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## **TELSTRA CORPORATION LIMITED**

### **Submission to the Department of Infrastructure, Transport, Regional Development and Communications: Options to boost pit and pipe in new developments**

**Public version**

**29 September 2020**



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## 01 Introduction

Telstra welcomes the opportunity to respond to the Department's consultation regarding options to boost the installation of pit and pipe in new developments. In our experience, most developers arrange for the provision of pit and pipe, but there is a degree of non-compliance and this creates a range of difficulties for end-users in new developments and for carriers requested to provide services in those developments.

In our submission to the Department regarding the recent review of the Telecommunications in New Developments (TIND) policy, we noted several possible reasons for developer non-compliance in relation to the installation of telecommunications infrastructure, including smaller scale developers who are not aware of the requirements of the TIND policy and/or are not aware of or bound by Part 20A of the *Telecommunications Act 1997* (Cth) (**Telco Act**).<sup>1</sup> In the same submission, we:

- suggested that unincorporated developers should be subject to similar requirements to those in Part 20A of the Telco Act;<sup>2</sup>
- suggested that a legislative obligation on developers to arrange for the provision of appropriate telecommunications network infrastructure (not just "fibre-ready facilities") may perhaps be the clearest and most direct way to achieve the objectives of the TIND policy;<sup>3</sup> and
- noted our expectation that, short of these legislative changes, further awareness raising of relevant policy and legislative requirements, as well as the adoption, maintenance and enforcement of complementary planning measures in all states and territories, would probably be necessary.<sup>4</sup>

Against that background, we welcome the Department's consideration of measures to increase the provision of pit and pipe infrastructure in new developments.

In Section 2 of this submission, we set out our comments regarding each of the options put forward by the Department in the draft Regulation Impact Statement (**RIS**). Overall, we think that Options 3, 4 and 7 are likely to be more effective in boosting the installation of pit and pipe in new developments, coupled with ongoing awareness raising by the Department as proposed in Option 2.

## 02 Comments on options outlined in draft RIS

### 2.1. Option 1: Do nothing

Telstra does not support this option. As the Department notes in the draft RIS, if there is no change to current arrangements, *"a small number of consumers each year would face additional costs and delays in obtaining telecommunications in their homes or places of business"*.<sup>5</sup>

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<sup>1</sup> Telstra, Submission to the Department of Communications and the Arts regarding the review of the 2015 Telecommunications in New Developments Policy, 17 January 2020, page 19.

<sup>2</sup> Telstra, Submission to the Department of Communications and the Arts regarding the review of the 2015 Telecommunications in New Developments Policy, 17 January 2020, page 19.

<sup>3</sup> Telstra, Submission to the Department of Communications and the Arts regarding the review of the 2015 Telecommunications in New Developments Policy, 17 January 2020, page 20.

<sup>4</sup> Telstra, Submission to the Department of Communications and the Arts regarding the review of the 2015 Telecommunications in New Developments Policy, 17 January 2020, page 20.

<sup>5</sup> Draft RIS, page 3.



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As the Universal Service Obligation (USO) provider, Telstra experiences first-hand the issues faced by property owners, tenants and businesses when developers do not provide telecommunications infrastructure in their developments. And, insofar as USO voice services are concerned, the lack of pit and pipe infrastructure may limit the technologies available to deliver those services (e.g. to wireless and satellite).

## **2.2. Option 2: Raise awareness within the developer and buyer community**

We agree with the Department that its ongoing efforts to raise awareness of the need for pit and pipe have contributed to a relatively high level of compliance amongst developers; however, to the extent that there continues to be a degree of non-compliance, additional measures (beyond awareness raising) are likely to be needed to help boost compliance (discussed in the sections below).

While we think awareness raising will not, on its own, be sufficient to boost compliance, we expect the Department will continue to play an important role in educating developers, buyers and planners about the importance of pit and pipe, and about the applicable policy and legislative requirements in this space (including any additional requirements which are introduced as a result of this consultation).

To illustrate the need for continuing education, we note that, in our experience, some developers and planners believe the term “fibre-ready” means NBN Co is going to install fibre; if NBN Co is not, in fact, installing fibre, they may then think no pit and pipe is required. The Department can help address these potential misunderstandings by explaining that:

- developers are not automatically exempt from the requirements to provide pit and pipe under Part 20A of the Telco Act just because NBN Co may not be the carrier servicing the development or may not be installing fibre; and
- in accordance with the TIND policy, developers should ensure they engage a carrier to service their new development and arrange for the provision of pit and pipe as required.

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

We think the inclusion of pit and pipe requirements in all state, territory and local government planning laws is likely to be one of the more effective options to boost the installation of pit and pipe in new developments, thereby reducing the level of non-compliance and the need for expensive remediation work. The introduction of these requirements into jurisdictions which do not currently have them would also help increase awareness of the importance of installing pit and pipe in new developments, including amongst developers, buyers and planning authorities.

To be most effective, we think the inclusion / introduction of pit and pipe requirements in state, territory and local planning laws:

- Should apply to incorporated and unincorporated developers alike.
- Must be coupled with robust processes to check and enforce compliance. For example, consideration could be given to establishing a dedicated contact point within state, territory and/or local planning bodies where consumers and carriers can raise compliance and enforcement questions and issues. Without adequate external compliance and enforcement processes, neither existing nor new pit and pipe requirements will succeed in delivering on their objectives.



