INDEPENDENT PRICING AND REGULATORY TRIBUNAL

REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION TOWERS ON CROWN LAND

Tribunal Members
Mr Ed Willett and Ms Deborah Cope

Members of the Secretariat
Ms Fiona Towers, Mr Brett Everett,
Ms Heather Dear and Mr James Diment

At

The Corinthian Room
SMC Conference and Function Centre,
66 Goulburn Street, Sydney

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OPENING REMARKS

MR WILLETT: Thank you, everyone, for your patience. We will now get underway.

Good morning, My name is Ed Willett. I am a member of the Independent Pricing and Regulatory Tribunal.

I would like to begin by acknowledging that we are meeting on the Gadigal land of the Eora people, and I would like to pay my respects to the traditional custodians of that land and Elders both past and present.

I welcome you to this public hearing, which is part of our consultation process for our review of the rental arrangements for communication towers on Crown land.

I am joined today by my fellow Tribunal member, Deborah Cope. Assisting the Tribunal today are members of the IPART secretariat: Fiona Towers, Brett Everett, Heather Dear and James Diment.

Today's hearing provides you with the opportunity to comment on our draft recommendations for rental arrangements for communication towers on Crown land.

The hearing is being transcribed and the transcript will be placed on our website. So that we have a complete record, please introduce yourself when you speak.

I would like to thank those who have participated in this review to date, particularly those who have provided a written submission in response to our issues paper for this review. Our issues paper, submissions on the issues paper and our draft report are all available on our website.

As well as the discussion today, we are seeking written submissions on the draft recommendations in our draft report. The closing date for written submissions is 9 August. Our final report is due to be submitted to the Premier and Ministers in September 2019, with a view to a revised fee schedule being applied by land management agencies from July 2020.

I will now turn to a brief overview of this review to date.

The New South Wales government asked IPART to review the rental arrangements for communication towers, located on Crown land managed by three government agencies - the Department of Industry's Division of Lands and Water; the Office of Environment and Heritage, and Forestry Corporation NSW.

Our terms of reference for this review ask us to provide advice on a fee schedule that reflects "fair, marketplace commercial returns". In forming this advice, we are to have regard to:

- Recent market rental agreed for similar purposes and sites;
- Relevant land valuations;
- The framework we established in the 2013 review; and
- The land management agencies' legislative requirements.

The fee schedule is also to cover rental arrangements for emerging communications technology.

As part of the review, we are to consider a range of matters, including the government's preference for a fee schedule that is as simple, transparent and cost reflective as possible.

We also have to have regard to clause 44 of schedule 3 of the Commonwealth Telecommunications Act, which prohibits discrimination against telecommunication carriers by state law.

This is the third time IPART has undertaken a review of rental arrangements for communication tower sites on Crown land. The previous reviews were in 2005, and 2013.

Since our last review six years ago, the communications landscape has continued to evolve with technological innovations and greater demand for mobile data capacity. Therefore, we developed an approach that allowed us to consider the principles that underpin the rental arrangements we recommended at our last review and update the range and sources of data we used previously.

We firstly considered the appropriate basis for setting rents that would meet our terms of reference and analysed two main options for setting rents, and whether they should reflect economically efficient prices, or the unimproved land value of the site.

We used a range of market evidence for this analysis including data on recent land rentals for commercial users of communication tower sites on private land and relevant land valuation. We examined the relationship between these land rentals and the range of factors that can influence the buyer's willingness to pay and the seller's opportunity costs in the communication tower site rental market. We also considered land values for these sites published by the NSW Valuer General.

For the next step, we considered how to apply the rental arrangements to different sites and users of those sites, including:

- How rents should be set for existing primary users;
- Whether the current location categories were appropriate;
- What arrangements should apply for new sites and for SCAX sites;
- How to set rents of co-users and small cell technology;
- Whether to continue to allow site-by-site negotiations for high value sites; and
- Whether rebates should continue to be available for certain types of users.

We then considered the impact on different users of our proposed rental arrangement and how rents should be adjusted over time.

I am going to turn over to staff members Brett Everett and Heather Dear, from the secretariat, who will give a brief overview of our draft recommendation.

I will then turn to discussion, firstly, from those at the table and then from the general audience. So, Brett?

OVERVIEW OF IPART'S DRAFT RECOMMENDATIONS

MR EVERETT: Thank you, Ed. I am Brett Everett from IPART.

As Ed mentioned, the first step in our approach was to decide on an appropriate basis for setting rents, given the terms of reference that were provided to us by the New South Wales government - that is, a fee schedule that reflects "fair, market-based commercial returns", and is as simple and transparent and-cost reflective as possible.

We found that annual rents for communication tower sites on Crown land should reflect recent market rentals for similar sites on private land. Because these rentals are agreed in a workably competitive market, we consider they are likely to reflect efficient prices for communication tower sites and therefore reflect "fair, market-based commercial returns".

In submissions to our issues paper, many site users disagreed with this approach. Most of these stakeholders argued that rents should instead be set to reflect a certain percentage of land value of the site, for example 6 per cent.

We consider that rents paid by commercial users of communication tower sites on private land are a better indicator of efficient prices and reflect fair, market-based returns given the nature and extent of the use of the land. Assessed land valuations are typically generic and do not necessarily reflect the nature and extent of the use of the land for communication tower sites. As a result, an approach based on land valuations alone does not reflect fair, market-based returns.

We also found that setting rent based on the land value of the site could not be simpler than our recommended fee schedule. The Valuer General's policy is that valuers should "value land subject to telecommunication leases separately from the adjoining land". In practice, we found very few instances where a separate valuation has been made for communication tower sites on private land and no instances for sites on Crown land.

The second step in our review involved deciding on a rent charging methodology for all sites, looking at existing sites as well as new sites. To do this, we compared the rent derived using the current approach to updated market figures. Next we considered whether to maintain a rent schedule for primary users on existing sites with four location categories and, if so, whether the levels of the rents remain appropriate. We also looked at how the location categories and the services that are provided under the schedule should be defined.

Our analysis of market data found that the four existing categories - Sydney, high, medium and low - which you can see on this slide, continue to reasonably reflect the variation in market rents or sites on private land by location, while at the same time keeping the rent schedule simple, transparent and easy to implement. Other factors, such as elevation, for example, did not provide a better indication of market rent than the existing location categories.

However, our analysis also found that the rents for primary users determined by the existing rent schedule can be better aligned with market rents for sites on private land in the same category. We found that rents for sites on Crown land in the Sydney, high and medium categories are generally higher rents on private land by varying degrees, and that those in the low categories are generally lower. Our recommended rent levels are shown on this slide here.

While our analysis of market data supports retaining the existing location categories, we think that the definition of high and medium categories needs to be refined and clarified.

We are recommending that high locations be defined as those in the Australian Bureau of Statistics (ABS) significant urban areas of Sydney, of course, excluding those council areas that are already captured by the Sydney category. It also includes Newcastle-Maitland, Central Coast and Morisset, Cooranbong and Wollongong.

We are also recommending that a list of UCL centre points be published for medium locations and that the list of relevant UCLs be updated to reflect population information from the 2016 census.

You can see that the slide here shows the changes between the existing

high category sites and what we are proposing in a white colour, and the red colour shows our draft recommendation for our proposed high sites.

Under the current arrangements, the services covered by the rent schedule are also not explicitly defined. As a result, the land management agencies may charge a range of fees in addition to the rent schedule. Our analysis of private leases found that most leases do not charge additional fees. Given that we have used these private leases to inform our recommended rent levels, we are recommending that rents for new and existing users of Crown land include all lessor costs of preparing and assessing lease applications and use of the existing roads and tracks at no additional cost.

