

12 April 2019

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

Dear Mr Willett and Ms Cope

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

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

CRA welcomes this opportunity to respond to the Issues Paper released by the Independent Pricing and Regulatory Tribunal (**IPART**) on 26 February 2019 in relation to the Review of rental arrangements for communication towers on Crown land (**Issues Paper**).

The matters raised in the Issues Paper represent a significant issue for many of our members, who frequently use Crown land to support the installation and operation of radio transmission infrastructure and the provision of free-to-air commercial radio broadcasts.

This submission has been supplemented with separate submissions by our members and those submissions should be read in conjunction with this industry submission.

Key messages

- **IPART's approach to determining "efficient rents" is structurally flawed and unnecessarily complex:** While seemingly seeking to respond to the terms of reference set by the NSW Government, IPART's proposed approach to determining efficient rents by reference to willingness to pay and opportunity cost is unworkable. It lacks objectivity and is unduly complex.
- **Rental charges are excessive:** The outcome of IPART's proposed approach, which does not materially deviate from its current approach, is excessive rents that seek to maximise the revenue generation opportunities from Crown land for the NSW Government at the expense of site users. The rental amounts chargeable for the use of Crown land are excessive and unjustified. They are well in excess of comparable prices for access to private land.
- **IPART's approach to geographic zoning and co-user charging compounds the excessive nature of the existing charging structure:** The negative impact of IPART's

approach is exacerbated by its approach to these two issues, which contribute to over-charging.

- **A new approach is needed:** CRA strongly encourages IPART to undertake structural changes to its approach for setting rental charges for access to communications towers on Crown land. We consider that a simplified approach is needed, comprising the following elements:
 - ❖ a **new pricing approach** that links rental charges to a fixed percentage of the averaged land value for the relevant geographic area, with that average being determined by reference to the relevant local council area or a broader geographic banding where there are similarities in land values between comparable local council areas;
 - ❖ **reform of the current location categories**, with a shift to geographic “bands” historically used by the ACCC to regulate fixed telecommunications services. These bands include CBD areas (Band 1), non-CBD metropolitan areas (Band 2), regional areas (Band 3) and remote areas (Band 4). Where there are wide variations of land values within a band, then IPART should use of sub-bands to group logically similar geographic areas when determining rental charges;
 - ❖ **reform of co-user charges**, including the introduction of a discount for infrastructure providers and a substantial increase in the co-user charge discount from 50% to 90%; and
 - ❖ **the abolition of posted prices for high-value sites** to encourage greater price negotiation and price discovery by land management agencies.

Use of Crown land by commercial radio broadcasters

Our members currently operate commercial radio services that are dependent on access to Crown land in NSW.

Analogue commercial radio broadcast transmissions are managed separately by each commercial radio broadcaster in the licence coverage area. This typically involves carriage of the relevant radio broadcast signal of each broadcaster from each radio station to a nearby transmission tower via redundant fibre links. These towers are usually operated by a third-party infrastructure provider, such as TXA and BAI Communications, from where the signal is broadcast into the radio licence area.

In addition to the main transmitter sites, it is often necessary for each broadcaster to supplement its main transmission infrastructure with extension infrastructure, known as repeaters or translators. This fulfils broadcasters’ regulatory obligation to broadcast within the entire radio licence area. Extension infrastructure is often deployed in less built up areas, with the precise location determined by reference to multiple engineering considerations, including site elevation, signal propagation characteristics and proximity to supporting infrastructure.

There are often positive benefits to listeners and local communities from having free-to-air services available within an entire licence coverage area. However, the additional investment costs in site access, transmission infrastructure and related activities typically

create a deadweight loss for broadcasters, as they do not generate any incremental advertising revenues for the relevant broadcaster. Accordingly, the willingness of licensees to pay for additional sites is usually zero or close to zero.

For analogue and digital radio extension infrastructure, the size requirement for plots of land are typically very modest, often amounting to no more than a few square metres to host an antenna and support facilities on a hilltop, or third-party tower or rooftop.

