrastructure on which communication infrastructure and facilities, including towers or other equipment such as shelters and huts, are located.

<sup>97</sup> Telstra submission, June 2013, pp 1, 9-11.

<sup>98</sup> NSW Telco Authority submission, June 2013, p 15.

<sup>99</sup> Catchments and Lands submission, June 2013, pp 1, 9-11; Parks & Wildlife submission, June 2013, p 10.

<sup>100</sup> Yless4U submission, June 2013, p 1.

In the Draft Report, we recommended 1 user category with rebates available to community groups and local service providers. Under that system, we recommended that SCAX sites should be treated no differently to other users and, due to the structure of the universal service obligation<sup>101</sup> (USO) scheme, should not be entitled to a rebate.

However, notwithstanding the USO funding arrangements, we recognise SCAX sites do provide a unique and necessary service for isolated communities. We also recognise that a multi-fold increase in costs could have an impact on Telstra's ability to deliver USO services. We therefore recommend that telephony service providers, such as Telstra and where relevant, other service providers, should be eligible to apply for a rebate for SCAX sites. The level of rebate has been set at the same level as for local service providers. We also recommend maintaining the 5-year transitional period from the Draft Report.

**Table 5.5 Recommended rent for SCAXs sites over 5 years (ex GST)**

Year	Annual rent (\$2013/14)
2013/14	1,468
2014/15	1,825
2015/16	2,183
2016/17	2,540
2017/18	2,898

**Note:** Rents in table are in real 2013/14 dollars. Actual nominal rents will depend on inflation (which is to be applied to the rents as set out in the fee schedule). A 2012/13 inflation rate of 2.8% has been used.

## 5.7 User impacts and transitional arrangements

Our Draft Report identified the potential impact on several user groups from moving to a single user category. We recommended that impacts be alleviated by phasing in the new fee levels over 5-years beginning on 1 July 2013.

<sup>101</sup> The USO is the obligation placed on universal service providers (currently, solely Telstra) to ensure that standard telephone services, payphones and prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they live or carry on business. (*ACMA website*.)

### 5.7.1 Stakeholders' views

Through both submissions and representations made at the second public roundtable, a number of site users expressed concerns over the impact that moving to a single fee level will have on their businesses, their employees and their local communities.<sup>102</sup> They also suggested that this may in turn lead to reduced use of Crown land for communication services.<sup>103</sup>

Land management agencies submitted that the proposed 5-year phase-in period was too generous. Catchments and Lands suggested that fee decreases should be implemented immediately.<sup>104</sup> All 3 land management agencies suggested that fee increases should be phased in, with a 50% increase on 1 July 2013 and 100% on 1 July 2014.<sup>105</sup>

### 5.7.2 IPART's findings and recommendations

We maintain that the transition to the single user fee schedule should take place over 5 years to take into account the impact on users.

For our final recommendations, we have taken into account stakeholder feedback and made changes, such as the definition of the Sydney location category. This means that the impact on users has been reduced compared to the Draft Report.

For administrative efficiency, we recommend that all licences fully reflect the new fee levels by the end of the phase-in period (that is, by 30 June 2018) regardless of when they are reviewed during this period. This means that a licence with a rent review date of 1 July 2016 will pay rent as per the current fee schedule (indexed to inflation) until 30 June 2015. On 1 July 2016, the rent applicable under that licence would be the rent for 2016/17 according to the tables below (indexed to inflation).

This means that users with a rent review date after 1 July 2013 would be paying a lower or higher rent (as per the 2005 Review) for a longer period before the fee schedule recommended in this review would apply.

Tables 5.6 to 5.9 below summarise the impact of the recommended fee and rebate schedules over the 5-year transition period for a primary user, excluding the effect of annual inflation adjustments.

---

<sup>102</sup> 2KY Sky Sports Radio submission, June 2013, p 6; Crown Castle submission, June 2013, p 3; Northern Rivers Communications submission, June 2013, p 2; Mastercom submission, June 2013, p 3; ATI submission, June 2013, p 2; T. Reece submission, June 2013, p 1; Gencom submission, June 2013, p 1.