Where additional access roads are required, the costs of building and maintaining them should be set with reference to a benchmark rate, with the lessee responsible for these costs. We are seeking further information from the land management agencies around this area and we will look to make recommendations in our final report.

After deciding on a rent schedule for existing sites, we next turned to what arrangements should apply for new communication tower sites and SCAX sites.

We consider that rents for primary users on new communication tower sites should vary by land size as well as by location. We consider it reasonable that users have an incentive to pay for the land that they use. We are therefore recommending that:

Rents on new sites should be charged on a per metre squared basis; and

Rates per square metre should vary according to the same four location categories we are recommending for existing sites.

We calculated these recommended rates per square metre by converting the recommended rent for primary users of existing sites, using the median of land size from our sample of market data for each location category.

We also consider that the same arrangement is reasonable for both new and existing SCAX sites. In recognition of these different sites, we are recommending that the rents for these sites also be charged on the same basis and at the same rate as primary users of new sites, and that they will be capped at a flat rate for primary users of existing sites in the same location category.

I will now pass over to Heather Dear to talk through the rest of our recommendations.

MS DEAR: Thanks, Brett.

Brett has talked about the draft recommending for primary users of communication towers and SCAX sites. I will now turn to the arrangements we are recommending for co-users and small call technology.

What we are recommending for co-users is a change from our earlier reviews, where they were charged 50 per cent of the primary user rate.

Similar to our approach in recommending rents for primary users, we looked at updated data and the arrangements that apply to co-users in the private market.

We found that the arrangement for additional users on communication sites varied. Many leases for communication sites allow the lessee to sublet, either with or without seeking the approval of the lessor.

In cases where the sublessee does not enter into a separate arrangement with the landowner it is likely they are not paying rent to the landowner. However, we also found a number of sites where the landowner has entered into a separate lease with a sublessee for land adjacent to the tower site, for which rent is payable.

Our draft recommendations are aimed at bringing the co-user arrangements more closely in line with the arrangements for sublessees in the private market. Therefore, we are recommending that co-users that are located wholly within the primary user's site pay the minimum annual rent to occupy Crown land, which we estimate at $508 in 2020-2021.

For co-users with an additional footprint outside the primary user's site, for example, for an equipment shed, we are recommending that rent be charged for this additional land on the same dollars per square metre basis as the primary users, by location category.

Our terms of reference ask us to considerate rental arrangements for emerging technology for communication purposes. This includes small cell technology such as required for 5G.

The current rental arrangements do not differ by technology or use of sites. However, small cells have a much smaller area of coverage than traditional communication towers and will require many more sites closer together to cover the same area.

Therefore, to provide a clear rent structure which reflects the costs to the landowner, while at the same time not hindering the deployment of small cell technology, we are recommending that the rent for such technology be based on the additional footprint only, and that these rents also be calculated on the same dollars per square metre basis as the primary users, by location category.

Similar to the recommendations we are recommending for co-users, we are recommending that the minimum annual rent to occupy Crown land be payable for small cells which are installed on existing poles and structures which do not have any additional footprint. In densely urban areas, there are likely to be many alternate structures on which to install small cell technology.

The current rental arrangements allow for the rent for sites that meet certain criteria to be negotiated to capture the particular value of certain sites. However, in practice, rents have not been negotiated on a site-by-site basis. Therefore, we are recommending that this provision be removed and that the rent for all sites be set according to the schedule.

The exception, however, is National Parks and Wildlife, which currently declares all its sites high value, as communication sites are only permitted in national parks if there is no alternative site available. However, rather than negotiating the rent for each site, National Parks has been setting the rent using the schedule rent one location category higher than the site's actual location.

We are recommending that this arrangement be allowed to continue to reflect the social, cultural and environmental values of National Park land. We consider this is appropriate as the recommended rent schedule we are using is based on recent market rents on private land and does not necessary capture these values.

Another aspect of the rental arrangements we considered was the discount for infrastructure providers which was removed in IPART's 2013 review. We received a range of views from stakeholders, both for or against it, and whether it should be reinstated. However, we are not recommending that it be reintroduced as we consider it appropriate that all primary users are charged the same rent regardless of their operating or business model.

After deciding on a rent schedule to apply for primary and co-users, we next considered whether there should continue to be rebates available for certain groups. Currently community groups, local service providers, the budget funds sector, and telephony service providers operating SCAX sites are able to apply for rental rebates.

While many users of communication towers undertake activities that generate positive externalities, we consider it more appropriate for the government to account for these externalities by directly funding service providers rather than subsidising one input to their activities.

Therefore, we are recommending that rental rebates no longer be available. This recommendation would also ensure that all users of communication towers on Crown land whose use of the land is of a similar nature and extent would pay the same effective price by location category.

We estimate many users will pay less under our draft recommendations. This includes primary users in Sydney, high and medium density locations, and many co-users particularly those wholly within the primary user's site, who, as mentioned, would only pay the minimum annual rent to occupy Crown land.

While removing rebates would impact on the groups that currently receive them, for many users, these impacts may be offset by our draft recommendations on co-user rents.

For example, just under 90 per cent of users currently receiving the community group rebate are co-users. Many of these groups, although no longer able to apply for a rebate, will continue to only pay the minimum annual rent to occupy Crown land under our recommendations. In the same way some local service providers may end up paying less under our draft recommendations despite no longer receiving a rebate.

Removing the rebate for the budget funded sector, for example, police and other emergency services, will not change the net New South Wales budget position, but would impact on those agencies if there was not also an adjustment to their budget allocation. Again we note that around three-quarters of the budget-funded communication towers on Crown land do so as a co-user.

The impacts of our recommendations will vary depending on how many Crown land sites a user leases, the size and location of these sites, and whether they are a primary or a co-user. A user with many sites may be able to defray increases at some sites against reductions at other sites. However, for some users with only a few sites, this may not be possible. Therefore we are recommending that:

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

The New South Wales government provide ongoing financial assistance to those community groups adversely impacted by our recommendation.

We are recommending that the new rental arrangements apply from 1 July 2020.

Thank you for your attention. I will now hand back to the Chair to open the discussion.

DISCUSSION FROM PARTICIPANTS AND ATTENDEES

MR WILLETT: Thanks, Heather and Brett. We will now move to discussions starting with people sitting around the front table and then we will move to the broader audience.

Could I remind people to speak clearly for the benefit of our transcript and begin their comment with their name and, where relevant, the organisation they represent. So calling for volunteers?

MS POLLARD: Jane Pollard from Axicom.

Thank you for the opportunity to speak today. On a general basis, the IPART report raises some interesting issues and I think there has been a genuine attempt to try and tackle some of the aspects in the terms of reference. However, we think there are some flaws in the report that need further investigation before we can land on some of the key issues.

On a sort of high-level basis, we think that there are two fundamental legal grounds which have not been addressed in the report. The first of those is that IPART has set the rent by reference to the economically efficient rent by reference to the private market. In *Telstra Corporation v State of Queensland* [2016], the Federal Court ruled against state authorities using private market benchmarks to set rental arrangements for Crown land.

The second point where we think the draft report is fundamentally flawed is that the terms of reference specifically require that IPART have reference to clause 44 of schedule 3 of the Telecommunications Act. The question of whether there is parity between the users of communication sites with other commercial users of Crown land has not been adequately addressed in the report at all.

