



AMTA

Australian Mobile
Telecommunications
Association



Deployment of Mobile Telecommunications Infrastructure

The need for consistency and best
practice planning rules and regulations
across Australia's States & Territories

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Executive Summary

Background

- Mobile network infrastructure is a key enabler of productivity growth.
- Regulation of telecommunications has traditionally been a Commonwealth responsibility, but Australia's State and Territory governments also play a significant role when it comes to telecommunications infrastructure.
- At present there is a labyrinth of planning regulation in Australia that is an impediment to the efficient, equal and effective deployment of mobile infrastructure.
- Whilst there is a compelling case for national consistency through the Commonwealth's Powers & Immunities framework, there are limits to what Federal legislation and regulatory powers can achieve.
- There is a better way for the regulation of deployment that achieves expedited approvals and more certain outcomes for the mobile telecommunications industry and end users of mobile technology.

The need for regulatory reform

- Through promoting consistent and best practice planning regulation for telecommunications infrastructure in the States and Territories, it is possible to adopt sensible legislative reform that will not only make the planning process more efficient and effective, but it will also save costs and therefore make investment more attractive.
- Australia's mobile network infrastructure providers seek objective, clear and non-discriminatory planning policies, rules and regulations that strike a balance between the provision of essential telecommunications services and minimising visual impact.
- 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 infrastructure that is not exempt as a result of P&I; and,
 - b. Secure Tenure, through a lease or license on freehold or Crown land to allow a carrier to establish a facility on the site.

- The recommendations set out in this model seek to make this process more efficient and effective.
- Recommendations for State and Territory governments:
- AMTA has developed the following eight model reforms to promote best practice regulation for development approval and tenure:
 - a. Withdraw 'Buffer/Exclusion Zone' policies and discourage their use by state/territory and local government.
 - b. Provide a single non-discriminatory fee structure for use of Crown land.
 - c. Review state/territory planning policies.
 - d. Introduce or review state/territory plans for telecommunications.
 - e. Develop strategic planning for mobile telecommunications infrastructure in growth areas.
 - f. Include Exempt/Complying provisions for telecommunications infrastructure, leading to the need for fewer development applications.
 - g. Ensure telecommunications infrastructure is not prohibited in any zones.
 - h. Exempt certain telecommunications facilities from the need for judicial review of decisions (where that forms part of the state or territory planning system).

Next Steps

- AMTA encourages state and territory governments to review and re-write their planning rules to ensure that they are consistent with best practice regulation outlined in the suggested reforms contained in this model.

Introduction

Mobile network infrastructure is a key enabler of productivity growth. In 2022, AMTA commissioned Deloitte Access Economics to examine the economic impact of adoption levels of 5G-enabled technologies and innovations, and the policy and regulatory principles required to support accelerated adoption. Deloitte's report, '5G Unleashed: Realising the potential of the next generation of mobile technology', found that in relation to Infrastructure deployment, there is a need [for governments] to:

- Coordinate clear and consistent policy across all communications-related issues at Federal, State and Territory level.
- Facilitate reform opportunities outlined in AMTA's 5G Infrastructure Readiness Assessment report at the state & territory level.
- Consider incentives to encourage private investment in 5G services such as new funding arrangements or tax incentives to support greater 5G coverage into regional and remote areas.

Government should consult with industry on the need for further de-regulation with a view to removing out of date and inefficient regulatory requirements across the sector and seek to enable greater co-regulation¹.

Regulation of telecommunications has traditionally been a Commonwealth responsibility, but Australia's State and Territory governments also play a significant role when it comes to telecommunications infrastructure. They regulate the 'use' and 'development' of public and private land, devise planning policies, and set the rules and processes for assessment of most new mobile network infrastructure. It is then local councils that interpret these rules, assessing proposals and finally deciding whether to grant development approval.

With eight State and Territory Governments and 537 Councils in Australia, there is a patchwork of rules and processes that are wholly inconsistent and require significant time and financial resources to navigate. But there is a better way for the regulation of deployment that achieves expedited approvals and more certain outcomes for the mobile telecommunications industry and end users of mobile technology.



