



Australian Mobile
Telecommunications
Association

AMTA State & Territory 5G Infrastructure Readiness Assessment Summary

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As deployment of the 5th Generation of mobile technology and supporting infrastructure gathers pace, Australia's mobile industry represented by AMTA is committed to advocating for regulatory and legislative frameworks that are reasonable, flexible and proportionate, as a means of supporting ongoing innovation and investment in mobile infrastructure.

AMTA is the peak industry body and voice of Australia's mobile telecommunications industry. It counts amongst its members the three mobile network operators currently deploying and operating mobile networks in Australia: Telstra, Optus and Vodafone (part of the TPG Telecom Limited Group) together with service providers, equipment vendors, infrastructure suppliers and support industries. In a competitive environment, our members are constantly investing in their existing 4G networks, and are now racing to build 5G.

Governments embracing the benefits of 5G Infrastructure

Australia's state, territory and local governments are increasingly developing smart places strategies and supporting projects to solve problems and improve the lives of their residents and capability of their businesses. Rather than the technology being a starting point, the public sector is 'citizen centric', and is designing solutions to improve the human experience. Communications networks, sensors and the Internet of Things (IoT) are then drafted and applied as enabling solutions. As these solutions rely on increased network capacity, faster download speeds, and lower latency, 5G will become a natural choice for smart connectivity.

What is 5G

'5G' is the 5th generation of mobile networks, a significant evolution of today's 4G networks. 5G is designed to meet the very large growth in data and connectivity of today's modern society, the internet of things with billions of connected devices, and tomorrow's innovations. 5G will initially operate in conjunction with existing 4G networks before evolving to fully standalone networks. The rollout of 5G will help meet Australians' growing demand for more data, with the Australian Communications and Media Authority (ACMA) reporting that the volume of data downloaded on mobiles has doubled from June 2018 to June 2019, and this is set to continue.

Why deploy 5G networks?

5G will deliver faster speeds, better response times and greater capacity. 5G networks are designed to work in conjunction with 4G networks using a range of macro cells, small cells and dedicated in-building systems. Small cells are mini base stations designed for very localised coverage typically out to a few hundred metres, providing in-fill capacity for the larger macro network. Small cells will be very important for future 5G networks and will evolve to include the use of millimetre wave (mm Wave) radio frequencies.

Why will 5G be important to Australia's States and Territories?

The continued deployment of 4G and emergence of 5G network infrastructure offers the potential for a short-term stimulus impact on the economy as we adapt to a new normal, post the covid-19 pandemic. As a technology that enables other sectors of the economy, 5G mobile infrastructure also offers medium and longer term economic benefits supporting communities, businesses and public services. It promotes and enables flexible working, cloud-based collaboration, connectivity and education for remote learning, homework and student connectivity.

Regulation of telecommunications has traditionally been a Commonwealth responsibility, but Australia's state and territory governments also play a significant role. 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 development approval.

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

It is therefore increasingly important that state and territory planning policy makers recognise the essential nature of telecommunications networks - just like they recognise critical infrastructure for water, energy, and transport infrastructure.

After carefully planning their 5G network infrastructure, Australia's three mobile network operators must secure development approval from councils and tenure on freehold or government land, and to do this they navigate through an array of rules and regulations of Australia's eight states and territories, and over five-hundred councils. To ensure readiness for the deployment of 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 AMTA's 5G State and Territory Readiness Assessment Full 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.

Delivery of 5G Requires a commitment from all levels of Government

For nearly three decades and through four generations of mobile network technology, the mobile industry represented by AMTA has worked constructively with all levels of government to unlock the potential social, economic and environmental benefits enabled by mobile telecommunications.

This has been achieved in the context of rules and regulations that have guided the carriers to deploy in a sensitive manner. 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 pandemic the level of demand for mobile networks spiked in some areas, and as people spent more time online at home, network traffic loads shifted geographically from city centres and office areas to suburban residential areas. This amplified the present challenges associated with ensuring quality mobile 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. 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 minor infrastructure does not require 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 network operators 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 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.

Best Practice Regulation for State & Territories

The process for a carrier to deploy a 5G Telecommunications Facility broadly requires the need to:

- a. Secure Development Approval to allow use of land and development of the infrastructure; and,
- b. Secure Tenure, through a lease or license to allow a carrier to establish a facility on the site.



Best Practice Processes for “Development Approval” for Telecommunications Network Infrastructure

The recommendations in AMTA’s 5G State and Territory Readiness Assessment relating to Development Approval are grounded in the principles and guidance found in the ‘Leading Practice Model for Development Assessment in Australia’

produced by the Development Assessment Forum (DAF). The DAF comprised all levels of government, industry, the Planning Institute of Australia and academia, and in the Model the DAF recommended ways to streamline development assessment without sacrificing the quality of decision making. It provides a blueprint for jurisdictions for a simpler, more effective approach to development assessment, via ten leading practices and six development assessment pathways/tracks.

Importantly, planning controls like those currently found in New South Wales and to some extent Victoria are consistent with the DAF model and recognise the critical nature of mobile network infrastructure. They 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 a full council development assessment process.

The Three Approval Pathways diagram outlines this arrangement and highlights the need to shift more assessment into the ‘Complying’ Development’ or ‘Permit Exempt’ pathway.

Some states and territories however do not provide such an arrangement and require full development approval for all forms of telecommunications infrastructure, 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 telecommunications infrastructure being zoned out of particular localities

In addition to the inclusion of the ‘Permit Exempt’ or ‘Complying Development’ pathway, the Readiness Assessment’s Full Report focuses on a range of ‘Best Practices’ and has identified ‘Reform Opportunities’ for the states and territories in relation to: development application fees, decision making, timing and appeals.