<sup>103</sup> NBN Co submission, June 2013, p 1.

<sup>104</sup> Catchments and Lands submission, June 2013, p 10.

<sup>105</sup> Catchments and Lands submission, June 2013, p 10; Forestry Corporation submission, June 2013, p 5; Parks & Wildlife submission, June 2013, p 10.

**Table 5.6 Impact on low density licence fees (\$2013/14, ex GST)**

	2012/13	5-year transition period					Annual impact <sup>a</sup>
		2013/14	2014/15	2015/16	2016/17	2017/18	
Community based organisations	444	444	444	444	444	444	0
Budget funded sector	1,811	1,739	1,666	1,594	1,522	1,449	-72
Government radio broadcasters	2,415	3,381	4,347	5,313	6,279	7,245	966
Local service providers	3,019	2,995	2,971	2,947	2,922	2,898	-24
Government business units/other	4,227	4,831	5,434	6,038	6,642	7,245	604
Commercial radio broadcasters	4,831	5,314	5,796	6,279	6,762	7,245	483
Government television broadcasters	6,037	6,279	6,521	6,762	7,004	7,245	242
Telecommunication and data carriers	9,057	8,694	8,332	7,970	7,608	7,245	-362
Commercial television broadcasters	12,077	11,111	10,144	9,178	8,212	7,245	-966

<sup>a</sup> The annual impact is the per annum change in real 2013/14 dollars over the 5 years 2013/14 to 2017/18. 2012/13 fees were adjusted to 2013/14 dollars using the inflation rate of 2.8%.

**Note:** Dollar figures provided in table are in real 2013/14 terms. Actual nominal fees will depend on inflation (which is to be applied to the fees and rebates as set out in the recommended schedules).



**Table 5.7 Impact on medium density licence fees (\$2013/14, ex GST)**

	2012/13	5-year transition period					Annual impact <sup>a</sup>
		2013/14	2014/15	2015/16	2016/17	2017/18	
Community based organisations	444	444	444	444	444	444	0
Budget funded sector	3,623	3,502	3,381	3,260	3,140	3,019	-121
Government radio broadcasters	4,831	6,883	8,936	10,989	13,042	15,095	2,053
Local service providers	6,037	6,038	6,038	6,038	6,038	6,038	0
Government business units/other	8,452	9,781	11,109	12,438	13,767	15,095	1,329
Commercial radio broadcasters	9,661	10,748	11,835	12,922	14,008	15,095	1,087
Government television broadcasters	12,077	12,681	13,284	13,888	14,492	15,095	604
Telecommunication and data carriers	15,095	15,095	15,095	15,095	15,095	15,095	0
Commercial television broadcasters	24,154	22,342	20,530	18,719	16,907	15,095	-1,812

<sup>a</sup> The annual impact is the per annum change in real 2013/14 dollars over the 5 years 2013/14 to 2017/18. 2012/13 fees were adjusted to 2013/14 dollars using the inflation rate of 2.8%.

**Note:** Dollar figures provided in table are in real 2013/14 terms. Actual nominal fees will depend on inflation (which is to be applied to the fees and rebates as set out in the recommended schedules).

**Table 5.8 Impact on high density licence fees (\$2013/14, ex GST)**

	2012/13	5-year transition period					Annual impact <sup>a</sup>
		2013/14	2014/15	2015/16	2016/17	2017/18	
Community based organisations	444	444	444	444	444	444	0
Budget funded sector	5,435	5,435	5,435	5,435	5,435	5,434	0
Government radio broadcasters	7,245	11,231	15,216	19,201	23,187	27,172	3,985
Local service providers	8,452	12,196	15,940	19,684	23,428	27,172	3,744
Government business units/other	12,680	15,579	18,477	21,375	24,274	27,172	2,898
Commercial radio broadcasters	14,493	17,029	19,564	22,100	24,636	27,172	2,536
Government television broadcasters	18,115	19,927	21,738	23,549	25,361	27,172	1,811
Telecommunication and data carriers	27,172	27,172	27,172	27,172	27,172	27,172	0
Commercial television broadcasters	36,230	34,418	32,607	30,795	28,984	27,172	-1,812

<sup>a</sup> The annual impact is the per annum change in real 2013/14 dollars over the 5 years 2013/14 to 2017/18. 2012/13 fees were adjusted to 2013/14 dollars using the inflation rate of 2.8%.