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

Telstra also supports this option, which we believe can work together with Option 3 to boost compliance, help avoid the need for expensive remediation work, and help increase awareness of the importance of installing pit and pipe.

Consistent treatment of incorporated and unincorporated developers under Part 20A of the Telco Act would help deliver on the objectives of that legislation in an efficient way. We expect it would also be beneficial for the following reasons:

- to the extent that state, territory and local planning laws reference the requirements of Part 20A of the Telco Act, extending Part 20A to cover unincorporated developers should flow-through to those planning laws as well; and
- it would help align Part 20A with the TIND policy, which applies to all developers regardless of whether the developer is incorporated or not.

Like Option 3, we note that appropriate compliance and enforcement processes will be necessary in order to ensure developers are meeting the requirements of Part 20A.

To the extent that Option 4 would have regulatory costs for unincorporated developers, we agree with the Department's comments that those costs are the *"inevitable consequence of dealing with the substantive problem of non-compliance with reasonable community expectations"*.<sup>6</sup> We also agree that any increased regulatory costs may be recovered through property prices (noting pit and pipe should enhance the value of properties), and that these costs are likely to be lower than any "retrofitting" costs incurred by consumers or carriers.<sup>7</sup>

## 2.5. Option 5: Legislation to require disclosure

We do not think this option is likely to be effective in boosting the installation of pit and pipe. As the Department notes in the draft RIS, *"[t]o the extent this option's intent is to have the developers concerned actually provide pit and pipe, it is little different in effect from option 4, but it would be less direct and certain"*.<sup>8</sup>

We also think there is a real risk that at least some consumers will not read or necessarily understand the disclosure documents they are given by the developer about the installation of pit and pipe, so this option may not actually boost developer compliance with pit and pipe requirements over time.

## 2.6. Option 6: Legislation to provide a compensation mechanism

We do not think this option is likely to be effective in boosting the installation of pit and pipe. We are concerned that amending Part 20A to allow consumers to seek compensation (if fibre-ready facilities are not installed or are defective) would shift the enforcement burden to consumers, and may result in those consumers incurring additional costs (beyond any remediation costs) if they decide to pursue court action. As the Department states in the draft RIS: *"[f]undamentally, however, [Option 6] does not directly*

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<sup>6</sup> Draft RIS, page 5.

<sup>7</sup> Draft RIS, page 5.

<sup>8</sup> Draft RIS, page 5.



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*address the problem of developers not installing facilities in the first place and the additional cost of retrofitting, and adds an extra enforcement cost without addressing the issue more directly”.<sup>9</sup>*

To the extent that Option 6 proposes to allow consumers to seek compensation for defective pit and pipe, there is also a risk that a non-compliant developer may seek to shift responsibility to the carrier who subsequently seeks to use the pit and pipe to install telecommunications network infrastructure in order to provide services to the development.

Ultimately, we think amending Part 20A to cover unincorporated developers (as proposed by Option 4), including pit and pipe requirements in all state, territory and local planning laws (as proposed by Option 3), and having appropriate compliance and enforcement processes for each of these, is likely to be a more direct and effective way to deliver on the Government’s objectives compared to Option 6.

## **2.7. Option 7: Legislation to require the installation of networks**

As noted above, Telstra has previously suggested that a legislative obligation on developers to arrange for the provision of appropriate telecommunications network infrastructure (not just “fibre-ready facilities”) may perhaps be the clearest and most direct way to achieve the objectives of the TIND policy, which requires developers to arrange for the provision of pit and pipe and to arrange for a carrier to install telecommunications network infrastructure to service the new development.

We see merit in Option 7, and note that this option will set out in legislation what the TIND policy already requires. As the Department noted, *“most developers already do this as a matter of course as access to telecommunications is generally seen as a necessary feature for selling properties. Therefore the additional substantive regulatory cost would largely fall on the developers who are not doing what the community would expect of them”*.<sup>10</sup>

However, we also acknowledge that Option 7 will involve the most significant legislative change, by extending the scope of the Telco Act beyond the provision of pit and pipe to cover the installation of telecommunications network infrastructure as well. In addition, we note the Government’s recent commitment to addressing the provision of telecommunications infrastructure in new developments through the TIND policy, rather than additional regulation. For example, in the recently revised TIND policy, the Government stated that it:

*“... has decided to continue to address the provision of telecommunications in new developments through this policy rather than additional regulation because the market overall is working well. Most participants in the market have been operating in line with the policy and most outcomes are positive. The number of negative outcomes is limited. In this context a lighter touch approach is warranted. The Government will, however, look at more direct approaches should this change and greater guidance be required”*.<sup>11</sup>

In all the circumstances, it may be sensible to pursue Options 3 and 4 in the first instance, and assess whether they achieve their intended effect over time. If they do not, then Option 7 could be reconsidered at a later date.

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<sup>9</sup> Draft RIS, page 5.

<sup>10</sup> Draft RIS, page 5.

<sup>11</sup> Telecommunications in New Developments Policy, 1 September 2020, page 4.