AMTA

Australian Mobile Telecommunications Association

AMTA State & Territory 5G Infrastructure Readiness Assessment

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Foreword

Mobile telecommunications are fundamental to Australia's economy and society. Australians demand near-ubiquitous, high-quality mobile services, and Australian networks must cater for continuous exponential growth of mobile traffic while maintaining affordable prices.

It is increasingly important that state and territory planning policy makers recognise the essential nature of telecommunications services and the rapidly-evolving dynamic requirements for network deployment and upgrade. Otherwise Australia's networks will fall behind and hinder economic growth and social connectivity.

AMTA counts amongst its members the three mobile network operators deploying and operating mobile networks in Australia: Telstra, Optus, Vodafone (part of the TPG Telecom Limited Group), together with infrastructure suppliers and support industries. The industry acknowledges both the critical role that it plays and the need to balance the very legitimate concerns of communities and government and comply with relevant regulations and standards. However, there is an opportunity to share best practice to identify opportunities for earlier realisation of the benefits of network upgrades for Australia.

In a competitive environment, our members are constantly investing in their existing 4G networks, and are now racing to deliver the benefits of 5G to Australia. After carefully planning their network infrastructure they must secure development approval from councils and tenure on freehold and government land, and to do this they must navigate through a complex and sometimes outdated web of rules and regulations in each of Australia's States and Territories, and over five-hundred council areas.

Regulation of telecommunications has traditionally been a Commonwealth responsibility, but Australia's state and territory governments play a key role in facilitating or hindering network deployment. They devise planning policies and the rules and processes for assessment of a substantial proportion of mobile network infrastructure. It is then local councils that are central in the process of interpreting these rules, assessing proposals and finally deciding whether to grant approval.

Despite several challenges during 2020 and 2021, Australia's mobile industry is now rapidly deploying new and augmented network infrastructure suitable to deliver 5G enabled services including new and additional antennas, new towers, poles and 'small cells'.

The continued deployment of 4G and emergence of 5G network infrastructure offers the potential for a substantial stimulus impact on the economy as we adapt to a "new post-Covid normal". As a technology that enables other sectors of the economy, 5G mobile infrastructure also offers economic benefits supporting communities, businesses and public services.

To ensure readiness for the deployment of the 5th generation of mobile networks, AMTA and its members encourage Australia's state, territory and local governments to embrace the opportunities for 'best practice' policy and regulatory reform recommended in this report.

In doing so, the industry is keen to work with all levels of government to unlock and expedite private sector investment in Australia's increasingly essential telecommunications sector.

Dan Lloyd, Chair, Australian Mobile Telecommunications Association (AMTA)

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Executive Summary

The time has never been better for Australia's State and Territory Governments to review and recalibrate their policy settings and planning rules to cater for improved mobile connectivity and deployment of new 5th Generation (5G) telecommunications network infrastructure.

As the peak industry body and voice of Australia's mobile telecommunications industry, one of AMTA's top priorities is the need to ensure the timely, efficient and effective deployment of 5G mobile technology.

Investment in 5G and delivery of improved speed, capacity and latency has the potential to support economic recovery, provide substantial benefits to business and consumers, enable remote work and education, support critical utilities and ultimately contribute to carbon reduction.

Australia's state, territory and some local governments are increasingly turning to smart city or smart region strategies as a means to solve problems and improve the lives of their residents. 5G will increasingly become a technology that enables smart cities and smart regions.

Whilst much of Australia's Telecommunications infrastructure is established using Federal 'Low-impact' exemptions, there is a substantial proportion that requires approval from local government. This means navigating the planning and tenure regulations framed by the various State and Territory Governments.

AMTA's recommendations for State and Territory governments are grounded in best regulatory practice and have been guided by the Development Assessment Forum 'Leading Practice Model for Development Assessment' endorsed by the Council of Australian Governments; (COAG) Business Advisory Forum.

When it comes to carriers securing land tenure, the central requirement is found in the non-discrimination requirements of the Telecommunications Act 1997, which requires that states, territories and local governments should not commercially 'discriminate' against telecommunications infrastructure in their laws.

AMTA acknowledges the important objectives of State and Territory Planning systems to minimise the visual impact of network infrastructure, and to strike a balance to provide for a net-community benefit.

Together with its members, AMTA has reviewed and assessed the current regulatory frameworks of each of Australia's eight State and Territory Governments, and by extension local governments.

After a thorough analysis by AMTA and its members, the assessment for each State and Territory includes:

- National 'Best Practice' elements of that State or Territory;
- Each 'Reform Opportunity' in that State or Territory; and,
- 'Recommendations' to improve 5G infrastructure regulatory 'readiness' in that State or Territory.

This 5G Infrastructure State Territory Readiness Assessment has highlighted best practice across Australia and has given credit where it is due. It has also sought to highlight and document a series of 21 recommendations based upon models for best practice regulation for which reform is also necessary. These are summarised in the following diagram.

The three mobile carriers deploying 4G and emerging 5G networks including Telstra, Optus and Vodafone are seeking objective, clear and non-discriminatory planning policies, rules and regulations that strike a balance between provision of essential telecommunications services and minimising impact.

The industry is already building the first 5G networks, with critical investment decisions being made now and in the very near future.

It is imperative that there is certainty around the ability to deploy the requisite infrastructure to provide 5G.

AMTA and its members look forward to working with all levels of Government so that Australians can realise the economic, social and environmental advances that can be enabled via existing 4G and emerging 5G mobile networks.

5G Readiness - Summary of Best Practice Examples and Reform Opportunities

QUEENSLAND

Best Practice Examples

• Moves to reform leasing with review and introduction of Land Regulation 2020.

Reform Opportunities

• Introduce Telecommunications Code into Queensland Planning Provisions.
• Introduce State-wide consistency for DA fees.
• Review Appeal process at P & E Court to avoid undue delay, expense and technicality.
• Review Dept Education Exclusion Zone Policy which is not science based.

NORTHERN TERRITORY

Reform Opportunities

• Include Telecommunications Facilities as 'permitted' to allow for exemption from consent in several zones (including Industrial and Rural) where conditions are met.
• Adopt AMTA's suggested amendments to the Northern Territory Planning Scheme 2020 as contained in the AMTA/MCF submission lodged with the Commission in April 2020.

NEW SOUTH WALES

Best Practice Examples

• The Infrastructure SEPP provides Exempt and Complying Development for specified types of telecommunications infrastructure within specified timeframes.

Reform Opportunities

• NSW Dept Education withdraw its policy promoting non-science based exclusion zones.
• IPART to create single fee structure that applies to all occupiers of Crown Land and does not discriminate.

WESTERN AUSTRALIA

Best Practice Examples

• Statement Planning Policy 5.2 provides a consistent policy framework, but requires action by councils to ensure consistency.

Reform Opportunities

• Ensure Council Policy compliance with SPP5.2 (3 Councils remaining).
• Seek amendments to ensure use not permitted is removed from zones in some Schemes.
• Timely & consistent approach to leasing Crown Land.

AUSTRALIAN CAPITAL TERRITORY

Reform Opportunities

• Introduce complying development for some facilities.
• Review Communications Facilities Code and minimise subjective assessment criteria.
• Introduce Master Agreement including timely & consistent approach to leasing land.

SOUTH AUSTRALIA

Best Practice Examples

• Independent professional members on Council Assessment Panels make decisions on DA under delegation from Council.

Reform Opportunities

• Phase 2 & 3 Planning and Design Code to recognise Telecommunications and provide Code with exemptions.
• Ensure Historic Overlays don't impact LIFD exemptions.
• DEW encouraged to establish Master Agreement.

TASMANIA

Best Practice Examples

• Short statutory timeframes for processing of DAs for Telecommunications Facilities.
• Firm statutory timeframes for decisions on 3rd Part Appeals to RMPAT.

Reform Opportunities

• Review acceptable heights in Single Planning Scheme Telco Code.
• Introcude complying development with additional facilities listed as 'minor communications infrastructure in Tasmanian Planning Scheme.

VICTORIA

Best Practice Examples

• Limited 3rd party appeals for mobile blackspot funded sites.
• Policy across the State underpinned by a Planning Policy Framework, Particular Provisions and a State-wise Code which offers permit exempt approval pathway.

Reform Opportunities

• Bring forward review of 2004 Victorian Code.
• Resolve permit triggers (use/development).
• Seek amendment to ensure no zones prohibit telecommunications facilities.

Background & Purpose

Australia consistently ranks amongst the top-tier of best performing countries for mobile broadband speeds, and this is in no small part a result of ongoing innovation, competition and investment in network infrastructure by Australia's licensed mobile carriers.

With the right policy settings at federal, state/territory and local government level, Australia's mobile carriers can continue to deliver this investment in quality next generation mobile networks – including new towers for wide area coverage, small smart poles and small cells for localised service and all of the antennas and technology that connects smart phones, sensors, machines, cars and the 'internet of things'.

During 2019/20, Australia's drought, bushfire and covid-19 pandemic response has highlighted the ever-increasing reliance on quality mobile connectivity for a wide range of uses. Most Australians are now acutely aware of the level of broadband and mobile connectivity and service available where they live and work. During the covid-19 pandemic, the level of demand for mobile networks has spiked, and as people spent more time online at home, network traffic loads shifted geographically from city centres and office areas to suburban residential areas[2]. This amplified the present and ongoing challenges associated with ensuring quality network service in residential areas during peak times of the day.

And just like council development approval is required for some new homes, apartments, office buildings and commercial premises, so too it is required for a substantial number of our new telecommunications network infrastructure, including for 5G when new structures are established.

The process for 'planning approval', which is interchangeable with terms including 'development approval' or 'development consent' is different in each state and territory, and is given effect by Acts of each State Parliament, regulations, codes and planning schemes which tend to include both state-wide and local council planning scheme provisions.

When it comes to securing "the go ahead" to build towers, poles, antennas and other network infrastructure, mobile telecommunications is somewhat unique, insofar as some of it is exempt from council planning approval due to federal exemptions, some of it requires council approval due to state planning rules, and some is exempt from council approval due to state planning rules. In short, all three levels of government have a role which presents significant regulatory complexity.

AMTA and Australia's three mobile carriers deploying 5G networks including Telstra, Optus and Vodafone are seeking objective, clear and non-discriminatory planning policies, rules and regulations that strike a balance between provision of essential telecommunications services (including ongoing 4G and emerging 5G), and minimising impact.

The industry is already well advanced in building the first 5G networks, with critical investment decisions being made now and in the very near future. It is imperative that there is certainty around the ability to deploy the requisite infrastructure to provide 5G, so the benefits can be realised across Australia.

What should State & Territory governments do to achieve 5G deployment readiness?

The next sections of this report outline and distinguish between the powers and immunities (or 'exemptions') from State & Territory Planning laws provided by the Federal Government, and the planning (development assessment) requirements of Australia's state and territory governments. It then examines State and Territory regulatory best practice with an outline of the highly regarded 'Leading Practice Model for Development Assessment'.

Importantly for context, we also outline the not well understood non-discrimination requirements of the Telecommunications Act 1997 as they relate to state and territory planning systems for telecommunications, and terms for tenure on government land. In short, the Telecommunications Act requires that states, territories and local governments should not 'discriminate' against telecommunications infrastructure in their laws.

The report then reviews and assesses the current regulatory frameworks of each Australian State and Territory and by extension local governments as a legislated instrument of the States & Territories, and determines how these frameworks align with best regulatory practice. After a thorough analysis by AMTA and its members, the analysis for each State and Territory includes:

- National **'Best Practice'** elements of that State or Territory;
- Each **'Reform Opportunity'** in that State or Territory
- Several **'Recommendations'** to improve 5G infrastructure regulatory 'readiness' in that State or Territory

The on-going evolution of services, which at the moment are focussed around the roll-out of 5G, requires a nimble and responsive policy regime and regulatory framework that recognises the essential nature of mobile telecommunications infrastructure and the on-going improvements to technology which allow new ways for services to be delivered.

AMTA has prepared this report to promote discussion, action and ultimately 5G deployment readiness by Australia's State and Territory Governments and councils.

The importance of 5G to Australia

The establishment of 5G network infrastructure is not an end point – rather it is the beginning of exciting possibilities with the introduction of substantially improved reliability, latency, throughput and speeds across our mobile networks.

More than ever, all forms of communications networks including mobile networks are viewed as essential, particularly when Australians are working remotely during the covid-19 pandemic. 5G infrastructure and services offer opportunities including for Australia's economy, consumers, utilities and carbon reduction.

"the productivity benefits of mobile telecommunications will be worth **$65 billion** to the Australian economy by 2023"

Economy

As we emerge from the pandemic, the foundation for a successful recovery in coming months and years will be rebuilding our local economies as quickly as possible, and mobile networks are key to enabling technology for all other sectors of the economy. For example, for every FTE role employed in the mobile industry there are 3.7 employed in flow-on industries.[3]

According to the Deloitte Access Economics Report' Mobile Nation – the 5G Future', the productivity benefits of mobile telecommunications will be worth $65 billion to the Australian economy by 2023 – equivalent to 3.1% of GDP.

Consumers

Consumers are embracing technology in the mobile ecosystem. Recent research points to the potential of 5G for consumers[4] with a key finding that data usage for one in five users could reach more than 160GB per month on a 5G device by 2025.

Australian consumers expect 5G to provide relief from urban network congestion in the near term - especially in Australia's bigger cities, where nearly half (47%) of smartphone users report facing network issues in crowded areas - and to create new home broadband choices.[5]

Current 4G usage patterns are not indicative of future usage behaviours. Video consumption is set to rise significantly with 5G. Australian consumers expect to not only stream video in higher resolutions but also use immersive video formats such as Augmented Reality (AR) and Virtual Reality (VR), resulting in an additional two hours of video content being watched weekly on mobile devices by users in the 5G future when they are out and about, including half an hour wearing AR glasses or VR headsets.

Remote work and education

5G's bigger bandwidth, lower latency and faster speed will remove remaining impediments to working, collaborating, studying and attending classes remotely.

Whether working from home, in the field, whilst travelling or in the office, 5G will allow for virtual meetings and the collection, retrieval and sharing of data rich material with ease.

As we emerge from the height of the Covid-19 pandemic, people are acutely aware of the need for quality mobile connectivity, which will go hand-in-hand with advances in edge computing and cloud-based storage.

The contribution of 5G to remote work and education will have a significant impact on the livelihood and competitiveness of Australia's regions and closing the digital divide.

Enhancing Australia's Utilities

Because 5G is an 'enabling' technology, critical infrastructure resilience increasingly recognises the interdependencies between telecommunications and other essential infrastructure for utilities such as water, power, manufacturing and transportation networks. 5G and IoT will promote the use of sensors, automation and precise machine control for monitoring equipment and processes virtually, delivering significant benefits for Australia's utilities.

From smart power grids to connected cars that autonomously traverse streets, massive amounts of mobile broadband data will be required. A heterogeneous network of technologies underpinned by 5G will be required to meet the challenge of providing enough coverage and capacity to power these advances.

Carbon Reduction

5G's most important contribution to energy efficiency may come from enabling users and especially the 5G-driven 'Internet of Things' to contribute to a net-reduction in carbon emissions.

Environmentalists and policy think tanks alike believe that smart wirelessly connected appliances, factories, cities and transportation grids will be able to optimize and reduce their power consumption. The end result will be lower costs and a meaningful contribution to global efforts to mitigate climate change.

A detailed analysis sector by sector, confirms that ICT (including 5G) has a substantial potential to mitigate climate change, with indications that total Greenhouse Gas emissions could be reduced by as much as 15% by 2030.[6]

Governments embracing the benefits of 5G Infrastructure

Australia's state, territory and some local governments are increasingly turning to smart city or smart region strategies as a means to solve problems and improve the lives of their residents.