Federal Legislation and Regulation – ‘Powers and Immunities’ framework

For several years, the Australian Government has been engaging with the telecommunications industry and other stakeholders on reforms required to ensure the Federal ‘powers and immunities’ (P&I) framework continues to meet the needs of modern Australia. This included changes in 2021 to the Telecommunications (Low-impact facilities) Determination 2018 and the Telecommunications Code of Practice 2021. These changes are ostensibly to ensure that P & I are fit for purpose and strike a balance between providing relief from the patchwork of rules and processes and minimising visual impact.

More recently AMTA and mobile network operators (MNO) have been seeking changes to the P & I framework to allow Multi-function Poles (MFP) to be deployed without the need for planning approval, to expedite 5G small cell deployment. The basis for such a request is that the industry is transitioning from upgrading existing macro base stations to providing localised service via small cells utilising mm Wave spectrum. The take-up of 5G is set to continue growing. As each of the mobile network operators has announced 3G network closures, we expect to see increased refarming of existing 3G/4G spectrum holdings to support future 5G deployment across a wide range of bands, increasing its accessibility and capacity to support data demand growth².

The need for nationally consistent planning rules for States & Territories

Whilst there is a compelling case for national consistency through P & I, there are limits to what Federal legislation and regulatory powers can achieve. Therefore, some States and Territories have chosen to turn their attention to producing tailored planning controls to support deployment.

For example, since 2010 under planning rules of successive NSW State Governments, new poles or towers in rural and industrial areas in NSW have been able to be deployed as ‘Complying Development’, without the need for Development Approval from Councils. To qualify as ‘Complying Development’ several conditions must be met by mobile infrastructure providers including limiting the height of poles and towers relative to the distance to residentially zoned land. In simple terms, such rules achieve a desired planning outcome, but are also providing certainty and an expedited process.

AMTA has been encouraging State & Territory Governments and local Councils to move forward together and apply best practice regulatory principles, such as that found in NSW in support of good outcomes and expedited approvals. These are found in the First Edition of the AMTA State & Territory 5G Readiness Assessment, published in March 2021.

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

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

This has been achieved in the context of rules and regulations that have been adapted and refined to require the carriers to deploy in a sensitive manner. With continued refinements to 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 multi-function poles and small cells for localised service and all of the antennas and technology that now connects a myriad of devices such as smart phones, sensors, machines, cars and the 'internet of things'.



Community Need

Most Australians are now acutely aware of the quality and consistency of mobile broadband connectivity and service available where they live and work. During the Covid-19 pandemic, the level of demand for mobile networks spiked where people spent more time online at home. Network traffic loads grew and shifted geographically from city centres and office areas to suburban and peri-urban residential areas. This amplified the emerging challenges associated with ensuring quality mobile network service during peak times of the day.

In Australia's regional, rural, and remote areas, where the business case for deployment is often marginal, the efficiency of the approval process can be critical to delivery of network infrastructure and improved service.

What's required?

Australia's mobile network infrastructure providers are seeking objective, clear and non-discriminatory planning policies, rules and regulations that strike a balance between provision of essential telecommunications services and minimising visual impact. The industry is now well progressed with 5G network deployment, with critical investment decisions now being made in relation to localised 5G services. It is imperative that there is certainty around the ability to deploy the requisite infrastructure to provide ongoing augmentation of 4G services and investment in 5G capacity, so the benefits can be realised 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 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, but this need not be done to the detriment of the environment and amenity.

Telecommunications Infrastructure Deployment Regulation - Best Practice 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 infrastructure that is not exempt under the P&I framework; and,
- b. **Secure Tenure**, through a lease or license on freehold or Crown land 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' (Model) produced by the Development Assessment Forum (DAF)³.

The DAF comprised all levels of government including representation from the Australian Local Government Association (ALGA), Industry, the Planning Institute of Australia and academia. 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 do not require a full council development assessment process.

