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Director

USG Implementation

USG Taskforce

Department of Infrastructure, Transport, Regional Development and Communications

GPO Box 594

Canberra ACT 2601

[new.developments@communications.gov.au](mailto:new.developments@communications.gov.au)

**Proposed amendments to Part 20A of the Telecommunications Act 1997 to reduce delays and cost to consumers**

ACCAN thanks the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to contribute to its consultation on options for boosting pit and pipe in new developments.

A small number of premises are built in Australia in areas which are serviced by fixed line telecommunications networks, without the necessary pit and pipe for telecommunications. Occupants of the premises then must retrofit pit and pipes to ensure network providers can install telecommunication network infrastructure into the building.

Data available to the Government shows that most developers install pit and pipe infrastructure however there are indications that some developers do not. Typically, these are small and frequently unincorporated developers. Some developers install pit and pipe that is defective and need remediating. Whilst the extent of the issue is limited, the impact to consumers is significant.

Under Part 20A of the *Telecommunications Act 1997*, incorporated developers are prohibited from selling or leasing a building lot or building unit if 'fibre-ready facilities' have not been installed in proximity to the lot or unit. The Commonwealth Telecommunications in New Developments (TIND) policy, states that all developers should provide pit and pipe infrastructure to developments and arrange with a telecommunications carrier to connect a development to a network. Some states and territories have adopted planning requirements that reflect those in Part 20A, or sometimes in the TIND policy, in which case unincorporated developers in those jurisdictions are also required to provide pit and pipe infrastructure.

The department has set out options to address this issue and achieve their goal of increasing the provision of pit and pipe infrastructure by small unincorporated developers and provide an effective model that states and territories can reflect in their planning laws if they wish:

1. *Do nothing.*
2. *Raise awareness within the developer and buying community*

Australian Communications Consumer Action Network (ACCAN)

*Australia's peak body representing communications consumers*

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PO Box 639, Broadway NSW 2007

Tel: (02) 9288 4000 | Fax: (02) 9288 4019 | Contact us through the [National Relay Service](#)

[www.accan.org.au](http://www.accan.org.au) | [info@accan.org.au](mailto:info@accan.org.au) | twitter: [@ACCAN\\_AU](#) | [www.facebook.com/accanau](https://www.facebook.com/accanau)

3. *Liaison with state, territory and local governments*
4. *Legislation to require unincorporated developers to provide pit and pipe*
5. *Legislation to require disclosure*
6. *Legislation to provide a compensation mechanism*
7. *Legislation to require the installation of networks*

### Option 1: Do nothing

ACCAN considers the option of doing nothing to be the least preferable as this doesn't resolve the issue. There will continue to be a small number of consumers each year who would face additional costs and delays in obtaining telecommunications in their homes or places of business.

As mentioned in the Regulatory Impact Statement, the cost of retrofitting a house with pit and pipe costs on average \$2,100 however there have been cases where the costs amount to \$10,000. This is a significant cost to consumers and is an inefficient use of resources when initially the cost of installing pit and pipe is between \$600-\$800. There is an added economic cost of not having access to telecommunications which can harm consumers as it prevents them from studying, working, accessing government services in addition to a range of other services. The COVID-19 pandemic has highlighted the need for consistent access to telecommunications and the significant cost of digital exclusion. The cost of doing nothing significantly outweighs the benefit which will be solely derived from the developers who have not installed the pit and pipe.

### Option 2: Raise awareness within the developer and buying community.

This option entails the department increasing efforts to raise awareness amongst small unincorporated developers and property buyers about the problems caused from not installing pit and pipe. If this option is successful at ensuring unincorporated developers install pit and pipe, then it is potentially the least costly solution to the problem. However, given that the department has already pursued this strategy since 2009, it would suggest that continuing to do so will be ineffective. Even if the department achieves complete awareness amongst developers, there remains the possibility that some developers will not install pit and pipe, which would result in a significant cost to consumers.

Support for this option could be increased if there is evidence that the main reason for developers to not install pit and pipe is due to a lack of awareness. However, without knowledge of the reasons why developers choose not to install pit and pipe, ACCAN considers this option to be one of the least preferable.

### Option 3: Liaison with state, territory and local governments

The option to continue efforts to encourage state, territory and local governments without requirements for developers to install fibre-ready facilities to amend their planning requirements is also one of the least favourable solutions. Considering the department has already pursued this strategy, there is a risk that this will not provide an effective solution to the issue. If no changes are made, then consumers will continue to face the significant costs of not having the pit and pipe installed.

ACCAN would be interested to understand where the locations of non-compliance are occurring, given the ad hoc approach taken by states, territories and local government, perhaps something could be learned from understanding which planning laws are most effective in ensuring that unincorporated developers provide pit and pipe.

## Option 4: Legislation to require unincorporated developers to provide pit and pipe

Option 4 is one of the more preferable options; it involves amending Part 20A of the Tel Act so that unincorporated developers must also plan for pit and pipe infrastructure to be installed before selling or leasing a building lot or building unit. The costs to developers of complying with the amendment can be easily recovered through property prices. The consumer benefits through the money saved from not having to retrofit the premises and having quicker access to telecommunications. The option ensures that pit and pipe will be provided ubiquitously across all new developments.