Rather than starting with the technology, the public sector is designing solutions to improve the human experience. Communications networks, sensors and IoT are then drafted and applied as enabling solutions.

During 2020, state and local governments in places such as Western Sydney, South-East Queensland and central Melbourne were examining the use of 5G technology as a means to enable smart solutions for their communities. Whilst these Governments are proceeding to examine all facets of deployment, regulation, governance and use of 5G technology, it is increasingly the economic imperative of being an early mover to 5G that appears to be the primary catalyst.

The potential economic benefits of 5G will soon become a differentiator for cities looking to attract businesses and residents.

The ability to compare progress between municipalities and learn lessons from the successes or costly delays of others may generate constructive cooperation between cities and carriers to become more efficient when deploying 5G infrastructure. Cities that provide accelerated and lower-cost mechanisms for wireless infrastructure deployment are likely to get rewarded by providing their residents and businesses access to game-changing 5G services faster than cities that fail to address costly or unreasonable delays."[7]

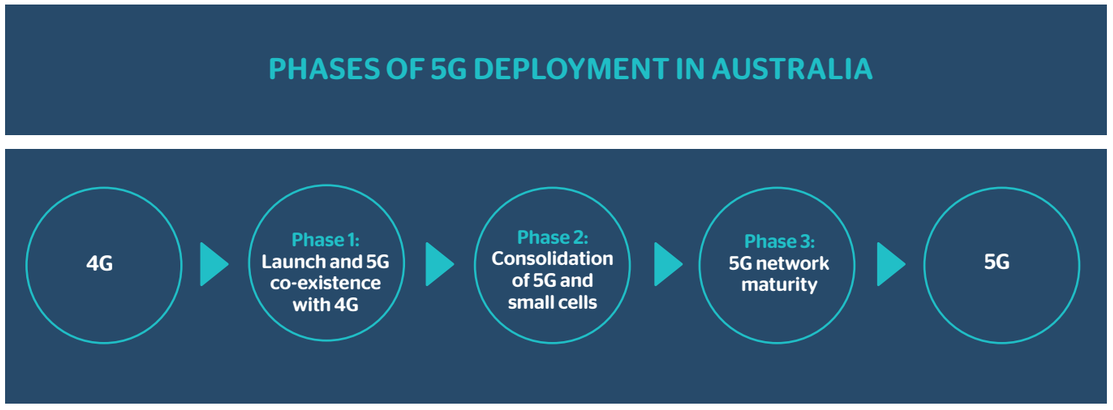
Speed of the processes for Councils to approve 5G infrastructure is central. The Australia New Zealand Smart Cities Council has produced a Smart Cities Readiness Guide. When it comes to the infrastructure for 5G the Guide recommends that Governments "seriously consider siting ordinances that shorten and/or simplify time-consuming review processes."[8]

In addition, the Australian Smart Communities Association, has drafted 'Common Principles and Recommendations for the Efficient, Unified and Community Viable Rollout of Next Generation Mobile and Wireless (5G & LPWAN) Infrastructure'.[9]

Further acknowledgement of 5G's role as a 'key enabler' in Smart Cities has been identified by Standards Australia, with the launch of its Smart Cities Standards Roadmap in August 2020. This includes the establishment of a national 5G standards development sub-committee of the Smart Cities 'Strategic Advisory Committee', to contribute to the development of 5G related standards and support 5G infrastructure deployment for Smart Cities.

Phases of 5G infrastructure deployment in Australia

It will take several years for Australia to migrate from 4G to 5G. This section summarises three phases of this transition, with indications of the likely form of infrastructure required in each phase and the corresponding regulatory response in each case.



Phase 1: Launch and 5G co-existence with 4G

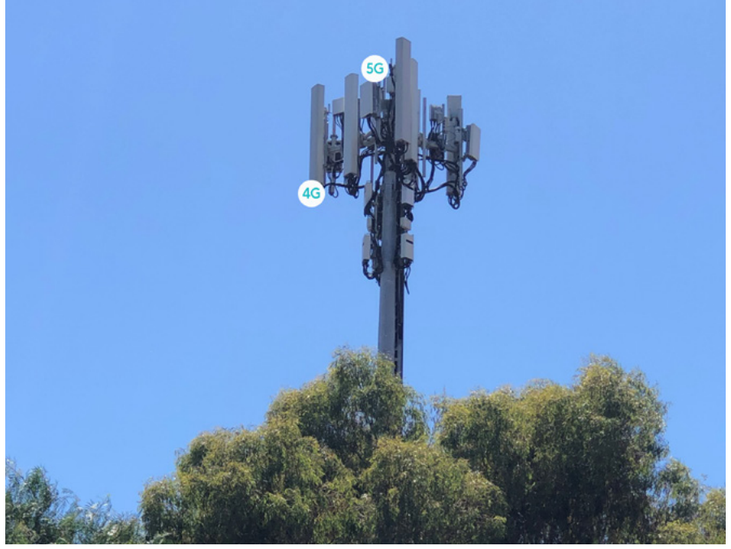
In this first phase of deployment in Australia, 5G will primarily coexist with 4G. This includes the addition of 5G antennas and ancillary equipment at existing 'macro' 4G facilities on towers, poles and rooftops. These deployments are usually referred to as non-stand-alone (NSA)[10]. This NSA co-location of 5G antennas onto existing 4G facilities typically in high traffic areas of the inner city and regional centres, and the use of lower and mid-band spectrum will allow for good coverage and mobility. In this scenario, carriers are essentially utilising Federal exemptions pursuant to the Telecommunications (Low-impact facilities) Determination to co-locate antennas in this initial phase. However, some standalone Telecommunications poles are reaching their structural capacity and may need to be replaced in order to achieve co-location of 5G. This will necessitate lengthy approvals from councils, if no suitable exemptions are available.

Phase 2: Consolidation of 5G and small cells

In the second phase, as 5G networks mature and higher spectrum bands (referred to as "mm Wave") become available in Australia from 2021, 5G will continue to be co-located on existing 4G sites.

In addition, 5G will also be deployed in mm Wave frequencies, meaning that 5G cell coverage areas will typically be smaller than those of 4G. Carriers will need to deploy 5G in this way to gain the significant new capacity in high demand areas and extremely high speeds that the mm Wave spectrum provides. As the 5G coverage area will be geographically smaller, some new sites will be needed in between existing 4G sites to achieve contiguous coverage. These will typically take the form of 'small cells', whereby 5G mobile antennas are typically attached to existing infrastructure, such as utility poles, streetlights, traffic lights, and sides of buildings. They may also be established on new small 'smart poles'.

Small cells typically have a range out to several hundred metres. Small cells will be a feature of 5G networks particularly where the new relatively high mm Wave frequencies which have short wavelengths are deployed. The signal is excellent but doesn't travel far, so more small cells will be deployed, but they'll be sending out less power than today's 4G systems. As the Australian Communications and Media Authority explains "5G base stations can also go into 'sleep mode' when they are not in use. This means their power output and EME emissions will be lower than 4G base stations".[11]



Many hundreds of small cells associated with 4G networks have already been deployed across Australia to boost depth of mobile coverage and provide capacity, mainly in built up areas including central business districts and sports stadiums. This is evident when searching within these localities utilising the Australian mobile industry's publicly accessible database called the 'Radio-frequency National Site Archive or "RFNSA" at www.rfnsa.com.au

A search for 'Melbourne', and 'Nearby Sites' in the map function will show a large number of existing small cells located in the "Road Reserve" within the Central Business District.

We are also seeing small cell deployments being utilised in too difficult to cover suburban locations where macro type facilities have been unable to deployed.

In this second phase, whilst carriers will be able to utilise Federal exemptions found in the Telecommunications (Low-impact facilities) Determination, this will not always be possible as these sites may be within "Areas of Environmental Significance" (including Environmental or Heritage protected) which may preclude the use of the exemptions within the Determination. In addition, suitable existing utility poles may not exist in the area to be serviced. The carriers will need to secure approval, navigating the uncertainty of state, territory and local government planning rules.

The challenges of deploying 5G small cells is complex and requires local government collaboration. This is neatly summed up by Accenture Strategy in its publication 'Smart Cities – How 5G can help Municipalities Become Vibrant Smart Cities.' "While the benefits of pervasive small-cell 5G technology are highly significant, the real-world logistics of deploying small cells on a large scale must also address the cost, complexity and time involved in deployment. Many municipalities continue to rely on regulations and processes that were created to handle the rollout of existing and previous wireless technologies, but which are likely to be inadequate for the rollout of 5G technology. The challenges in this area are threefold: local permitting and regulations; access to public rights of way; and fee structures" [12].

Prior to this phase, it is incumbent upon all levels of government, the industry and the community to work towards understanding what constitutes a balanced outcome in terms of providing quality and cost effective 5G service, as well as minimising negative impact on visual amenity.

Phase 3: 5G network maturity

In the third phase, when 5G reaches full maturity and demand is fully utilising and in balance with capacity of the technology, we expect to see operators deploy stand-alone (SA) 5G in low, mid and high (mm Wave) bands. This will require new macro base stations and new small cells, with many requiring council approval.

SA 5G deployments will also be used for new use cases, such as private or enterprise networks and industrial IoT, in 'self-contained' factory, hospital or campus environments.[13] It is in this phase, if not before, that 5G telecommunications infrastructure will be undoubtedly recognised as essential, and its omnipresence well accepted.

At least in the initial phases, 4G networks will continue to be utilised in parallel and be interoperable with 5G and new towers, monopoles and co-located 4G facilities will continue to be deployed. Therefore, the recommendations of this Readiness Assessment apply equally to 4G as they do to emerging 5G infrastructure.

Co-location and Site Sharing

For the successful delivery of 5G networks, 'co-location', site sharing and co-operation between the carriers will be required across all three phases of deployment.

There is a well-established industry practice and process for carriers to share 'passive' infrastructure such as towers, poles, buildings and housings. That is, where carriers co-locate their antennas onto a single structure. Despite misconceptions from state, territory and local government, the industry achieves high levels of 'co-location'.

AMTA members expect sharing of passive infrastructure to continue on throughout the 5G era where it is technically feasible (e.g., physical space, wind-loading of the structure, matching equipment rack types, etc) and this makes economic sense to do so.

State, territory and local government planning rules can play a significant part in incentivising carriers to co-locate. For example, allowing exemptions for the extension or swapping out of existing towers or poles for a stronger and moderately higher structure to enable the addition of co-located antennas can negate the need for an additional stand-alone structure.

However, sharing 'active' infrastructure such as electronics including radio transmitters and antennas, has a range of technical and economic constraints.

Nevertheless, the Australian industry continues to explore the potential for 'Open Radio Access Networks' (Open RAN) that provides for interoperability and sharing of open hardware, software, and interfaces for mobile networks.

As we move to deploying small cells, precise placement is critical for them to be effective. It will be rare that the needs of all carriers align for any small cell to a sufficient extent for sharing the small cell to be viable. The factors requiring precise small cell site placement include amount and geographic focus of customer demand and location of surrounding network elements (macros and other small cells) and these are unique to each carrier.

The visual impact of co-locating multiple small cells on a single structure should also be carefully considered when determining the best method of deployment and mitigating impacts in a locality. There is scope for coordination with local councils in relation to the best siting solutions, whether these involve co-located or standalone small cells.

Creating Planning Regulations for 5G Infrastructure

Minimising impact on amenity from 5G infrastructure

The purpose of each state and territory planning system as it relates to telecommunications network deployment is generally two-fold. Firstly, government is seeking to promote the development of network infrastructure due to social and economic benefits, which has been outlined in earlier sections of this report. Secondly, the other side of the equation involves government seeking to minimise the negative impact on 'amenity' from 5G infrastructure.

Commenting on this dual objective in its submission to the Federal Parliamentary 5G Inquiry the Australian Local Government Association (ALGA) states "While ALGA supports the rollout of modern telecommunications infrastructure to improve the lifestyles, environment and economy of cities and towns, it needs to be balanced with proper process to ensure structural integrity, safety, urban design, and visual amenity is retained and visual interference (e.g., along road corridors) is minimised".

The 'amenity' of a neighbourhood or streetscape is a 'wide ranging' and flexible concept.[14] Some aspects are 'practical and tangible such as traffic generation, noise, nuisance, appearance and even the way of life of the neighbourhood ... but others are more elusive such as the standard or class [or reasonable expectations] of the neighbourhood' [15]. But when it comes to the addition of 5G equipment in a streetscape or on a building, it is its visibility which is often the focus. Importantly, 'visual change' with the addition of antennas and other equipment does not always equate to a negative or detrimental change.

When combined, government will assess and balance these often-competing aspects to determine if a net-community benefit has been achieved as a result of a proposal. Achieving a net-community benefit places an emphasis on ensuring that an area is provided with comprehensive, ubiquitous communication and digital network services, particularly where this infrastructure will add to social well-being and economic growth, whilst seeking to minimise impact as much as possible within the context of the area. [16]

"'Visual change' with the addition of antennas and other equipment does not always equate to a negative or detrimental change"

The need for non-discriminatory and objective planning rules

Thankfully, in some states, territories and council areas, government has determined where the balance is achieved in their prescriptive planning rules between the positive service-based aspects and minimising impact on amenity. To avoid subjectively assessing every proposal, this is 'codified' into planning rules including performance criteria such as the maximum height or setback distance of the telecommunications infrastructure from site boundaries and protection of view-lines.

In attempting to achieve the objectives of the planning system in a state or local area this approach is desirable as the rules are clear and not subject to sometimes vague discretion when a permit application is being assessed by a council. This is consistent with the Leading Practice Model for Development Assessment, which is discussed later.

This approach incentivises carriers to establish network infrastructure without the need for formal approval if reasonable requirements for siting and design are met. The desired policy goal has been determined, and the policy makers have developed often prescriptive 'exempt' or 'complying development' controls. Such an approach has successfully been introduced in New South Wales and Victoria, and to a lesser degree and inconsistently in Queensland. In some cases, it has also been introduced into Council policies, such as in Mandurah, Western Australia.

Recognition of the essential role of telecommunications networks

If we are to realise the economic benefits and enable smart outcomes built on 5G infrastructure, much will depend on how robustly 5G networks are deployed locally, and how we can apply new regulatory approaches from those used in the past.

As outlined above, 5G networks have the potential to be a key input into the 4th industrial revolution. 5G services will be as critical as power, gas and water. Indeed, communications is commonly regarded as the fourth utility. However, when it comes to state and territory planning rules the mobile industry does generally not have the same rights as utility companies to deploy assets in a timely and cost-effective manner with similar planning exemptions. The industry is concerned that continuation of this approach risks making 5G networks commercially unviable in some areas, and also discourages other utilities from cooperating with mobile carriers to coordinate the sharing of infrastructure.

So, AMTA and its members are not seeking a regulatory break that is disproportionate or inflated from the rights of other utilities or from the importance of 5G services.

Rather, some of today's state and territory planning policies for telecommunications had their genesis twenty years ago, when mobiles were considered an optional accessory, when small cells were seldom deployed, and less than half of all Australians had a mobile subscription.

At that time, due to less demand, mobiles were not considered to be an essential or critical utility service. The siting of mobile infrastructure was able to be established in industrial or commercial zoned areas, but this is just not possible now or into future as 5G infrastructure needs to be in areas of demand which is increasingly where people access network services in residential areas.

In addition, the rules need to be updated to reflect the essential nature of the infrastructure, and to ensure they are written to reflect planning best practice.