**Note:** Dollar figures provided in table are in real 2013/14 terms. Actual nominal fees will depend on inflation (which is to be applied to the fees and rebates as set out in the recommended schedules).

**Table 5.9 Impact on Sydney licence fees (\$2013/14, ex GST)**

	2012/13	5-year transition period					Annual impact <sup>a</sup>
		2013/14	2014/15	2015/16	2016/17	2017/18	
Community based organisations	444	444	444	444	444	444	0
Budget funded sector	5,435	5,652	5,870	6,087	6,304	6,521	217
Government radio broadcasters	7,245	12,318	17,390	22,462	27,534	32,607	5,072
Local service providers	8,452	13,283	18,114	22,945	27,776	32,607	4,831
Government business units/other	12,680	16,666	20,651	24,636	28,621	32,607	3,985
Commercial radio broadcasters	14,493	18,115	21,738	25,361	28,984	32,607	3,623
Government television broadcasters	18,115	21,014	23,912	26,810	29,708	32,607	2,898
Telecommunication and data carriers	27,172	28,259	29,346	30,433	31,520	32,607	1,087
Commercial television broadcasters	36,230	35,505	34,780	34,056	33,331	32,607	-725

<sup>a</sup> The annual impact is the per annum change in real 2013/14 dollars over the 5 years 2013/14 to 2017/18. 2012/13 fees were adjusted to 2013/14 dollars using the inflation rate of 2.8%.

**Note:** Dollar figures provided in table are in real 2013/14 terms. Actual nominal fees will depend on inflation (which is to be applied to the fees and rebates as set out in the recommended schedules).

Table 5.10 illustrates how, applying this recommendation, a fee of \$5,000 would increase to \$6,000 over 5 years, taking into account the effect of inflation.

**Table 5.10 Illustration of transition to recommended fee schedule**

Year	Inflation rate	Current fee (\$)	New fee (\$)	Transition fee (\$)
1		\$5,000	\$6,000	\$5,200
2	2.5%	\$5,125	\$6,150	\$5,535
3	2.5%	\$5,253	\$6,304	\$5,884
4	2.5%	\$5,384	\$6,461	\$6,246
5	2.5%	\$5,519	\$6,623	\$6,623

**Note:** For illustrative purposes, we have assumed inflation will be 2.5% in future years.

The formula used to compute the transition fee at each year (n) of the transition period is:

$$\text{Transition fee (in year } n) = \text{Current fee} + [(\text{New fee} - \text{Current fee}) * (n/5)]$$

## 5.8 Impact of our recommendations on land management agencies

We estimate that our final recommendations (excluding the removal of the infrastructure provider discount which we recommend be delayed to 1 July 2018) are broadly revenue neutral in real terms. That is, if fully implemented, our recommendations will neither materially increase nor decrease total agencies' revenue generated by communication towers on Crown land.

## 5.9 Process for resolving disputes

In our Draft Report, we suggested that common dispute resolution processes could take a number of forms, including:

- ▼ Mediation by a third party: both parties agree on a third party mediator. The mediator does not make a final determination. The mediator controls the negotiation process and helps the parties involved to reach an agreement.
- ▼ Expert appraisal: both parties nominate an agreed expert in the field of the dispute. The expert provides their opinion on the dispute, but has no determinative power.
- ▼ Arbitration: the third party arbitrator is normally recognised as an expert in the field of the dispute and makes a final and binding determination, where both parties have agreed to refer the dispute to arbitration. Arbitration is governed by the *Commercial Arbitration Act 1984* (NSW).

Another form of dispute resolution is an expert determination where both parties agree to refer the dispute to an independent expert and to be bound by the expert's decision.

