

The AMTA submission on:
The ACCC Regional Mobile Infrastructure Inquiry
– Report on preliminary findings

16 May 2023



About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak national body representing Australia’s mobile telecommunications industry. It aims to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia. Please see www.amta.org.au

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Introduction

AMTA welcomes the opportunity to provide this submission in response to the ACCC's *Regional Mobile Infrastructure Inquiry* – Report on preliminary findings 18 April 2023.

AMTA notes that its original, 1 September 2022, submission to the Inquiry was referenced regularly in the preliminary findings and AMTA thanks the ACCC for its obvious and careful consideration of the AMTA submission.

The ACCC has encouraged industry participants to make submissions on the preliminary findings set out in the report. AMTA's submission addresses selected findings and is limited to non-competitive matters where a common industry view exists across AMTA's membership.

AMTA supports the following preliminary findings and provides the following additional information, with a focus on solutions.

Preliminary Finding 1:

Consistent with previous reports and inquiries, regional, rural and remote Australians consider mobile services to be vitally important but are concerned with coverage and congestion issues.

AMTA Comment:

AMTA acknowledges this finding and notes the opportunities to partially improve provision of mobile services in regional, rural and remote areas by reducing the cost to industry and providing greater certainty to secure development approval and by providing access to Crown Land on reasonable terms.

Where there is an unviable business case to deploy a new or upgraded mobile facility to service a blackspot or underserved area, the cost and time to deploy can improve viability. For example, in NSW the exempt and complying provisions of the Transport & Infrastructure SEPP provides much greater certainty and improved time frames when compared to other States & Territories.

The AMTA Mobile Carrier's Forum (MCF), is a member funded forum to address mobile network deployment matters on behalf of its members: Telstra, Optus and TPG Telecom. The MCF continues to work with all three levels of Government to improve the regulatory framework and processes that MNOs must navigate to be able to deploy new mobile network facilities. This has included AMTA's role co-chairing the Powers & Immunities Reference Group (PIRG), pursuing reforms detailed in AMTA's State & Territory 5G Readiness Assessment, and engagement with local government associations and councils.

Preliminary Finding 4:

Increasing instances of natural disasters in recent years significantly resonates with consumers, who have a heightened need for access to reliable communications services during such disasters. Consumers consider reliable and resilient mobile services are particularly necessary during natural disasters.

AMTA Comment:

AMTA acknowledges this finding. AMTA notes the challenges associated with provision of mobile network infrastructure in some areas that are prone to natural disasters, including flood prone areas and areas of bushfire risk. In several cases, the balancing of State, Territory and local planning policies is skewed towards protection of amenity and gives insufficient weight to the need for service in these areas.

There is a need for planning policy that gives priority to provision of telecommunications infrastructure in these areas. Such policy is not necessarily at odds with protection of landscapes and amenity. For example, in the Victorian Planning system, a Development Application (referred to as a 'Planning Permit Application') must be assessed against a standard clause in each of the Council Planning Schemes (71.02-3 Integrated decision making) that requires "*Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations*" [emphasis added]. Such a Clause provides tangible support and should be replicated in other jurisdictions.

Whilst AMTA accepts that there are other constraints and limitations to the provision of mobile network coverage in areas prone to natural disasters, policy should provide greater support for provision of infrastructure where it is proposed.

Preliminary Finding 9:

Options for capacity upgrades to meet consumer demand for mobile services are more limited in regional, rural and remote areas compared with urban areas.

AMTA Comment

We also note that options for capacity upgrades in some urban areas are also severely restricted by planning controls. For example, in South-East Queensland, the varying extent, approach and disparity of telecommunications policy within individual planning schemes operates without overarching State policy and as a result this impacts cost, time, the consistency of approach and the certainty of outcomes depending on location.

However, we note that with the focus of this Inquiry being regional, AMTA proposes that there could be additional support and regulatory relief for the structural upgrade of existing towers to allow for additions of headframes and antennas in regional areas. Section 3.2 of the ACCC's report on preliminary findings observes that in remoter areas, the tendency is to consider upgrades to antennas on existing structures, which can lead to structural upgrade costs. Clearer support for tower strengthening within the Powers and Immunities framework including the Telecommunications (Low-Impact Facilities) Determination would be welcome.

Preliminary Findings 10 & 11:

Based on stakeholder submissions and data we collected, there is considerable variance in land access costs across states and territories, areas of remoteness and public versus private property owners.

Several industry stakeholders report that Government/Crown land is typically more expensive than private land.

AMTA Comment

AMTA notes these preliminary findings (10 & 11) and points to a need for a review at State and Territory level of the basis for setting rentals for the MNOs on Crown Land.

The appropriate basis for setting rents for the MNOs 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 Schedule 3 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 landowner 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.

AMTA and the mobile telecommunications industry continues to encourage State and Territory Governments to complete long overdue reviews of the basis for setting rentals.

We note that some State and Territory Governments have not reviewed their pricing for many years, and in our view, these pricing structures are both discriminatory and outdated.

We note that 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 and no additional review has yet commenced.

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

In 2022, the Victorian Government conducted a 'Telecommunications Infrastructure Provisions Review'. The outcome of this was an Action Statement which is found at this link.

https://djsir.vic.gov.au/_data/assets/pdf_file/0006/2149341/Telecommunication_Infrastructure_Provisions_Review_action_statement-v2.pdf

The Action Statement also includes an initiative as follows:

"Land access for telecommunication providers - Develop and publish a checklist and guidance to create more transparency around processes for Crown Land leases".

Develop a checklist to support telecommunication providers to assess leasing requirements for different types of Crown Land sites. This will include guidance material about how to assess items in the checklist.

Such an initiative is welcomed by AMTA and together with a review of any discriminatory pricing this will assist the carriers to deploy on Crown Land.

Preliminary Finding 12:

Several stakeholders argue that streamlining and reforming state and territory planning rules may better facilitate infrastructure deployment. This includes reforms to access costs to Crown land, reconsidering minimum lot sizes for towers and giving noncarriers similar tower planning exemptions to carriers.

AMTA Comment

AMTA agrees with this preliminary finding. 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.

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 including representation from the Australian Local Government Association (ALGA), 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, it includes planning controls like those currently found in the State Environmental Planning Policy (Transport and Infrastructure) 2021 ('the SEPP'), which now has a track record of successfully guiding telecommunications deployment in NSW since 2010.

The DAF model recognises that subject to relevant performance criteria, there would be telecommunications facilities outside those defined federally as 'Low-impact' that don't need to be the subject of a full council development assessment process. Instead of being assessed subjectively by Councils the criteria must be set out in advance (like in the SEPP) so that a proponent can prepare an application that conforms to the criteria and submit it with suitable documentation to show that it meets the criteria.