Regulatory Responsibilities for 5G Infrastructure

The Federal Government and 5G Infrastructure

Legislative Framework

The power to regulate and control telecommunications in Australia is vested in the Commonwealth through Section 51 of the Australian Constitution. During the 1990's, when mobile carriers began their 1st and 2nd generation rollouts they were aided by a range of exemptions and powers afforded by the Commonwealth. This allowed the carriers to establish a network without the need for state and territory approvals, and this extended to the construction of structures such as monopoles and lattice towers.

With the arrival of the Telecommunications Act 1997, the Commonwealth limited the exemptions and powers available to the carriers and permitted only 'low-impact facilities' to be deployed without scrutiny of State and Territory laws and Council approval. These exemptions were enshrined in the Telecommunications (Low-Impact Facilities) Determination 1997 (the Determination), which was amended in 1999, 2018 and 2020.

For mobile telecommunications, the Determination deals primarily with the mounting of antennas on existing buildings and structures, as well as co-location and the placement of ground-based equipment.
It sets out in a schedule the physical and locational characteristics which must be complied with to enable a carrier to deem a facility 'low impact'.

For more than 20 years, the Determination and its successive amendments have been an effective instrument, striking a balance between expediting the deployment of network infrastructure and minimising visual impact. There is no better example of this than the high levels of co-location and site sharing between the carriers, which is required and encouraged by the Determination and Telecommunications Code.

Federal requirements for Co-location

Australia's mobile carriers have worked cooperatively for more than two decades to comply with government policy to co-locate, and in doing so have achieved high levels of site sharing and co-location of antennas on towers, rooftops and other structures. Whilst this has been the carriers' preference, it is also mandated within the Federal Telecommunications Code of Practice 2018 [17], which requires that each carrier must take all reasonable steps to use existing facilities.

This has negated the need for the establishment of many more towers in Australia than would otherwise exist. In short, it makes good sense for carriers to co-locate because it saves money, time and often minimises community angst. But this cannot be at the expense of coverage, quality and continuity of service and health and safety, so there will often be the need for new freestanding facilities for new services such as 5G.

Federal requirements for Notification & Consultation

From 2002 notification and consultation was required for telecommunications facilities that were either 'low impact' or did not require Development Approval pursuant to state and territory rules. It is a Carrier license condition that they must comply with a mandatory consultation code (the 'Code') produced through the Communications Alliance processes and titled "C564:2020 Mobile Phone Base Station Deployment".

Amongst several obligations, the Code requires a consultation strategy be devised for a new telecommunications facility, with council input, and it is then executed by the carrier or its representative.

The consultation is undertaken to ensure that community stakeholders have an opportunity to obtain information and engage with the carrier or its representative. The consultation is mandatory and where triggered it is regulated by the ACMA.

Federal Regulatory Framework for Tenure

When it comes to securing land access and tenure there is a misconception that carriers have rights to install all types of telecommunications infrastructure, without approval or tenure. But this only applies to 'low-impact' facilities – that is, facilities specified in the Telecommunications (Low-impact facilities) Determination 2018.

The mobile carriers must follow the rules in the Telecommunications Act 1997 when they seek to install these 'low-impact' facilities. If a licensed telecommunications carrier follows the rules in the Act, it can enter onto land to: inspect the land, install a low-impact facility, and maintain a facility. Whilst it should not be mistaken with the notification required by the Deployment Code outlined above, Schedule 3 of the Act requires notice to be supplied by the carrier to access land.

Whilst licenced carriers have some powers to occupy land and install telecommunications facilities for mobile base stations there is a clear preference to enter into commercial agreements.

Federal role in safety of 5G Radio-Frequency Energy

The legislative authority to control radiofrequency (RF) exposures from radiocommunications facilities derives from the Federal Radiocommunications Act 1992, and the applicable limits are set out in the ARPANSA Standard for Limiting Exposure to Radiofrequency Fields – 100 KHz to 300 GHz (RPS S-1). The limits are based on the recommendations of the International Commission for Non-Ionizing Radiation Protection (ICNIRP).

When it comes to demonstrating compliance with safety standards, Australian industry systems are world leading and offer unparalleled transparency. Carriers must prepare an Environmental EME Report in a format approved by the ARPANSA and these are uploaded onto the publicly accessible Radio Frequency National Site Archive (www.rfnsa.com.au). The Report shows calculated EME levels and compliance with the Standard for each and every facility, including additions to that facility.

Regulatory Responsibilities for 5G Infrastructure

Australia's States & Territories and 5G Infrastructure

Legislative Framework

Following deregulation by the Commonwealth in 1997, several States recognised that it would not be appropriate for all new telecommunications facilities which were not 'low impact facilities' to be caught by the full force of the planning system. Victoria moved first when in 1999 it adopted "A Code of Practice for Telecommunications Facilities in Victoria".

Other States implemented codes or policies at a State level so as to enable certain forms of Telecommunications facilities, including NSW's Infrastructure State Environmental Planning Policy (ISEPP), which was accompanied by the Telecommunications Guideline.

The ISEPP allows telecommunications infrastructure that would otherwise require development approval to be either exempt from planning approval, or be able to receive a ten-day complying development approval, subject to strict performance criteria including health and amenity considerations.

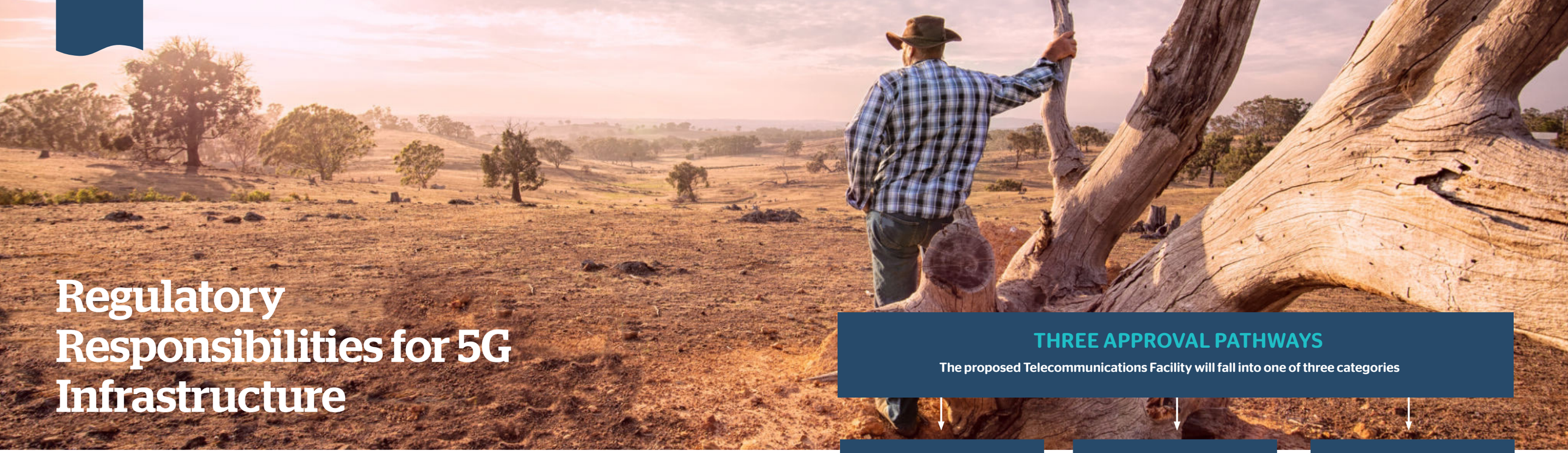
Importantly, planning instruments like the Victorian Code and the New South Wales ISEPP recognise critical nature of the infrastructure, and that this infrastructure should be dealt with in the same or similar manner as other critical utility infrastructure like that for water and electricity. They are designed to ensure there is a consistent approach and regulation state-wide, rather than allowing councils to adopt their own varying regulations and policies. They also recognise that subject to relevant performance criteria, there are telecommunications facilities outside those defined Federally as 'low impact' which don't need to be the subject of the development assessment process.

This type of framework has proven effective and provided greater certainty to carriers. The diagram on the right outlines this arrangement.

Some states however do not provide such an arrangement and do not provide this "middle" way, and they require development approval for all forms of telecommunications development, unless a proposal is a Low-impact facility.

The end result is:

- Unnecessary regulation of and delay in the deployment of critical infrastructure';
- Inconsistent policies, regulation and performance criteria between different council areas when the infrastructure required is ubiquitous and essential; and,
- Critical/essential infrastructure being zoned out of particular localities



Safety of 5G Radio-Frequency Emissions - State & Territory role

What are the states, territories and local government responsibilities when it comes to safety of 5G Radio-Frequency Energy?

State and territory governments are responsible for implementing, regulating and enforcing Work, Health and Safety laws in their jurisdictions. In relation to Radio Frequency EME, this can extend to ensuring that the work environment is safe for workers carrying out work, at or close to base stations, buildings or other facilities with radio transmitting antennas.

In some states and territories, councils that are assessing development applications for 4G and 5G infrastructure seek confirmation from the carrier that when it is operational, the facility is designed to operate and comply with the ARPANSA safety standards.

It is not open to a council, a planning court or a tribunal to pioneer new standards of its own on the basis of health concerns associated with electromagnetic energy. [18] A Council is obliged to have regard to relevant regulatory standards as it finds them, and the creation of new standards is a matter for other authorities. In addition, state and territory discretion in the planning system does not extend to the establishment of planning based-exclusion zones designed to separate a proposed facility from perceived 'sensitive' land uses such as schools. Finally, calls for precautionary measures in addition to the standards are not required, as the standards already adopt a precautionary approach, including significant safety margins.

State & Territory Regulatory Framework for Tenure

What are the states, territories and local government responsibilities when it comes to carriers securing tenure (usually a lease or license) to establish telecommunications facilities?

Whilst the carriers will often relegate the use of Crown and Council owned land in favour of freehold land due to the additional time to finalise tenure on the Crown and Council land, it can still make sense when a good site is found from either a planning perspective (due to good visual and physical separation from dwellings), or if such a site is required for efficient network coverage.

Authorisation to use, access and occupy Crown land in each State is generally subject to requirements and processes contained in an Act of State Parliament, ensuring that the Crown land is used in a manner consistent with certain land management practices. Tenure is often negotiated with the relevant State Department, and approved by the Minister. The process to obtain approval to occupy Crown Land is generally observed as time consuming and inefficient, delaying the establishment of new facilities. Council owned land is equally problematic.

For both Crown and Council owned land it is often necessary to undertake two separate and sequential environmental assessments and community consultations. The first to determine whether granting a lease would be appropriate and whether owner's consent should be provided allowing the Carrier to lodge a development application, and the second in relation to that development application. This adds considerably to the cost of and the delay in deployment. There is no reason why the two processes could not be combined with the right regulatory changes.

5G Readiness Reforms – USA & UK Examples

With all three Australian carriers having now launched commercial 5G services, Australia is amongst a leading group of nations seeking to realise the economic benefits this brings. For State, Regional and local governments in these nations, 5G will soon become a differentiator to attract businesses and residents. It is no surprise then that many of these governments are seeking to create a regulatory environment for deployment that is conducive to investment.

United States

To-date in the United States, 29 States have successfully enacted legislation to modernise and streamline state rules for small cell deployment. This legislation allows for expedited deployment of small cells in the public right-of-way (streets) in a responsible and sustainable manner. These carefully crafted and balanced laws reflect the innovative changes in technology for the deployment of 5G.

For example, in January 2020 in New York State, Governor Andrew Cuomo outlined a proposal to improve cell service in the State of New York. The Governor's new plan includes appointing a project director from Empire State Development, the state's economic development agency, who will begin by focusing on 1,950 miles of major roadways across the state that need more robust wireless coverage.

The state has facilitated the launch of private cellular projects through "batch permitting," or approving multiple projects under a single application. The state will also establish "shot clocks" — essentially shorter timelines — on smaller cell service projects on state land, rights of way and high priority corridors.

Lastly, the state will look to advance legislation that will standardize permitting for the installation of small cell technology on municipal infrastructure.

Equally impressive are early initiatives to support 5G deployment in New York City. In early 2020, the New York City Department of Information Technology and Telecommunications approved 10 franchise agreements with several companies to install 5G equipment on streetlamps and some traffic-light poles. With nearly 6,000 pole installations, with 5,000 more in the pipeline, each franchisee gets access to a number of poles, and that access is exclusive — they don't have to share with the other wireless infrastructure franchisees.

5G Readiness Reforms – USA & UK Examples

United Kingdom

In the UK the government has recently confirmed it will push ahead with its plans to reform planning laws to make it easier for industry to share and upgrade mobile phone masts. This will speed up the rollout of 5G and improve 4G coverage in rural areas. This is largely in response to the "Speed up Britain" campaign , an industry driven effort to expedite 5G infrastructure.

Following public consultation, the government has announced it is taking forward proposals to simplify planning rules to speed up 5G rollout and improve rural mobile coverage. The reforms to permitted development rights to support the deployment of 5G and extend mobile coverage in England will allow mobile network providers to put more equipment than they currently can on phone masts, making it easier to share masts and increase mobile coverage areas. This will help maximise the use of existing mast sites and minimise the need to build more infrastructure.

The reforms will provide greater consistency across England's regions and allow:

- New masts to be built taller, subject to prior approval by the planning authority, to deliver better coverage and allow more mobile operators to place equipment on them
- Existing phone masts to be strengthened without prior approval, so that they can be upgraded for 5G and shared between mobile operators
- Building-based masts to be placed nearer to highways to support better mobile coverage of the UK's road networks, subject to prior approval
- Cabinets containing radio equipment to be deployed alongside masts, without prior approval, to support new 5G networks

Best Practice State & Territory Regulation for 5G Infrastructure

Best Practice Planning Regulation for Telecommunications Network Infrastructure

Where it has been determined that a facility is not a 'Low-impact" facility as per the Federal Telecommunications (Low-impact Facilities) Determination, the process for a carrier to deploy a Telecommunications Facility broadly requires the need to:

1. Secure Development Approval to allow use of land and development of the infrastructure; and,
2. Secure a lease, license or 'tenure' to allow a carrier to establish a facility on the site.

'Development Approval' is a term that can be referred to as 'Planning Approval' or 'Planning Consent' in some jurisdictions. The Assessment tracks for securing approval can take many forms, as identified in the Leading Practice Model for Development Assessment, which is further discussed below. In some jurisdictions a "Building" Permit can also be required, but this is not generally a point of contention and is not discussed in this report.

Best Practice Planning Regulation for Telecommunications Network Infrastructure

Where the assessment tracks do not allow for a facility to be 'exempt' or 'complying', and a full application and assessment process is required, the basic process for development approval is essentially the same across all jurisdictions:

1. The applicant lodges an application with necessary documents and fees
2. The assessment authority checks the application and requests additional information if the application is incomplete.
3. The application may be passed to referral agencies and placed on exhibition for comments from owners of neighbouring properties and from the community (these may not happen concurrently.
4. Relevant assessment authorities consider the application, taking into account comments, submissions, and what is allowed under the planning regulation
5. The assessment authority decides to reject, approve or conditionally approve the application
6. The applicant (or a third party, in some cases) may apply for independent review of the decision. [19]

Notwithstanding the similarities in the system, there are substantial differences that can impact the successful deployment of mobile network infrastructure.