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, which is regulated by state and territory governments.

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) provides that where state law discriminates against telecommunications 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 often treated differently to other critical infrastructure providers when it comes to utilising public roads and land, in that no rent is often 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 such arrangements in Queensland 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 in the Readiness Assessment to require state, territory and local governments to 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 State and Territory Governments 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 small cell mobile telecommunications.

Where feedback has been supplied by AMTA’s members, the Full Report of the Readiness Assessment examines land access arrangements in the states and territories to gauge their fairness and consistency.

Findings of the 5G State & Territory Readiness Assessment

The Full 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 above. After a thorough analysis of the regulations by AMTA and its carrier members, an 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 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 and territory is not exhaustive, and only the most impressive “Best Practices” and most pressing “Reform Opportunities” are included.

What are the Best Practices and Reform Opportunities for Australia’s States and Territories?

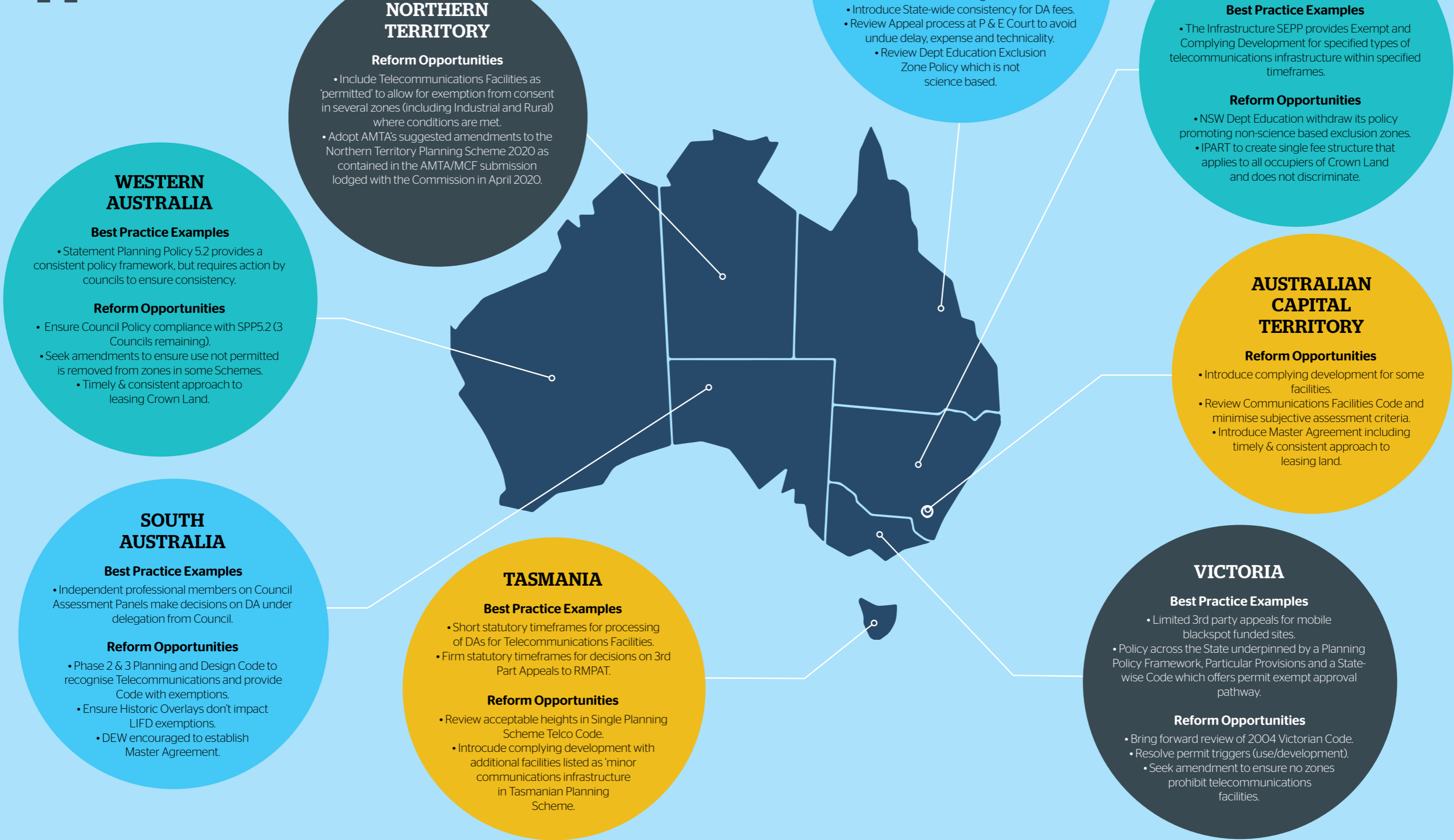
AMTA, and its infrastructure division the Mobile Carriers Forum, has been willing to contribute necessary industry expertise to assist governments to understand what is driving the telecommunications sector.

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 priority recommendations based upon models for best practice regulation. Whilst not exhaustive, these reforms have been identified by AMTA members as the most pressing to ensure readiness for 5G deployment. These are summarised in the following diagram.



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



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.

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.

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.
- Introduce 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-wide 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.

5G – What’s Next for Australia’s State & Territory Governments?

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.

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 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. AMTA welcomes feedback on this Readiness Assessment and invites discussion with state and territory governments.

For access to the **Full Report** please visit <https://amta.org.au/>



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