In the case of disputes between users and land management agencies on implementation of the fee schedule for standard sites, we recommended the land management agency seek the services of a mediator or an arbitrator, where appropriate. We consider that it will generally be more appropriate to engage a mediator, or potentially an expert valuer, to facilitate dispute resolution in relation to the implementation of the fee schedule.

We noted that standard licences contain dispute resolution clauses setting out processes for mediation and, in some cases, expert determination. Where a dispute resolution clause exists, parties should follow the process set out in the licence. Alternatively, where a statutory appeal mechanism exists,<sup>106</sup> the user may seek to object to the re-determined rent in accordance with the statutory appeal mechanism.

---

<sup>106</sup> *Crown Lands Act 1989* (NSW), Section 142.

### 5.9.1 Stakeholders' views

Our recommendation to seek the services of a mediator or arbitrator was supported by all 3 land management agencies.<sup>107</sup> The NSW Telco Authority also supported our approach, adding that “the cost of such a service should be borne by the relevant land management agency which is the beneficiary of the financial benefits of the leasing arrangement”.<sup>108</sup>

### 5.9.2 IPART's findings and recommendations

We consider that any costs from mediation and arbitration should be borne jointly by the agencies and the users. The NSW Telco Authority's suggestion that mediation or arbitration costs should be borne solely by the land management agencies gives an incentive to any user to initiate such a process in the hope of improving its position, knowing there is no risk. This may lead to numerous unnecessary and costly dispute resolutions.

## 5.10 Ongoing review of rental arrangements

In our Draft Report, we recommended the fee schedule should be subject to an independent review every 5 years to ensure it continues to reflect market-based commercial returns. We also recommended that implementation of the rental arrangements be reviewed by the Audit Office of NSW twice in every 5 years.

### 5.10.1 Stakeholders' views

Land management agencies objected to the recommendation for the Audit Office of NSW to review the implementation of rental arrangements, arguing it is overly prescriptive and unrelated to non-compliance or other risk-related issues.<sup>109</sup> Crown Castle was concerned that a 5-yearly review of the implementation of the fee schedule would create uncertainty and adversely affect the level of investment by the industry.<sup>110</sup>

<sup>107</sup> Catchments and Lands submission, June 2013, p 11; Parks & Wildlife submission, June 2013, p 11; Forestry Corporation submission, June 2013, p 6.

<sup>108</sup> NSW Telco Authority submission, June 2013, p 16.

<sup>109</sup> For example, Parks & Wildlife submission, June 2013, p 11.

<sup>110</sup> Crown Castle submission, June 2013, p 5.

### 5.10.2 IPART's findings and recommendations

We maintain that a review twice in every 5 years by the Audit Office of NSW on the implementation of rental arrangements is warranted:

- ▼ Stakeholders continue to express concern at inconsistent application of the rental arrangement by land management agencies.
- ▼ Land management agencies will need to manage the transition to a new fee schedule under our recommendations.

We consider that regular reviews by the Audit Office of NSW will underpin the effective implementation by land management agencies of any new rental arrangements as decided by government.

## 6 Treatment of different occupancies

A licence to occupy a communication tower site can be held by a primary user, an infrastructure provider or a co-user. Primary users own and operate towers primarily for transmission purposes. In contrast, infrastructure providers own and operate towers for the sole purpose of hosting co-users on these towers. Co-users co-locate their transmission equipment on towers managed by primary users or infrastructure providers.

Infrastructure providers currently receive a 30% discount on the published fee schedule relative to primary users. Co-users receive a discount of 50% relative to the primary user fees in the published fee schedule.

In our Draft Report, we recommended that the 30% infrastructure provider discount should be gradually removed starting at the end of the next rent review period. We recommended that the 50% co-user discount should remain.

We also recommended that, where multiple users share the same equipment located on a tower, these users will be considered as 1 co-user and pay 1 rent.

In this chapter we outline our consideration of the stakeholder feedback on the discount for infrastructure providers and co-users, and the treatment of multiple users sharing the same equipment at a site. We recommend that the 50% discount for co-users should be maintained and the 30% discount for infrastructure providers should be gradually removed from July 2018. On the issue of multiple users sharing the same equipment on a tower, we recommend that the equipment owner be charged the rent.