For example:

- Whether the system is underpinned with planning policies that support and promote the provision of reliable Telecommunications networks. These vary considerably.
- The availability of 'exempt' or 'complying' development in State Planning systems, and clear rules for what is considered to be acceptable development, rather than vague objectives applied with maximum discretion by a Council.
- The Fees paid to the assessment authority (usually a Council) for lodging an application also vary considerably, both across the States, but also even within some States. Most States set DA fees through regulations, but some States, such as Queensland, allow Councils to set their own fees. Whilst the carriers understand the need for cost recovery, this is not always reflected in fees charged.
- Statutory timeframes for development assessment vary widely, from 42 days in Tasmania to 84 days in the Northern Territory. Queensland and South Australian legislation include substantial possible extensions (up to 16 or 28 weeks respectively) for referrals and different types of development.
- Appeals from nearby property owners or residents against a decision on a DA are often referred to as a 'Third party appeal'. These Appeal processes for DAs are substantially curtailed in some jurisdictions, particularly Western Australia and New South Wales.. Victoria and Tasmania provide the most scope for third party appeals. These can take up to 2 years and require substantial resource outlay in terms of legal and professional experts.

Leading Practice Model for Development Assessment

As discussed above, the Development Assessment systems in each Australian State and Territory are unique with the rules being set by varying combinations of legislation, regulations, policies and statutory controls.

At its inaugural meeting in 2012, the Council of Australian Governments' (COAG) Business Advisory Forum agreed that all jurisdictions would undertake development assessment reforms to ensure that processes were efficient and did not create unnecessary delays .

The Development Assessment Forum (DAF), an independently chaired forum with representation from the development industry, related professional associations and the three spheres of government was originally formed in 1998 to recommend ways to streamline development assessment without sacrificing the quality of decision making.

In 2005 DAF developed a 'Leading Practice Model for Development Assessment in Australia' which provides a blueprint for jurisdictions for a simpler, more effective approach to development assessment. It achieves this by defining ten leading practices that a development assessment system should exhibit, and then by applying the ten leading practices to six development assessment pathways/tracks.

The recommendations in the following sections of this Readiness Assessment prepared by AMTA are grounded in the principles and guidance found in the 'Leading Practice Model for Development Assessment in Australia'.

The Development Assessment Forum Leading Practice Model

The DAF leading practice model is a toolkit that can be adapted and adopted by jurisdictions to suit their specific needs. Application of the model in each jurisdiction will result, over time, in the increased harmonisation of systems across Australia.

Development assessment should not operate in isolation but within a framework of good planning policy. To be efficient, assessment must operate in conjunction with effective policy development.

DAF emphasises that any review or implementation of a new development assessment process must include the formulation of strategic and statutory planning policies that meet community expectations.

The DAF leading practice model proposes:

- Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.
- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.

The ten leading practices proposed by DAF are:

1

Effective policy development

Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.

2

Objective rules and tests

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

3

Built-in improvement mechanisms

Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

4

Track-based assessment

Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard. Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.

5

A single point of assessment

Only one body should assess an application, using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times.

6

Notification

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

7

Private sector involvement

Private sector experts should have a role in development assessment, particularly in: undertaking pre-lodgement certification of applications to improve the quality of applications, providing expert advice to applicants and decision makers, certifying compliance where the objective rules and tests are clear and essentially technical, and making decisions under delegation.

8

Professional determination for most applications

Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either: Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council, or Option B – An expert panel determines the application. Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

9

Applicant appeals

An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

10

Third-party appeals

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases. Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

The six development assessment tracks proposed by DAF are:

- Exempt
- Prohibited
- Self assess
- Code assess
- Merit assess
- Impact assess.

Each track will be consistent with the ten leading practices and provide a process of assessment that is relevant to the project's complexity and impact on the built and natural environments. The track in which an application is to be assessed must be clear before an application is submitted.

Best Practice 'Tenure' Regulation for Telecommunications Network Infrastructure

Central to the process of providing an essential utility service including water, roads, electricity and telecommunications is ensuring appropriate and fair access to public land.

The Australian Constitution, (and in particular section 109) states that when a state law is inconsistent with a law of the Commonwealth, the Commonwealth law shall prevail, and the state act shall be invalid to the extent of the inconsistency. The Telecommunications Act 1997 (Cth) (the Commonwealth Act) provides that where state law discriminates against carriers, that law has no effect to the extent to which it discriminates.

So, the appropriate basis for States, Territories and councils to setting rents for the mobile carriers are, for example, the rentals charged by the Crown Land agencies to all other uses of Crown land. To do otherwise results in discrimination and inconsistency with the Telecommunications Act, cl. 44.

Notwithstanding, Carriers are treated differently to other critical infrastructure providers when it comes to utilising public roads and land, in that no rent is charged to electricity, water and other traditional utilities.

The Federal Court decision in Telstra Corporation Ltd v State of Queensland [2016] FCA 1213 found that Land Regulation 2009 discriminated by imposing higher rents for commercial carriers that lease Crown land for "provision, relay or transmission of telephonic television, radio or other electronic communication services" .

It is therefore considered to be 'best practice' for 'tenure' arrangements that State, Territory and local governments do not discriminate against carriers. This extends to not just the lease terms, but fees and charges associated with rentals.

This can often be reflected in a 'Master Agreement' between carriers and the Government to guide the conditions under which land will be leased for the establishment of Telecommunications Facilities. The carriers are seeking a streamlined process for the leasing of land without discriminatory terms. Such an approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications.

Where feedback has been supplied by AMTA's members, this assessment examines land access arrangements and rents in the States and Territories to gauge their fairness and consistency.

State and Territory 5G Infrastructure Readiness Assessment

This section of the report reviews and assesses the current regulatory frameworks of each Australian State and Territory, and by extension local government as a legislated instrument of the States & Territories.

It seeks to determine how these frameworks align with best regulatory practice as outlined in the previous section.

After a thorough analysis of the regulations by AMTA and its carrier members, the following assessment for each State and Territory is provided.

Firstly, 'Best Practice' regulations displayed by that State or Territory are outlined and their alignment with model best practices as outlined in the previous chapter is explained.

Secondly, we then highlight each 'Reform Opportunity' identified in that State or Territory. An explanation of the likely improvement to '5G readiness' from the reform is provided. Finally, a specific 'Recommendation' is made, corresponding to each 'Reform Opportunity'.

Analysis for each State & Territory is not exhaustive, and only the most impressive "Best Practices" and most pressing "Reform Opportunities" are included.

New South Wales

Best Practice Example

DEVELOPMENT APPROVAL

In New South Wales the State Environmental Planning Policy (Infrastructure) 2007 (known as ISEPP) contains provisions relating to telecommunications, and offers exemptions from the need to secure development approval if stringent conditions are met. For several years, this system has demonstrated 'best practice' regulation. In addition, a separate supporting document 'The NSW Telecommunications Facilities Guideline including Broadband' has been produced to provide a guide to the State-wide planning provisions and development controls for telecommunication facilities in NSW contained in the Infrastructure SEPP.

When it was released on the 16th July 2010, it was described by the Mobile Carriers Forum as "Australia's leading framework for the deployment of advanced telecommunications infrastructure," and that the amendments to the State's planning system "now clear the way for improved telecommunication services to the people of NSW and represent a regulatory environment that is superior to any other Australian state".[22]

The ISEPP expands the amount of infrastructure which can be deployed without Development Approval beyond that identified by the Commonwealth in the Low-Impact Determination. This includes infrastructure such as the extension of existing towers to enable co-location in certain circumstances, the replacement of towers, and provision of new towers up to 50 metres tall in rural zones and up to 30 metres tall in industrial zones provided that specific performance and siting criteria are met. Where approvals are not required, new structures are required to undergo community consultation via the Industry Code for Mobile Base Station Deployment.

The NSW Planning and Environment website says of the Telecommunications Guideline: "The Infrastructure SEPP allows telecommunications infrastructure providers to be either exempt from planning approval, or be able to receive a ten-day complying development approval, for a number of telecommunications facilities subject to strict criteria including health and amenity considerations. New telecommunications towers in residential zones will continue to require development application approval from the local council".

As such, the NSW legislative regime, including the Infrastructure SEPP has:

- Identified and classified telecommunications as infrastructure being of the same essential and critical nature as a range of other traditional utilities;
- Has developed an over-arching policy which permits certain activities to occur without any local government approval provided certain performance and siting criteria are met; and
- Has allowed for easier deployment of facilities that are likely to be less controversial in any event (such as rural and industrial deployment).

This approach not only further streamlines the more straightforward deployment, it actively encourages carriers to utilise it in preference to development applications. It also states very plainly the importance NSW places on the timely and cost-effective deployment of telecommunications infrastructure and the balance that needs to be struck with public interest and amenity.

This is entirely consistent with the Leading Practice Model for Development Assessment. In summary the NSW Government has:

1. Demonstrated 'Effective policy development"
2. Created a planning instrument that has 'Objective rules and tests" that are "clearly linked to stated policy intentions'; and,
3. Included "Track-based assessment" whereby the system has streamed assessment into a 'track' that corresponds with the level of assessment required to make an appropriately informed decision (i.e. Exempt and Complying Development tracks are applied').

Whilst the NSW ISEPP and associated Guideline represent 'leading practice', it will be important for these to be systematically and actively reviewed to ensure they remain relevant, effective, and efficiently administered.

In due course, when the NSW Government next reviews the ISEPP and Guideline, In summary, AMTA considers that the following matters should be addressed in the next review:

- Expansion of the land use zones within which new towers can be erected as complying development, including commercial and business zones – recognising the increased value of this essential infrastructure to communities;
- Broadening the definition of co-location purpose – so that a single carrier be permitted to co-locate with itself for the purposes of technology upgrade and reducing the need to deploy additional infrastructure for this purpose;
- Increased flexibility to determine heritage impacts – to ensure heritage impacts are appropriately assessed through an independent statement of heritage impact; and,
- Ancillary facilities – adopting a definition which is consistent with the Federal governments interpretation of such facilities under the Low Impact Facilities Determination.

New South Wales

Best Practice Example

LOCAL PLANNING PANELS

AMTA welcomed the NSW Government's decision in 2017 to introduce local planning panels (LPPs) to make decisions on complex Applications, a system that is not dissimilar to that also found in South Australia. These are mandatory for all councils in Greater Sydney and Wollongong. The panels of qualified, independent experts determine Applications for Telecommunications, which improves decision making linked to planning policy. This is consistent with the Leading Practice Model for Development Assessment.

Reform Opportunity

DEPARTMENT OF EDUCATION (DOE) POLICY

Whilst the exempt and complying development is considered best practice, NSW has provided a mixed public policy response to deployment of existing networks and 5G.

Whilst the NSW ISEPP references the need for operators to comply with the Federal ARPANSA RF exposure (ICNIRP) limits, since 1997 the NSW Department of Education has applied a policy that seeks to limit the distance between the boundary of a school property and a radio base station to at least 500 metres.

The Department's policy carries no statutory weight in the NSW council planning process and contains no scientific assessment of the distance. In fact the policy acknowledges that:

"While the Department cannot state a specific separation distance between a proposed mobile telecommunications facility and a school or TAFE campus, the Department has a preference for a distance of at least 500 metres from the boundary of the property."[23] From time to time, the policy has sought to be applied to interfere with proper planning assessment when the Department is called upon by communities to intervene. The policy is only applied selectively, and many telecommunications facilities continue to be built within 500 metres of schools in NSW. Also, DoE continues to build schools within 500m of existing telecommunications facilities in contravention of its own policy.

Just as schools are located close to the residential communities to service the educational needs, so too are mobile network facilities, which seek to address the telecommunications needs of the same community. Students are not any more, or less, vulnerable simply by virtue of their congregating in one place, (a school or TAFE) then they would be anywhere else in the community. The regulated standards afford a wide margin of safety for all Australians, including the young, the sick and the elderly.

If the DET's Policy was applied uniformly across Greater Sydney the mobile network carriers would become inoperable and mobile network users would be unable to access network services. It is worth considering that the vast majority of calls to emergency services originated from mobile phones and that people are increasingly relying on the technology and quality mobile network coverage for their personal safety.

The full implications of the use of Planning based exclusion zones policies was comprehensively detailed in Australian analysis by the GSMA in its report "Impact of exclusion zones policies on siting base stations: Australian case study analysis."[24]

The main findings of the analysis include:

- Across the whole metropolitan area, 54% of all existing radio base stations would be impacted by a 500 m exclusion zone around community facilities (schools, pre-school and medical facilities).
- In an inner urban suburb an exclusion zone of 500 m around all community facilities would cover nearly 90% of the total geographic area of the suburb, affecting virtually all-existing antennas sites and making it nearly impossible to improve mobile network services.
- If an exclusion zone was to be applied around community facilities such as schools, then it may also impact upon a range of other RF sources including transmitters associated with emergency services.
- The many negative consequences mean that distance-based planning exclusion zones are not an effective response to community concerns about siting of base stations.
- Positive policy responses in the report included: adopting science-based exposure limits following the recommendations of the World Health Organisation (WHO); ensuring compliance with those limits; developing nationally consistent planning policies for base stations and ensuring the public availability of information about radio base stations in a format that is understandable by communities.

Today's educational environment is more reliant than ever on interactive applications were students, teachers and administrators can access the internet via Wi-Fi and wireless broadband services. The increasing demands to improve the quality of education in NSW will necessitate greater levels of accessibility to wireless technologies including 5G.

RECOMMENDATION 1

AMTA calls on the NSW Government's Department of Education to immediately review its Policy "Mobile Telecommunications Facilities" to ensure that it provides a science-based response to concerns about RF EME, and does not have any unintended consequences such as creation of insufficient 4G & 5G mobile network service.

New South Wales

Reform Opportunity

TENURE BASED UPON IPART

Locating Telecommunications Facilities on Crown Land in NSW will often provide a viable solution to supplying service to communities. The Carriers are seeking the Crown to adopt a single non-discriminatory fee structure that applies to all occupiers of Crown land, through a decision of NSW's Independent Pricing & Regulatory Tribunal (IPART) process. Without such a fee structure, the Carriers face uncertainty about the viability of investing in telecommunications facilities on Crown land.

As part of its latest review, IPART was also recommending new arrangements for sites used by emerging communication technologies, such as 5G mobile telecommunications. In announcing its review, IPART explained "This technology requires many small cells to be deployed in high density locations. Therefore, it needs many more sites than traditional communication technologies, and uses less land area per site".

During 2019, AMTA provided comment on IPART's Draft Review of rental arrangements for communication towers on Crown land. Central to AMTA's submission was that the precedent judgement by the Federal Court in the matter of Telstra v the State of Queensland (Queensland case) necessitated significant amendment to the current Terms of Reference (ToR) for IPART's most recent review.

The ToR stipulated that the fee schedule reflects fair market-based commercial returns having regard to recent market rentals for similar purposes and sites. The Queensland case was clear that this approach is discriminatory. The Crown should adopt a single fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier. In this regard, the fair market commercial return should be assessed on a reasonable return based upon the value of the land and rentals paid by other Crown Land occupiers. There does not appear to be any consideration given in IPART's interpretation of the ToR in regard to relevant land valuations or rentals paid by other Crown land occupiers.

The appropriate basis for setting rents for the mobile carriers are the rentals charged by the Crown Land agencies to all other uses of Crown land, and the value of that Crown Land. To do otherwise results in discrimination and this is inconsistent with the Telecommunications Act cl. 44.

The use of rentals paid on private land is not a fair comparator for land held by the Crown. Private land has a variety of uses permissible under the numerous zoning restrictions which may result in a higher rental being paid to compensate that land-owner for a limitation in the future development of that land.

There is an obligation on the Crown to assist in the facilitation of utility service development and operation for the wider net-community benefit. In this case that is often the deployment of mobile network facilities in communities that have previously been under-served. At the time of preparation of this report, we understand that IPART has completed its Report and this has been provided to the Minister. The new rent schedule was to apply to all communication tower sites on Crown land from 1 July 2020 but has not yet been released.