In terms of that first point and the reference to the private market, we feel that the Telstra case was very clear on this point. In that case, the court gave specific direction that state authorities are not permitted to reflect the private market when looking at the rental of Crown land.

Even without the benefit of this decision, we feel that the private market is not the correct market to look at. With regard to the back areas occupied for Crown land, particularly in the low areas, finding alternative sites in those areas is rarely possible, so it is really difficult to say that is a fair market rent, and there is really no alternative use for these small parcels of land.

The private market is not where we believe you should have looked. We believe you should have looked at other jurisdictions in the market for access to public land. Obviously the relevant one that we have all referred to in our submissions is the Queensland jurisdiction, where rents are set with a fixed yield on the unimproved land value.

What we would like to see within the final report is some more clarification about why unimproved land valuations do not reflect fair and market-based return. It is clearly a well-used, well-acknowledged methodology

and it is underpinned by the Crown Land Management Act of New South Wales. Section 6.5 of the Crown Land Management Act clearly states that improvements are to be disregarded on the land, and the key point there is the consistency of application. If some users of Crown land reference the Crown Land Management Act, yet and telco sites are not permitted to reference on the same basis, there is not consistency there and it is potentially a breach of clause 44.

That leads me to the second point, and this a point that we feel was not really addressed in the report. We asked in our submission for the land management agencies to provide evidence of what other commercial users of Crown land pay. The report alludes to the fact that, with telecommunications sites, the rent is higher on those sites, but there is no evidence to prove that in the report. We would have like to have seen that in the report because we feel it is very clear in the case law that that would be the appropriate comparison.

I think the report looked at the appropriate comparator for a site as a carrier using a site versus a non-carrier using a site. It is our view that that is not the appropriate comparator. The appropriate comparator is other users of Crown land. In the final report, we would like to see that and the transparency around what other commercial users of Crown land are paying.

MR WILLETT: Thank you, Jane. Could I follow up on that. Is it your view that the approach you have outlined is consistent with our terms of reference or that our terms of reference need to be, in effect, subject to section 44?

MS POLLARD: The terms of reference said that that was to be taken into account. I think if you had looked at other jurisdictions of Crown land, then that would have been an appropriate comparator.

You are trying to then address the question of is there discrimination here or not? We feel at the moment that that question has not been adequately answered because we have no transparency about what other users of Crown land pay. Without that being answered, it still leaves the potential for discrimination.

MR WILLETT: Thank you. Telstra?

MR PACKETT: Mike Packett from Telstra.

I fully support a lot of the comments raised by Jane, and they are comments that Telstra actually agree with. I say that, especially in light of the outcome of the decision in *Telstra v the State of Queensland* that private rents are not to be considered.

Another thing we would like to raise relates to SCAX, which are a Telstra-alone entity. I don't know why exactly SCAX has been raised in this

review, because it is dealing with "rental arrangement for communication towers on Crown lands". They are not towers. But if we are going to talk about it, I don't know where you got the average of a SCAX being 35 square metres. They are not 35 square metres. My analysis is that they are up around 200 square metres. They are licences, so they are non-exclusive.

Just as an example, I pulled one lot, to look at. The Valuer General assessed the 8.5 hectares of that lot at $9,000 for the whole lot, which comes out on a pro rata basis of 11 cents a square metre. But then it is being suggested that we pay $124 a square metre, which would be a 1,127 per cent return, which would be nice. That has to be looked at. Again, from my analysis, it would cause the rent on our portfolio of SCAXes to be raised by about 300 per cent.

This document is very important because it has cause and effect throughout the whole market. People are referencing this document from Queensland to South Australia. They should not be, but they are. We are often hearing of councils that pass motions to use the IPART draft report, as if it is set in gold and that you did an amazing analysis of it. It has cause and effect. Everything that comes out from this report reflects back into the market, and it has affected the market in raising rent.

The other point we would like to raise is with regard to National Parks self-assessing. That in itself is discriminatory, because there are no low sites in National Parks; it is all one up. So if it is a low site, it goes to medium, and if it is a medium site, it goes to high. How is that not discriminatory behaviour? The Valuer General would not assess it that way.

Speaking of the Valuer General, who is referenced through your report, what was the advice that the Valuer General gave you on the 6 per cent land value? Is that report available or is it referenced? If not, maybe there could be a reference in the final report, because this 6 per cent of land value is a fair market return.

MR WILLETT: We will take that on board. Thanks, Mike.

I wonder if you could help me on SCAX sites. What is the future of those in the context of the NBN? Can you help me with that?

MR PACKETT: There will be a certain amount that will head to the NBN; a certain amount will be redundant; and a certain amount will be kept due to some technologies that are inside that box. We classify them as A, B, C of SCAX - some will just disappear; some will got to NBN; and others we have to retain because of --

MR WILLETT: They are non-NBN services.

MR PACKETT: They are non-NBN services, yes, a fixed line, a fixed line service.

The other thing maybe, if I could have a minute, is RTs, which are basically point to point, all they are is basically fibre in the air, so a microwave takes it in and a microwave takes it out. It is not a mobile site, but again it has been assessed like a mobile site.

MR WILLETT: But the infrastructure is based on its positions on towers?

MR PACKETT: The infrastructure could be a tower. It is called a repeater site. With the repeating nature, basically it takes one signal and it stops us from trenching kilometres of fibre.

MR WILLETT: It is a transmission. It is a wireless transmission?

MR PACKETT: Yes.

MR WILLETT: Thanks very much.

MS TOWERS: Would Telstra be able to share with us your information on the size of your SCAX sites?

MR PACKETT: Certainly.

MS TOWERS: Thank you.

MR MCKENZIE: My name is Ray McKenzie. I am from the Mobile Carriers Forum.

Thanks to the panel for inviting us here today to speak on the draft report and my apologies for my late arrival.

The Mobile Carriers Forum is an industry association. We represent the mobile operators and carriers who deploy the network on deployment matters - that is, Telstra, Optus, Vodafone and, in some cases, TPG, although TPG is not really active in this space.

We are interested in this clearly as a deployment matter and we welcome the opportunity to appear, and we have put in a submission to the review, which I think is fairly detailed.

I have members across the table from me, at the end of the table here, and scattered throughout the audience. I will try to keep my comments general and I will leave the more complex and detailed comments and questions to them.

To start off I would like to echo Axicom's comment around the overarching concerns to do with the terms of reference and the matter to do with discrimination in clause 44.

I would say, in fact, that the terms of reference have an inherent conflict within them because they require you to look at:

> *Fair, market-based commercial returns, having regard to: Recent market rentals agreed for similar purposes and sites.*

That in itself is inherently not consistent with clause 44, as we think is quite clear from the *Telstra v State of Queensland* case. Putting that up-front, you have a bit of a problem. As the report relates to how a site might be more special, more interesting or more economically valuable, with a better return because of the use of the site, much of what follows becomes not relevant if you accept the point of view that you are not consistent with clause 44.

Leaving that aside and taking up some of the detail, the rental rates you have prescribed have variously gone up and down. You talk about the three categories that have come down and the lower category has gone up. Depending on category, the decreases, where they occur, perhaps do not tell the whole story, because another thing you have introduced is the limits on the area size of the compound. And it is clear that for many and perhaps most of telco sites those compound sites are not adequate, if we are applying for new sites.

Another question may be exactly how broadly these rates do apply. It is not completely clear whether we are talking about just new sites or all sites.