In less densely populated areas, due to the need for site elevation to support signal propagation, there may be few alternatives to Crown land. Further, once the infrastructure is installed, it is often difficult from a cost and regulatory standpoint to relocate that infrastructure. This is because the location of extension infrastructure is usually embedded into the licence terms of the relevant licence holder. Consequently, licensees tend to have limited countervailing bargaining power with site owners and often have little, if any, choice but to accept rental increases.

Responses to IPART's consultation questions

1. Do you agree with IPART's proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?

We are strongly opposed to IPART's proposed approach for this review.

It is very clear that IPART's approach, while seemingly seeking to respond to the terms of reference that have been set by the NSW Government, has been predicated on a set of objectives that seek to maximise the revenue generation opportunities from Crown land for the NSW Government.

Specifically, IPART's proposed approach of determining "efficient rents" for Crown land, with the range of such rents being linked to user's willingness to pay and the opportunity cost of land agencies, is highly questionable from an economic perspective and raises a series of difficulties from a practical perspective.

The outcome of such an approach is excessive and unjustified rents for access to Crown land that bear no resemblance to the underlying value for the land or comparable rental charges payable for access to private land.

A more detailed explanation of these flaws is provided in our responses to Questions 2 – 7.

IPART's approach is also exacerbated by flaws in its approach to the following matters:

- categorisation of location, which lumps the bulk of NSW in the "Sydney" location category, despite existence of wide variations in population density, property values and other factors across the covered areas; and
- IPART's proposed approach to co-user charging, which results in duplicative charging of co-users and fails to align to established approaches for sub-letting access to multi-user sites.

2. Do you agree with our proposed definition of efficient rents for communication

tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?

CRA strongly disagrees with the proposed approach of determining "efficient rents" for tower sites on Crown land by reference to willingness to pay and opportunity costs.

Such an approach for defining "efficient rents" is flawed and lacks credibility. It is unduly complex and is attended by a range of implementation challenges that IPART does not convincingly address in its Issues Paper.

The use of an approach that considers opportunity costs and willingness to pay will always result in a debatable outcome. This is because willingness to pay is often a private value that is difficult objectively to measure or infer, particularly in the absence of a market-based process to reveal that value (such as an auction process). Consequently, in virtually all cases, there is likely to be significant scope for disagreement as to what the opportunity cost and willingness to pay will be.

This is further complicated by the fact that IPART's approach is seeking to use willingness to pay as an input to set a single unit price for rent in each geographic location. This is just not a credible approach when you are dealing with over a thousand sites, scattered all over the State.

The number of factors and permutations that would be needed to do this credibly is extremely high. For example, IPART's proposed approach to willingness to pay is predicated on the maximum a user would pay for accessing the site, or the economic value it would derive from its use. In turn, IPART seeks to use the economic value that users can obtain from the site, the existence of alternative sites and features of the site in question to infer the willingness to pay.

However, willingness to pay will not be same between each user or type of user. It will also vary depending on the site and location in question and will be influenced by a range of other factors, such as the extent of a user's regulatory obligations, the availability of alternative sites and costs of decommissioning and relocation.

IPART's approach to determining willingness to pay is also based on a series of incorrect assumptions. For example, IPART's theory is that broadcasters and carriers receive "additional network benefits" on the basis that the site contributes to broader network of interconnected facilities, which increases the economic value that can be derived from that network.

This is simply not correct.

Commercial radio broadcasters derive little, if any, additional benefit from deploying extension infrastructure to supplement a broadcaster's main transmission facility. The impact that such additional investment would have on advertising revenues would be *de minimis* and in virtually all cases would constitute a deadweight loss for the individual broadcaster. This is because the bulk of the addressable market covered by the relevant licence area will usually already be serviceable through a licensee's main transmission site.

Similar difficulties arise in the context of evaluating and pricing opportunity costs in the context of thousands of sites throughout NSW. Unlike situations where there is a specific

area of land that is located in a specific area and used for a specific purpose (e.g. an airport), an assessment of the opportunity cost of thousands of disparate plots of land is not a workable approach to determining opportunity cost, particularly where these costs are then aggregated into a single unit price for a geographic area.

CRA is very concerned that IPART's proposed approach is overly complex and prone to error and over-estimation.