RECOMMENDATION 2

AMTA calls on IPART and the NSW Minister responsible for Crown Land to:

a. **Adopt a single fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier, and in doing so, avoid discrimination and any potential breach of the Telecommunications Act, cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications; and,**
b. **Direct NSW Councils to apply this new IPART rate to all their leases to telecommunications carriers so the Councils also comply with Clause 44.**

Australian Capital Territory

Reform Opportunity

DEVELOPMENT APPROVAL

Deployment of facilities that utilise the Telecommunications (Low-impact facilities) Determination exemptions are not permitted within the National Capital Plan area and planning approvals here are determined by the Commonwealth Government. The National Capital Plan contains detailed policies relating to the installation and erection of telecommunications facilities on National land and within designated areas.

Outside of the National Capital Plan area but within the ACT, low-impact facilities are possible. Development in this area which is not low-impact is assessed against the Territory Plan.

Consistent with the Leading Practice Model for Development Assessment, the ACT has a track-based system for assessing proposals that need approval.

This includes:

- A code track – for simpler developments that meet all the relevant rules in the Territory Plan.
- A merit track – for most developments.
- An impact track – for developments that may have a major impact on the environment.

At section 11.6 of the Territory Plan is the Communications Facilities and Associated Infrastructure General Code, which came into effect in 2013. Whilst this Code seemingly provides codified requirements, each element of the Code consists of 'Intents' and Items under which are 'Rules' and 'Criteria'. '

Intent' describes the purpose of the development controls, 'Rules' provide the quantitative, or definitive, controls for development, and 'Criteria' provide the qualitative controls for development. Assessment of several of the 'Criteria' is highly subjective and uncertain.

There is important 'Criteria' in the Code that provides little realistic guidance to the siting of contemporary mobile networks with their widespread deployment of towers and antennas to provide ubiquitous network service. For example, Criteria C19 requires that "Telecommunications towers are not visually intrusive to a significant extent when viewed from a public place". Such 'Criteria' provides little guidance, particularly when considering the need for relatively small poles and small cells as a part of 5G.

RECOMMENDATION 3

AMTA calls on the ACT Government to undertake a review of the Communications Facilities and Associated Infrastructure General Code, and in particular any subjective criteria, to ensure that this strikes an appropriate balance between providing important mobile network services (including 5G), and protecting amenity.

Reform Opportunity

TENURE

AMTA encourages the facilitation of 'Master Agreements' between carriers and the ACT Government to guide the conditions under which land will be leased across the ACT for the establishment of Telecommunications Facilities. The carriers are seeking a streamlined process for the leasing of land without discriminatory terms. This would comprise a single fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier, and in doing so, avoid discrimination and any potential breach of the Telecommunications Act, cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications.

RECOMMENDATION 4

AMTA encourages the ACT Government to establish Master Agreements with carriers, to ensure a timely and consistent approach to leasing of land. The approach must avoid discrimination consistent with the Telecommunications Act, Sch 3 cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G small cell facilities.

Queensland

Reform Opportunity

DEVELOPMENT APPROVAL

The State of Queensland has attempted to implement the DAF Leading Practice Model with the use of track-based assessment. That is, development applications are streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision.

The categories of development in Queensland are:

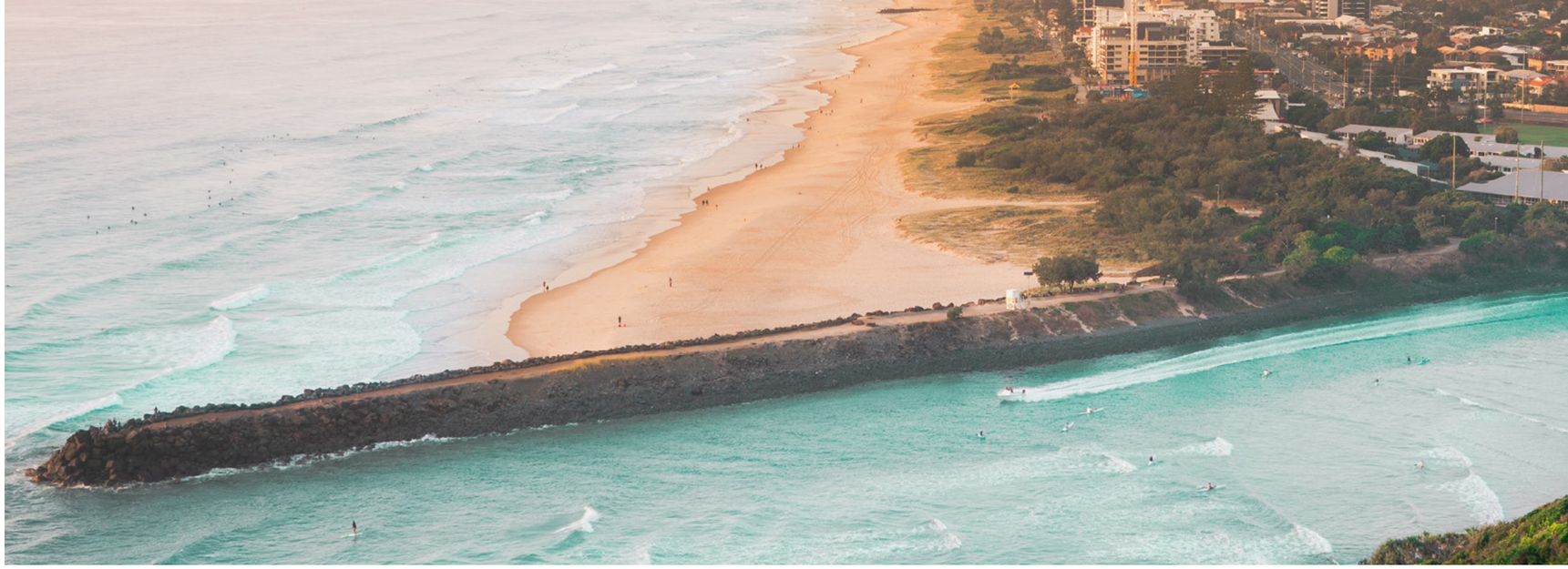
- 'Accepted development', whereby a development approval is not required. Some development is categorised as accepted, subject to meeting certain requirements, which are identified in the tables of assessment and in the relevant codes of a Council Planning Scheme.
- 'Assessable development', which comprises either (i) 'code assessment' or (ii) 'impact assessment', whereby a development approval is required.
- 'Prohibited development', whereby a development application may not be made for prohibited development.

Whilst such a track-based approach is welcome in-principle, these categories are applied inconsistently for development of Telecommunications Facilities, and council requirements diverge significantly across the State for reasons that are unclear. Such an approach would be entirely unsatisfactory in relation to water, electricity supply and for other 'traditional' utilities and accordingly state-wide consistency should be applied for mobile telecommunications infrastructure. Councils such as Redland City Council have a significant proportion of zones whereby Telecommunications Facilities are 'accepted development', whereas Sunshine Coast has few. Councils such as Toowoomba have attempted to devise conditional requirements for accepted development which is welcome.

For example, a facility can be accepted if a carrier is not increasing the number of Telecommunications facilities on the site, and:

a. Increasing the height of an existing Telecommunications facility by no more than 5m, or
b. Replacing an existing Telecommunications facility with a new Telecommunications facility with a height no more than 5m greater than the existing Telecommunications facility.

Across Queensland's 77 Councils there is a wide disparity of approaches and a lack of consistency that frustrates or delays provision of ubiquitous mobile network service.



When it comes to 5G deployment, these proposals deemed to be "accepted development" (with or without conditions) will be widely welcomed by the carriers

Other arbitrary and highly subjective requirements are applied in Council Telecommunications Codes that do not reflect provision of modern telecommunications network service.

For example, in the Sunshine Coast Planning Scheme section 9.3.2 the Telecommunications Facility Code contains 'performance' and 'acceptable' outcomes for assessable development including a need for a facility to be:

a. 400 metres from any residential use or park; and,
b. 20 metres from any public pathway.

In addition, the facility must be located at least 1km from any other existing or approved telecommunications facility. Such requirements are often impossible to comply with so are virtually pointless.

AMTA therefore encourages the Queensland Government to include a State-wide Telecommunications Code within the Queensland Planning Provisions (QPP) to ensure that infrastructure can be deployed based upon uniform assessment criteria to meet the needs of consumers in all parts of the State in a timely manner. The Code's Purpose should reflect the importance of this form of Infrastructure.

We note that when the QPP were originally drafted in around 2008/09 they included a Telecommunications Infrastructure Code.

The Code, which was originally included in the QPP at section 9.2, outlined performance outcomes and acceptable outcomes for telecommunications facilities. The Code was withdrawn from subsequent drafts of the QPP pending a review, following significant feedback.

RECOMMENDATION 5

AMTA encourages the Queensland Government to include a State-wide Telecommunications Code within the Queensland Planning Provisions (QPP) to ensure that infrastructure can be deployed based upon uniform assessment criteria to meet the needs of consumers in all parts of the State in a timely manner. AMTA also encourages the inclusion of consistent and wide-ranging acceptable outcomes in the QPP, not dissimilar to the criteria found in the NSW ISEPP and Victorian Codes.

Queensland

Reform Opportunity

QLD DEPARTMENT OF EDUCATION BUFFER ZONES

The Queensland Department of Education retains a Policy and Procedure Register (PPR), which is the Department's central directory for operational policies and procedures. This contains a Procedure 'Mobile Telecommunications Facilities', which was created in 2012 and reviewed in 2013.

The Procedure nominates a 'separation buffer' of 200 metres from mobile base station facilities and school or TAFE property boundaries. In addition it requires that exposure to electromagnetic energy (EME) from such facilities does not exceed 1% of the relevant Australian standard on school or TAFE premises.

RECOMMENDATION 6

AMTA calls on the Queensland Government's Department of Education to immediately review its Procedure "Mobile Telecommunications Facilities" to ensure that it provides a science-based response to concerns about RF EME at schools and TAFEs, and does not have any unintended consequences such as creation of insufficient 4G & 5G mobile network .

Arbitrary and non-science based restrictions on the placement of mobile phone towers can lead to inefficient networks, increased energy from handsets and base stations, as well as more base stations required to fill coverage gaps, which is ultimately contrary to the Department's stated objective.

The Department's Procedure is not consistent with the objective of facilitating timely provision of advanced mobile telecommunication facilities to the Queensland public and must be addressed as a matter of priority to ensure the continued smooth deployment of mobile telecommunications services in Queensland.

In relation to 'buffer separations' or 'exclusion zones' specifically, the Department's Procedure does not meet the policy's stated objective of a "...risk avoidance position in relation to electromagnetic energy from mobile telecommunication facilities" because buffer zones do not necessarily reduce exposure to EME from mobile phone base stations.

Research has shown that mobile network facilities create exposures in public areas that are well below the exposure limit in national and international safety guidelines and setting arbitrary distances from network equipment does not guarantee that public exposures will be reduced.

Reform Opportunity

DA FEES

Generally cost recovery is a delicate balance between competing considerations including efficiency and equity.

In Queensland, the Local Government Act 1993 (Qld) provides Council with the authority to set fees for development applications, and specifically section 1071A(2) provides that "a regulatory fee must not be more than the cost to the local government of providing the service or taking the action for which the fee is charged".

The approach taken by councils when determining fees for this class of application has sometimes been widely disparate with little transparency when it comes to 'cost recovery'.

Examples of fees charged are as follows:

- Central Highlands: Code Assessment $5,870.00, Impact assessment $8,805
- Sunshine Coast: Material Change of Use $5,940
- Logan City Council: Code Assessable $7,767, Impact Assessable $11,217
- Redland City Council Material Change of Use $1,826.00
- Toowoomba Regional Council: Code Assessable $5,933, Impact $7,916
- Rockhampton Regional Council Material Change of Use $1,826

AMTA has been monitoring fees for over 10 years, and in this time we understand that there has been some course correction due to the industry's focus on this matter. For example, after AMTA raised serious concerns with Council, we understand that Banana Shire Council no longer charges in excess of $29,000 for an Impact assessable development application[26].

But it remains that DA fees at the higher end of the range in Queensland for Code and Impact Assessment are considerably higher than fees charged in all other States and Territories, and would be difficult to justify in terms of cost recovery. The mobile carriers have a choice as to how and where they invest their capital and direct their resources, and Queensland is the only State where DA fees are carefully considered by the Carriers before such decisions are made.

In contrast, Application Fees in States such as Victoria also reflect a partial cost recovery approach, but these are uniform across the State. For development of a new telecommunications facility DA fees will typically be $1,500 [27]. In other States and Territories, fees are both lower and more consistent than in Queensland.

RECOMMENDATION 7

AMTA calls for Queensland State Government intervention to set standard fees across the State to process development applications for telecommunications facilities.

Reform Opportunity

APPEALS IN QUEENSLAND

Whilst AMTA has no commentary on the outcome of Court decisions in relation to Telecommunications Facilities in Queensland, there is an element of complexity and cost which distinguishes Queensland from other jurisdictions (such as in Victoria and Tasmania), which offer more efficient reviews of Council decisions.

Pursuant to the Planning and Environment (P & E) Court Act 2016 Qld, in conducting P&E Court proceedings and applying the rules, the P&E Court must both (a) facilitate the just and expeditious resolution of the issues; and (b) avoid undue delay, expense and technicality.

The P & E Court is a Division of the District Court of Queensland and operates with all of the formality and procedures of a standard Court.

AMTA's members have assessed the cost of seeking judicial review and have found that costs in Queensland are often at least ten times those of seeking a review in other States for similar matters.

The formality and complexity of appearances in front of the P & E Court is in stark contrast to the accessibility and efficiency of appearances in front of the Resource Management and Planning Appeal Tribunal - RMPAT (Tasmania) and Victorian Civil and Administrative Tribunal - VCAT (Victoria).

In contrast to Queensland, in Victoria when decisions in relation to applications are reviewed by VCAT, the Tribunal has regard for precedents set in similar cases and confines itself to points of contention. The Victorian system is focussed on a merits-based planning decision, as opposed to focussing on interpretation and application of law. It follows that the Victorian system is more accessible for all parties.

For example, in relation to disagreements amongst the parties in regarding the 'need' for a facility, VCAT will not entertain lengthy debate, as arguments that there is a lack of a need will rarely be a ground for refusing to grant a permit. Case law that efficiently dispose of such arguments are often cited including Tuhan v Moira SC [2016] VCAT 235 (22 February 2016) at Paragraph 21:

"Many Tribunal decisions have considered the relevance of need. Their primary finding is that a demonstrated need for a facility or use may be a relevant factor in a planning decision, but lack of a need will rarely, if ever, be a ground for refusing to grant a permit"

This reflects a principle often common across Australia's Planning system. In contrast, in Queensland the P & E Court seems to take the approach that lack of 'need' for a facility will always be considered relevant. Cases such as Lennium Group Pty Ltd v Brisbane City Council & Ors [2019] QPEC 17 (paragraphs 289 to 316) demonstrates how significant this factor is in decision making by the P & E Court.
It will often be the case that third parties will wish to contest matters such as property devaluation or exposure to radio-frequency energy, and again the efficiency of the Court in each jurisdiction in disposing of such matters can clearly be contrasted. VCAT's ruling in Marshall & Ors v Ararat Rural CC [2013] VCAT 90 (22 January 2013) nearly seven years ago has formed a strong precedent that does not appear to exist or be applied in Queensland.

Queensland

In this case VCAT Deputy President Helen Gibson ruled briefly and concisely on a number of grounds of objection that are not planning grounds to be relied upon at hearings involving telecommunications facilities.[28] Since then this case is cited regularly at VCAT.

We note that RMPAT in Tasmania is as equally efficient as VCAT when considering these matters. In stark contrast, even in 2020, the P&E Court appears to not have formed clear precedents to deal with these matters efficiently.