## Option 5: Legislation to require disclosure

Option 5 would see Part 20A of the Tel Act amended so that developers must disclose to prospective buyers or tenants whether they have installed pit and pipe infrastructure or whether an exemption applies. This option could be adopted in addition to option 4.

By letting the potential buyer or lessee know that no fibre-ready facilities have been installed the consultation paper assumes that most rational consumers would refuse to buy or let the property or would pay less to reflect the cost of retrofitting the property.<sup>1</sup> Behavioural economics provides an abundance of examples and reasons why consumers may not act rationally when it comes to the housing market.<sup>2</sup>

If consumers behave irrationally, and despite receiving disclosure that pit and pipe is not installed, continue to value the premise the same prior to the disclosure, it is unlikely that developers will adjust their behaviour. As there is still a risk that some developers will continue not to install pit and pipe despite having to provide disclosure, this option is not preferred.

Adopting option 5 in addition to option 4 would mean that consumers will be informed if they are about to purchase or lease a premise which is exempt from receiving fixed line broadband. Whilst disclosure might not necessarily change consumers behaviour, it would help prevent information asymmetries and allow consumers to make provisions for alternative options, such as purchasing fixed wireless, satellite or mobile broadband. ACCAN considers that consumers should be made aware of the type of telecommunications which will be available to them prior to purchase, thus option 5 as an addition to option 4 will benefit end users.

## Option 6: Legislation to provide a compensation mechanism

Option 6 amends Part 20A of the act to provide a right for consumers to seek compensation from a court if fibre-ready facilities were not installed or were defective. This option could be adopted on its own or in addition to option 4 or option 5. If this option is adopted on its own, whilst providing a greater incentive for developers to comply, it might not necessarily prevent developers from not installing pit and pipe. Only now the developer would bear the cost of retrofitting the premises. The occupant will continue to suffer a cost from not having quick access to fixed line telecommunication services.

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<sup>1</sup> <https://www.communications.gov.au/have-your-say/options-boosting-pit-and-pipe-new-developments>

<sup>2</sup> Whittle, R. et al (2014). *Behavioural Economics and House Prices: A literature review*. Business and Management Horizons. 2(2). P.15-28

ACCAN would prefer to see option 6 and option 4 implemented together. This will ensure that there is both a high level of compliance, and where the legislation hasn't been adhered to, consumers will receive compensation for the significant costs which result from pit and pipe not being provided by developers.

If option 6 is adopted with option 5 it would need to be tailored to provide compensation where there has been no or inadequate disclosure. This option incentivises developers to provide disclosure on whether pit and pipe has been installed, but the issue remains that consumers might not act rationally. If developers know that providing disclosure that pit and pipe has not been installed will not affect the demand for the premises, they will not seek to install the pit and pipe. Thus, the problem will not be addressed via this option.

### Option 7 legislation to require the installation of networks

This option is ACCAN's preferred approach as it will see new legislation prepared to require all developers to contract with a carrier to have network infrastructure installed. This option would increase the installation of enabling pit and pipe and networks and aligns more closely to the Government's Telecommunication in New Developments policy.<sup>3</sup> It would also have the benefit of ensuring network infrastructure is installed and ready to use by occupants, thus the time in which consumers will not have access to fixed line broadband will be minimised. The majority of developers already do this, and it is likely that the developer can easily pass on the costs to the property buyers or renters.

ACCAN is aware that this option may result in some consumers not receiving their preferred choice of network provider, and given the well-documented issues with embedded networks, we are concerned that this may come as a cost to a small sample of consumers. Developers will not always have the occupant's preferences in mind when choosing a network provider. However, we consider that this is an issue of network service standards and will be more suited to regulatory instruments such as the ACCC's SBAS and LBAS declarations<sup>4</sup> as well as the NBN wholesale service standards inquiry.<sup>5</sup> Additionally, ACCAN considers that the Minister should set standards, rules and benchmarks to ensure that any consumer moving into a new development receives a baseline level of service regardless of network infrastructure provider.

Option 7 should be adopted in conjunction with option 5 and option 6. This would mean that all developers are required to contract a carrier to have a network infrastructure installed, where they are exempt from doing so they will be required to inform potential occupants, and where this hasn't been complied with, consumers will have the right to compensation.

### Summary

ACCAN has considered the options set out in the regulatory impact statement; a list of our preferred choices, those which provide the most benefit to consumers, is provided in the table below. The options which reflect the status quo (i.e. do nothing, liaise with state and territory governments and

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<sup>3</sup> <https://www.communications.gov.au/have-your-say/review-telecommunications-new-developments-tind-policy>

<sup>4</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020>

<sup>5</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-service-standards-inquiry>

raise awareness) are unlikely to solve the issue. The other options provide better solutions to the problem, although to varying extents. Given the patch work legislation currently in place, ACCAN considers there is a real need for federal legislation to combat this issue.