The fact that IPART has sought to effectively replicate its previous approach from the 2013 review is disappointing, particularly after the virtually universal criticism it received during that process.

CRA strongly submits that IPART should move away from its existing approach in favour of a simpler and more straightforward approach. There is enough scope within the NSW Government's terms of reference to permit IPART to do this. The terms of reference appropriately provide for the development of a fee schedule that reflects "fair, market-based commercial returns" and which is developed having regard to:

- recent market rentals agreed for similar purposes and sites
- recent land valuations
- the framework established by IPART in the 2013 review
- the land management agencies' legislative requirements
- other matters, such as telecommunications specific legislative requirements.

The terms of reference are sufficiently broad to enable IPART to take a different approach to its current proposal and as part of its review, to reject the framework that it previously adopted in 2013-2014.

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

Such a reform would need to be implemented in conjunction with a shift to geographic "bands" proposed in our response to Question 8 below. This would involve redefining the geographic bands used for charging purposes to align with the bands previously used by the ACCC in relation to the regulation of fixed telecommunications services. These bands include CBD areas (Band 1), non-CBD metropolitan areas (Band 2), regional areas (Band 3) and remote areas (Band 4). Where there are wide variations of land values within a band, then IPART should use of sub-bands to group logically similar geographic areas when determining rental charges

Such a model would be consistent with the terms of reference, providing a fair, market-based approach that delivers the NSW Government commercial returns. However, it would do so in a way that avoids the excessive pricing that exists in the current framework which IPART is looking to replicate in its Issues Paper.

Further consultation will be needed to develop a proposal that aligns with CRA's suggested approach, but we consider that this will reflect a better outcome for all stakeholders.

3. What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)?

As noted above, CRA does not agree with IPART's proposed approach to using willingness to pay to determine efficient rents.

CRA does not consider that this should be a relevant consideration and that a broader review of IPART's overall approach is needed.

4. Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)?

It is common for the rental arrangements for site access to cover all relevant aspects associated with usage of the site.

This includes:

- the right to use the relevant plot of land and to erect structures upon it
- the right to enter and exit the property (e.g. for the purpose of installing, operating and maintaining the relevant transmission equipment).

The main exception to the above is usage-based charges, such as electricity costs.

It is common for each site user to take responsibility for procuring its own electricity supply. However, in some cases, electricity may be procured indirectly by the site owner or infrastructure provider. In such a case, electricity costs would also be chargeable as a separate item, usually on a cost pass through basis.

To the extent that there are one-time charges associated with an activity, such as site preparatory works and the set-up of a separately metered power supply, then these may also be chargeable separately.

5. What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets?

As noted above, CRA does not agree with IPART's proposed approach to using willingness to pay to determine efficient rents.

CRA does not consider that this should be a relevant consideration and that a broader review of IPART's overall approach is needed.

6. How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?

As noted above, CRA does not agree with IPART's proposed approach to using opportunity cost to pay to determine efficient rents.

CRA does not consider that this should be a relevant consideration and that a broader review of IPART's overall approach is needed.

7. What do you consider to be a ‘fair’ sharing of any differences between a user’s willingness to pay and the opportunity cost of a site?

As noted above, IPART’s proposed approach to “efficient rents” is flawed.

The fact that IPART’s suggested approach requires a methodology for the “fair” sharing of the difference between the opportunity cost of the site and the user’s willingness to pay suggests that the whole approach is unduly complex and prone to error and over-estimation.

8. Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories?

Existing schedule of rental fees is excessive

CRA submits that current market evidence strongly suggests that the existing schedule of rental fees by location is excessive. The rental amounts that are suggested by IPART reflect a multiple of the rental amounts that are typically payable by our members to private land owners.

As an example, one radio broadcaster was asked to pay \$4,475 per year for a rural site approximately the size of a shipping container. The broadcaster rents a nearby private commercial site, of the same size, for \$2,091 per year. This is typical of the experience of many radio broadcasters.

As the above data demonstrates, the existing schedule of rental fees is completely out of line with market rates. The fact that such a disparity exists is concerning and validates the previous criticisms that have been made in relation to IPART’s approach.