RECOMMENDATION 8

Pursuant to the Planning and Environment Court Act 2016 Qld, AMTA calls upon the Queensland State Government to review whether the P&E Court is facilitating the just and expeditious resolution of the issues, and is avoiding undue delay, expense and technicality when conducting P&E Court proceedings relating to Telecommunications Infrastructure.

Reform Opportunity

TENURE

A landmark Federal Court decision in Telstra Corporation Ltd v State of Queensland [2016] FCA 1213 found that Land Regulation 2009 discriminated against carriers by imposing higher rents in certain circumstances. The appropriate basis for setting rents for the mobile carriers are the rentals charged by the Crown Land agencies to all other uses of Crown land, and the value of that Crown Land.
To do otherwise results in discrimination and is inconsistent with the Telecommunications Act, cl. 44.

Land Regulation 2009 automatically expired after 10 years, and this has recently been replaced by Land Regulation 2020. In remaking the Land Regulation, the industry was seeking a fair and equitable framework for allowing the use of land, and to not discourage the delivery of important telecommunications services to often remote Queensland communities. At the time of writing, Land Regulation 2020 has recently been released and the industry is reviewing this to understand whether it has addressed issues of discrimination against the carriers.

Similarly, AMTA is concerned about Queensland council's singling out and discriminating against telecommunications carriers by applying excessive rental demands for using Council land, and notes that this may also be inconsistent with the Telecommunications Act. If not resolved, a likely result may be the selection of environmentally and technically inferior locations and/or a delay in the delivery of enhanced telecommunications services to some communities.

RECOMMENDATION 9

AMTA calls upon the Minister responsible for Crown Land in Queensland to monitor implementation of Land Regulation 2020 to ensure the application of an equitable fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier, and in doing so, avoid discrimination and any potential breach of the Telecommunications Act, cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications.

Victoria

Best Practice Example

DEVELOPMENT APPROVAL

In 1999, Victoria was the first State to introduce additional exemptions when it adopted A Code of Practice for Telecommunications Facilities in Victoria (The Code) to clearly enunciate the State's position with respect to the importance of telecommunications facilities in Victoria, as well as effectively expanding the range of facilities (with specific requirements) that do not require approval, beyond those contained in the Low-Impact Determination.

The Code contains a list of telecommunications facilities which may be developed without the need for a planning permit provided the specified requirements are met. If the specified requirements are not met, a planning permit is required.

This approach is entirely consistent with the Leading Practice Model for Development Assessment.

Best Practice Example

MOBILE BLACKSPOT AND STATE GOVERNMENT FUNDED MOBILE FACILITIES

In March 2018, Clause 52.19-3 of all Planning Schemes in Victoria was amended so that Telecommunications facilities funded, or partly funded by the Commonwealth through the Mobile Black Spot Program or The State of Victoria were provided with exemptions from the need to provide notice of the application, and the decision of council could not be appealed by 'third-parties'. This approach did not negate the need for councils to assess these proposals against the planning scheme provisions, and the applications were still able to be refused by council. **However, when it comes to mobile blackspots, it is pleasing that the Victorian State Government recognised the widespread community benefits from facilities funded under these programs in under-served areas of Victoria. It is these kinds of provisions that other states should consider including in their Planning provisions.**

Reform Opportunity

PLANNING POLICY

All of Victoria's Planning Schemes contain a single planning policy objective 'To facilitate the orderly development, extension and maintenance of telecommunication infrastructure'.

Whilst this seemingly offers strong policy support, in practice when working to design and site a proposal to be consistent with the planning scheme provisions including Zones, Environment and Landscape Overlays, Heritage and Built Form Overlays, the telecommunications carriers are confronted with limited siting options to minimise impact, setbacks from boundaries and other requirements. This has the effect that it can be very difficult to find a location for a telecommunications facility amongst multiple constraints presented by the scheme. This in turn leads to substantial compromise that can deliver an inefficient network and the need for new additional network facilities.

The height of antennas and their location is increasingly critical to network performance in 4G and emerging 5G networks. Accepting that mobile telecommunications infrastructure is essential, it should be considered by State and Territory Governments to be on-par with other essential infrastructure, and not be subject to compromise due to a false equivalence between protecting amenity and provision of service.

The Victorian State Government should consider strengthening planning policy support for mobile telecommunications infrastructure to align with other essential utility infrastructure. We note that in NSW, all such essential utility infrastructure, including mobile telecommunications has been treated in the same way, with inclusion in the NSW ISEPP.

RECOMMENDATION 10

AMTA calls on the Victorian State Government to recognise Telecommunications Facilities as essential infrastructure in planning policy across the 'Planning Policy Framework' and 'Particular Provisions' sections of the Victorian Planning provisions. This should in turn filter through the VPP including further exemption for additional forms of Telecommunications infrastructure, and strengthened guidance on what constitutes a net-community benefit.

Reform Opportunity

DEVELOPMENT APPROVAL

Given that the Victorian Code was originally drafted in the late 1990's, at the time when 2nd Generation (2G) mobile networks were being deployed, with very minor updates to the Code in 2004, the industry considers that the time is right for a review. This is a view shared by several Councils in Victoria, and we understand that some Councils are writing their own Local Planning Policies and Codes due to perceived deficiencies in the Victorian Code. For example, Melton City Council has recently produced a Local Planning Policy and Macedon Ranges Shire has publicly called for a review of The Code.

When Victoria's Capital City Strategy 'Plan Melbourne" was being formulated, AMTA encouraged the State Government to introduce a review of The Code into the Plan, and Policy 1.2.3 "Support the provision of telecommunications infrastructure" was included together with an action in Plan Melbourne's "Implementation Plan".

Originally, in around late 2014 AMTA, together with a working group from the Department of Environment, Land Water and Planning (DELWP), commenced drafting changes to The Code to bring this up to date to reflect new infrastructure requirements and to align with NSW Infrastructure SEPP (ISEPP) exempt and complying development provisions. DELWP intended to then consult with the local government sector on these changes (through the Municipal Association of Victoria). Unfortunately, Departmental priorities shifted, probably due to the "Refresh" of Plan Melbourne, and this was delayed.

Most recently, in the Report on progress for Plan Melbourne there is an update on "Action 15" with lead agencies identified as "DELWP, DEDJTR". The status update confirms that "DEDJTR is developing mapping tools to identify broadband and mobile coverage, relevant government infrastructure and business demand by location across Melbourne. These tools will be used to plan new telecommunications infrastructure, such as 5G mobile technology".

The timing for Action 15 is "Medium term" which has a timeframe "By the end of 2021 (2 – 5 years)". Given progress with 5G to-date, the level of interest from several stakeholders (particularly local government), and the focus on these matters in other States, AMTA encourages the Victorian State Government to immediately commence review of The Code.

RECOMMENDATION 11

AMTA calls on the Victorian DELWP and DJPR to bring forward the review of A Code of Practice for Telecommunications Facilities in Victoria 2004, including additional permit exempt facilities such as those that are 'Exempt" or 'Complying Development' in NSW, together with emerging 5G infrastructure.

Victoria

Reform Opportunity

ZONES WHERE TELE-COMMUNICATIONS IS 'PROHIBITED'

Clause 19.03-4S of the Planning Policy Framework, which appears in all Planning Schemes in Victoria contains a strategy to "Ensure that the use of land for a telecommunications facility is not prohibited in any zone". This has mostly been achieved, and where it hasn't, it would appear to be an anomaly rather than intentional.

There are several cases where a 'Telecommunications Facility', which falls within the land use "Utility installation" are prohibited in existing schemes. Generally this is in some Special Use zones, Comprehensive Development zones and a Priority Development zone. It occurs in 14 municipalities in a total of 27 specific zones.

It is submitted that these 14 Planning Schemes be amended to remove the prohibition. Section 1 uses in these Zones must include "Any use listed in cl 62.01" with a condition "Must meet the requirements of Clause 62.01" and Section 2 should refer to "utility installation (other than a telecommunications facility").

If this is not done then no new telecommunications facilities can be built on this land. This land includes specific racecourses, showgrounds and golf courses, which can be suitable for facilities (subject to approval). These are places where business and the public would legitimately expect coverage for telecommunication services.

To deal with this number of schemes or sites individually would be cumbersome and an administrative burden, so a State-wide Amendment to capture all of these changes would be reasonable.

In addition, whilst Clause 62.01 'Uses Not Requiring A Permit', provides for a Telecommunications Facility to be a Use not requiring a Permit if it meets the condition, the Clause is limited to land in any Zone 'other than a requirement in the Public Conservation and Resource Zone (PCRZ)'. This has caused considerable uncertainty, and given the essential nature of telecommunications in bushfire prone areas is often in or near the PCRZ, there is a reasonable expectation that the use of land for a Telecommunications Facility in a PCRZ would not be prohibited. This should be made clear in the Victorian Planning Provisions.

RECOMMENDATION 12

In consultation with the industry, AMTA calls on the Victorian DELWP to amend:

a. The 14 Planning Schemes and 27 specific zones that contain the anomaly prohibiting Telecommunications Facilities. Section 1 uses in these Zones must include "Any use listed in cl 62.01" with a condition "Must meet the requirements of Clause 62.01"; and,

b. The Public Conservation and Resource Zone in the Victorian Planning Provisions, to ensure that the use of land for a Telecommunications Facility in a PCRZ is not prohibited.

Reform Opportunity

PERMIT TRIGGERS FOR TELECOMMUNICA-TIONS FACILITIES

There are conflicting interpretations of the Planning Scheme and case law in Victoria regarding the triggers for a permit for a Telecommunications Facility. The uncertainty likely stems from a time when the Victorian Planning provisions were amended in 2011.[29]

There are several Victorian Civil and Administrative Tribunal (VCAT) decisions that demonstrate that the interpretation of what triggers the need for a Permit differs amongst Members of the Tribunal.

The case law is too extensive to adequately describe in this report. However, the issues requiring clarity are neatly summarised in a 2018 VCAT case Optus Mobile Pty Ltd v Macedon Ranges SC [2018] VCAT 1683. At paragraph 20, the decision states "There was no dispute between the parties that the proposal before me is one that requires a planning permit under Clause 52.19. The question is whether it also requires permission for use and development under the zone provisions. This turns on the interpretation of the exemption provisions at Clauses 62.01 and 62.02 set out above that require the 'requirements of Clause 52.19 to be met'- in essence the question is are the 'requirements of Clause 52.19 met' by the grant of a permit under that clause?"

In addition to the question of whether a Telecommunications facility requires permission (or not) for use and development under the zone provisions, there is also a question of whether the proposal requires permission under any applicable overlay provisions.

Without going into the details of both sides of the argument, in the VCAT case Pfarr v Campaspe SC [2014] VCAT 872, the VCAT Deputy President states:

"These provisions are poorly drafted. They do not make it clear whether, if a permit is required for buildings and works under clause 52.19-2, then no permit is required under any other provision". Furthermore, in the VCAT case Optus Mobile Pty Ltd v Macedon Ranges SC [2018] VCAT 1683, the Member states: "If it is the intent of government that Clause 52.19 be the sole permit trigger for planning approvals for telecommunications facilities the planning scheme should be amended to make this clear".

This kind of uncertainty which has persisted for nearly a decade is not consistent with the Leading Practice Model for Development Assessment, and the Victorian State Government should seek to rectify this as a priority, given that it is adding cost and complexity at the Council application level, for public submissions and at VCAT.

RECOMMENDATION 13

In consultation with the industry, AMTA calls on the Victorian DELWP to redraft the Victorian Planning Provisions including Clause 52.19 and Clauses 62.01 and 62.02 (as required) to clarify the permit triggers for a Telecommunications Facility in Victoria.

Victoria

Reform Opportunity

TENURE

Despite some previous inconsistencies in the approach of securing tenure on Crown Land, which have extended to a turnaround of two-and-a-half-years in some cases, there has lately been some progress in Victoria in relation to securing tenure on Crown Land.

The State Government is guided in these matters by the Leasing policy for Victorian Crown land 2018 (and associated guidelines) to provide a consistent framework for the leasing of Crown land by formalising 'Crown Land Leasing Principles' at a State-wide level. These principles guide land managers, existing tenants and prospective tenants, help inform decision making around leasing and improve community awareness of government policy for the leasing of Crown land. Notwithstanding, the industry is seeking consistency and timely resolution of leasing and tenure matters on Crown Land from the Victorian State Government, and in particular the Department of Transport and Department of Environment, Land, Water and Planning. In order to progress a lease, these Departments defer to the Valuer General's Office to provide valuations and the industry is concerned at inconsistencies in approach and potential for discriminatory outcomes potentially inconsistent with the Telecommunications Act, Sch 3 cl. 44.

RECOMMENDATION 14

AMTA calls upon the Victorian State Government and the Minister for Energy, Environment and Climate Change, being the Minister responsible for Crown Land to ensure a timely and consistent approach to leasing of Crown Land. The approach must avoid discrimination and any potential breach of the Telecommunications Act, Sch 3 cl. 44. This approach should be applied to both land for 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G small cell facilities. Such an approach should also be applied by Victorian councils.

Tasmania

Tasmania

Best Practice Example

DA STATUTORY TIMEFRAMES

Tasmania's Planning system is well regarded for its 'statutory timeframes for assessing Development Applications.

Section 57(1) of Land Use Planning and Approvals Act 1993 (LUPAA) requires Council to make a decision on a discretionary application within 42 days of a valid application being received. The timeframe does not run where Council is waiting for further information to be provided by the applicant.

Within the 42 days, Council must advertise the application and allow 14 days for representations to be received. Council must consider those representations and decide to either approve it with or without conditions or refuse the application.

This timeframe can be extended by a written agreement between the applicant and the Council. This agreement must occur before the 42 days is up.

Many applications are decided in less than the statutory time frames, especially if they are straightforward applications and all of the necessary information has been provided at the beginning.

It is these types of best practice elements of a planning system that provide carriers with confidence to invest. Expedited DA timeframes was one element that recently contributed to Telstra completing an upgrade to its telecommunications infrastructure in north west Tasmania (Black-spot funded sites in conjunction with the federal government), more than 12 months ahead of schedule.

Best Practice Example

APPEALS

AMTA notes the Resource Management and Planning Appeal Tribunal's (RMPAT) high rates of resolution of planning appeals (against Council decisions) through mediation.

In relation to Appeals lodged for Telecommunications facilities, RMPAT continues to achieve a high degree of compliance with the requirement imposed upon it to hear, determine and deliver written reasons for decision within 90 days after an appeal is instituted.

This requirement is unique in Australia and is considered by AMTA to be "Leading Practice" as it provides significant certainty, particularly in contrast to jurisdictions such as Victoria or Queensland, where significant uncertainty exists. RMPAT's conduct is entirely consistent with the Leading Practice Model for Development Assessment.

Reform Opportunity

DEVELOPMENT APPROVAL

The Tasmanian Parliament enacted amendments to the Land Use Planning and Approvals Act 1993 (the Act) in December 2015, that provide for a single planning scheme for Tasmania, known as the Tasmanian Planning Scheme. The Tasmanian Planning Scheme consists of State Planning Provisions (SPPs) and Local Provisions Schedules (LPSs) for each municipal area. The Minister made the SPPs on 22 February 2017.

Whilst the industry welcomes a consistent approach, AMTA's primary concern is restrictive tower heights in the "Acceptable Solutions" section of the Telecommunications Code found within the SPP. This was modelled, with some modifications on the Launceston Telecommunications Code, which was one of the first Planning Schemes to be adopted based upon the single Planning Scheme for Tasmania.