### 6.1 Recommendations

We recommend that:

- 19 For standard sites, land management agencies should continue to grant separate licences to primary users and co-users.
- 20 Co-users should continue to receive a discount of 50% from the fee schedule relative to primary users.

- 21 Infrastructure providers should pay the same rent under the fee schedule as primary users. For infrastructure providers with existing licence agreements, the current discount of 30% should be gradually removed over 5 years, starting after the end of the next rent review period. For instance, for infrastructure providers with licences with July 2013 as the next rent review date, the 30% discount will be gradually removed on a straight line basis from July 2018 to July 2023.
- 22 Where a joint venture operates as a single incorporated legal entity, it should be charged 1 rent. Where the joint venture is unincorporated, rent is payable by each party to the joint venture arrangement.
- 23 Where a user fully owns equipment on a tower and offers services using this equipment to other parties, only the equipment owner should be charged rent.

## 6.2 Treatment of co-users

Co-users currently receive a 50% discount on the published fee schedule relative to primary users. In our Draft Report, we recommended continuing this arrangement.<sup>111</sup> A number of stakeholders argued against co-user fees. In this section we address stakeholders' comments and our findings on the discount for co-users.

### 6.2.1 Stakeholders' views

Many stakeholders maintained that co-user fees should be abolished:<sup>112</sup>

- ▼ Infrastructure providers maintained that the presence of co-users does not reflect an increase in the underlying value of the land.<sup>113</sup>
- ▼ Broadcast Australia claimed market evidence shows that primary user rates are not 'concessionary' (reduced to factor in co-users) and that co-user fees are indeed 'double dipping'.<sup>114</sup>
- ▼ ATI claimed that many co-users have fixed term contracts with tower owners. These co-users may not have the option to terminate these contracts in the event that co-user fees to the land management agencies (which are independent of the contract with the tower owner) are increased.<sup>115</sup>

---

<sup>111</sup> Crown Castle submission, June 2013, p 51.

<sup>112</sup> Sky Sports Radio submission, June 2013, p 6; Gencom submission, February 2013, p 4; ARCIA submission, February 2013, pp 5-6; ATI submission, February 2013, pp 2, 3, 7; Comments from stakeholders at the 17 June 2013 public roundtable including David McKean (Crown Castle, p 5) Peter Choquenot (ATI Australia, p 10) and Martin McLeod (Gencom, p 14).

<sup>113</sup> Comments from stakeholders at the 17 June 2013 public roundtable including Gary Wallis (Broadcast Australia, p 32) and David McKean (Crown Castle, pp 4-5).

<sup>114</sup> Broadcast Australia submission, June 2013, p 11.

<sup>115</sup> ATI submission, June 2013, p 2.



### 6.2.2 IPART's findings and recommendations

We recommend no change to the policy of charging co-users 50% of the rents as per the fee schedule.

We consider co-user fees important to ensure that the total rent charged by land management agencies reflects the intensity of land use by all users. Stakeholders claim that co-user fees represent 'double dipping' by the agencies but this is not supported by market evidence.

According to BEM, the evidence shows that co-user fees range from 0% to 100% of primary user fees. In rural areas, the co-user discount is likely to be greater than in metropolitan areas. BEM recommended maintaining the 50% discount for co-users.<sup>116</sup>

If the co-user fees were removed, then the rent for primary users would need to increase to recognise the ability of the primary user to sub-let, with greater intensity of land use. This is in effect a head licence arrangement. As discussed in Section 4.4, we propose that a head licence arrangement be applied for either high value or standard sites where the agencies and the primary user agree.

## 6.3 Treatment of infrastructure providers

Infrastructure providers own and operate towers for the sole purpose of hosting co-users on these towers. For example, Broadcast Australia operates towers and offers managed services primarily used by 2 government television broadcasters, ABC and SBS. Crown Castle owns and operates towers used primarily by mobile phone operators. Infrastructure providers currently receive a 30% discount from the fee schedule relative to primary users on account of their different business model.

In our Draft Report, we recommended that the 30% infrastructure provider discount should be gradually removed starting at the end of the next rent review period.