The Three Approval Pathways diagram below 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.

Therefore, the appropriate bases for states, territories and councils to set rents for the mobile carriers are, for example, the rentals charged by the Crown Land agencies to all other users of Crown land. To do otherwise would result in discrimination and inconsistency with the Telecommunications Act, Schedule 3 clause. 44.

Notwithstanding, telecommunications 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*⁴ 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 'best practice' for 'tenure' arrangements 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 is often reflected in a 'Master Agreement' between mobile carriers and state and territory governments to guide the conditions under which land will be leased for the establishment of telecommunications facilities. The carriers seek a streamlined process for the leasing of land on non-discriminatory terms. Such an approach should be applied to both 'macro' tower sites as well as for sites used by emerging communications technologies, such as 5G small cell mobile telecommunications.

Suggested Reforms to be Applied by State & Territory Governments when regulating mobile network infrastructure

AMTA has developed the following eight model reforms to promote best practice regulation for development approval and tenure.

1. Withdraw ‘Buffer/Exclusion Zone’ Policies and discourage their use by State/Territory and Local Government

State and local governments should be discouraged from applying policies that seek to limit the distance between the boundary of a ‘sensitive land use’ such as a school or child-care centre and a radio base station. Such policies have a considerable negative impact upon MNOs trying to deploy infrastructure and provide a service.

For example, 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 2012 ‘Procedure ‘Mobile Telecommunications Facilities’, that contains 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. Similarly, the Coffs Harbour Council imposes a very restrictive 500 metre separation distance between telecommunications facilities and ‘sensitive land uses’.

Such policies have no regard for science-based restrictions on the placement of mobile network infrastructure and can lead to inefficient networks, increased energy from handsets and base stations, as well as more base stations being required to fill coverage gaps, which is ultimately contrary to the objectives the policies are hoping to achieve.

2. Single Non-discriminatory Fee Structure for Use of Crown Land

AMTA encourages the facilitation of ‘Master Agreements’ 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 seek a streamlined process for the leasing of land on non-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, Schedule 3, clause 44. This approach should be applied to both ‘macro’ tower sites as well as sites used by emerging communication technologies, such as 5G small cells.

We note that some State & Territory Governments have not reviewed their pricing for many years, and these pricing structures are both discriminatory and outdated. For example, the recommendations from NSW Independent Pricing and Regulatory Tribunal (IPART) 2019 review into rental arrangements for communications towers on Crown land has never been adopted.

State and Territory Governments should also provide improved information to support telecommunication providers to assess leasing requirements for different types of Crown Land sites, and guidance to Crown Land Committees of Management.

3. Single State/Territory Planning Policy for Telco Infrastructure

All States and Territories should pursue a single planning policy objective to facilitate the orderly development, extension, and maintenance of telecommunications infrastructure. In practice, this should filter down to planning scheme provisions including Zones, Environment and Landscape Overlays and Heritage and Built Form controls (amongst others).

Mobile network operators 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 differing planning schemes. This in turn leads to substantial compromise that can deliver an inefficient network and the need for new additional network facilities.

4. Introduce or Review State/Territory Plans for Telecommunications

AMTA is encouraging a review and recalibration of State/Territory Plans, or at least a re-think of the current system and the way in which telecommunications deployment is approached.

A State Plan can effectively address (as it has in States such as Victoria) such issues as:

- Recognition of telecommunications infrastructure and services as essential, along with setting out the State's desired outcomes for connectivity, access, and economic need. The key purpose, objectives and outcomes could also be incorporated into the strategic framework sections of local planning schemes.
- Standardised definition for telecommunications infrastructure (preferably aligned with the Commonwealth definition).
- Ensuring telecommunications is not a type of land use excluded (or practically excluded) from any zone type (an approach used in New South Wales and Victoria).
- Recognising the potential for detrimental impact of such infrastructure and the balance that needs to be struck between that impact and the need to provide service.
- Identifying the key requirements of such infrastructure (such as height) and allowing for flexibility as technologies, equipment types and requirements change over time.