In any case, we would be paying multiples of that rental because we have sites that are much larger than 30 square metres in the Sydney or the high category. Again, to describe it as an overarching decrease, we do not believe that that is clearly the case; in fact, we think it probably works the other way.

The other remark that we would make is that the increase which occurs in the low category has a quite broad impact because it probably affects more numbers of sites than in any other category. Clearly it is in what you would call the low category when we are deploying sites on Crown land. They are sites which are servicing very small communities, with very low populations, and which are already economically challenged. To have a further impost makes it all the more difficult for them.

Speaking of categories, the way they are set out, whether they are appropriate or not - and we argue they are probably not appropriate - they attempt to reflect probably population density and maybe some other matters. All would seem to go to something to account for the value of the land or the

value of the use of the land. It would seem that if you are really trying to reflect land value and some of those other factors, that is actually inherently caught up in what the land value is.

If the land is special for some reason, say it is in a highly populated area or it has some other special value in a low population density area, that would already be reflected in its land value. Therefore, that makes the idea of a fixed rate of unimproved land value as being a fair, transparent and quite simple way to get appropriate returns, and you apply that for all users. Then you will get away from the discrimination concern with clause 44. To us that would be a straightforward way of attacking the problem.

The other thing is that the four categories are not really granular enough to show true variations, and land value could do that for you.

We heard Mike Packett talk about a 1,000-odd per cent return. Any scheme you use - it does not really matter how you do your numbers - that proposes an annual rental which exceeds the freehold value of the land is in some way inappropriate. We do not believe we need to make much of an argument about that; that should be obvious.

In summing up we have some concerns with the IPART approach. We have, as a consequence, concerns with the IPART recommendations and we would be seeking significant change, or indeed withdrawal, of the recommendations. We do believe that the issue to do with clause 44 needs to be resolved and we will be following up with further comments. Thank you.

MR EVERETT: Ed, could I clarify one point that Ray made in terms of the arrangements of existing sites versus new sites?

MR WILLETT: Yes.

MR EVERETT: For new sites, we are not recommending that the size of the land be capped. We are saying that the rate should vary, depending on how much land you use, by applying the dollars per square metre.

The examples that were in a slide earlier, I suppose are just as an example of a site that would be, for example, 30 square metres, 50 square metres, 80 square metres. We are not recommend that those are capped necessarily. They were just some indicators of showing how that approach would apply.

MR MCKENZIE: Yes, we understand that, but if you have sites that are bigger than 30 square metres, if you are already paying the top 33,000, it will be more than that because the sites are bigger than 30 square metres.

MR EVERETT: Thank you.

MR PACKETT: Does that include the renewals?

MR EVERETT: No. So an existing site is one that is current. The way we are looking at the definition of an existing site is a site that currently has an arrangement with a telco and the land management agencies.

MS POLLARD: It would be interesting to hear from the land management agencies about how they are going to interpret that, because it is not entirely clear from the report how we are going to interpret what is a primary user, what is in the compound and what is outside the compound.

MR WILLETT: I will turn to Stuart in a moment on that, but before I do, Ray in terms of applying unimproved values, and you have raised the question of granularity, a question that occurs to me is that particular sites within the mass of Crown land might have different values, and they have different values particularly in the context of the type of use that they are being put to. High sites might have more unimproved value - higher unimproved value than site in lower lying areas. How we would apply with the sort of granularity you are talking about an approach which recognises the unimproved value of the particular sites in demand for communication towers.

MR McKENZIE: I actually want to --

MR PACKETT: Actually we build networks not sites. Whether it is on a mountain in a valley, near the beach or near Boggabri or Bankstown, it is a site. No-one in this room is paying for a phone call; they are all on plans. It is all fixed - a fixed fee.

In the early days we would have been on top of hilltops. For example, in Tamworth we had one site and now Tamworth has 15 sites. It is a network not a site, so there is no intrinsic value in a high site there or one sitting near the roads of Bankstown.

MS COPE: I want also to ask a question about how you think about unimproved value. I understand the concept of unimproved value, but here we have land which is constrained as a result of the ownership of the land. Therefore, you have a difference in unimproved value between constrained and unconstrained land.

We have a bit of a circularity in here in the way that you define the land because of the owner which affects the potential value of that land because of the uses that it can be put to. Are you talking about the unimproved value of freehold land in the area or the unimproved value of land which is subject to constraint because of its ownership and therefore the land that is specifically where the sites are?

MR PACKETT: Well, it is unimproved land value is actually the land we are talking about. If that land can only be used for cows, then it can be used for cows. If it can be used for a 20-storey office block, then the value would reflect that.

MS COPE: But the value of a piece of national park cannot be used for any other purpose, whether it be for cows or office blocks, because of the nature of the ownership. In the planning scheme, it is considered to be constrained land, and we know from planning that that has a substantial impact on its value.

MR PACKETT: Well, there are some valuers in the room. I am sure they will make comment.

MR WILLETT: We look forward to that. Stuart?

MR McKENZIE: I think one of the other points that needs to be made clear is that, even when you are talking about high sites versus low sites, that comes back to the use. For a telco that might matter, but if does not matter for the guy grazing cows. If you are going to apply the same rental regime to all users, you can't be comparing how one user might benefit compared with another.

MR WILLETT: I wonder about that, and perhaps others might like to comment when they get the opportunity, but surely unimproved value has a relationship to the uses that are approved for that land? There is a differentiation between those two things, but the point was just made that the unimproved value of land that you can build a 20-storey tower on is worth obviously a lot more than land that is approved for a single dwelling. So you cannot surely divorce the approved or the intended land use from an estimate of unimproved value.

MR McKENZIE: No, but all possible uses of that plot of land.

MR WILLETT: Thanks, Ray. Stuart, would you like to comment on what has been recommended?

MR SCHRAMM: Stuart Schramm, National Parks. I guess we would have wait until the final outcomes are presented and analyse them fully before we can work out how we would interpret them if I understand your question correctly Jane.

MS POLLARD: I think it is absolutely crucial, particularly for Axicom as an infrastructure provider. When I look at our compounds, 100 square metres is normal for us; 30 square metres is not normal. There are references in the report to the parameters that the industry might use to determine what is in that compound from day one. It references the asset protection zone, the fence compound. I think you would have to come to the decision that, to be clear for everyone, it should be the fence compound from 2020 onwards.

MS COPE: Can I ask a question around that? Your existing sites you are saying are greater than the average that is in the report at the moment?

MS POLLARD: Yes.

MR PACKETT: Yes.

MS COPE: Is that a result of that being the amount of land that you need to conduct that activity or is it as a result of what the amount of land was that was available at the time that those original negotiations happened? Those sites are not subject to the per square metre charge; it is only future sites which are negotiated from scratch.

MS POLLARD: I think there is a bit of a misconception in the report, in that we talk about equipment sheds being 7.5 square metres, but I was looking at some of our sites. There are cable trays that run out of those. There is a perimeter around each one of them. There are doors that need to open. There are all sorts of things around it that actually, when the carriers have installed, they do not install large for the sake of it, they install what is necessary.

When I looked at some of them, some of the carriers actually occupy 30 square metres on their own. That is outside the tower precinct, with the footing we might have, and whatever else there is, and the initial cabin, they are a lot larger I think than what your report suggests.

MR PACKETT: Also for OH&S reasons - drop zones - towers are not actually scaled. We have a lot of them that actually use elevated work platforms rather than the old Lad-Safs. There is space for a generator, space for an earthing mat, space for footings because not all soil can take it, so you have to actually go out. So 30 square metres is not the average that we would be looking at.

