

6 September 2019



**BROADCAST**AUSTRALIA

a bai communications company

Rental Arrangements for Communication Towers on Crown Land  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop NSW 1240

Submitted electronically

[www.ipart.nsw.gov.au/Home/Reviews/Lodge-a-submission](http://www.ipart.nsw.gov.au/Home/Reviews/Lodge-a-submission)

Dear Sir/Madam

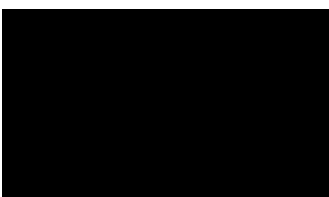
**Review of rental arrangements for communication towers on Crown land**

**Response to Draft Report**

Please find attached a submission from Broadcast Australia in response to the *Review of rental arrangements for communications towers on Crown land– Draft Report, July 2019*.

Thank you for the opportunity to provide comments on this report. Should you have any questions relating to our submission, please do not hesitate to contact Gary Chao by email [gary.chao@broadcastaustralia.com.au](mailto:gary.chao@broadcastaustralia.com.au)

Yours faithfully



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## **Broadcast Australia's submission to IPART**

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

#### **Draft Report**

**July 2019**

Broadcast Australia (BA) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal (IPART) *Review of rental arrangements for communications towers on Crown land – Draft Report, July 2019* (the Draft Report).

BA owns and operates the most extensive terrestrial broadcast transmission network in Australia and acts as a "neutral host" for a range of customers across a range of technologies. BA provides managed transmission services for radio and television (analogue and digital) broadcasters and offers site sharing, co-hosting and infrastructure services to the telecommunications, emergency services and broadcasting industries.

BA's network covers over 630 transmission sites located across Australia, providing opportunities for sharing in metropolitan, regional and remote locations. BA has an existence on over 150 sites in New South Wales (NSW). BA is the facility provider of 25 sites situated on Crown land. BA's relationships with the relevant land management agencies (LMAs) are as follows:

- 16 sites with the Department of Industry - Division of Lands and Water;
- 5 sites with the NSW National Parks and Wildlife Service of the Office of Environment and Heritage; and
- 4 sites with Forestry Corporation of NSW.

BA notes that IPART has considered the relevance of clause 44, Schedule 3 of the *Telecommunications Act 1997* (Cth) which prohibits discrimination against carriers.

IPART should be aware that by reason of section 20 of the *National Transmission Network Sale Act 1998* (Cth), BA (there referred to as NTC) is given the protection of clause 44(1) (and other parts of Schedule 3) as if it was a carrier as defined under the *Telecommunications Act 1997*.

BA makes the following submissions with respect to the matters raised in the recent Public Hearing and the Draft Recommendations that are included in IPART's Draft Report. BA trusts that IPART will consider various impacts and potential risks affecting not only BA, but also the wider communication site users and essential service providers. We look forward to parties working together on a mutually agreeable rental structure which will be adopted in the Final Report.

## DRAFT RECOMMENDATIONS

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

Determining the appropriate rents for communication sites has been an issue for some time and proves difficult to address.

While BA agree with the comments made by Brett Everett (IPART), that a fee schedule that reflects “fair, market based commercial returns, which is simple, transparent and cost reflective”, it does not believe that the best indicators of private rents are those that are paid by commercial users.

The major issue is that the IPART Draft Report does not appear to address the pricing discrimination against carriers under the Telecommunications Act 1997 (CTH). As stated in our previous submission and again at the recent Public Hearing the precedent set in the Telstra v State of Queensland case shall be the basis for determining the rents on Crown land. The court had given direction that the State Authorities are not permitted to reflect the private market when looking at the rentals of Crown land”.

Another issue encountered by utilising this method would be that private land has a variety of permissible uses under the various zoning restrictions that may change over time and that this can affect the rental being paid to compensate the landlord for future development. This is not the case with Crown Land where the zoning is usually “Open Space” with little or no future development potential.

Any negotiation, therefore, needs to be open and acknowledge the zoning of the land, related to any comparable evidence provided to reflect the compensation or rent paid.

The 6% return on the unimproved land value provided by the Valuer General of Queensland for telecommunication sites is actually based upon the telecommunication use, not the constrained value as suggested by IPART. BA would consider this to be the most appropriate return on the land utilised as it captures the specified use of the land as a telecommunications facility plus is an equitable measure for all stakeholders.