Of particular concern is the Telecommunications Code's simplistic two size fits all approach, to the 'Acceptable Solution' height of a telecommunications tower with the acceptable approach being either 20m or 30m, depending upon which zone a facility was to be established. It is clear that across all of zones found in the SPP, expectations of amenity are on a wide spectrum necessitating a wide range of guidance as to what heights are acceptable.

Before the introduction of the Tasmanian Planning Scheme in March 2017, the Hobart Scheme reflected heights that were in place for at least the past 15 years in Schemes across Tasmania, and also in the Southern Region Interim Schemes, with the vast majority of approvals across Tasmania using these heights to provide clarity without major issue.

Whilst AMTA and the industry has been receptive to varying heights as acceptable solutions across different zones, the fact that they have been reduced by so much in the SPP is of significant concern. In some cases the heights deemed to be acceptable within some zones have been halved from the Interim schemes to the SPP.

This sends a very concerning signal. Although the Industry remains able to seek approval above the acceptable heights, the case is thin when attempting to gain approval for say a 50m tower in a rural zone when the acceptable solution set by the SPP is 30m. For comparison, we note that in NSW a tower of this height in a rural zone could be 'complying development' pursuant to the Infrastructure SEPP and no DA would be required at all.

The ongoing application of the Telecommunications Code in the SPP could jeopardise approvals for augmentation of mobile network service in Tasmania (including 5G), and approval for mobile blackspot towers, many of which are in rural areas and co-funded by Tasmanian State Government.

RECOMMENDATION 15

AMTA calls on the Tasmanian State Government and Minister for Planning to undertake a review of the Tasmanian Planning Schemes' Telecommunications Code, and in particular C5.6 Development Standards for Buildings and Works, to ensure that the acceptable solution for the height of structures strikes an appropriate balance between providing important mobile network services (including 5G), and protecting amenity.

Tasmania

Reform Opportunity

EXEMPT DEVELOPMENT

It is no surprise that a very substantial proportion of land in Tasmania is covered by one or more of the triggers in the Telecommunications (Low-impact Facilities) Determination for land to be in an "Area of Environmental Significance". This means that no telecommunications equipment, no matter how minor, can be established without the need for Council approval. For example, the addition of an antenna to an existing tower or the addition of a small equipment cabinet inside an existing Telecommunications compound area in a National Park could require a Planning Permit.

In addition there are several forms of development that are currently exempt or complying in NSW and/or Victoria that likewise should reasonably not require planning approval in Tasmania. These include the minor extension of an existing pole or tower to enable co-location, the swap out or replacement of a tower which is the same height (or not more than 5 metres taller) and must be similar in appearance to the original tower, and the addition of a new pole or tower of limited height in industrial or rural areas where there is a substantial distance to adjacent residential zones. These could be exempt from planning approval in Tasmania too provided they were not in heritage locations or conservation areas.

However, to provide new 5G service into heritage areas or conservation areas, the planning provisions should seek to direct new 5G small cells to utility poles, with the incentive of an exemption with their inclusion in Clause 4.2.6.

Clause 4.2.6 of the Tasmanian State Planning Provisions contains a list of minor communications infrastructure that is exempt from the need to secure a planning permit. The addition of the telecommunications infrastructure outlined above to 4.2.6 would provide a substantial incentive for carriers to prioritise investment of 5G infrastructure in Tasmania, by removing the need to engage in sometimes lengthy approval applications for minor or negligible modifications to existing infrastructure, or infrastructure with little impact on adjacent zones.

RECOMMENDATION 16

AMTA calls on the Minister for Planning to amend Clause 4.2.6 of the Tasmanian State Planning Provisions, with additions to the list of minor communications infrastructure that are exempt from requiring a permit.

This should include:

a. **The addition of antennas to an existing facility where the antennas do not exceed the dimensions of existing antennas and the overall height of that facility does not increase.**
b. **The establishment of a shelter or cabinet/s within an existing Telecommunications compound area**
c. **Co-location of new 5G small cells onto existing utility poles within heritage areas.**

- **In addition, Clause 4.2.6 could include several types of Telecommunications infrastructure that is currently not captured by the Telecommunications (Low-impact facilities) Determination 2018 but are exempt in States including Victoria or NSW.**

Western Australia

Western Australia

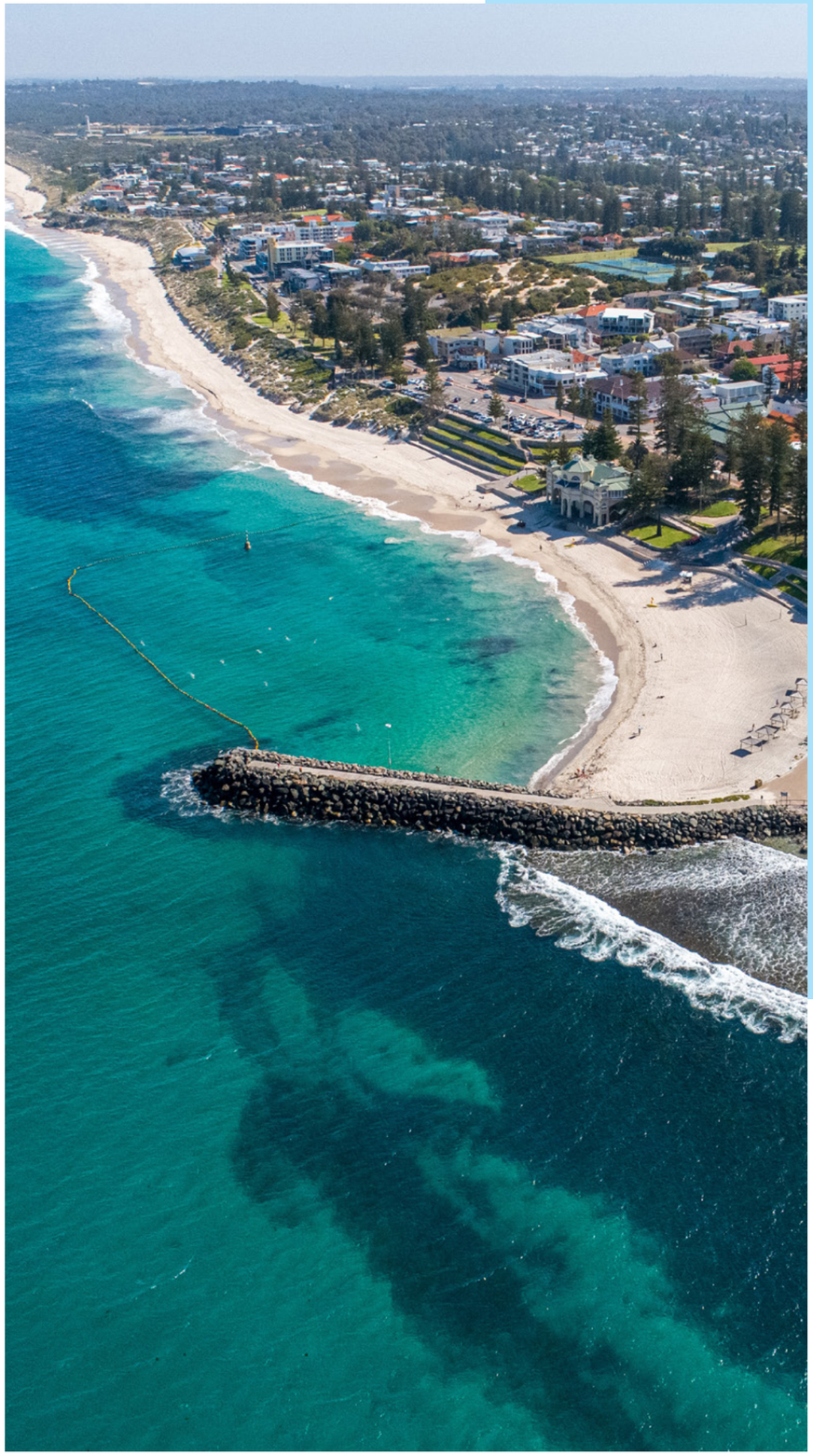
Best Practice Example

DEVELOPMENT APPROVAL

Western Australia has adopted a somewhat neutral State Planning Policy for telecommunications infrastructure, titled 'State Planning Policy 5.2 – Telecommunications Infrastructure, September 2015'.

The policy document outlines the State's position with respect to the importance and role of telecommunications infrastructure, which is intended to provide direction to local government for incorporation into local planning schemes and council policy documents. Unfortunately, it stops short of including state-wide exemptions like those found in Victoria and New South Wales, which would allow deployment of certain non-obtrusive telecommunications facilities without an application for development approval, if conditions are met.

Despite this, one Council in WA has recognised and applied 'best practice' found in the Leading Practice Model for Development Assessment. The City of Mandurah has identified an opportunity to attract investment in 4G, and now 5G, by offering incentives for carriers to establish facilities in certain zones and acceptable heights without the need for development approval.



Best Practice

Case Study – City of Mandurah Local Planning Policy LPP5 Telecommunications Infrastructure

In August 2017, the City of Mandurah adopted a new Local Planning Policy for Telecommunications Infrastructure. The Policy was a first in Western Australia, as it provided the opportunity for a carrier to deploy telecommunications infrastructure including a structure up to 30 metres in height as exempt development without an application for development approval, if certain conditions were met. This approach has long been advocated by the carriers, and is an example of the approach taken in the Leading Practice Model for Development Assessment.

A facility can be 'Exempt Development' and the prior development approval of the Council is not required for the erection of telecommunications infrastructure in the following circumstances:

a. On land zoned City Centre Development and Precinct Development unless otherwise described within the applicable
b. Activity Centre Plan; on land zoned Service Commercial and Industry;
c. On land zoned Commercial, subject to the designation of the site as a Strategic Centre, District Centre or Neighbourhood Centre within the Local Planning Strategy;
d. On any other land where expressly described in a Structure Plan or Activity Centre Plan;

Where the proposed development is consistent with the following criteria:

a. The structure has a maximum height of 30 metres;
b. The guiding principles for the location, siting and design of the structure is in accordance wwith the relevant State Planning Policy associated with telecommunications infrastructure; and
c. The proponent has notified the local community of the proposed structure consistent with the Council's requirements

The policy incentivises the carriers to deploy in commercial areas where opportunities to minimise negative visual impact are available. This is strengthened by several requirements for location, siting and design. The policy also ensures that the proponent has notified the local community of the proposed structure, consistent with the Industry Code for Mobile Base Station Deployment.

Western Australia

Reform Opportunity

DEVELOPMENT APPROVAL

AMTA considers that there is an increasing need in Western Australia to remove reference to Telecommunications Infrastructure from being a use 'not permitted' in certain zones in local Planning Schemes. The inclusion of 'telecommunications infrastructure' designated as an 'X' use is not permitted under SPP 5.2. Given the ubiquitous nature of mobile telecommunications, there is a need for service in all zones, and therefore the possibility that a facility will be needed. Therefore, at the very least, councils should allow carriers to lodge an Application for a facility and for council to apply its discretion as allowed for in policy when assessing an application. Notably, in its recent review of its Telecommunications Policy the City of Bayswater amended its Scheme to remove Telecommunications Infrastructure from being an "X" use not permitted in some zones and Council will now assess Applications on their merits.

In a 2010 review conducted by AMTA, more than seventeen councils in Western Australia had included planning exclusion zones for siting of telecommunications facilities around community sensitive sites (such as schools) within their local planning policies, ranging from 100 metres up to 500 metres. The choice of distance in policies was arbitrary and has little relationship to the actual Electromagnetic Energy exposure levels associated with mobile network antenna sites. This was in response to the perceived public opposition to the siting of telecommunication facilities. Once adopted, such policies may provide the basis for a council refusing a planning proposal.

Typically, these exclusion zones are imposed in areas around community facilities such as primary or secondary schools, pre-schools, or medical facilities including hospitals.

These policies were adopted and selectively applied despite legal precedent from Western Australia's Planning Tribunal in regard to the City of Swan's telecommunications policy requiring a minimum 200 metre separation from residential buildings. The Tribunal Member stated: 'No evidence was led to establish the rationale from any field of discipline to show the basis for such a figure. Without such direct evidence it can only be seen to be arbitrary and in any event Council, as a policy, has the discretion in order to deal with the particular circumstances of each development application'.[30]

Gradually, since the amendments to SPP5.2 in 2015, there's been a reduction of Councils with buffer zones from 17 to 3, following Council policy reviews which brought these policies into alignment with SPP5.2. AMTA is directly appealing to the remaining Councils to do likewise.

RECOMMENDATION 17

AMTA calls upon the remaining Councils in WA, being City of Gosnells, Shire of Serpentine-Jarrahdale and the City of Swan to review their Council Telecommunications Policies so that they comply with State Planning Policy 5.2. This should include removal of exclusion/buffer zones in accordance with SPP5.2.

In addition, all Councils in WA should remove any reference to Telecommunications Infrastructure from being a use 'not permitted' in certain zones in local Planning Schemes. The inclusion of 'telecommunications infrastructure' designated as an 'X' use is not permitted under SPP 5.2.

Reform Opportunity

TENURE

AMTA encourages the use of a 'Master Agreement' between the State Government and carriers to guide the conditions under which land will be leased across WA for the establishment of Telecommunications Facilities. The carriers are seeking a streamlined process for the leasing of land without discriminatory terms. This would comprise a single fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier, and in doing so, avoid discrimination consistent with the Telecommunications Act, cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications.

RECOMMENDATION 18

AMTA encourages the WA State Government and the Minister responsible for Crown Land to ensure a timely and consistent approach to leasing of Crown Land for telecommunications facilities. The carriers are seeking an approach that is streamlined and avoids discrimination consistent with the Telecommunications Act, Sch 3 cl. 44.

South Australia

South Australia

Best Practice Example

COUNCIL ASSESSMENT PANELS

In relation to the Development Assessment process in South Australia, the DAF Leading Practice Model promotes professional assessment and determination of applications, including by an expert panel, with delegated authority to make decisions. **The continued use of Council Assessment Panels constituted of not more than four professionally accredited members and an elected Council member, provides welcome focus on assessment of a Telecommunications Facility against planning policies and provisions. The Leading Practice Model encourages elected members to represent their communities in planning matters by investing time in establishing robust planning policy and adjusting this as required.**

Reform Opportunity

DEVELOPMENT APPROVAL

South Australia is nearing the completion of a process to reform its planning system, which is underpinned by the new Planning, Development and Infrastructure Act 2016. The Planning and Design Code (the Code) is the cornerstone of the new planning system. The Code will replace all development plans to become the single source of planning policy for assessing development applications across the state.

At the time of preparing this Readiness Assessment, the State Planning Commission was considering submissions for Phase Three Urban Areas) of the Planning and Design Code. AMTA had reviewed the consultation material and had made several submissions to the Commission (during phase 2 & 3). In addition detailed submissions on the Productive Economy policy and the draft Development Regulations were also made in 2019.

In summary, based upon the current status of proposed changes to the planning system in South Australia, AMTA is concerned that the clarity, balance and timeliness of the system as it relates to deployment of Telecommunications Facilities is deteriorating. There has been little regard for and response to the issues raised by the industry during the consultation process. Without changes, there will be a higher degree of difficulty to deploy networks in South Australia than prior to the commencement of the reform process.

When considering the DAF Leading Practice Model for Development Assessment, the system as proposed in South Australia fails to provide 'objective rules and tests that are clearly linked to stated policy intentions'. The desired objectives and outcomes set out in the Productive Economy discussion paper[31] focus on reliable, robust and generally ubiquitous access to telecommunications. In fact, one of the central tenets of the discussion paper is the provision of the necessary infrastructure to enable the continuing growth and diversification of the South Australian economy and allow it to attract and take advantage of new opportunities and emerging technologies. The discussion paper recognises: "Evolving technology and communications continue to change the way business is conducted, how we live our lives, and how our urban and regional environments are shaped." It also discusses 'Smart Cities' where it is noted "the emphasis is on the integration of public infrastructure, data technology and the internet to improve the quality of life for people living, visiting and working in the area". None of the reforms proposed contribute to the advancement and deployment of Telecommunications Infrastructure.