For example, Queensland, and in particular South-East Queensland, has seen significant population growth in recent years. Very large development areas for vast numbers of dwellings (up to 50,000 in a single area) have been identified across the region. As such, the disparate approaches of each local government area, with policy that often demonstrates a poor understanding of the needs of such infrastructure and gives confusing guidance to both the community and council planning staff, must be re-positioned in a consistent and practical way with the State laying down the key rules and expectations for such infrastructure.

5. Strategic Planning for Mobile Telecommunications Infrastructure in Growth Areas

Mobile network operators continue to confront significant challenges when seeking to provide new and augmented mobile services into the growth areas of Australia's capital cities and regional centres. These challenges are not those typically experienced by other utilities (water, gas, electricity) and fixed line communications that are provided as typically undergrounded physical connections to each lot.

The operators seek to provide mobile network services to emerging and consolidating residential growth areas but are confronted with blockers. These include a combination of factors including:

- sensitivity of retrospectively establishing facilities within residential areas and open spaces;
- the ability to secure a lease in a timely manner and on reasonable terms;
- lack of clarity due to delays in councils finalising Precinct Structure Plans (PSPs);
- lack of acknowledgement that mobile infrastructure should be 'planned' for; and
- the absence of any guidance in PSPs about suitable types of siting solutions for mobile infrastructure.

It is possible for PSPs to identify the types of siting solutions for mobile telecommunications infrastructure that are acceptable in residential areas. In doing so, this can provide greater certainty (for developers and industry) about the types of locations or precincts that will be suitable for mobile infrastructure.

In identifying the types of solutions for mobile communications infrastructure in a PSP, these should generally be compatible with the visual and environmental sensitivities of these areas.

To increase the likelihood of securing development approval when it comes time for an operator to progress a proposal, these solutions should be explicitly identified in the PSP as being acceptable or indeed essential forms of infrastructure.

6. Inclusion of Exempt/Complying Provisions for Telecommunications

Several jurisdictions persist with a one-assessment pathway fits-all approach i.e., a full development assessment process despite what is proposed and the level of sensitivity of a site. Proposed telecommunications facilities that are not low-impact should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision.

Importantly, planning instruments like the State Environmental Planning Policy (Transport and Infrastructure) 2021 in New South Wales and the Victorian Planning Provisions recognise the critical nature of the infrastructure, and that this infrastructure should be addressed 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 do not need to be the subject of the development assessment process.

7. Ensure Telecommunications Infrastructure is Not Prohibited in any Zones

Planning Schemes and Plans should avoid 'Telecommunications' from being a use that is 'not permitted' in Zones. 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. 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.

For example, several Councils in Western Australia have amended their Planning Schemes to remove Telecommunications Infrastructure from being a use not permitted in some zones and these Councils will now assess Applications on their merits.

8. Judicial Review

Where Judicial Review of Decisions is part of the state and territory system, reforms should be considered. In Victoria, several exemptions from judicial review at the Victorian Civil and Administrative Appeals Tribunal (VCAT) were introduced in November 2022 into the Victorian system. For example, where a facility is located with good separation from residentially zoned land it is exempt from objectors' VCAT appeals in Victoria.

Since 2018, mobile network facilities in Victoria that are to be developed with federal or state funding have also been exempted from judicial review.



Conclusion and Next Steps

AMTA

With planning well progressed for the continuing rapid deployment and consolidation of 5G network 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 5G telecommunications network infrastructure.

The rules and requirements need to be rewritten to reflect the ubiquitous and essential nature of the infrastructure.

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 understands the demands on state, territory and local government to provide rules that protect amenity and minimise visual impact from telecommunications infrastructure. However, importantly, there are enormous economic and social benefits to be realised through the efficient deployment of infrastructure and the right balance must be struck.

AMTA seeks the urgent attention of governments to rewrite their planning rules to ensure that they are consistent with best practice regulation found in the eight suggested reforms contained in this model.





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