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

**Table 5.1 Draft recommendations on annual rents for primary users on existing sites from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per site	33,700	16,900	13,500	9,900

The Draft Recommendation is generally acceptable to BA. The above rents schedule represents a reduction to the current IPART fee schedule and any reduction would be an acceptable outcome. However there is a concern, as stated during the Public Hearing that the schedule “perhaps does not tell the whole story” due to the introduction of size limits to compounds and that “perhaps for most communication sites those compound sizes are not adequate”.

The issue around generic size compounds needs to be clarified as many BA sites exceed the suggested site areas proposed in the IPART document which would result in excessive charges. We note from the IPART Public Hearing that existing site leases will not be affected by the compound area limits, however, we would need IPART to clarify the situation with lease renewals where the existing tenure still remains unaffected.

Alternatively we believe that the site rent based on the 6% of the unimproved land value model as adopted by Queensland is considered more appropriate.

3. *Location definitions for High and Medium locations are refined.*

*Locations are defined as:*

***Sydney:*** *local council areas in metropolitan Sydney with a population density greater than 1,800 people per kilometre (as listed in Appendix A).*

***High:*** *ABS significant urban areas of Sydney (excluding local areas included in the Sydney category above), Newcastle – Maitland, Wollongong, Central Coast and Morisset – Cooranbong.*

***Medium:*** *areas within 12.5km of the centre of the urban centres and localities (UCLs) defined by the ABS as having a population of 10,000 or more based on the 2016 census (as listed in Appendix B),*

***Low:*** *the rest of NSW.*

BA acknowledges IPART's attempt to simplify the rental arrangements on Crown land. However, BA does not support the use of a location category based system to determine rents. The adoption of geographical categories to determine rents has been an issue from the beginning and has seen a gradual increase to rents at each opportunity.

It has been suggested that no location categories would be required if the rents were determined by a percentage return on the unimproved land value as provided in our previous submission.

In terms of transparency we suggest that a fair approach would be for the LMAs to provide rental details being paid by other occupiers on Crown land in NSW. These rents should be taken into consideration by IPART in its deliberation. This would also ensure transparency in the setting of rent levels and would enable carriers to determine that Crown Lands is complying with the non-discrimination provisions set out in clause 44, Schedule 3 of the *Telecommunications Act 1997* (Cth).

- 4. The following services are included in the rents for new and existing primary users on Crown land: All lessor costs of preparing and assessing leased applications use of existing tracks at no additional cost. Where additional access roads are required the costs of building and maintaining should be set with reference to a benchmark rate.***

BA supports this Draft Recommendation in principle.

BA would agree that the annual rent for the installation of a communications facility needs to be all inclusive. Utilities such as electricity and fibre cable need to be delivered to the site as well as ongoing maintenance and security. The inclusion of lessor costs in the annual rent is a sensible approach and should be applied to existing and new sites.

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

**Table 6.1 Draft recommendations on annual rents for primary users on new sites and SCAX sites from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per m <sup>2</sup>	1,123	273	203	124
Rent per site varies depending on land size	For a median land size of 30 m <sup>2</sup> for Sydney sites, rent would be \$33,690	For a median land size of 60 m <sup>2</sup> for High sites, rent would be \$16,380	For a median land size of 65 m <sup>2</sup> for Medium sites, rent would be \$13,195	For a median land size of 80 m <sup>2</sup> for Low sites, rent would be \$9,920

There are several issues that are of concern with adopting a fee schedule where rents may vary due to location and land size. There appears to be inconsistencies between the above rents schedule and the Terms of Reference.

It has been argued the introduction of a rent based on land area will ensure occupiers limit their use of the land, however, this is misleading. There has never been an approach taken by occupiers of Crown Land to abuse the use of land for its sites and over the years the industry and technology has evolved to ensure that the areas required are minimised.

Furthermore, the large portion of land in NSW controlled by the three Crown agencies has created a potential monopolistic effect which should not be taken advantage of by the respective agencies.

The concerns for BA lie with IPART's interpretation of the size of the median compounds. Please note that "the median site area of 100 square meters is not normal for us" which indicates that this method requires further investigation and consideration.

For instance, if BA was to establish a new communications facility on Crown land, the minimum land area required would be approximately 400 square meters. This would equate to an annual rent of \$49,600 for a "Low" site and \$81,200 for a "Medium" site based on the Draft Recommendation. Clearly these rents would be economically unsustainable.

In light of the above it is important that IPART sets a cap on the annual rents charged based on the Draft Recommendation number 2.

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

As BA has no SCAX sites, we have no comments on this recommendation.

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

As BA has no SCAX sites, we have no comments on this recommendation.