MR EVERETT: I would like to point out that the 30 square metres is the median of only the Sydney category site. When we were looking for high, medium and low, the sites were generally larger - so 80 square metres. I take the point that you are making, that there is gear and equipment that needs to be put on the site that is larger than a 30 square metre site.

MR PACKETT: Maybe on the data that you utilised there were rooftops in there. From what I have reviewed, there were 17 pieces of data that are actually rooftops which would not be able to correspond with a land site.

MR WILLETT: Are there any other comments from around the table? Yes, Hamish.

MR DUFF: Good morning. My name is Hamish Duff. I represent ARCIA,

which is the Australian Radio Communications Industry Association.

When we represent our market to ACMA and the Department of Communications, we represent the approximately 60,000 apparatus licences used around Australia. I guess we are the non-carrier world, if you like.

Firstly, we would like to congratulate IPART for the depth of work in its report. Something that we have argued against since 2005 was the co-user fees. The LMR - land mobile radio - industry is very badly affected by co-user fees. Finally, I think we now have an approach that really applies to how the market actually works.

These fees have had a very negative impact on our market in New South Wales, and that is speaking from information from many of our members and personally. I would like to congratulate IPART for having a look at that and the way it is done.

However, as good as that is, there are several other points we would like to make. In ARCIA'S submission, we made a point that, particularly in the rural areas, as you pointed out, the issue around the ownership of the land is a monopoly-type arrangement. As you also pointed out, through all these discussions, people are searching for how to value the site, with all the different technologies and uses of that site. This is a real problem.

We have just heard the carriers argue about different sites for carriers, whether it is small cell or large cell or whether it is point-to-point microwave. Land mobile has many, many markets inside that market, and many land mobile sites don't look like that slide. They look more like the SCAX sites; they are tiny. They could be, indeed, very small land area usage; yet, we have an approach that sets that minimum cost, particularly for rural and remote areas, which is way too high. This has really affected our members badly. Many of our members have just simply avoided dealing with Crown lands at all.

In our industry, the most difficult thing to get is access to radio sites, and there are costs involved. Again, if the carriers want to say that their market is fairly small in the regional areas, our market is even smaller. You only have to look at the ACMA evidence to see that. We have many, many small users. Of course, we have lots of high profile users, like mining on private land, but there are many public users. And, of course, our market takes into consideration many forms of users from community groups, from volunteer rescue to the SES, to Surf Life Saving right up to public safety and commercial organisations. So there is a high degree of value that those networks have.

The question we have is why does the government think it needs to value different technologies for the basis of how they charge rent? As has been pointed out, technology is moving so quickly, by the time we have this review again in five years, the technology will be changed. Why does the

government feel it needs to spend a lot of time and effort valuing something?

I guess the message from us is that we have dealt with ACMA for many years about the economic value of spectrum, and we have argued about this. In fact, we wrote a piece about how to value spectrum in terms of not just auctioning everything off to the highest possible valuation - in other words, the person with the most amount of money - because, just like real estate, some spectrum has to be set aside for the equivalent of schools or highways or some kind of use.

At the last RadComms conference, Rod Sims, from the ACCC, stood up and basically said that spectrum should be about the productivity of the country not about taxation for the ACMA. You can see that those approaches are starting to taking shape because we all want infrastructure for the benefit of all our users. There is no point in National Parks having a highly valued site if there is no-one in there to actually benefit from using the national park. Or if users cannot afford to build a firefighting system in a national park and it burns down, there is not much point in making it hard to put radio comms in a national park. That, to us, seems to defeat the purpose.

That is why we argue that, with the regional and remote sites, there still should be a method to negotiate with the land management agency. A lot of the sites are put there for very small reasons. They are equivalent of the SCAX system. It could be a SCADA system. It could be something just measuring the water level.

To give you an example, after the Toowoomba floods, many sensor networks were put up just to measure rapidly rising flood levels. They are all very minor systems, but if the government says, "Well, there will be a cost there to run that system", people just won't do. That is what our market has been doing; we have just been avoiding Crown lands altogether.

Our members have spent tens of thousands of dollars removing stuff from Crown land sites to adjacent sites. This has affected people like Axicom badly because they don't get the revenue from the sites that they had to invest in. We now have some government users, like TransGrid, who have sites that are empty because the site next door is not subject to taxation. Clearly the market was speaking. All and all, we feel that that has led to a decrease in investment in land mobile.

The co-user fees will go a long way to addressing that situation. We appreciate your understanding on that matter, but particularly in the rural areas we would argue that many of systems, whether they are a local government situation or the people out there who are providing these kinds of services, they are also fairly small businesses. They are not carriers. They don't have carriers' licences, and they do not have the protection of the Commonwealth Act and the rights over deployment that many other people enjoy. Therefore,

we think that there should be a methodology for people to negotiate rents, particularly for new sites, that is in line with what they are able to actually provide for that site rather than just a blanket fee.

MS COPE: Can I just check then on that? If you have a new site, what sort of size location are you normally talking about?

MR DUFF: It is extremely varied. We would love to have sites like that one on the slide, but many sites are tiny.

MS COPE: Because the new arrangement of being charged per square metre for a new site will, I think, deliver exactly what you are talking about - that you would have a much lower rate that you are paying for a new site with a much smaller footprint.

MR DUFF: Yes, but I just go back to the expectation that was raised; namely, that this document gets referenced everywhere. We have had local councils reference that document and saying, "That is the bottom line you are going to pay. No negotiations. It says it there".

If you recall back to 2005, this was where the Queensland thing started from. Queensland looked at our legislation and said, "We will copy that", and they made it simpler and, as it turned out, legal.

All of these things that have been put in, like the rebates, were really a methodology to try and overcome something which was not correctly set up in the first place. It was really an attempt to gouge the carriers, because there was massive growth in that market, and people like land mobile got caught up in something that should never have happened in the first place.

I really appreciate that co-users fees will affect that market changing, but why does the government feel it needs to understand the technology on the basis of payment of the sites? That does not make any sense to us. Thank you for your time.

MR WILLETT: Thank you, Hamish. Just to finish up around the table, Marine Rescue, would you like to comment?

MR CRIBB: Andrew Cribb, Marine Rescue NSW.

Thank you for the opportunity to talk to you today. Marine Rescue NSW and Surf Life Saving NSW are unique agencies in that we are emergency services but do not operate on the GRN. The reason for that is that we need to engage with the public via the radio networks as opposed to just internal communications.

One item that we are trying to gain some understanding of is which

government department is envisaged to provide the financial assistance should we be adversely impacted? Our concern is that that would actually be done by the NSW Telco Authority. We believe it would be a bit more difficult to go through that financial process and would be trying push us on a co-location basis on those sites, whether it be in the form of rebates or actual financial assistance with that business model. We don't have an understanding of what that is under the report, apart from support by the New South Wales government. That is something we would like to pursue in depth.

MR WILLETT: I don't think that's what's intended, but perhaps Brett could answer that.

MR EVERETT: Our recommendation that has been made is a recommendation that we have made to the New South Wales government in terms of providing additional assistance if impacted. We have not made recommendations about which specific agency would be administering that at this stage, but these are draft recommendations and we are seeking comment from the stakeholders.

MR CRIBB: I guess the only other thing in regards to the size is that a lot of our sites are in National Parks and we are the head licence holder for those sites. Based on that, could we have clarification on the charges and whether they include the asset protection zones and all of that sort of stuff that, for a very small site all of a sudden expand quite a lot, especially being that it is proposed that the National Parks' charges are set at that higher rate which would be concerning.