While CRA appreciates that the objective of the review is to ensure that the fee schedule reflects “fair, market-based commercial returns” and CRA is supportive of this objective, these data points suggest to us that the current fee schedule goes well beyond what is fair and reasonable.

Location categories encourage overcharging

CRA is also concerned by the current location categories that are used to determine rental fees. The current location categories and associated rents are as follows:¹

Location category	Description	Annual rent (2018-2019, exclusive of GST)
Sydney	Local council areas in metropolitan Sydney with a population density of more than 1,800 people per square kilometre	A\$36,068

¹ https://www.industry.nsw.gov.au/_data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf

High	Local council areas in metropolitan Sydney with a population density of 1,800 people per square kilometre or less, and greater metropolitan areas such as Central Coast, Newcastle and Wollongong	A\$30,056
Medium	Areas within 12.5 kilometres of the centre of 37 Urban Centres and Localities (as defined by the ABS) as having a population of 10,000 or more	\$16,697
Low	All other areas of NSW	\$8,014

CRA does not consider that these location categories are appropriate. These categories are flawed on a range of grounds:

- the “Sydney” location category is excessively wide, picking up very large parts of the Sydney area despite the very wide variations in land values in the various local council areas covered by this category. The implication of this approach is rental amounts in the Sydney CBD (City of Sydney Council area) should be equivalent to what is payable in suburban and other less densely populated areas in Western Sydney and beyond, such as Fairfield City Council, City of Parramatta Council and Cumberland Council areas). This shows that the “Sydney” category is not fit for purpose and needs to be reduced to limited sub-set of genuinely high-value areas
- the rental amounts for the “High” location category, which encompasses local council areas in less densely populated areas in metropolitan Sydney is also excessive, providing only a modest reduction on the “Sydney” location charge. In addition to the skewed relativities, such rates are out of line with land valuations and market rents for these areas and therefore need to be reduced; and
- the rental amounts for “Medium” and “Low” location categories are also excessive. These areas are often country towns and regional centres with very low levels of population density. It is simply not credible to suggest that the annual rental amounts that are currently used represent an appropriate proxy for these areas.

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

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

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

		smaller provincial towns
Band 4	Remote areas	Rural and remote areas

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

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

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

9. Are the current location categories reflective of recent data on population density?

Please refer to our comments in section 8 above.

We consider that the current location categories represent the wrong approach.

Consequently, the use of population density in an isolated way as per the current approach is also flawed, resulting in banding of highly disparate geographic areas into a single category.

10. What is the appropriate rent discount for co-users?

CRA remains concerned about IPART’s apparent preference for a continuation of the existing 50% discount rate for co-users.

This approach is flawed for a range of reasons and compounds the over-charging issue identified above. In particular:

- the co-user charge effectively results in double and triple dipping for multi-user sites, such as transmission towers. For example, a site with two additional co-users would effectively double the rental income payable to the NSW Government and four co-users would triple that amount. That is excessive and unreasonable, particularly when regard is had to the initial level of rents which have been set, and which inevitably get passed through to co-users in any event
- it runs contrary to existing practices (on private land) where it is common for the head lessee to sub-let access to their site to smaller user to defray their own rental costs and to improve the utilisation of tower resources

CRA submits that the co-user discount needs to be substantially increased to encourage higher levels of co-location on Crown land. This can be achieved through an increase in the

co-user fee discount to (say) 90% so that any resulting co-user charge is only a nominal amount. In practice, this will mean that co-users will only need to pay 10% of the amount being paid by the primary user.

However, CRA also notes that, while an increase of the discount level to 90% is appropriate by reference to current rental charging levels, it may be that a less aggressive discount rate may be appropriate in situations where IPART undertakes structural reform to its overall approach to reduce the starting point for rental charges.

11. Should infrastructure providers receive a discount relative to primary users?

Commercial radio broadcasters often have strong incentives to use infrastructure providers, as these are purpose-built facilities, usually have reasonable connectivity options and operate on a neutral basis as between users. This is reflected in the fact that many of the sites used to support on-channel repeaters in the rollout of digital radio services are multi-user sites operated by infrastructure providers, such as Axicom and BAI Communications.