---

<sup>116</sup> BEM Property Consultants, *Review of the current schedule of rentals for telecommunication sites located in NSW*, March 2013, p 43.

### 6.3.1 Stakeholders' views

Crown Castle stated that removing the discount was a disincentive to co-location and future investment in new services, anti-competitive and discriminated against Crown Castle.<sup>117</sup> They maintained that, if the discount were removed, land management agencies would be overcompensated where an infrastructure provider sets up the site at which a co-user operates compared to when a primary user sets up the infrastructure and uses the site alone.<sup>118</sup> They argued the discount should be increased to 50%.<sup>119</sup>

Broadcast Australia argued land management agencies are already receiving an undue windfall by charging co-user fees.<sup>120</sup>

The MCF<sup>121</sup> and land management agencies<sup>122</sup> supported the removal of the infrastructure provider discount.

### 6.3.2 IPART's findings and recommendations

We recognise Crown Castle's argument on the higher revenue received by the land management agencies when the tower is owned by an infrastructure provider compared to a primary user. Without an infrastructure discount, agencies can charge infrastructure providers full rent (100%) and a co-user fee (50%) to the primary user of the tower. If the primary user owned and used the tower, the land management agency can only charge 100% of the fee.

However, under a single use fee schedule, it would be inconsistent to provide a different rate for infrastructure providers by continuing the discount. A single use fee schedule provides for competitive neutrality, and does not take into account the different business operating models of site users. A licence for a primary user or infrastructure provider both allows them to erect a tower and use it for transmission purposes. Because the licence is the same there appears to be no reason for a discount to be provided to infrastructure providers who do not transmit at their sites but allow others to do so.

The discount, if retained, may allow the infrastructure provider to offer lower rents to potential co-users. This was a concern noted by Vertel in their submission.<sup>123</sup>

---

<sup>117</sup> Crown Castle submission, June 2013, pp 4-5.

<sup>118</sup> Ibid, p 6.

<sup>119</sup> Ibid, p 2.

<sup>120</sup> Broadcast Australia submission, June 2013, pp 10-12.

<sup>121</sup> MCF submission, June 2013, p 4.

<sup>122</sup> Catchments and Lands submission, June 2013, p 11; Forestry Corporation submission, June 2013, p 7; Parks & Wildlife submission, June 2013, p 12.

<sup>123</sup> Vertel submission, February 2013, p 6.

On balance, we maintain that the discount for infrastructure providers should be removed gradually over 5 years from July 2018 at the earliest.

As discussed in Section 4.4, an infrastructure provider may choose to enter a head licence arrangement as its business is based on attracting co-users to a site. Under a head licence arrangement, the infrastructure provider may be able to negotiate rent with land management agencies which better reflects the risks that it takes on through a head licence arrangement and allows it to recover its costs or profit through charging co-user fees.

## 6.4 Multiple users sharing equipment

In our Draft Report, we recommended that “where multiple users share the same equipment located on a tower, these users will be considered 1 co-user and pay 1 rent”.<sup>124</sup> We explained that this refers both to infrastructure providers performing broadcast services, and to joint ventures using jointly owned equipment.<sup>125</sup>

### 6.4.1 Stakeholders’ views

Land management agencies did not support our draft recommendation on treating a joint venture as 1 co-user.<sup>126</sup> Instead, the agencies supported treating each joint venture partner as a separate user and charging each a fee.<sup>127</sup> Catchments and Lands proposed a 25% discount for each joint venture partner instead of the 50% co-user discount.<sup>128</sup>

In our Draft Report, we recommended that managed service providers such as Broadcast Australia that are currently treated as infrastructure providers should be treated as a primary user.<sup>129</sup> We also recommended that no co-user fees should be payable by users of these services.<sup>130</sup> Broadcast Australia disagreed with our recommendation that it be treated as a primary user.<sup>131</sup> Catchments and Lands also disagreed with our recommendation that users of managed services should not be charged co-user fees.<sup>132</sup>

<sup>124</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, p 50.

<sup>125</sup> Ibid, pp 54-55.