In a lot of those sites it is just ourselves and Surf Life Saving, or possibly it is Rural Fire Service on those sites. So clarification is needed on that.

Beyond that also, there is a question as to the process in which a site is used for different uses, whether it would require two separate leases or licences for a site. For example, a Marine Rescue base, because there are training rooms, meeting rooms, operational rooms, and the communications section of that site is actually quite small, how would the costings be worked out on that square meterage basis? Thank you very much.

MR WILLETT: We will take that on board. Thanks very much.

MS TOWERS: Could I ask one question?

MR WILLETT: Sure.

MS TOWERS: Do you have many new sites each year that you --

MR CRIBB: Yes. Marine Rescue are starting our fourth year of an eight-year network plan. We are in huge amounts of work with our network, as

is Surf Life Saving. In the next year, we aim to put in another 12 sites, and that is just in the next year. It is not a huge amount but for a volunteer agency, it is actually a lot. Of those, I would say probably 50 per cent of those, we would be the head licence holder, yes.

MR WILLETT: Thank you for that.

MS COPE: Some information on the size that you need for those sites would be useful too.

MR CRIBB: No problems. We can follow that up.

MR WILLETT: Thank you, Andrew.

Broadcast Australia, any comments? Gary, is it?

MR CHAO: Yes, Gary Chao from Broadcast Australia. Ashard Ali cannot be here and sends his apologies.

In general, Broadcast Australia recognises that a lot of effort has been made by IPART in addressing a number of the issues over the last 10 to 15 years. I would still, as my colleagues have already mentioned, say that there are a lot of frameworks and concepts that are still yet to be resolved and addressed by IPART.

For instance, for our network, a lot of our footprint at our existing sites is way larger than the median land size as recommended or suggested by IPART in its draft report. That is one thing we would like to see more clarity on. Thank you.

MR WILLETT: Thanks for that, Gary.

MS TOWERS: Do you have a growth plan in terms of the number of sites you put in each year or are your sites going to stay --

MR CHAO: For a broadcast network, it is quite a mature network. So at this stage, no, there are not a lot of plans to expand that particular area of technology.

MS TOWERS: Because the charge per metre is for new sites. So your existing sites will not get charged on that per square metre basis.

MR CHAO: One of the clarifications we would like to see would be whether there would be a cap on the rent with respect to the square metre rate approach.

MS POLLARD. Yes.

MR PACKETT: Just on technology, if you are doing a guyed mast, the guyed mast is where you put a structure in the middle and the guy lines come out, that can take a lot of area. It could take up to 4,000 square metres. It is done on the basis that sometimes the soil structure does not allow for the force to be distributed over a larger area. Also there is the cost of construction. Building a guyed mast is a lot cheaper than building a 50 metre concrete pole. If you go on the square metre basis, it is $400,000, so I think you need to - and it will be in low and medium areas. There is not a scarcity of land out a Wilcannia, so I don't know why we are worried about 80 square metres versus 1,000 square metres.

MR WILLETT: Thanks for that, Mike.

Finishing off around the table. From the department, Sam, is it?

MS WILLIAMS: Yes, Sam Williams from the Department of Planning and Environment. Apologies from Chris Reynolds.

I would like to provide IPART with an overview of NSW Crown Lands. The New South Wales government welcomes this forum to gain an understanding on how IPART has calculated rent and is considering the recommendations from the draft report further.

Crown land is one of the New South Wales's most valuable assets and is owned by the government on behalf of the people of New South Wales. Across the state there are more than 540,000 Crown land parcels covering 42 per cent of New South Wales and they have some overall value of $11 billion.

Crown Lands is committed to change, which delivers improved customer service, a reduced bureaucracy, cost reduction and a better outcome for the community. Ensuring the people of New South Wales receive a fair return from Crown land is of key importance.

Contributions from activities on Crown land provide funding to improve community facilities and help preserve environmental, social and cultural values across other parts of the Crown estates. Rents from tenures on Crown land support funding programs, such as our Crown Reserve Improvement Fund. The New South Wales government has allocated more than $79 million from this program over the past five years through the provision of funding and loans for major infrastructure upgrades of Crown assets for the benefit of the wider community. To ensure that the people of New South Wales receive a fair return from Crown land, we must ensure that we receive a fair, market-based commercial return.

Crown Lands provide the foundation for the delivery of some of the

state's most important values, services and infrastructure. The values of Crown lands are unique compared to other types of public land, because of its range of uses and characteristics. Crown Lands is expected to go beyond delivering only environmental outcomes. Crown land provides a multitude of values that underpin the prosperity and wellbeing of our society.

Any change to the current framework may have a significant impact on the management of Crown land and to the wider community. The government is committed to ensuring that Crown land is managed in such a way that it continues to provide significant benefits for the people of New South Wales. Any changes should clearly deliver an improved net outcome, drive efficiencies and deliver a fair, market-based return for the wider community.

MR WILLETT: Thank you very much, Sam.

I think we have heard from everyone around the front table. Sorry, Stuart?

MR SCHRAMM: I would like to reiterate Sam Williams's comment regarding the importance of IPART's review of rents for communication facilities as well as the agency's appreciation of the opportunity to appear at this forum.

I would like to provide IPART with a brief overview of the National Parks context and the reasons that this review is of such importance to the National Parks and Wildlife Service.

The National Parks and Wildlife Service manages 870 protected areas throughout New South Wales, making up more than 9 per cent of the state by geography. These protected areas, generally referred to as "national parks, are a priceless community asset enjoyed by the people of New South Wales, and Australia, with more than 51 million domestic visits annually. Many of New South Wales's national parks are also international attractions that draw visitors from around the world, including the Blue Mountains World Heritage Area and the Figure Eight Pools in the Royal National Park.

The National Parks and Wildlife Service Act charges the service with managing these iconic places in the public interest to achieve three key objectives:

Conservation of ecosystems, landscapes and Aboriginal cultural heritage;
Providing opportunities for recreation and enjoyment of nature; and
Improving our understanding of the natural world and our place in it.

While these objectives are paramount, parliament has also recognised the need to balance them against the importance of essential public services, such as electricity, water and telecommunications.

In 2003 Parliament amended the National Parks and Wildlife Act to give the National Parks and Wildlife Service power to authorise new telecommunications sites on reserved lands. However, parliament made its intention clear that this would need to confer a net financial benefit in favour of national parks, stating in the second reading speech, amongst other things:

> *National Parks should not be seen as a soft option relative to land outside the estate.*

And:

> *National Parks and Wildlife Service [will] negotiate a rental or fee agreement that reflects the commercial nature of the proposal.*
> *The receipt of revenue will also benefit the management of national parks as such funds would be dedicated for a range of conservation works.*

Under the National Parks and Wildlife Act, all fees are used to the fund the service's statutory function. As such, the revenue from communication towers goes directly back into parks.

Managing communications sites located in sensitive natural environments is a complex and resource-intensive task, from monitoring compliance with environmental safeguards to ensuring that the service's restricted-access fire trails required by emergency and firefighting vehicles are not compromised.

If these matters are not appropriately managed, the consequence may be very serious. The service's ability to host these sites is only feasible where management costs are covered by the site user and there is a net financial benefit that offsets the environmental, social and cultural impacts of these sites. Thank you for the opportunity.

MR WILLETT: Thank you very much, Stuart.

One last comment. Yes, Luke?

MR VAN HOOFT: Luke van Hooft from Optus. I will not repeat what has previously been said by the various carriers and tower operators.