CRA generally supports the use of a discount to infrastructure providers on the basis that this is likely to drive economic efficiencies downstream and encourage higher levels of co-location at sites by co-users.

However, this will only be effective in driving increased usage if such discounts for infrastructure providers are complemented by a discount in the co-user charges that are payable. As noted above, the co-user charge should be a nominal amount.

BEM Property Consultants had previously recommended a 30% discount for infrastructure providers. We consider that it would be worthwhile for IPART to reconsider its position on this matter.

12. Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?

The rebates that are currently available are limited to a small subset of users, which does not include commercial radio broadcasters and other major users of towers on Crown land.

If IPART does not reduce the rental rates in the fee schedule, then CRA submits that there may be merit in considering an expansion in the list of user groups that will benefit from rebates.

As noted above, the deployment of extension transmission infrastructure by commercial radio broadcasters is a marginal activity that does not generate any additional revenue for commercial radio broadcasters but generates some positive externalities associated with the increased availability of free-to-air services for the local communities in regional areas.

CRA's preference is to avoid a situation where the commercial radio sector needs to advocate for concessional discounts. CRA's primary preference is for IPART to reform the quantum of rental charges by reference to a simplified land value approach and to take steps to reform the location categories and co-user charging arrangements which compound the identified issues with over-charging.

13. Should the current rent arrangements based on site-by-site negotiation for

high-value sites be continued?

CRA agrees with IPART's observation that there appears to have been only limited site-by-site negotiations for access to high value sites. Our understanding is that the "Sydney" rate is typically set by the relevant agency as the applicable charge with little scope for negotiation.

The effect of having a "Sydney" rate is that agencies appear to prefer to use it as a default price, rather than a "price ceiling". As the rental amounts are already excessive and out of line with comparable rates for Crown land sites, agencies appear to have little incentive to undertake negotiations in good faith, as the outcome of such negotiations would be a reduction, rather than an increase to rental charges. Accordingly, agencies have an incentive to "play it safe" by sticking to the published rental price.

Our members have also observed that land agencies have also started to use these posted prices for access to other types of land, resulting in these prices becoming a "baseline charge", notwithstanding the fact that there is no obvious correlation between access to those sites and Crown land used for tower access.

CRA submits that if the existing policy of having site-by-site negotiations is to be continued, it needs to be reformed so that it works in an economically efficient way that facilitates price discovery and results in outcomes that align.

As high value sites are typically situated in areas where reasonable alternatives are more likely to exist and rental charges for access to private land will be easier to ascertain, CRA would potentially support a situation where the rental charge for the "Sydney" area (Band 1 in our proposal) are not subject to posted price regime and are subject to negotiation on a case-by-case basis. We consider that this would probably reflect a better approach and would remove any incentives on government land agencies to simply revert to a default posted price.

14. Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-value sites? If so, what site characteristics would need to be included in the formula to determine the rent?

CRA submits that this is likely to introduce unnecessary complexity into the price discovery process. Our preference is to leave these matters open and subject to commercial negotiation on a case-by-case basis. This is because these matters will vary on a site-by-site basis and it will be difficult for these to be determined upfront in a formulaic way.

15. Do you agree with our proposed approach for assessing the impact of our recommendations on users?

As noted above, CRA does not agree with IPART's proposed approach to determining efficient rents. Consequently, CRA considers that a broader review of IPART's overall approach is needed.

16. Is the current approach of adjusting rents annually by the CPI appropriate?

CRA supports an annual CPI based adjustment mechanism to rental charges.

However, as noted above, CRA's primary concern relates to the starting point for rental charges and the associated location categories and co-user charging anomalies.

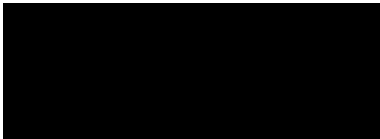
A CPI based adjustment mechanism makes little sense if these primary concerns cannot be addressed as part of this review.

17. Should the fee schedule continue to be independently reviewed every five years?

CRA supports a periodic review of the fee schedule and considers that five years is an appropriate review period.

Please contact Joan Warner on [REDACTED] for clarification on any aspect of this submission.

Yours sincerely

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Joan Warner
Chief Executive Officer