Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Inquiries Question on Notice

Standing Committee On Communications and the Arts

Inquiry Into Co-investment in Multi-carrier Regional Mobile Infrastructure

Wednesday, 24 May 2023 House of Representatives

Question:

Ms TEMPLEMAN: I just wanted to ask something specific about the crown land issue. Do you have any data so that you're able to say to us, 'We've seen evidence of payments being required, say, a percentage increase'? Are they being asked to pay double, a third or 25 per cent? Do you have any figures that make that a bit clearer about what, over and above what might be fair and reasonable, is being asked of mobile phone carriers?

Answer:

The Australian Mobile Telecommunications Association (AMTA) does not have visibility of the payments made by its members for their access to and use of Crown Land, consistent with the Association's protocols that align with requirements under the Competition and Consumer Act 2010 (Cth).

However, in relation to what is 'fair and reasonable' we provide the following information in response.

We are advised by our members that for land occupied by telecommunications carriers or supporting infrastructure providers the rentals charged by Crown land agencies do not have regard to the area of the land, the zoning of the land, the services available (power, roads etc.), the specific locations and most importantly the freehold value of the land. This method applied does often not follow any standard valuation methodology in determining the rental value of vacant land and differed from the method used to determine the rental for all other users who leased Crown land.

When AMTA's members seek to use government-owned crown land to establish a telecommunications facility to provide carriage services, it is our members' experience that State and Territory governments can take undue advantage of the carriers for the use of this land. This can make some proposed facilities uneconomical to deploy to the detriment of the wider Australian community. To address this problem, clause 44(1) of Schedule 3 to the Telecommunications Act provides protection for carriers against the effects of discriminatory laws, including protection against the imposition of discriminatory taxes, rents and charges.

<u>Telstra v State of Queensland (2016) FCA 12132</u>

In March of 2009, AMTA became aware that the crown land management agency in Queensland, the Department of Environment and Resource Management (DERM) (later retitled the Department of Natural Resources and Mining (DNRM)) had reviewed its method of determining rentals for telecommunications facilities and had gazetted the new Land Regulation 2009.

The new Regulation commenced on 1 July 2010. All other users of Crown land were to pay 6% of the land value as determined by the Valuer General. However, all land occupied by telecommunications carriers were to be charged $15,000 p.a. in the 7 major Local Government Authorities in southeast Queensland and $10,000 p.a. for the rest of Queensland. The rentals were to be indexed at CPI annually.

For land occupied by telecommunications carriers or supporting infrastructure providers these rentals did not have regard to the area of the land, the zoning of the land, the services available (power, roads etc.), the specific locations and most importantly the freehold value of the land. This method did not follow any standard valuation methodology in determining the rental value of vacant land and differed from the method used to determine the rental for all other users who leased Crown land from the DERM.

After some 2 years of failed negotiations, Telstra initiated proceedings in the Federal Court of Australia (FCA) in 2012. The main hearing commenced on 26 April 2016. On 14 October 2016, Rangiah J delivered his judgement in Telstra's favour finding that the Land Regulation 2009 was discriminatory and in breach of the Telecommunications Act 1997, cl.44. Subsequently DERM/DNRM refunded Telstra some $18.2m in restitution payments, interest and legal costs.

Unfortunately, AMTA members have advised that this case has not altered the practice of other State Crown Land agencies.

<u>New South Wales and Other States</u>

AMTA members are of the view that, following the FCA judgement in the Queensland case, the rental regime adopted in NSW by its' 3 Crown land agencies continues to be inconsistent with the Telecommunications Act 1997 cl.44 of Schedule 3.

Previous NSW IPART (Independent Pricing and Regulatory Tribunal) rental reviews, which are seen more broadly as a floor price to work up from for other state and, in particular, local government authorities, have a major inflationary impact on carrier rentals nationally.

AMTA members have advised that they are regularly confronted by other NSW Government departments, local Councils and Departments in other States, seeking to "cherry pick" elements of the IPART rental regime to achieve inflated rental outcomes in their own jurisdictions.

These other state and local government landowners generally show a disregard to the carriers' objective of enhancing telecommunication services, even in areas deemed to be 'Black spots'.

AMTA notes that the latest NSW IPART Rental review which was finalised by IPART in November 2019 sought to address issues of rental discrimination against the carriers, however the NSW Minister for Lands delayed release of IPART's report. In June 2022, several of our members received letters from the NSW Department of Planning and Environment (Crown Lands) advising that IPART had been asked to publish its 2019 report, but the NSW Government had decided not to accept the recommendations because the dataset in that review pre-dates Covid and is out of date. Therefore, AMTA's members continue to be exposed to discriminatory pricing that elevates rentals on Crown Land significantly compromising provision of service.