<sup>126</sup> Catchments and Lands submission, June 2013, p 12; Forestry Corporation submission, June 2013, p 1; Parks & Wildlife submission, June 2013, p 12.

<sup>127</sup> Ibid.

<sup>128</sup> Catchments and Lands submission, June 2013, p 11.

<sup>129</sup> IPART, *Review of rental arrangements for communication towers on Crown land - Draft Report*, April 2013, p 50.

<sup>130</sup> Ibid.

<sup>131</sup> Broadcast Australia submission, June 2013, p 12.

<sup>132</sup> Catchments and Lands submission, June 2013, p 12.

#### 6.4.2 IPART's findings and recommendations

We recommend treating joint ventures as 1 entity, where it is operating as a single **incorporated** legal entity. Where the joint venture is unincorporated, rent is payable by each party to the joint venture arrangement.

In the Broadcast Australia arrangement with SBS and ABC, we recognise that Catchment and Lands will lose revenue if the draft recommendation is maintained. However, we consider it may be unreasonable to issue a licence to a user if there is no physical presence at the site. We maintain that Broadcast Australia should be treated as a primary user as they own the transmitting equipment on the site. If their customers had their own equipment for broadcasting from the site, then co-user fees would be payable.



## **Appendices**



## A Terms of Reference

### TERMS OF REFERENCE

#### REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION TOWERS ON CROWN LANDS

I, Barry O'Farrell, Premier, approve the provision of services by the Independent Pricing and Regulatory Tribunal under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* to the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS), the Office of Environment and Heritage and Forests NSW in accordance with these 'terms of reference'.

The services to be provided by the Tribunal are a review of the rental arrangements for communication towers on Crown Lands.

In particular, the Tribunal is to review the fee schedule published in its report *Review of Rental Arrangements for Crown Land Communication Tower Sites* (October 2005) and advise on any revisions or amendments to ensure that it reflects fair market-based commercial returns, including:

- the level of the current fees having regard to:
  - recent market rentals agreed for similar sites;
  - relevant land valuations; and
  - any additional requirements that the land management agency is required to take into account under relevant legislation (for example, principles in section 143(1) *Crown Lands Act 1989*);
- the definitions and applications of the high, medium and low density location categories;
- the types of use classifications; and
- the potential inclusion of an additional classification of use to cover National Broadband Network infrastructure.

In addition, the Tribunal is to recommend principles to guide rental rates for sites considered by the Tribunal to be of strategic or high value.

In providing these services, the Tribunal is to consider:

- the policy objective of the New South Wales Government to achieve fair market-based commercial returns on publicly owned land occupied for the purposes of telecommunications, data transmission or broadcasting;
- the Government's preference for a fee schedule that is as simple, transparent, and cost reflective as practicable; and
- any other relevant matters.

The Tribunal should consult with key stakeholders including agencies responsible for the management of Crown Land sites, owners of communication infrastructure that occupy Crown Land sites and access seekers (including other government agencies that purchase access).

The Tribunal is requested to present a final report to the Deputy Premier, Minister for Trade and Investment and Minister for Regional Infrastructure and

Services within nine months of receipt of these terms of reference with a view to a revised fee schedule being applied by land management agencies before the end of 2013.



The Hon Barry O'Farrell MP  
Premier

Dated at Sydney... *5 October* .....2012



## B Definitions

Throughout this report, the Tribunal has used a range of terms in a specific way. These terms are defined below.

**Co-user** means a person who has an arrangement with a primary user or infrastructure provider to use their tower.

**Communication tower site** means Crown land or land otherwise managed by the land management agencies which is occupied by a primary user or infrastructure provider and on which communications infrastructure and facilities (including towers and or other equipment such as shelters and huts) are located.

**Crown land** means land owned and/or managed by Catchments and Lands, Forestry Corporation or Parks & Wildlife.

**High value site** means a site nominated by a land management agency (on a published list of high value sites that is updated every 5 years) that exhibits some combination of the following characteristics: elevation, ease of transport access, good line of sight, proximity to major highways, and availability of alternative sites.