Strong consideration should be given to an instrument – whether it be practice directions/guidelines, or another form of separate code – to set out the State's position on Telecommunications Facilities as essential infrastructure. AMTA has repeatedly cited the NSW infrastructure SEPP and the Victorian Planning Provisions and Code as good examples.

Disappointingly, Telecommunications Facilities go completely unmentioned in over 80% of the zones in Phase 2 and Phase 3, which is not appropriate nor consistent with the State's high-level statements relating to the need for infrastructure. Only one zone out of 54 – the Employment Zone, specifically listed a Telecommunications Facility in the assessment provisions as being a desired or envisaged form of development. AMTA submissions to include telecommunications facilities as performance assessed developments and/or exempt from notification in a number of employment zones and infrastructure zones, appear to have been excluded at this stage.

The Hills Face Zone is introduced as the only zone within the Code where a 'telecommunications facility' is a restricted form of development. AMTA maintains the position that Telecommunications Facilities should not be restricted in the Hills Face Zone – the only zone where they appear to be. Just like other utilities, it should not be restricted, especially given the need for quality connectivity during bushfires and emergencies.

AMTA remains very concerned at the impact of the introduction of Character Overlays and Historic Overlays on the ability of carriers to continue using Commonwealth powers to build, maintain, replace and operate 'low-impact' facilities that would otherwise not need approval (and also increase the difficulty for facilities that do require approval). These are extensive powers and widely-used by the carriers to ensure continuation of service. We have already suggested possible ways this could be rectified, but there has been no action from the Commission.

AMTA is seeking a more declarative position from the State on the essential nature of telecommunications infrastructure teamed with a more resolute policy regime. This would effectively result in aligning the Code with the well-understood meanings and policy positions of the current Development Plan regime and would go a considerable way to ensuring the necessary changes to the Code are made and the State can more readily benefit from new telecommunications infrastructure and services.

RECOMMENDATION 19

AMTA is seeking the South Australian Planning Commission's intervention to address issues raised by AMTA in relation to the Planning and Design Code Phase 2 & 3 to ensure that the carrier's efforts to augment 4G and deploy 5G networks in South Australia are not frustrated.

Reform Opportunity

TENURE

Authorisation to use, access and occupy Crown land is subject to the Crown Land Management Act 2009 which ensures that all Crown land is used in a manner consistent with ecologically, sustainable land management practices. Use of Crown Land is administered by the Department for Environment and Water (DEW).

DEW's responsibilities include confirming the tenure of the parcel of land, negotiating with the carrier about suitable tenure requirements, and undertaking a detailed land assessment. When requirements have been satisfied, DEW can seek the Minster for Environment and Conservation's consent to allocate tenure.

The carriers have tended to avoid the use of Crown Land in South Australia due to protracted processes and uncertainty surrounding short tenure.

Whilst sites on Crown Land can often offer excellent visual and physical separation from sensitive uses, unfortunately these are often not pursued due to the uncertainty of the tenure process. Sometimes this is unavoidable, because even when a site for a telecommunications facility is selected on freehold land, the carrier must negotiate to secure an easement for access across Crown Land.

Carrier leasing of freehold land owned by the State or local government in South Australia can offer improved opportunities, albeit the processes and timing often relegate these candidate sites in the order of priority. Councils will often insist upon rentals that are above market value and outside the carriers' commercial parameters.

RECOMMENDATION 20

AMTA encourages South Australia's DEW to establish 'Master Agreements' with carriers to guide the conditions under which land will be licensed for the establishment of Telecommunications Facilities. The carriers are seeking a streamlined process with DEW for the leasing of land ensuring there is also no use of discriminatory terms in such arrangements.

Northern Territory

Northern Territory

Reform Opportunity

DEVELOPMENT APPROVAL

The Northern Territory Planning Commission, established in 2013, has responsibility for progressing the Territory's Planning Reform process.

Planning reform across the Territory has continued to be rolled out, and most recently this has included the establishment of a new Northern Territory Planning Scheme 2020. AMTA has made a submission during the process of establishing the new Planning Scheme, and has presented to a Hearing of the Commission.

Confirmation that Telecommunications Facilities are not prohibited in any zone in the Northern Territory Planning Scheme 2020 is welcome and ensures that the Territory is broadly in alignment with the planning systems in several other states that have acknowledged that this infrastructure is needed in all areas.

Notwithstanding, AMTA considers that some zones should allow for Telecommunications Facilities to be permitted development when conditions are met. With recent national emergencies including drought, bushfires and covid-19, telecommunications infrastructure of all types is universally regarded as 'essential infrastructure'.

Notably, the Purpose of the new policy wording guiding Telecommunications Facility deployment (Clause 5.8.10) has added "facilitating the provision of telecommunications infrastructure to meet community expectations and needs" to the purpose that was included in the old Planning Scheme, which just focussed on the protection of amenity. Whilst this is welcome, recent decisions of the Northern Territory Development Consent Authority on a Telstra Application near Alice Springs have not demonstrated facilitation.

In order to actively facilitate provision of the infrastructure, it follows that an assessment track less onerous than "Impact Assessable" in Zones where expectations of amenity are not as great, would be entirely consistent with the Purpose.
Therefore, like the Planning Schemes in New South Wales and Victoria, AMTA submits that the Northern Territory Scheme should allow some exemptions from the need to obtain consent for certain types of facilities in certain zones over and above those found in the Federal Low-Impact Facilities Determination. This should extend to allowing new towers in rural and industrial areas where conditions are met.

In addition, AMTA has offered several other suggestions regarding the Application process which would provide more certainty for the industry and community.

AMTA considers that the Northern Territory planning system has not yet demonstrated an adequate degree of readiness for future mobile network deployment including 5G.

RECOMMENDATION 21

AMTA calls on the Northern Territory Planning Commission to:

a. Include Telecommunications Facilities as 'permitted' and therefore exempt from the need for development consent in several zones, including Industrial and Rural Zones where conditions are met; and,

b. Adopt AMTA's suggested amendments to the Northern Territory Planning Scheme 2020 as contained in the AMTA/MCF submission lodged with the Commission in April 2020.

Conclusion and Summary of Recommendations

With planning well progressed for the continuing rapid deployment of 5G infrastructure across Australia, the time has never been better for Australia's States and Territories to review and recalibrate their policy settings and planning rules to cater for the demand for new 5G telecommunications network infrastructure.

Many of the State and Territory planning rules and requirements to lease land have not kept pace with community demand for essential services offered by existing 4G mobile networks and the emerging transformational services offered by 5G.

The rules and requirements need to be rewritten to reflect the ubiquitous and essential nature of the infrastructure to recast the balance in favour of timely and efficient deployment.

Gone are the days when entire residential suburbs could be serviced by a 'macro' telecommunications facility in an adjacent suburb. Telecommunications facilities are required where people use the service, which is increasingly in residential areas.

The Australian mobile industry represented by AMTA is not indifferent to the demands on State, Territory and local government to provide rules that protect amenity and minimise visual impact from telecommunications infrastructure.

But AMTA is seeking the urgent attention of governments to rewrite their planning rules to ensure that they are consistent with best practice regulation found in the Leading Practice Model for Development Assessment, as well as non-discriminatory tenure rules consistent with the provisions of Telecommunications Act.

AMTA, and its infrastructure division the Mobile Carriers Forum, has been willing to contribute necessary industry expertise to assist Governments to understand what is driving the telecommunications sector. This 5G Infrastructure State & Territory Readiness Assessment has highlighted best practice across Australia and has given credit where it is due. It has also sought to highlight and document a series of 21 recommendations based upon models for best practice regulation for which reform is also necessary. These are summarised below.

AMTA and its members look forward to working with all levels of Government so that Australians can realise the economic, social and environmental advances that can be enabled via existing 4G and emerging 5G mobile networks.

Summary of Recommendations

Recommendation 1 (NSW):

AMTA calls on the NSW Government's Department of Education to immediately review its Policy "Mobile Telecommunications Facilities" to ensure that it provides a science-based response to concerns about RF EME, and does not have any unintended consequences such as creation of insufficient 4G & 5G mobile network service.

Recommendation 2 (NSW):

AMTA calls on IPART and the NSW Minister responsible for Crown Land to:

a. Adopt a single fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier, and in doing so, avoid discrimination and any potential breach of the Telecommunications Act, cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications; and,
b. Direct NSW Councils to apply this new IPART rate to all their leases to telecommunications carriers so the Councils also comply with Clause 44.

Recommendation 3 (ACT):

AMTA calls on the ACT Government to undertake a review of the Communications Facilities and Associated Infrastructure General Code, and in particular any subjective criteria, to ensure that this strikes an appropriate balance between providing important mobile network services (including 5G), and protecting amenity.

Recommendation 4 (ACT):

AMTA encourages the ACT Government to establish Master Agreements with carriers, to ensure a timely and consistent approach to leasing of land. The approach must avoid discrimination consistent with the Telecommunications Act, Sch 3 cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G small cell facilities.

Recommendation 5 (QLD):

AMTA encourages the Queensland Government to include a State-wide Telecommunications Code within the Queensland Planning Provisions (QPP) to ensure that infrastructure can be deployed based upon uniform assessment criteria to meet the needs of consumers in all parts of the State in a timely manner. AMTA also encourages the inclusion of consistent and wide-ranging acceptable outcomes in the QPP, not dissimilar to the criteria found in the NSW ISEPP and Victorian Codes.

Recommendation 6 (QLD):

AMTA calls on the Queensland Government's Department of Education to immediately review its Procedure "Mobile Telecommunications Facilities" to ensure that it provides a science-based response to concerns about RF EME at schools and TAFEs, and does not have any unintended consequences such as creation of insufficient 4G & 5G mobile network service.

Recommendation 7 (QLD):

AMTA calls for Queensland State Government intervention to set standard fees across the State to process development applications for telecommunications facilities.

Recommendation 8 (QLD):

Pursuant to the Planning and Environment Court Act 2016 Qld, AMTA calls upon the Queensland State Government to review whether the P&E Court is facilitating the just and expeditious resolution of the issues, and is avoiding undue delay, expense and technicality when conducting P&E Court proceedings relating to Telecommunications Infrastructure.

Recommendation 9 (QLD):

AMTA calls upon the Minister responsible for Crown Land in Queensland to monitor implementation of Land Regulation 2020 to ensure the application of an equitable fee structure that applies to all occupiers of Crown land without regard to the purpose and the actual or perceived financial viability of the occupier, and in doing so, avoid discrimination and any potential breach of the Telecommunications Act, cl. 44. This approach should be applied to both 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G mobile telecommunications.

Recommendation 10 (VIC):

AMTA calls on the Victorian State Government to recognise Telecommunications Facilities as essential infrastructure in planning policy across the 'Planning Policy Framework' and 'Particular Provisions' sections of the Victorian Planning provisions. This should in turn filter through the VPP including further exemption for additional forms of Telecommunications infrastructure, and strengthened guidance on what constitutes a net-community benefit.

Recommendation 11 (VIC):

AMTA calls on the Victorian DELWP and DJPR to bring forward the review of A Code of Practice for Telecommunications Facilities in Victoria 2004, including additional permit exempt facilities such as those that are 'Exempt" or 'Complying Development in NSW', together with emerging 5G infrastructure.

Recommendation 12 (VIC):

In consultation with the industry, AMTA calls on the Victorian DELWP to amend:

a. The 14 Planning Schemes and 27 specific zones that contain the anomaly prohibiting Telecommunications Facilities. Section 1 uses in these Zones must include "Any use listed in cl 62.01" with a condition "Must meet the requirements of Clause 62.01"; and,
b. The Public Conservation and Resource Zone in the Victorian Planning Provisions, to ensure that the use of land for a Telecommunications Facility in a PCRZ is not prohibited.

Recommendation 13 (VIC):

In consultation with the industry, AMTA calls on the Victorian DELWP to redraft the Victorian Planning Provisions including Clause 52.19 and Clauses 62.01 and 62.02 (as required) to clarify the permit triggers for a Telecommunications Facility in Victoria.

Recommendation 14 (VIC):

AMTA calls upon the Victorian State Government and the Minister for Energy, Environment and Climate Change, being the Minister responsible for Crown Land to ensure a timely and consistent approach to leasing of Crown Land. The approach must avoid discrimination and any potential breach of the Telecommunications Act, Sch 3 cl. 44. This approach should be applied to both land for 'macro' tower sites as well as for sites used by emerging communication technologies, such as 5G small cell facilities. Such an approach should also be applied by Victorian councils.

Recommendation 15 (TAS):

AMTA calls on the Tasmanian State Government and Minister for Planning to undertake a review of the Tasmanian Planning Schemes' Telecommunications Code, and in particular C5.6 Development Standards for Buildings and Works, to ensure that the acceptable solution for the height of structures strikes an appropriate balance between providing important mobile network services (including 5G), and protecting amenity.

Recommendation 16 (TAS):

AMTA calls on the Minister for Planning to amend Clause 4.2.6 of the Tasmanian State Planning Provisions, with additions to the list of minor communications infrastructure that are exempt from requiring a permit. This should include:

a. the addition of antennas to an existing facility where the antennas do not exceed the dimensions of existing antennas and the overall height of that facility does not increase.
b. the establishment of a shelter or cabinet/s within an existing Telecommunications compound area
c. co-location of new 5G small cells onto existing utility poles within heritage areas.

In addition, Clause 4.2.6 could include several types of Telecommunications infrastructure that is currently not captured by the Telecommunications (Low-impact facilities) Determination 2018 but are exempt in States including Victoria or NSW.

Recommendation 17 (WA):

AMTA calls upon the remaining Councils in WA, being City of Gosnells, Shire of Serpentine-Jarrahdale and the City of Swan to review their Council Telecommunications Policies so that they comply with State Planning Policy 5.2. This should include removal of exclusion/buffer zones in accordance with SPP5.2.

In addition, all Councils in WA should remove any reference to Telecommunications Infrastructure from being a use 'not permitted' in certain zones in local Planning Schemes. The inclusion of 'telecommunications infrastructure' designated as an 'X' use is not permitted under SPP 5.2.

Recommendation 18 (WA):

AMTA encourages the WA State Government and the Minister responsible for Crown Land to ensure a timely and consistent approach to leasing of Crown Land for telecommunications facilities. The carriers are seeking an approach that is streamlined and avoids discrimination consistent with the Telecommunications Act, Sch 3 cl. 44.

Recommendation 19 (SA):

AMTA is seeking the South Australian Planning Commission's intervention to address issues raised by AMTA in relation to the Planning and Design Code Phase 2 & 3 to ensure that the carrier's efforts to augment 4G and deploy 5G networks in South Australia are not frustrated.

Recommendation 20 (SA):

AMTA encourages South Australia's DEW to establish 'Master Agreements' with carriers to guide the conditions under which land will be licensed for the establishment of Telecommunications Facilities. The carriers are seeking a streamlined process with DEW for the leasing of land ensuring there is also no use of discriminatory terms in such arrangements.

Recommendation 21 (NT):

AMTA calls on the Northern Territory Planning Commission to:

a. Include Telecommunications Facilities as 'permitted' and therefore exempt from the need for development consent in several zones, including Industrial and Rural Zones where conditions are met; and,
b. Adopt AMTA's suggested amendments to the Northern Territory Planning Scheme 2020 as contained in the AMTA/MCF submission lodged with the Commission in April 2020.

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