Just from the perspective of what we would like to see in the final report, obviously there are disagreements about what can and cannot be done and we would welcome any clarity on that.

Further discussion specifically around what other utilities are paying for

rental on Crown lands would be welcome; for example, what do electricity transmission towers pay for rental on Crown lands?

We need a larger discussion on the impact of charging for small cells on electricity poles. How is that compliant with discrimination or non-discrimination when the pole owners - transmission poles or electric poles - are not charged rents, or are they charged rents on Crown land? Interesting question there.

I would also welcome, I suppose, more in-depth discussion about the efficiency aspects. Rather than just assuming that any price within a possible range is efficient, a discussion would be welcome on what price best promotes efficiency, best promotes the long term interests of end users and the social benefits that come from promoting communications.

It is probably not fair to say that a price at the lower end of the range would be equally as efficient as a price at the higher end of the range. There needs to be a discussion about: do you prefer a high end or a low end range for all these reasons? That would be welcomed.

I think that's about it. I will just confirm that we support what has been said beforehand.

MR WILLETT: Thank you, Luke.

There is an opportunity now for people in the audience to make a contribution. Yes, up the back?

MR SULLIVAN: My name is David Sullivan. I am a valuer, a representative of the telcos.

In relation to the comment about the unimproved land value, you may well be aware that in Queensland, the actual 6 per cent return is based on the non-constrained value. I don't know if you realised that. It is not based on the rural value or the value of the parkland. I would suggest you have a conversation with Neil Bray, the VG up there. We were pretty much involved in the whole process of the values being applied. You will find it is 6 per cent of the non-constrained value, which is probably what a lot of people are not aware of.

You will also find that the VG of New South Wales, Michael Parker, has a somewhat sort of similar policy. The unimproved land value for a lot of telco sites is actually based on the non-constrained value, which you would probably be aware of.

When Michael Packett was quoting 9 cents per square metres for National Park land, yes, obviously that was for National Park land only. But a

lot of telco sites actually have the non-constrained value already applied to them, and a 6 per cent return would be fair on that.

I think what Ray McKenzie was getting at is that where you have a situation now that the rate per square metre is in excess of the non-constrained land value for telco towers, it will obviously be problematic.

I would suggest that you have a talk to both those valuers general prior to releasing the report. Tell them you have spoken to me, that's fine as well, because I have been involved in all the conversations - not for this matter but for other matters. That is pretty much where it is at. There probably would be a lot of clarity around that point, and it might help you go in the right direction.

The other thing I have to say too is this time around, having been involved in other IPART sort of matters, I think you have actually tried to make an attempt to fix it, which I think has been refreshing from that point of view. Jane Pollard mentioned that earlier in the piece.

How it was done before was very problematic. The gentleman from ARCIA mentioned that there have been no new sites going on. Cost has been a problem. I think we need to get the pricing right. Again, in Queensland, Neil Bray realised this, and Michael Parker has recognised this as well, with some objections we have had in regards to land values. So you will find there is a policy there for the non-constrained use, which would probably resolve all your problems with the unimproved land values. So I suggest that contacting those two fellows is the way to go. That's it.

MR WILLETT: Thanks very much for that. Your comments are on the record and we will take them into account. Yes, in the front here?

MR RAYNER: My name is Ken Rayner. I represent and I am a member of the St George Amateur Radio Society. I am also a valuer and a member of the API, the Australian Property Institute, and a couple of other organisations.

The St George Amateur Radio Society is a community-based organisation. It operates under the Radio Communications Act 1992 and, as such, is a non-profit organisation and is not allowed to make financial money.

We do have a facility in the Blue Mountains, which is probably rated as a low. It is about 52.9 kilometres west of Katoomba, therefore it would be a low site, I believe. At the moment we are paying about $550 a year in rent after the rebate. We are the primary user of the site - we are the only user of the site, I should say.

We face a difficulty if that rebate is lost. We have a lot of uncertainty on a site that could be costing $9,900 per year for a club that earns a total turnover of $2,500 a year. We would have to sell a lot of sausages at sausage sizzles,

if you understand where I am coming from.

Like our friend from Marine Rescue, we would certainly require some certainty as to what is going to happen with the rebate and the rent on those sites. As a valuer, personally, I have difficulty with rents of $9,900 per annum on a low-use site. Our site is miles from anywhere. It has a lot of trees around it.

This certainly is something that we are very concerned about, and I wonder how this all fits in with the terms of reference for IPART, which are about a fair resolution based on rents. If I can just quickly quote.

> *... fair, market-based commercial returns, having regard to:*
> *Recent market rentals ...*
> *Relevant land valuations;.*
> *The framework that IPART established in the 2013 review.*

And there are requirements under other Acts, including, I would add, the Radio Communications Act of 1992, which we have to comply with, and the ACMA determination of 2015.

I would like to finish off by saying that the St George Amateur Radio Society is very concerned about the rental situation. We are doing a lot to provide community services out to Orange, where we have a lot of support from the local amateur radio society there, and into the city.

Our repeater at this particular facility provides service where certainly mobile service is not available, where the GRN service is not available, and the only radio signal that can really be picked up on a two-way basis is from that repeater facility, in some very remote locations. Thank you for your time.

MR WILLETT: Thank you for that.

Any other comments? So the third row and then to the front.

MR GOODMAN-JONES: Andrew Goodman-Jones, from the Manly Warringah Media Co-Operative, which is publicly known as Radio Northern Beaches. We are a community radio station covering the Northern Beaches of Sydney, a 100 per cent volunteer run group. We currently pay about $500 a year, after the rebate, for our transmitter site. We use about one or two square metres of land. If the rebate was removed and we had to pay the full rate, that would put us out of operation. So I support the continuation of the rebate and that we continue paying around $500 rather than $16,900. Yes, that is all, thank you.

MR WILLETT: Okay, thank you. Up the front here?

MR MILLER: Ian Miller, from ARCIA. I echo Hamish's comments earlier about co-user fees and the advantages that can be made there.

IPART, in its draft report, acknowledged that, particularly in the remote areas, there is a fair chance that the Crown is actually a monopoly supplier. Having acknowledged that, you have now gone ahead and increased the rate in those areas to make them more expensive. That tends to be counterproductive, one against the other.

We can see this anecdotally - our members in the rural and remote areas are having a heck of a job trying to convince their clients to upgrade technology. They are looking, in fact, at running their equipment for as long as they can. But in those same locations the carriers have black spots and they cannot give the same level of coverage. So we are caught in a cleft stick, where they need the equipment, and they need the coverage, but they will be now caught by a monopoly supplier increasing the rental rate, and that is a real issue.

The second part is that the bulk of our customers or our members don't have network services. The costs of that particular location have to be amortised across the users on that location. This is not like the carriers. For example, my wife's mobile phone that only gets turned on once a month in Melbourne is helping to offset the costs of Optus and Telstra and the rest of them because it is all part of a plan that covers the whole lot. Our members have to generate their funds on that particular service, and that is where our service is different from the others. You have to recognise that they are not network services; they are a great stack of individual services in those locations. Thank you.

MR WILLETT: Thank you for that. Any other comments? Yes, here in the front.

MS KATSINAS: Betty Katsinas from Axicom.

This is a cheeky question, but I wonder if IPART has had any legal advice in relation to the whole clause 44, schedule 3, issue, and how that might impact your decision to actually look at the private market versus other commercial use on public land?