**Infrastructure provider** means a party that owns and operates a tower (and related equipment) for the sole purpose of hosting co-users.

**Land management agencies** mean Catchments and Lands, Forestry Corporation and Parks & Wildlife.

**Primary user** means a party that owns and operates a tower (and / or related equipment) for the principal purpose of transmitting communication signals from the site. Primary users can host co-users on their towers and equipment.

**Rental** means the charge or fee that an occupancy rights holder is charged by a land management agency under an occupancy instrument, irrespective of whether that it is a lease, licence or other form of instrument.

**Small country automatic exchanges (SCAX)** are unmanned facilities, located in small huts, that deliver fixed wire telephony services to remote customers.

**Standard site** means any site that is not considered a high value site.

## C List of medium locations

Table C.1 lists UCLs with a population of 10,000 or more (excluding Sydney and areas defined by IPART as high locations).

**Table C.1 Medium density urban locations based on 2011 census data**

<b>UCL name</b>	<b>Population</b>
Albury – Wodonga (Albury part)	45,627
Armidale	19,818
Ballina	15,963
Batemans Bay	11,334
Bathurst	31,294
Blue Mountains	28,769
Bowral – Mittagong	19,726
Broken Hill	18,430
Canberra – Queanbeyan (Queanbeyan part)	35,878
Cessnock	20,013
Coffs Harbour	45,580
Dubbo	32,327
Echuca – Moama (combined VIC and NSW)	16,811
Forster – Tuncurry	18,904
Gold Coast – Tweed Heads (Tweed Heads part)	55,553
Goulburn	21,484
Grafton	16,598
Griffith	17,616
Kempsey	10,374
Kiama	12,817
Kurri Kurri – Weston	13,057
Lismore	27,474
Lithgow	11,143
Maitland	67,132
Mildura – Buronga (combined VIC and NSW)	33,432
Muswellbrook	11,042
Nelson Bay – Corlette	11,060
Nowra – Bomaderry	27,988
Orange	34,992

<b>UCL name</b>	<b>Population</b>
Parkes	10,026
Port Macquarie	41,491
Raymond Terrace	13,217
Singleton	13,961
Tamworth	36,131
Taree	17,820
Ulladulla	12,137
Wagga Wagga	46,913

**Source:** ABS 1270.0.55.004 - Australian Statistical Geography Standard (ASGS): Volume 4 - Significant Urban Areas, Urban Centres and Localities, Section of State, July 2011, Urban Centre and Locality (UCL) Edition 2011 in .csv Format. Population data from ABS website 'QuickStats'.

## D List of local council areas within Sydney location

The following are the local council areas we recommend to comprise the 'Sydney' location category:

- ▼ Ashfield Council
- ▼ Auburn City Council
- ▼ Bankstown City Council
- ▼ City of Botany Bay Council
- ▼ Burwood Council
- ▼ City of Canada Bay Council
- ▼ Canterbury City Council
- ▼ Fairfield City Council
- ▼ Holroyd City Council
- ▼ Hunter's Hill Council
- ▼ Hurstville City Council
- ▼ Kogarah City Council
- ▼ Lane Cove Municipal Council
- ▼ Leichhardt Municipal Council
- ▼ Manly Council
- ▼ Marrickville Council
- ▼ Mosman Municipal Council
- ▼ North Sydney Council
- ▼ Parramatta City Council
- ▼ Randwick City Council
- ▼ Rockdale City Council
- ▼ Ryde City Council
- ▼ Strathfield Municipal Council
- ▼ City of Sydney Council
- ▼ Waverley Council
- ▼ Willoughby City Council
- ▼ Woollahra Municipal Council

The remaining outer Sydney LGAs will remain classified as 'high density':

- ▼ Blacktown City Council
- ▼ Camden Council
- ▼ Campbelltown City Council
- ▼ The Hills Shire Council
- ▼ Hornsby Shire Council
- ▼ Ku-ring-gai Council
- ▼ Liverpool City Council
- ▼ Penrith City Council
- ▼ Pittwater Council
- ▼ Sutherland Shire Council
- ▼ Warringah Council