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

**Table 7.1 Draft recommendations on annual rents for co-users and small cell technology from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per m <sup>2</sup>	1,123	273	203	124

BA does not agree with the draft recommendation from IPART that co-users on existing sites should be charged for additional land occupied outside the perimeter of the primary user's communication tower site. The preferred alternative would be for the allowance of the primary user to extend its compound at a nominal charge ie. \$508 per annum.

We further suggest that IPART should set a cap on the annual rents charged in the Final Report.

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

BA's suggestion is that co-users are simply charged at the recommended figure of \$508 per annum. Furthermore the primary user should also be permitted to extend the existing compound at the same rate.

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

BA understands that IPART is unwilling to remove the co-user rent concept from its Draft Report. In this regard BA would support this Draft Recommendation on the reduced rent for co-users wholly located within the primary user's site.

There has been the industry's perception that co-tenants pay "excessive charges" for using existing compounds. Hence any recommendation that would lead to a reduction of co-user's rents would be a favourable outcome for the industry.

Notwithstanding the above BA prefers that there would be no charge for co-users, as LMAs are already receiving an income for an area that is leased to an individual tenant. LMAs should not impose a co-user charge for rental for equipment that is on BA's infrastructure.

It is standard market practice in the property sector that a co-user (sub tenant) does not pay rent to the head lessor if they do not have an exclusive lease area.

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

BA does not have any small cell technology customers at the moment, however, this particular piece of infrastructure is simply an advancement of the transition from 4G to 5G, whereby, BA would suggest no charge should be levied.

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

As above – please refer to response 11.



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

BA supports this Draft Recommendation.

The industry would welcome the recommendation from IPART that rents for all communications sites on Crown Land be set according to the rent schedule for the relevant location and that negotiation of high value sites are not permitted in future.

The "High Value" category was an ineffective component that did not reflect the true nature of the industry. It should be noted the category has never existed in the private marketplace and was another flawed approach adopted in 2005 and 2013 by the IPART appointed consultant.

**14. That the Office of Environment and Heritage continue to set the rent for sites in National Parks one location category higher than the sites actual category.**

BA disagree with the Draft Recommendation, whereby, the Office of Environment and Heritage continue to set the rent for sites in National Parks one location category above the other Departments.

It would appear National Parks developed this category as a strategy to achieve additional revenues under the façade of social and cultural values. When Parliament amended the National Parks and Wildlife Act in 2003, allowing the NPWS power to authorise new communication sites on reserved lands, the intention was made clear that this would need to lead to a net financial benefit to NPWS.

It should be noted sites on NPWS land are usually seen as the last option due to the expense and are generally avoided where possible.

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

Infrastructure providers should not be disadvantaged from investing on Crown land to provide a communications facility that would not otherwise be available.

The initial concern is that it is unknown if it is the intention of IPART to limit rent charged for infrastructure providers to the area taken up by their assets. Clarifications

need to be provided on the recommended rent charged for the tower, or the entire fenced compound or other co-user assets.

BA does not agree with the complexities provided in the IPART system, rather, it is our view the rent should be determined based on a certain percentage of the unimproved land value. This particular rent valuation methodology is consistent with the recent legal precedent and has been adopted by one of the LMAs in Queensland.

Furthermore, it is our view that the current 30% discount set for the infrastructure provider is low given the co-users' implications at these sites. The proposition in the 2013 review to phase out the infrastructure provider discount acts as a disincentive to develop infrastructure. We again suggest IPART should consider granting the infrastructure providers the same discount level as the co-users.

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

BA's view is that community groups should receive some assistance in this area, whereby, they should be encouraged to enter existing compounds or any co-location should be levied at a nominal amount. Encouragement of essential services is paramount. Adding excessive costs to these groups will simply discourage services which are vital in times of emergencies for the general public as a whole and would be seen as a responsibility of the Crown.

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

BA agrees to the recommended commencement date of 1 July 2020.

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

BA has no additional comments in this area.

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

BA has no additional comments in this area.

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

BA supports this Draft Recommendation. It is widely agreed that the industry accepts rental to be subject to a CPI adjustment annually.

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

BA would support this Draft Recommendation in general. We recognise the fact that IPART has made an attempt to simplify the rent schedule which is encouraging. Having said this, there still needs to be attention directed towards the various rent categories which should be determined based on the precedent set in the Telstra v State of Queensland case. This methodology covers and addresses the issue of land valuation and the application of a non constrained land value, which was highlighted by David Sullivan (Telecommunications Specialist Valuer) at the recent Public Hearing. It was further highlighted by Mr Sullivan that the unconstrained land value was also captured in the assessments by the NSW Valuer General and, as such in this regard a 6% return based on this assessment would meet expected commercial returns for any owners of the land.