Secondly, would you be willing to share any of that with us before the actual submissions are due? Frankly, if the result, as we have seen in the case law, is that it is unlawful to do so, nobody in this room will have to actually comply with any determination that the government actually puts down post the IPART determination.

MR WILLETT: James, would you like to respond on that?

MR DIMENT: Sure. Our terms of reference require us to consider the discrimination point and clause 44 of schedule 3 to the telcos Act. We have set out how we have done that in our draft report and the reasons why we think our draft recommendations do comply with that clause. If stakeholders have contrary views, then we would welcome submissions in writing to our draft report explaining why that is.

MS KATSINAS: So would you be willing to actually divulge what you charge other commercial users on Crown land as a result of that?

MR WILLETT: What we charge?

MS KATSINAS: Sorry, what the land management agencies charge.

MR WILLETT: Oh, I see. I think, at this stage, all we can do is take that comment on board and we will have a look at.

MS KATSINAS: Okay.

MR WILLETT: Thank you. Yes, up the back?

MR JOICE: Thank you. Bob Joice is my name. I am a telco consultant. I am on my retirement from Telstra, so some of you will know me.

I spend eight years managing, preparing affidavits and appearing in that Queensland case. I can tell you now that the terms of reference are clearly in conflict. You cannot have commercial-based returns and compliance with clause 44 of schedule 3. If you read the judgment of Rangiah J, he makes that perfectly clear - you can't have both. Arguments to support that, I just find breathtaking. If you got some legal advice, any competent legal advice would tell you that you can't use that.

The pretence that you can use a valid comparator, being the private market, is clearly nonsense. The Telco Act prohibits states and territories from discriminatory conduct. It does not prohibit commercial private enterprise. If you are using tainted evidence where they are allowed to discriminate, and do, to come up with state-based pricing, it is still discriminatory. You can't have that in the system. It is invalid. I find it extraordinary.

What you should be looking at are what are the Crown land agencies charging all their other users. That is the valid comparator. We are talking Crown land. The Valuer General values that Crown land. If you had done some analysis of the actual values, compared that to other Crown land occupiers, being non-telco, you should not look at any users, you should just say, "What are they operating on? What land area do they operate on that particular business?" You should then compare that to the land areas

occupied by the carriers.

This view is that telcos are right to be ransomed, and that term "efficient rent" is more accurately described as a "ransom rent". It is, "What will they pay before the pain is so much that they will leave?"

Telco sites cost a lot of money. They are not easily picked up and relocated. They have been building these sites in the fixed market, in the fixed line network since 1901 and since 1985 for the mobile networks.

You have to look at the value of the land. You have to look at other rents, not this arbitrary tainted evidence which does not pass the *Spencer v the Commonwealth* test.

With regard to the location categories and the rents described, you mentioned that these rents will apply to existing sites. Recommendation 17 says that these will apply to all sites. Can you clarify is it all sites? Are existing sites going to be captured by the rates per square metre? Recommendation 17 says otherwise.

If you look at the categories, you have Sydney, high, medium and low. If you go out to Baulkham Hills, one side of Old Windsor Road is in Parramatta Council, the other side is in the Hills Council. If I have two identical sites, each of 30 square metres, the rental for the Parramatta Council site is four times that of the Hills Council. The land values would be the same - both sites are in Baulkham Hills.

It is just obscene to think of $1,123 per square metre for a Sydney site. The three Crown land agencies combined have 53.5 per cent of land in this state - 44.5 million hectares. If you capitalise the rent at 6 per cent, which we believe is a fair rate, and then apply that on a hectare rate, that values land from Watsons Bay to Parramatta - it is all the same; it is all in the Sydney category - at $187 million on a hectare. That is telling me that a three-bedroom fibro house at the back of Parramatta is worth the same as land on Point Piper. It is nonsense. It is absolute nonsense. You have to look at the land value. What is the lost opportunity cost to the Crown?

I will turn briefly to National Parks. The sudden need to consider the social and cultural values of National Park land only arose after the last review when the low category rents went down. There was a budget black hole apparently for National Parks and, to fill it, they said, "We are just going to move rent up a category".

Now we have nothing charged at the low category, but the IPART draft report is now suggesting they are going to reduce the medium and high rates. The industry can anticipate that National Parks will change the rules again and say, "Well, we are going to put everything now in the Sydney category". They

are making it up as they go. It is just obscene.

I am afraid to say it, but IPART has to think about how they are going to charge. This is land, right. This industry is going backwards. You get more for your dollar today than had you did five years ago, 10 years ago and 20 years ago. You don't pay individual fees now for phone calls and texts. That is all thrown in; that is free. We have data plans.

This view that, because a site is on a highway, the industry is making buckets of money is false. The industry is not. If we were, we would be telling you because there would be an issue because you could have car drivers watching videos instead of driving their cars. Yes, they can make a phone call. That is all they do. They make a phone call. They are not paying a thing on their plan. They are paying a one-off.

There are certain issues that will come to light during the written submissions, but my view is that this state is looking at a Federal Court case. I would be happy to help in any way I can because the charging of rents which do not reflect the underlying value of the land is discriminatory and needs to be corrected. Thank you.

MR WILLETT: Thank you, Bob. We will take all of that on board.

Are there any other comments? Yes?

MR CUPITT: Greg Cupitt, from Commercial Radio Australia. I can't dispute any of the comments that have been made by the tower operators and owners because most of the commercial radio services are operated as co-users.

We have made comments in our submissions. We disputed most of the comments and findings in the draft report. With regard to everything else that has been said in terms of land value and market value in terms of the cost, double-dipping and the like, yes, okay, you have addressed that in a part, but it is certainly not addressed insofar as the broadcasters are concerned.

We required, under the Broadcasting Services Act, to cover licence areas with services, to provide local services. It is a fait accompli that that has to be done, whether by a main service and repeaters or whatever. As has been said, 43 per cent of New South Wales is covered by Crown land. We are caught up with that, and unfairly so. We don't believe that any of the mechanisms that have been identified in the report are founded. That's us, thank you.

MR WILLETT: Thank you very much for that.

Are there any other comments from the floor?

MR MITCHELL: Ross Mitchell, Free TV. Let us start with a positive, which has been repeated several times today, namely, that the change to the co-user arrangements is a far more sensible approach to charging people who are not extending beyond the footprint. In fact, I think they are probably lucky to be getting 500 bucks out of it.

I think the CRA has made a very good point. This is a point that we made in our original submission and I will make it again: you need to have a look at the service that is being provided. I think the change that you are proposing to rebates is probably retrograde.

I think what you are looking for is what service is being provided? What is the benefit to society? If it is good enough for National Parks to be trying to value up social, cultural and environmental impacts, it is probably fair enough to be weighing up the value of the service being provided on the other side. So we will go into those points.

MR WILLETT: Thank you very much, Ross.

Are there any other comments from around the room? Any final comments from around the table? No.

CONCLUDING REMARKS

MR WILLETT: Thanks very much, everyone. That brings the proceedings to an end. I want to express my thanks, on behalf of the organisation, for everyone's attendance here and the contributions they have made. I think the discussion has been supremely useful. I particularly want to say thanks to everyone for the very constructive way in which they have engaged in this discussion.

I remind you and encourage you to follow up with submissions to our draft report by 9 August. Anything more you can contribute would be very welcome. Thank you very much.

The transcript of this hearing will be available on the website in a few days' time, and we will consider all the feedback from today and from your submissions before submitting our final report to the Premier and Ministers in September. Once again, thank you all very much.

AT 11.10AM, THE TRIBUNAL ADJOURNED ACCORDINGLY